

By: Canales, Darby, Clardy, Phelan, Burrows,
et al.

H.B. No. 2845

Substitute the following for H.B. No. 2845:

By: Raymond

C.S.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 at least three feet from the grade of the land affected

1 by the foundation; 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 at least three feet below the grade of the land affected by
9 the cable; 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 agreement may not authorize the landowner to make a
12 request under Subsection (b) or (c) after the first anniversary of
13 the date on which the wind power facility is no longer capable of
14 generating electricity in commercial quantities.

15 Sec. 301.0004. REQUIRED AGREEMENT PROVISIONS ON REMOVAL
16 BOND. (a) A wind power facility agreement must provide that the
17 grantee shall obtain and deliver to the landowner a bond or other
18 form of financial assurance, such as a letter of credit, an escrow
19 account, or other form of financial assurance acceptable to the
20 landowner, that conforms to the requirements of this section to
21 secure the performance of the grantee's obligation to remove the
22 grantee's wind power facilities located on the landowner's property
23 as described by Section 301.0003.

24 (b) The amount of the bond or other financial assurance must
25 be at least equal to the estimated amount by which the cost of
26 removing the wind power facilities from the landowner's property
27 and restoring the property to as near as reasonably possible the

1 condition of the property as of the date the agreement begins
2 exceeds the salvage value of the wind power facilities, less any
3 portion of the value of the wind power facilities pledged to secure
4 outstanding debt.

5 (c) The agreement must provide that:

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

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

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

21 (d) The grantee is responsible for the costs of obtaining a
22 bond or other financial assurance described by this section and
23 costs of determining the estimated removal costs and salvage value.

24 (e) The agreement must provide that the grantee shall
25 deliver the bond or other financial assurance not later than the
26 earlier of:

27 (1) the date the wind power facility agreement is

1 terminated; or

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

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

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

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

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