

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3809
By: Darby et al. (Schwertner)
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, Texas has enacted comprehensive legislation to regulate the decommissioning of wind and solar power facilities. Chapters 301 and 302 of the Utilities Code establish clear requirements for the removal of equipment and the restoration of property at the end of service of the project. However, no equivalent law currently exists for energy storage systems. As the deployment of energy storage continues to accelerate across the state, similar legislation is needed to ensure the responsible decommissioning and proper site restoration of these facilities as well. H.B. 3809 creates Chapter 303 of the Utilities Code to establish decommissioning and recycling regulations for battery energy storage facilities.

(Original Author/Sponsor's Statement of Intent)

C.S.H.B. 3809 amends current law relating to the removal of battery energy storage facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Utilities Code, by adding Chapter 303, as follows:

CHAPTER 303. BATTERY ENERGY STORAGE FACILITY AGREEMENTS

Sec. 303.0001. DEFINITIONS. Defines "battery energy storage facility," "battery energy storage facility agreement," "battery energy storage resource," "battery operation date," "grantee," and "recycle."

Sec. 303.0002. APPLICABILITY. Provides that, except as provided by Section 303.0004(c), this chapter applies only to an agreement that authorizes a grantee to operate a battery energy storage facility that is not subject to Chapter 301 (Wind Power Facility Agreements) or 302 (Solar Power Facility Agreements).

Sec. 303.0003. WAIVER VOID; REMEDIES. (a) Provides that a provision of a battery energy storage facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by this chapter is void.

(b) Provides that a person who is harmed by a violation of this chapter is entitled to appropriate injunctive relief to prevent further violation of this chapter.

(c) Provides that the provisions of this section are not exclusive. Provides that the remedies provided in this section are in addition to any other procedures or remedies provided by other law.

Sec. 303.0004. REQUIRED AGREEMENT PROVISIONS ON FACILITY REMOVAL.

(a) Requires that a battery energy storage facility agreement provide that the grantee is responsible for removing the battery energy storage facility from the landowner's

property and that the grantee shall, in accordance with any other applicable laws or regulations, safely perform certain duties.

(b) Requires that the agreement provide that the grantee is responsible for:

(1) collecting and reusing or recycling, or shipping for reuse or recycling, all components of the battery energy storage facility practicably capable of being reused or recycled, in accordance with any other applicable laws or regulations; and

(2) properly disposing of components of the battery energy storage facility not practicably capable of being reused or recycled at a facility authorized under state and federal law to dispose of hazardous substances for a component considered hazardous under those laws or for nonhazardous components, at a municipal solid waste landfill or other appropriate waste disposal facility authorized under state and federal law to dispose of that type of component.

(c) Requires that a wind power facility agreement entered into under Chapter 301 or solar power facility agreement entered into under Chapter 302 that authorizes the operation of a battery energy storage facility include the provisions described by Subsection (b) and requires that the financial assurance required by those chapters be sufficient to secure the performance of the grantee's obligations under that subsection, in the manner provided by Section 303.0005.

(d) Requires that the agreement provide that, at the request of the landowner, the grantee is required to clear, clean, and remove each road constructed by the grantee on the property and ensure that each hole or cavity created in the ground by the removal is filled with soil of the same type or a similar type as the predominant soil found on the property.

(e) Requires that the agreement provide that, at the request of the landowner, if reasonable, the grantee is required to perform certain actions.

(f) Requires the landowner to make a request under Subsection (d) or (e) not later than the 180th day after the later of the date on which the landowner receives from the grantee via certified mail a copy of a notification of intent to suspend operations filed with a grid operator indicating an intent to permanently cease operations or the date the landowner receives written notice of intent to decommission the battery energy storage facility from the grantee.

Sec. 303.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL ASSURANCE. (a) Requires that a battery energy storage facility agreement provide that the grantee is required to obtain and deliver to the landowner evidence of financial assurance that conforms to the requirements of this section to secure the performance of the grantee's obligations under Section 303.0004. Provides that acceptable forms of financial assurance include a parent company guaranty with a minimum investment grade credit rating for the parent company issued by a major domestic credit rating agency, a letter of credit, a bond, or another form of financial assurance reasonably acceptable to the landowner.

(b) Requires that the amount of financial assurance be at least equal to the estimated amount by which the cost of removing the battery energy storage facilities from the landowner's property, recycling or disposing of all the components of the battery energy storage facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins, as described by Section 303.0004, exceeds the salvage value of the battery energy storage facilities, less any portion of the value of the battery energy storage facilities pledged to secure outstanding debt.

(c) Requires that the agreement provide that:

(1) the estimated cost of removing the battery energy storage facilities from the landowner's property, recycling or disposing of all the components of the battery energy storage facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins, as described by Section 303.0004, and the estimated salvage value of the battery energy storage facilities is required to be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee is required to deliver to the landowner the estimated cost of removal and recycling or disposal of the battery energy storage facilities and the salvage value on or before the 10th anniversary of the battery operation date of the grantee's battery energy storage resources located on the landowner's property; and

(3) the grantee is required to deliver an updated estimate of the cost and salvage value described by Subdivision (2) of at least once every five years after the initial estimate for the remainder of the term of the agreement.

(d) Provides that the grantee is responsible for the costs of obtaining financial assurance described by this section and determining the estimated removal, recycling, and disposal costs and salvage value.

(e) Requires that the agreement provide that the grantee is required to deliver financial assurance not later than the earlier of the date the battery energy storage facility agreement is terminated or the 15th anniversary of the battery operation date of the grantee's battery energy storage resources located on the landowner's property.

(f) Provides that the grantee is responsible for ensuring that the amount of financial assurance remains sufficient to cover the amount required by Subsection (b), consistent with the estimates required by this section.

(g) Prohibits the grantee from cancelling financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's battery energy storage facilities located on the landowner's property in the manner provided by this chapter, unless the grantee provides the landowner with replacement financial assurance at the time of or before the cancellation. Requires that financial assurance provided by the grantee, in the event of a transfer of ownership of the grantee's battery energy storage facilities, remain in place until the date evidence of financial assurance meeting the requirements of this chapter is provided to the landowner.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2025.