

A BILL TO BE ENTITLED

AN ACT

relating to the removal of solar power facilities.

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

SECTION 1. The heading to Title 6, Utilities Code, is amended to read as follows:

TITLE 6. PRIVATE [WIND] POWER AGREEMENTS

SECTION 2. Title 6, Utilities Code, is amended by adding Chapter 302 to read as follows:

CHAPTER 302. SOLAR POWER FACILITY AGREEMENTS

Sec. 302.0001. DEFINITIONS. In this chapter:

(1) "Grantee" means a person, other than an electric utility, as defined by Section 31.002, who:

(A) leases property from a landowner; and

(B) operates a solar power facility on the property.

(2) "Solar energy device" has the meaning assigned by Section 185.001.

(3) "Solar power facility" includes:

(A) a solar energy device; and

(B) a facility or equipment, other than a facility or equipment owned by an electric utility, as defined by Section 31.002, used to support the operation of a solar energy device, including an underground or aboveground electrical transmission or communications line, an electric transformer, a

1 battery storage facility, an energy storage facility,
2 telecommunications equipment, a road, a meteorological tower, or a
3 maintenance yard.

4 (4) "Solar power facility agreement" means a lease
5 agreement between a grantee and a landowner that authorizes the
6 grantee to operate a solar power facility on the leased property.

7 Sec. 302.0002. APPLICABILITY. This chapter applies only to
8 a solar power facility that is a generation asset as defined by
9 Section 39.251.

10 Sec. 302.0003. WAIVER VOID; REMEDIES. (a) A provision of a
11 solar power facility agreement that purports to waive a right or
12 exempt a grantee from a liability or duty established by this
13 chapter is void.

14 (b) A person who is harmed by a violation of this chapter is
15 entitled to appropriate injunctive relief to prevent further
16 violation of this chapter.

17 (c) The provisions of this section are not exclusive. The
18 remedies provided in this section are in addition to any other
19 procedures or remedies provided by other law.

20 Sec. 302.0004. REQUIRED AGREEMENT PROVISIONS ON FACILITY
21 REMOVAL. (a) A solar power facility agreement must provide that
22 the grantee is responsible for removing the grantee's solar power
23 facilities from the landowner's property and that the grantee
24 shall, in accordance with any other applicable laws or regulations,
25 safely:

26 (1) clear, clean, and remove from the property each
27 solar energy device, transformer, and substation;

1 (2) for each foundation of a solar energy device,
2 transformer, or substation installed in the ground:

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

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

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

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

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

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

20 (b) The agreement must provide that, at the request of the
21 landowner, the grantee shall:

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

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

27 (c) The agreement must provide that, at the request of the

1 landowner, if reasonable, the grantee shall:

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

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

7 (3) ensure that:

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

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

15 (d) The landowner shall make a request under Subsection (b)
16 or (c) not later than the 180th day after the later of:

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

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

22 Sec. 302.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
23 ASSURANCE. (a) A solar power facility agreement must provide that
24 the grantee shall obtain and deliver to the landowner evidence of
25 financial assurance that conforms to the requirements of this
26 section to secure the performance of the grantee's obligation to
27 remove the grantee's solar power facilities located on the

1 landowner's property as described by Section 302.0004. Acceptable
2 forms of financial assurance include a parent company guaranty with
3 a minimum investment grade credit rating for the parent company
4 issued by a major domestic credit rating agency, a letter of credit,
5 a bond, or another form of financial assurance acceptable to the
6 landowner.

7 (b) The amount of the financial assurance must be at least
8 equal to the estimated amount by which the cost of removing the
9 solar power facilities from the landowner's property and restoring
10 the property to as near as reasonably possible the condition of the
11 property as of the date the agreement begins exceeds the salvage
12 value of the solar power facilities, less any portion of the value
13 of the solar power facilities pledged to secure outstanding debt.

14 (c) The agreement must provide that:

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

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

26 (3) the grantee is responsible for ensuring that the
27 amount of the financial assurance remains sufficient to cover the

1 amount required by Subsection (b), consistent with the estimates
2 required by this subsection.

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

6 (e) The agreement must provide that the grantee shall
7 deliver the financial assurance not later than the earlier of:

8 (1) the date the solar power facility agreement is
9 terminated; or

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

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

19 (g) The grantee may not cancel financial assurance before
20 the date the grantee has completed the grantee's obligation to
21 remove the grantee's solar power facilities located on the
22 landowner's property in the manner provided by this chapter, unless
23 the grantee provides the landowner with replacement financial
24 assurance at the time of or before the cancellation. In the event
25 of a transfer of ownership of the grantee's solar power facilities,
26 the financial security provided by the grantee shall remain in
27 place until the date evidence of financial security meeting the

1 requirements of this chapter is provided to the landowner.

2 SECTION 3. Chapter 302, Utilities Code, as added by this
3 Act, applies only to a solar power facility agreement entered into
4 on or after the effective date of this Act. A solar power facility
5 agreement entered into before the effective date of this Act is
6 governed by the law as it existed immediately before that date, and
7 that law is continued in effect for that purpose.

8 SECTION 4. This Act takes effect September 1, 2021.