

By: Darby

H.B. No. 2961

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a program for the development of solar energy industry in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 39.002, Utilities Code, is amended to read as follows:

Sec. 39.002. APPLICABILITY. This chapter, other than Sections 39.155, 39.157(e), 39.203, 39.903, 39.904, 39.9051, 39.9052, ~~[and]~~ 39.914(e), and 39.9156, does not apply to a municipally owned utility or an electric cooperative. Sections 39.157(e), 39.203, and 39.904, however, apply only to a municipally owned utility or an electric cooperative that is offering customer choice. If there is a conflict between the specific provisions of this chapter and any other provisions of this title, except for Chapters 40 and 41, the provisions of this chapter control.

SECTION 2. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9155 to read as follows:

Sec. 39.9155. SOLAR GENERATION INCENTIVE PROGRAM. (a) In this section:

(1) "Distributed solar generation" means distributed renewable generation as defined by Section 39.916 that uses an energy source derived directly from the sun.

(2) "Low-income electric customer" has the meaning assigned by Section 39.903(1).

1           (3) "Rated watts" means the output of a solar energy  
2 device as specified by the manufacturer of the device expressed in  
3 watts of direct current.

4           (4) "Small commercial customer" means a non  
5 residential customer as classified by the appropriate electric  
6 utility or transmission and distribution utility tariff whose  
7 electricity consumption averages less than 2500 kilowatt hours per  
8 month over the 12 month period ending on the last full calendar  
9 month before the effective date of this section.

10           (5) "Solar energy device" has the meaning assigned by  
11 Section 185.001.

12           (6) "Wholesale solar generation" means a solar  
13 generation system that:

14                   (A) regardless of the system's generation  
15 capacity, is installed on the utility's side of the meter; or

16                   (B) has a generation capacity of two megawatts or  
17 more and is installed on a retail customer's side of the meter.

18           (b) The program developed under this section applies only to  
19 an electric utility operating inside or outside of ERCOT.

20           (c) The commission shall develop and implement a program as  
21 provided by this section to facilitate the development of a solar  
22 energy market and solar energy industry in this state by increasing  
23 the amount of wholesale and distributed solar generation installed  
24 in this state. The program shall be transparent, cost effective,  
25 limited in scope and duration, apply statewide, and that  
26 residential and small commercial customers may choose to  
27 participate at a higher level than that prescribed by this section

1 or may choose not to participate in the program. The commission  
2 shall act as the program administrator to oversee and administer  
3 the implementation of the program or may designate a third party as  
4 the program administrator in accordance with an agreement with the  
5 designated party.

6 (d) The commission shall establish a goal of achieving  
7 through the program the installation of at least 1,000 megawatts of  
8 solar generation over the duration of the program.

9 (e) The solar generation rebate fund is established as a  
10 special trust fund held by the comptroller outside of the state  
11 treasury and administered by the program administrator for the  
12 payment of the incentives authorized by this section, without the  
13 necessity of an appropriation. Money in the fund may be used only  
14 for the purposes of the program as provided by this section. Not  
15 more than 2.5 percent of the fund may be spent annually for costs of  
16 administering the fund and the program. The fund consists of:

17 (1) fees imposed under this section and remitted to  
18 the comptroller for deposit to the credit of the fund;

19 (2) gifts or grants awarded for the purposes of the  
20 program and deposited to the credit of the fund; and

21 (3) interest and other income from investment of the  
22 money deposited to the credit of the fund.

23 (f) Money collected under the program may be spent only for  
24 program purposes. Except for spending authorized by Subsections  
25 (e), (o), and (p), 50 percent of all money spent under the program  
26 must be used for incentives for wholesale solar generation projects  
27 and the remaining money spent under the program must be used for

1 incentives for distributed solar generation projects. The money  
2 spent for distributed solar generation projects must be divided  
3 proportionately between residential and nonresidential market  
4 segments in accordance with the relative percentage of money  
5 contributed under the program from those market segments. A  
6 portion of the money allocated for the residential market segment,  
7 as determined by the commission, must be reserved to be spent only  
8 for incentives for distributed solar generation projects in new  
9 residential construction.

10 (g) The commission by rule shall provide for the assessment  
11 and collection of nonbypassable fees by electric utilities and  
12 transmission and distribution utilities. An electric utility or  
13 transmission and distribution utility shall remit all fees  
14 collected to the comptroller for deposit to the credit of the solar  
15 generation rebate fund. The fees assessed under this subsection  
16 must be in the following amounts:

17 (1) \$1 each month for each residential meter which, if  
18 applicable, must be included in nonbypassable delivery charges paid  
19 by the customer's retail electric provider;

20 (2) \$5 each month for each commercial meter; and

21 (3) \$50 each month for each industrial meter, except  
22 that the total of nonbypassable fees assessed against a retail  
23 electric provider for a single industrial account may not exceed  
24 \$250 in a single month.

