

By: Smithee

H.B. No. 4204

A BILL TO BE ENTITLED

AN ACT

relating to wind energy rights and wind energy development agreements.

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

SECTION 1. Title 6, Utilities Code, is amended by adding Chapter 303 to read as follows:

CHAPTER 303. WIND ENERGY RIGHTS AND RELATED AGREEMENTS

Sec. 303.0001. DEFINITIONS. In this chapter:

(1) "Wind energy agreement" means a lease, license, easement, or other agreement between the owner of a wind energy right and a wind energy developer to develop wind-powered energy generation.

(2) "Wind energy developer" means the lessee, easement holder, licensee, or similar party under a wind energy agreement.

(3) "Wind energy developer of record" means the wind energy developer named in a recorded wind energy agreement or, if the wind energy agreement has been transferred by a recorded document, the most recent transferee of the rights of the original wind energy developer identified in the recorded document.

(4) "Wind energy right" means the right of the owner of a surface estate, either directly or through a wind energy developer under a wind energy agreement, to capture and employ the kinetic energy of the wind or a person to whom that right has been transferred.

1           (5) "Wind-powered energy generation" means the  
2 generation of electricity by means of a turbine or other device that  
3 captures and employs the kinetic energy of the wind.

4           Sec. 303.0002. WIND ENERGY RIGHT. A wind energy right is  
5 severable from the surface estate and may be transferred,  
6 encumbered, or modified by agreement.

7           Sec. 303.0003. WIND ENERGY AGREEMENT. (a) A wind energy  
8 agreement is subject to statutory and other rules of law to the same  
9 extent as other agreements creating interests in or rights to use  
10 real property.

11           (b) A wind energy agreement:

12                   (1) may be recorded in the office of the county clerk  
13 in the county where the land subject to the agreement is located;  
14 and

15                   (2) unless recorded as described in Subdivision (1),  
16 is void as to any person who subsequently purchases rights in or to  
17 the land for a valuable consideration, except as between the  
18 parties to the agreement and as to those having notice of the  
19 agreement.

20           (c) The county clerk shall index a wind energy agreement in  
21 both the grantor and grantee indices under the name of each party to  
22 the wind energy agreement.

23           (d) This section applies to any modification, assignment,  
24 or encumbrance of a wind energy agreement.

25           Sec. 303.0004. TERMINATION; RELEASE. (a) If a wind energy  
26 agreement expires or is terminated, the wind energy developer of  
27 record shall record a release in the office of the county clerk in

1 the county where the land subject to the agreement is located.

2 (b) If the wind energy developer of record fails to record a  
3 release as described by Subsection (a), the owner of the surface  
4 estate or the owner of the wind energy right that is the subject of  
5 the agreement or the owner's agent may request the wind energy  
6 developer of record to record the release. The request must be:

7 (1) in writing; and

8 (2) delivered to the last-known address of the wind  
9 energy developer of record:

10 (A) personally; or

11 (B) by certified mail, first class postage  
12 prepaid, and return receipt requested.

13 (c) A wind energy developer of record who receives a request  
14 under Subsection (b) shall, not later than 90 days after the date  
15 the request is received, record the release as described by  
16 Subsection (a).

17 (d) If the interest of the wind energy developer of record  
18 has been transferred by an instrument that has not been recorded,  
19 the transferee shall:

20 (1) first record the instrument by which the  
21 transferee acquired the interest and then record the release  
22 required by Subsection (c); or

23 (2) cause the wind energy developer of record to  
24 record the release required by Subsection (c).

25 (e) A release recorded under this section must:

26 (1) identify the wind energy agreement with reasonable  
27 clarity; and

1           (2) include:

2                   (A) the names of the parties;

3                   (B) the legal description of the land subject to  
4 the agreement; and

5                   (C) the applicable recording information of the  
6 agreement.

7           (f) The county clerk shall index the release in both the  
8 grantor and grantee indices under the name of each party identified  
9 in the release.

10           Sec. 303.0005. FAILURE TO RECORD RELEASE; LIABILITY. (a) If  
11 a wind energy developer of record who receives a request under  
12 Section 303.0004(b) fails to record the release as required by  
13 Section 303.0004(c), the wind energy developer of record is liable  
14 to the owner of the surface estate and the owner of the wind energy  
15 right that is the subject of the agreement for any damages caused by  
16 the failure.

17           (b) The wind energy developer of record and every transferee  
18 described in Section 303.0004(d) are jointly and severally liable  
19 for any damages caused by the failure of:

20                   (1) the wind energy developer of record to record the  
21 release as required by Section 303.0004(c); or

22                   (2) a transferee to comply with Section 303.0004(d).

23           Sec. 303.0006. TRANSFER OF PARTY'S INTEREST IN AGREEMENT.  
24 Nothing in this chapter restricts the transfer of any interest of a  
25 party to a wind energy agreement, including the transfer of the  
26 right of the owner of the surface estate to receive payments under  
27 the wind energy agreement.

1           SECTION 2. Nothing in this Act affects the validity of an  
2 agreement entered into before the effective date of this Act.

3           SECTION 3. This Act takes effect September 1, 2023.