

- SUBJECT:** Prohibiting certain restrictions on energy devices; requiring disclosures
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 11 ayes — Paddie, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson
- 0 nays
- 2 absent — Hernandez, Smithee
- SENATE VOTE:** On final passage, April 9 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing.
- BACKGROUND:** Utilities Code sec. 39.916 defines "distributed renewable generation" to mean electric generation with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology that is installed on a retail electric consumer's side of the meter. Sec. 39.202(o) defines "small commercial customer" to mean a commercial customer having a peak demand of 1,000 kilowatts or less.
- Property Code sec. 202.010 prohibits a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device, with certain exceptions.
- Concerns have been raised that some municipalities have adopted ordinances that limit a homeowner's ability to install solar generation on their property and are more restrictive than what has been approved by the Legislature for home owners' associations. It has been suggested that the same limits approved for homeowners' associations should be applied to municipalities.
- DIGEST:** SB 398 would prohibit a municipality from prohibiting or restricting the installation of a solar energy device by a residential or small commercial

customer, with certain exceptions. The bill also would amend disclosure requirements for sellers or lessors of distributed renewable generation resources.

Municipal regulation of solar energy devices. Under SB 398, a municipality could not prohibit or restrict the installation of a solar energy device by a residential or small commercial customer except to the extent a property owners' association could prohibit the installation.

A municipality also could prohibit or restrict the installation of such devices to the extent the interconnection guidelines and interconnection agreement of a municipally-owned utility serving the customer's service area, the rules of the Public Utility Commission (PUC) of Texas, or the protocols of an independent organization certified by the PUC to perform certain essential functions for a power region limited the installation of such devices due to reliability, power quality, or the safety of the distribution system.

Disclosures. The bill would require a seller or lessor of a distributed renewable generation resource who entered into a purchase, lease, or power purchase agreement with a residential or small commercial customer for the operation of a distributed renewable generation resource to provide certain disclosures to the customer.

A written disclosure under this section would have to include:

- contact information of the salesperson and installer of the generation resource;
- a description of all equipment to be installed;
- the cost of all equipment to be installed;
- a detailed accounting of fees associated with the installation or operation of the generation resource;
- representations, if any, made as part of the agreement regarding the expected operational performance and financial performance of the generation resource; and
- all applicable warranties.

A lessor also would have to provide a written disclosure to a leasing residential or small commercial customer that included:

- the term and rate of the lease, including any payment escalators or other terms that affected the customer's payments; and
- a statement of whether the lease and any applicable warranty or maintenance agreement was transferable to a subsequent purchaser of the property where the distributed renewable generation resource was installed.

A residential or small commercial customer who entered into a power purchase agreement also would be entitled to a written disclosure that contained:

- the information required for such agreements as listed above;
- the term and rate of the power purchase agreement, including any payment escalators or other terms that affected the customer's payments; and
- whether the power purchase agreement and any applicable warranty or maintenance agreement was transferable to a subsequent purchaser or the property where the distributed renewable generation resource was installed.

The bill's provisions would not apply to:

- a transaction involving the sale or transfer of the real property on which a distributed renewable generation resource was located;
- a person who marketed, sold, or entered into an agreement for the sale or financing of a distributed renewable generation resource as part of a transaction involving the sale or transfer of the real property on which the distributed renewable generation resource was or would be affixed; or
- a third party that entered into an agreement for the financing of a distributed renewable generation resource.

The bill would take effect September 1, 2021, and would apply only to an agreement governing the sale or lease of distributed renewable generation or a power purchase agreement entered into on or after the effective date.

NOTES:

The House companion bill, HB 3696 by Deshotel, was considered by the House State Affairs Committee in public hearings on April 8, reported favorably on April 20, and sent to the Calendars Committee.