

By: Gerdes

H.B. No. 3422

A BILL TO BE ENTITLED

AN ACT

relating to the removal of battery 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. BATTERY ENERGY STORAGE FACILITY AGREEMENTS

Sec. 303.0001. DEFINITIONS. In this chapter:

(1) "Battery energy storage facility" includes a facility or equipment used to support the operation of battery 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) "Battery energy storage facility agreement" means a lease agreement between a grantee and a landowner that authorizes the grantee to operate a battery energy storage facility on the leased property.

(3) "Grantee" means a person who:

(A) leases property from a landowner; and

(B) operates a battery energy storage facility on the property.

Sec. 303.0002. APPLICABILITY. This chapter applies only to battery energy storage that is a generation asset as defined by Section 39.251.

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

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

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

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

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

20 (2) for each foundation of battery energy storage
21 equipment, including a transformer or substation installed in the
22 ground:

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

26 (B) ensure that each hole or cavity created in
27 the ground by the removal is filled with topsoil of the same type or

1 a similar type as the predominant topsoil found on the property;

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

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

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

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

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

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

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

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

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

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

27 (3) ensure that:

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

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

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

10 (1) the date on which the battery energy storage
11 facility is no longer capable of storing electricity in commercial
12 quantities; or

13 (2) the date the landowner receives written notice of
14 intent to decommission the battery energy storage facility from the
15 grantee.

16 Sec. 303.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
17 ASSURANCE. (a) A battery energy storage facility agreement must
18 provide that the grantee shall obtain and deliver to the landowner
19 evidence of financial assurance that conforms to the requirements
20 of this section to secure the performance of the grantee's
21 obligation to remove the grantee's battery energy storage
22 facilities located on the landowner's property as described by
23 Section 303.0004. Acceptable forms of financial assurance include a
24 parent company guaranty with a minimum investment grade credit
25 rating for the parent company issued by a major domestic credit
26 rating agency, a letter of credit, a bond, or another form of
27 financial assurance acceptable to the 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 battery energy storage facilities from the landowner's property and
4 restoring the property to as near as reasonably possible the
5 condition of the property as of the date the agreement begins
6 exceeds the salvage value of the battery energy storage facilities,
7 less any portion of the value of the battery energy storage
8 facilities pledged to secure outstanding debt.

9 (c) The agreement must provide that:

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

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

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

26 (d) The grantee is responsible for the costs of obtaining
27 financial assurance described by this section and costs of

1 determining the estimated removal costs and salvage value.

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

4 (1) the date the battery energy storage facility
5 agreement is terminated; or

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

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

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

26 SECTION 2. Chapter 303, Utilities Code, as added by this
27 Act, applies only to a battery energy storage facility agreement

1 entered into on or after the effective date of this Act. A battery
2 energy storage facility agreement entered into before the effective
3 date of this Act is governed by the law as it existed immediately
4 before that date, and that law is continued in effect for that
5 purpose.

6 SECTION 3. This Act takes effect September 1, 2025.