

By: Springer

S.B. No. 760

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 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 used to support the operation of a solar energy device, 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, or a maintenance yard.

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

4 Sec. 302.0002. WAIVER VOID; REMEDIES. (a) A provision of a
5 solar power facility agreement that purports to waive a right or
6 exempt a grantee from a liability or duty established by this
7 chapter is void.

8 (b) A person who is harmed by a violation of this chapter is
9 entitled to appropriate injunctive relief to prevent further
10 violation of this chapter.

11 (c) The provisions of this section are not exclusive. The
12 remedies provided in this section are in addition to any other
13 procedures or remedies provided by other law.

14 Sec. 302.0003. REQUIRED AGREEMENT PROVISIONS ON FACILITY
15 REMOVAL. (a) A solar power facility agreement must provide that
16 the grantee is responsible for removing the grantee's solar power
17 facilities from the landowner's property and that the grantee
18 shall, in accordance with any other applicable laws or regulations,
19 safely:

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

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

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

27 (B) ensure that each hole or cavity created in

1 the ground by the removal is filled with topsoil of the same type or
2 a similar type as the predominant topsoil found on the property;

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

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

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

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

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

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

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

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

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

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

1 (3) ensure that:

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

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

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

11 (1) the date on which the solar power facility is no
12 longer capable of generating electricity in commercial quantities;
13 or

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

16 Sec. 302.0004. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
17 ASSURANCE. (a) A solar power facility agreement must provide that
18 the grantee shall obtain and deliver to the landowner evidence of
19 financial assurance that conforms to the requirements of this
20 section to secure the performance of the grantee's obligation to
21 remove the grantee's solar power facilities located on the
22 landowner's property as described by Section 302.0003. Acceptable
23 forms of financial assurance include a parent company guaranty with
24 a minimum investment grade credit rating for the parent company
25 issued by a major domestic credit rating agency, a letter of credit,
26 a bond, or another form of financial assurance acceptable to the
27 landowner.

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

8 (c) The agreement must provide that:

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

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

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

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

27 (e) The agreement must provide that the grantee shall

1 deliver the financial assurance not later than the earlier of:

2 (1) the date the solar power facility agreement is
3 terminated; or

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

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

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

23 SECTION 3. Chapter 302, Utilities Code, as added by this
24 Act, applies only to a solar power facility agreement entered into
25 on or after the effective date of this Act. A solar power facility
26 agreement entered into before the effective date of this Act is
27 governed by the law as it existed immediately before that date, and

1 that law is continued in effect for that purpose.

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