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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

1 wind power facility agreement that purports to waive a right or
2 exempt a grantee from a liability or duty established by this
3 chapter is void.

4 (b) A person who is harmed by a violation of this chapter is
5 entitled to appropriate injunctive relief to prevent further
6 violation of this chapter.

7 (c) The provisions of this section are not exclusive. The
8 remedies provided in this section are in addition to any other
9 procedures or remedies provided by other law.

10 Sec. 301.0003. REQUIRED AGREEMENT PROVISIONS ON FACILITY
11 REMOVAL. (a) A wind power facility agreement must provide that the
12 grantee is responsible for removing the grantee's wind power
13 facilities from the landowner's property and that the grantee
14 shall, in accordance with any other applicable laws or regulations,
15 safely:

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

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

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

21 (C) each substation; and

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

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

26 (A) clear, clean, and remove the foundation from
27 the ground to a depth of at least three feet below the surface grade

1 of the land in which the foundation is installed; and

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

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

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

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

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

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

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

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

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

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

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

3 (3) ensure that:

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

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

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

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

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

18 Sec. 301.0004. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
19 ASSURANCE. (a) A wind power facility agreement must provide that
20 the grantee shall obtain and deliver to the landowner evidence of
21 financial assurance that conforms to the requirements of this
22 section to secure the performance of the grantee's obligation to
23 remove the grantee's wind power facilities located on the
24 landowner's property as described by Section 301.0003. Acceptable
25 forms of financial assurance include a parent company guaranty with
26 a minimum investment grade credit rating for the parent company
27 issued by a major domestic credit rating agency, a letter of credit,

1 a bond, or another form of financial assurance acceptable to the
2 landowner.

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

10 (c) The agreement must provide that:

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

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

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

26 (d) The grantee is responsible for the costs of obtaining
27 financial assurance described by this section and costs of

1 determining the estimated removal costs and salvage value.

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

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

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

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

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

25 SECTION 2. Chapter 301, Utilities Code, as added by this
26 Act, applies only to a wind power facility agreement entered into on
27 or after the effective date of this Act. A wind power facility

1 agreement entered into before the effective date of this Act is
2 governed by the law as it existed immediately before that date, and
3 that law is continued in effect for that purpose.

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