

By: Smithee

H.B. No. 2474

A BILL TO BE ENTITLED

AN ACT

relating to wind energy rights and wind energy development agreements.

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. WIND ENERGY RIGHTS AND RELATED AGREEMENTS

Sec. 303.0001. DEFINITIONS. In this chapter:

(1) "Wind energy agreement" means a lease, license, easement, or other agreement between the owner of a wind energy right and a wind energy developer to develop wind-powered energy generation.

(2) "Wind energy developer" means the lessee, easement holder, licensee, or similar party under a wind energy agreement.

(3) "Wind energy developer of record" means the wind energy developer named in a recorded wind energy agreement or, if the wind energy agreement has been transferred by a recorded document, the most recent transferee of the rights of the original wind energy developer identified in the recorded document.

(4) "Wind energy right" means the right of the owner of a surface estate, either directly or through a wind energy developer under a wind energy agreement, to capture and employ the kinetic energy of the wind.

(5) "Wind-powered energy generation" means the

1 generation of electricity by means of a turbine or other device that
2 captures and employs the kinetic energy of the wind.

3 Sec. 303.0002. WIND ENERGY RIGHT. A wind energy right is
4 not severable from the surface estate but may be created,
5 transferred, encumbered, or modified by agreement.

6 Sec. 303.0003. WIND ENERGY AGREEMENT. (a) A wind energy
7 agreement is subject to statutory and other rules of law to the same
8 extent as other agreements creating interests in or rights to use
9 real property.

10 (b) A wind energy agreement:

11 (1) may be recorded in the office of the county clerk
12 in the county where the land subject to the agreement is located;
13 and

14 (2) unless recorded as described in Subdivision (1),
15 is void as to any person who subsequently purchases rights in or to
16 the land for a valuable consideration, except as between the
17 parties to the agreement and as to those having notice of the
18 agreement.

19 (c) The county clerk shall index a wind energy agreement in
20 both the grantor and grantee indices under the name of each party to
21 the wind energy agreement.

22 (d) This section applies to any modification, assignment,
23 or encumbrance of a wind energy agreement.

24 Sec. 303.0004. TERMINATION; RELEASE. (a) If a wind energy
25 agreement expires or is terminated, the wind energy developer of
26 record shall record a release in the office of the county clerk in
27 the county where the land subject to the agreement is located.

1 (b) If the wind energy developer of record fails to record a
2 release as described by Subsection (a), the owner of the surface
3 estate or the owner's agent may request the wind energy developer of
4 record to record the release. The request must be:

5 (1) in writing; and

6 (2) delivered to the last-known address of the wind
7 energy developer of record:

8 (A) personally; or

9 (B) by certified mail, first class postage
10 prepaid, and return receipt requested.

11 (c) A wind energy developer of record who receives a request
12 under Subsection (b) shall, not later than 90 days after the date
13 the request is received, record the release as described by
14 Subsection (a).

15 (d) If the interest of the wind energy developer of record
16 has been transferred by an instrument that has not been recorded,
17 the transferee shall:

18 (1) first record the instrument by which the
19 transferee acquired the interest and then record the release
20 required by Subsection (c); or

21 (2) cause the wind energy developer of record to
22 record the release required by Subsection (c).

23 (e) A release recorded under this section must:

24 (1) identify the wind energy agreement with reasonable
25 clarity; and

26 (2) include:

27 (A) the names of the parties;

1 (B) the legal description of the land subject to
2 the agreement; and

3 (C) the applicable recording information of the
4 agreement.

5 (f) The county clerk shall index the release in both the
6 grantor and grantee indices under the name of each party identified
7 in the release.

8 Sec. 303.0005. FAILURE TO RECORD RELEASE; LIABILITY. (a) If
9 a wind energy developer of record who receives a request under
10 Section 303.0004(b) fails to record the release as required by
11 Section 303.0004(c), the wind energy developer of record is liable
12 to the owner of the surface estate for any damages caused by the
13 failure.

14 (b) The wind energy developer of record and every transferee
15 described in Section 303.0004(d) are jointly and severally liable
16 for any damages caused by the failure of:

17 (1) the wind energy developer of record to record the
18 release as required by Section 303.0004(c); or

19 (2) a transferee to comply with Section 303.0004(d).

20 Sec. 303.0006. TRANSFER OF PARTY'S INTEREST IN AGREEMENT.
21 Nothing in this chapter restricts the transfer of any interest of a
22 party to a wind energy agreement, including the transfer of the
23 right of the owner of the surface estate to receive payments under
24 the wind energy agreement.

25 SECTION 2. Nothing in this Act affects the validity of an
26 agreement entered into before the effective date of this Act.

27 SECTION 3. This Act takes effect September 1, 2023.