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By:  Canales H.B. No. 2845

A BILL TO BE ENTITLED

AN ACT

relating to the removal of wind power facilities.

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

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

TITLE 6. WIND POWER

CHAPTER 301. WIND POWER FACILITY AGREEMENTS

Sec. 301.0001.  DEFINITIONS. In this chapter:

(1)  "Grantee" means a person who:

(A)  leases property from a landowner; and

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

(2)  "Wind power facility" includes:

(A)  a wind turbine generator; and

(B)  a facility or equipment used to support the operation of a wind turbine generator, including an underground or aboveground electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility, telecommunications equipment, a road, a meteorological tower with wind measurement equipment, or a maintenance yard.

(3)  "Wind power facility agreement" means a lease agreement between a grantee and a landowner that authorizes the grantee to operate a wind power facility on the leased property.

Sec. 301.0002.  WAIVER VOID; REMEDIES. (a) 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)  A person who is harmed by a violation of this chapter is entitled to appropriate injunctive relief to prevent further violation of this chapter.

(c)  The provisions of this section are not exclusive. 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) A wind power facility agreement must provide that the grantee is responsible for removing the grantee's wind power facilities from the landowner's property and that the grantee shall, in accordance with any other applicable laws or regulations, 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 at least three feet from the grade of the land affected by the foundation; 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 at least three feet below the grade of the land affected by the cable; 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)  The agreement must provide that, at the request of the landowner, the grantee shall:

(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)  The agreement must provide that, at the request of the landowner, if reasonable, the grantee shall:

(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 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)  The agreement may not authorize the landowner to make a request under Subsection (b) or (c) after the first anniversary of the end of the wind power facility's useful life. The facility's useful life is presumed to be at an end if the facility is no longer being used to generate electricity.

Sec. 301.0004.  REQUIRED AGREEMENT PROVISIONS ON REMOVAL BOND. (a) A wind power facility agreement must provide that the grantee shall obtain and deliver to the landowner a bond or other form of financial assurance, such as a letter of credit, an escrow account, or other form of financial assurance acceptable to the landowner, 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.

(b)  The amount of the bond or other financial assurance must be at least equal to 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.

(c)  The agreement must provide that:

(1)  if the landowner and the grantee cannot agree in good faith on the estimated cost described by Subsection (b) before the 60th day after the date of their first attempt to agree on the cost, the landowner and the grantee shall mutually select a qualified independent engineer who will determine an estimated cost; and

(2)  if the landowner and the grantee cannot mutually select an engineer before the 30th day after the date of their first attempt to agree on an engineer, the landowner may petition the district judge of the county in which the landowner's property is located to appoint a qualified independent engineer to determine an estimated cost.

(d)  The estimated cost determined by an engineer selected or appointed under Subsection (c) is binding, and the grantee shall obtain and deliver to the landowner a bond or other financial assurance of that amount.

(e)  The agreement must provide that:

(1)  the landowner may request that the grantee increase the amount of the bond or other financial assurance not more than once every two years;

(2)  the amount of the new bond or other financial assurance shall be determined according to the procedures provided by Subsections (b), (c), and (d); and

(3)  except as provided by Subsection (f), the amount of the bond or other financial assurance may not be decreased.

(f)  The agreement must provide that the grantee may decrease the amount of a bond or other financial assurance described by this section if:

(1)  at least 60 percent of the wind turbines in the wind power facilities located on the landowner's property are repowered and refitted after the effective date of the original bond or other financial assurance; and

(2)  the amount of the new bond or other financial assurance is determined according to the procedures provided by Subsections (b), (c), and (d).

(g)  The grantee is responsible for the costs of obtaining a bond or other financial assurance described by this section and costs of determining the estimated removal costs, including any costs associated with obtaining an estimate from an independent engineer.

(h)  The agreement must provide that the grantee shall deliver the bond or other 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 date that wind turbine generators representing at least 95 percent of the installed capacity of the wind power facilities located on the landowner's leased property are authorized and able to continuously and reliably generate and deliver energy, other than test energy, to the electric utility grid.

(i)  The grantee may not cancel a bond or other 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 a replacement bond or replacement financial assurance at the time of or before the cancellation.

SECTION 2.  Chapter 301, Utilities Code, as added by this Act, applies only to a wind power facility agreement entered into on or after the effective date of this Act. A wind power facility agreement entered into before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.