

BILL ANALYSIS

Senate Research Center

H.B. 2845
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2845 amends current law relating to the removal of wind power facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the Utilities Code by adding Title 6, as follows:

TITLE 6. WIND POWER

CHAPTER 301. WIND POWER FACILITY AGREEMENTS

Sec. 301.0001. DEFINITIONS. Defines "grantee," "wind power facility," and "wind power facility agreement."

Sec. 301.0002. WAIVER VOID; REMEDIES. (a) Provides that a provision of a wind power facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by this chapter is void.

(b) Entitles a person who is harmed by a violation of this chapter to appropriate injunctive relief to prevent further violation of this chapter.

(c) Provides that the provisions of this section are not exclusive. Provides that the remedies provided in this section are in addition to any other procedures or remedies provided by other law.

Sec. 301.0003. REQUIRED AGREEMENT PROVISIONS ON FACILITY REMOVAL.

(a) Requires a wind power facility agreement to provide that the grantee is responsible for removing the grantee's wind power facilities from the landowner's property and that the grantee is required, in accordance with any other applicable laws or regulations, to safely:

(1) clear, clean, and remove from the property:

(A) each wind turbine generator, including towers and pad-mount transformers;

(B) all liquids, greases, or similar substances contained in a wind turbine generator;

(C) each substation; and

(D) all liquids, greases, or similar substances contained in a substation;

(2) for each tower foundation and pad-mount transformer foundation installed in the ground:

(A) clear, clean, and remove the foundation from the ground to a depth of at least three feet below the surface grade of the land in which the foundation is installed; and

(B) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property;

(3) for each buried cable, including power, fiber-optic, and communications cables, installed in the ground:

(A) clear, clean, and remove the cable from the ground to a depth of at least three feet below the surface grade of the land in which the cable is installed; and

(B) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property; and

(4) clear, clean, and remove from the property each overhead power or communications line installed by the grantee on the property.

(b) Requires the agreement to provide that, at the request of the landowner, the grantee is required to:

(1) clear, clean, and remove each road constructed by the grantee on the property; and

(2) ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property.

(c) Requires the agreement to provide that, at the request of the landowner, if reasonable, the grantee is required to:

(1) remove from the property all rocks over 12 inches in diameter excavated during the decommissioning or removal process;

(2) return the property to a tillable state using scarification, V-rip, or disc methods, as appropriate; and

(3) ensure that:

(A) each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property; and

(B) the surface is returned as near as reasonably possible to the same condition as before the grantee dug holes or cavities, including by reseeding pastureland with native grasses prescribed by an appropriate governmental agency, if any.

(d) Requires the landowner to make a request under Subsection (b) or (c) not later than the 180th day after the later of:

(1) the date on which the wind power facility is no longer capable of generating electricity in commercial quantities; or

(2) the date the landowner receives written notice of intent to decommission the wind power facility from the grantee.

Sec. 301.0004. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL ASSURANCE. (a) Requires a wind power facility agreement to provide that the grantee is required to obtain and deliver to the landowner evidence of financial assurance that conforms to the requirements of this section to secure the performance of the grantee's obligation to remove the grantee's wind power facilities located on the landowner's property as described by Section 301.0003. Provides that acceptable forms of financial assurance include a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency, a letter of credit, a bond, or another form of financial assurance acceptable to the landowner.

(b) Requires the amount of the financial assurance to be at least equal to the estimated amount by which the cost of removing the wind power facilities from the landowner's property and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins exceeds the salvage value of the wind power facilities, less any portion of the value of the wind power facilities pledged to secure outstanding debt.

(c) Requires the agreement to provide that:

(1) the estimated cost of removing the wind power facilities from the landowner's property and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins and the estimated salvage value of the wind power facilities is required to be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee is required to deliver to the landowner an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the cost of removal and the salvage value at least once every five years for the remainder of the term of the agreement; and

(3) the grantee is responsible for ensuring that the amount of the financial assurance remains sufficient to cover the amount required by Subsection (b), consistent with the estimates required by this subsection.

(d) Provides that the grantee is responsible for the costs of obtaining financial assurance described by this section and costs of determining the estimated removal costs and salvage value.

(e) Requires the agreement to provide that the grantee is required to deliver the financial assurance not later than the earlier of:

(1) the date the wind power facility agreement is terminated; or

(2) the 10th anniversary of the commercial operations date of the wind power facilities located on the landowner's leased property.

(f) Provides that, for purposes of this section, "commercial operations date" means the date on which the wind power facilities are approved for participation in market operations by a regional transmission organization and does not include the generation of electrical energy or other operations conducted before that date for purposes of maintenance and testing.

(g) Prohibits the grantee from cancelling financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's wind power facilities located on the landowner's property in the manner provided by this

chapter, unless the grantee provides the landowner with replacement financial assurance at the time of or before the cancellation. Requires the financial security provided by the grantee, in the event of a transfer of ownership of the grantee's wind power facilities, to remain in place until the date evidence of financial security meeting the requirements of this chapter is provided to the landowner.

SECTION 2. Makes application of Chapter 301, Utilities Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2019.