25 (h) The commission by rule shall establish a mechanism to  
26 ensure that fees collected under this section and remitted for  
27 deposit to the solar generation rebate fund are made continuously

1 available as necessary to provide for payment of incentives in the  
2 form of rebate payments as provided by this section to defray the  
3 cost of installing solar generation.

4 (i) the commission shall establish a method by which  
5 residential and small commercial customers may request to increase  
6 the amount of the nonbypassable fee assessed to them under this  
7 section by \$1 per month, or by which residential and small  
8 commercial customers may waive the assessment of the nonbypassable  
9 fee assessed to them under this section by:

10 (A) submitting a written request after receiving  
11 an initial notification of the implementation of this program,  
12 which notice shall be issued by an electric utility or a  
13 transmission and distribution utility to its residential and small  
14 commercial customers within 60 days after the commission adopts  
15 rules implementing this program; or

16 (B) making a request when establishing service  
17 with a retail electric provider or an electric utility;

18 (j) Customers who request a waiver under subsection (i) will  
19 not be eligible for rebates under the program.

20 (k) When a customer requests a waiver under subsection (i),  
21 the commission shall ensure that the retail electric provider is  
22 not responsible for the fees that normally would be collected for  
23 that customer account.

24 (l) The commission shall establish a schedule of rebate  
25 amounts for installed solar generation that vary according to the  
26 rated watts of, or the kilowatt-hours produced by, the solar  
27 generation equipment and that decrease in proportion to the

1 capacity of solar generation installed. The commission shall  
2 ensure that the schedule:

3 (1) is publicly available;

4 (2) provides for reducing rebate amounts per unit of  
5 solar generation capacity by not less than 12 percent for each year  
6 of the program;

7 (3) does not obligate payment of rebates in amounts  
8 that would cause the rebate program payments to exceed the amount  
9 budgeted for rebate payments over the duration of the program; and

10 (4) provides for rebates to be paid directly to  
11 customers, qualified installers, homebuilders, remodelers, or  
12 third-party owners of installed solar generation in a simple,  
13 uniform, and reliable administrative manner that:

14 (A) ensures the timely payment of rebates; and

15 (B) allows for the assignment of the rebate to  
16 another person at the direction of the qualified recipient.

17 (m) The commission shall establish as the initial rebate  
18 amounts:

19 (1) \$2 per rated watt for installed distributed solar  
20 generation with a capacity of not more than 10 kilowatts, or an  
21 equivalent amount per kilowatt-hour produced;

22 (2) \$1.40 per rated watt for installed distributed  
23 solar generation with a capacity of more than 10 but not more than  
24 2,000 kilowatts, or an equivalent amount per kilowatt-hour  
25 produced; and

26 (3) \$1 per rated watt for installed wholesale solar  
27 generation, or an equivalent amount per kilowatt-hour produced.

1       (n) The fees authorized by this section may not be assessed  
2 after the fifth anniversary of the date the program is established  
3 under commission rules, and the program ends when all money in the  
4 solar generation rebate fund that is available for paying  
5 incentives under the program is exhausted.

6       (o) Using available money from the solar generation rebate  
7 fund, the commission, in consultation with an independent  
8 organization certified under Section 39.151, shall identify and  
9 report to the 83rd Legislature before January 1, 2013, the  
10 geographic areas of this state where wholesale solar generation can  
11 be located with minimal additional transmission facilities.

12       (p) The commission by rule shall provide a method by which  
13 the program administrator shall use money from the solar generation  
14 rebate fund to pay for a credit to the electric service bill of each  
15 low-income electric customer for an amount equal to the amount of  
16 the fee assessed in the customer's bill.

17       (q) This section may not be construed as mandating  
18 distributed solar generation or any design, construction, or  
19 installation of solar-ready products to be installed by  
20 homebuilders.

21       SECTION 3. Subchapter Z, Chapter 39, Utilities Code, is  
22 amended by adding Sections 39.9156 and 39.9157 to read as follows:

23       Sec. 39.9156. SOLAR GENERATION PROGRAMS. (a) This section  
24 applies only to an electric cooperative or municipally owned  
25 utility with retail sales of more than 500,000 megawatt hours in  
26 2009.

