

By: Springer

S.B. No. 2213

A BILL TO BE ENTITLED

AN ACT

relating to the removal of electric energy storage facilities.

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. ELECTRIC ENERGY STORAGE FACILITY AGREEMENTS

Sec. 303.0001. DEFINITIONS. In this chapter:

(1) "Electric energy storage facility" includes a facility or equipment, other than a facility or equipment owned by an electric utility, as defined by Section 31.002, used to support the operation of electric energy storage, including an underground or aboveground electrical transmission or communications line, an electric transformer, telecommunications equipment, a road, a meteorological tower, or a maintenance yard.

(2) "Electric energy storage facility agreement" means a lease agreement between a grantee and a landowner that authorizes the grantee to operate an electric energy storage facility on the leased property.

(3) "Grantee" means a person, other than an electric utility, as defined by Section 31.002, who:

(A) leases property from a landowner; and

(B) operates an electric energy storage facility on the property.

Sec. 303.0002. APPLICABILITY. This chapter applies only to

1 electric energy storage that is a generation asset as defined by
2 Section 39.251.

3 Sec. 303.0003. WAIVER VOID; REMEDIES. (a) A provision of
4 an electric energy storage facility agreement that purports to
5 waive a right or exempt a grantee from a liability or duty
6 established by this chapter is void.

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

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

13 Sec. 303.0004. REQUIRED AGREEMENT PROVISIONS ON FACILITY
14 REMOVAL. (a) An electric energy storage facility agreement must
15 provide that the grantee is responsible for removing the grantee's
16 electric energy storage facilities from the landowner's property
17 and that the grantee shall, in accordance with any other applicable
18 laws or regulations, safely:

19 (1) clear, clean, and remove from the property each
20 piece of electric energy storage equipment, including any
21 transformers or substations;

22 (2) for each foundation of electric energy storage
23 equipment, including a transformer or substation installed in the
24 ground:

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

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

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

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

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

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

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

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

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

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

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

27 (2) return the property to a tillable state using

1 scarification, V-rip, or disc methods, as appropriate; and

2 (3) ensure that:

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

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

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

12 (1) the date on which the electric energy storage
13 facility is no longer capable of storing electricity in commercial
14 quantities; or

15 (2) the date the landowner receives written notice of
16 intent to decommission the electric energy storage facility from
17 the grantee.

18 Sec. 303.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
19 ASSURANCE. (a) An electric energy storage facility agreement must
20 provide that the grantee shall obtain and deliver to the landowner
21 evidence of financial assurance that conforms to the requirements
22 of this section to secure the performance of the grantee's
23 obligation to remove the grantee's electric energy storage
24 facilities located on the landowner's property as described by
25 Section 303.0004. Acceptable forms of financial assurance include a
26 parent company guaranty with a minimum investment grade credit
27 rating for the parent company issued by a major domestic credit

1 rating agency, a letter of credit, a bond, or another form of
2 financial assurance acceptable to the 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
5 electric energy storage facilities from the landowner's property
6 and restoring the property to as near as reasonably possible the
7 condition of the property as of the date the agreement begins
8 exceeds the salvage value of the electric energy storage
9 facilities, less any portion of the value of the electric energy
10 storage facilities pledged to secure outstanding debt.

11 (c) The agreement must provide that:

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

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

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

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

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

6 (1) the date the electric energy storage facility
7 agreement is terminated; or

8 (2) the 10th anniversary of the commercial operations
9 date of the electric energy storage facilities located on the
10 landowner's leased property.

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

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

1 SECTION 2. Chapter 303, Utilities Code, as added by this
2 Act, applies only to an electric energy storage facility agreement
3 entered into on or after the effective date of this Act. An
4 electric energy storage facility agreement entered into before the
5 effective date of this Act is governed by the law as it existed
6 immediately before that date, and that law is continued in effect
7 for that purpose.

8 SECTION 3. This Act takes effect September 1, 2021.