27       (b) It is the goal of the legislature that:

1           (1) electric cooperatives and municipally owned  
2 utilities administer incentive programs to facilitate the  
3 development of a solar energy market and solar energy industry in  
4 this state by increasing the amount of wholesale and distributed  
5 solar generation installed in this state;

6           (2) customers of electric cooperatives and  
7 municipally owned utilities will have access to incentives for the  
8 installation of distributed solar generation; and

9           (3) electric cooperatives and municipally owned  
10 utilities spend money to increase the amount of solar generation to  
11 a funding level consistent with the requirements for electric  
12 utilities in this state under Section 39.9155.

13           (c) Beginning not later than March 1, 2012, an electric  
14 cooperative or municipally owned utility annually, in a form and  
15 manner determined by the program administrator, shall report to the  
16 program administrator designated under Section 39.9155,  
17 information regarding the efforts of the municipally owned utility  
18 or electric cooperative related to this section.

19           (d) This section does not prevent the governing body of an  
20 electric cooperative or municipally owned utility from adopting  
21 rules, programs, and incentives to encourage or provide for the  
22 installation of more solar generation capacity beyond the goals  
23 established by Section 39.9155, or rules adopted under that  
24 section.

25           (e) An electric cooperative or municipally owned utility  
26 may recover the costs required by this section through a  
27 nonbypassable fee consistent with the nonbypassable fees



1 authorized by the commission for electric utilities under Section  
2 39.9155(g), or another cost recovery mechanism as determined by the  
3 governing body of the electric cooperative or municipally owned  
4 utility.

5 Sec. 39.9157. OWNERSHIP OF DISTRIBUTED SOLAR GENERATION.

6 Notwithstanding any other provision of this title:

7 (1) any person may own distributed solar generation  
8 and enter into a contract with the retail customer on whose property  
9 the solar generation capacity is located to lease the solar  
10 generation equipment or sell the generated output to the retail  
11 customer or to that customer's retail electric provider;

12 (2) an owner of the distributed solar generation is  
13 not an electric utility and is not required to register with the  
14 commission as a power generation company or self-generator; and

15 (3) the commission may establish appropriate  
16 reporting and other requirements for an owner of distributed solar  
17 generation to be eligible to earn renewable energy credits.

18 SECTION 4. Section 151.318(c), Tax Code, is amended to read  
19 as follows:

20 (c) The exemption does not include:

21 (1) intraplant transportation equipment, including  
22 intraplant transportation equipment used to move a product or raw  
23 material in connection with the manufacturing process and  
24 specifically including all piping and conveyor systems, provided  
25 that the following remain eligible for the exemption:

26 (A) piping or conveyor systems that are a  
27 component part of a single item of manufacturing equipment or

1 pollution control equipment eligible for the exemption under  
2 Subsection (a)(2), (a)(4), or (a)(5);

3 (B) piping through which the product or an  
4 intermediate or preliminary product that will become an ingredient  
5 or component part of the product is recycled or circulated in a loop  
6 between the single item of manufacturing equipment and the  
7 ancillary equipment that supports only that single item of  
8 manufacturing equipment if the single item of manufacturing  
9 equipment and the ancillary equipment operate together to perform a  
10 specific step in the manufacturing process; and

11 (C) piping through which the product or an  
12 intermediate or preliminary product that will become an ingredient  
13 or component part of the product is recycled back to another single  
14 item of manufacturing equipment and its ancillary equipment in the  
15 same manufacturing process;

16 (2) hand tools;

17 (3) maintenance supplies not otherwise exempted under  
18 this section, maintenance equipment, janitorial supplies or  
19 equipment, office equipment or supplies, equipment or supplies used  
20 in sales or distribution activities, research or development of new  
21 products, or transportation activities;

22 (4) machinery and equipment or supplies to the extent  
23 not otherwise exempted under this section used to maintain or store  
24 tangible personal property; ~~or~~

25 (5) tangible personal property used in the  
26 transmission or distribution of electricity, including  
27 transformers, cable, switches, breakers, capacitor banks,

1 regulators, relays, reclosers, fuses, interruptors, reactors,  
2 arrestors, resistors, insulators, instrument transformers, and  
3 telemetry units not otherwise exempted under this section, and  
4 lines, conduit, towers, and poles; or

5 (6) solar energy devices as defined by Section  
6 185.001(2), Utilities Code.

7 SECTION 5. Except Section 39.9157, Utilities Code, as added  
8 by this Act, this Act expires when the fund established pursuant to  
9 Section 39.9155, Utilities Code, as added by this Act, is  
10 exhausted.

11 SECTION 6. The Public Utility Commission of Texas shall  
12 adopt rules establishing the programs required under Sections  
13 39.9155 and 39.9156, Utilities Code, as added by this Act, not later  
14 than December 1, 2011.

15 SECTION 7. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2011.