

By: Darby

H.B. No. 3809

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) a battery energy storage resource; and

(B) 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 a battery energy storage resource, including an underground or aboveground electrical transmission or communications line, an electric transformer, a power conversion system, a battery management system, a heating, ventilation, and air conditioning system, telecommunications equipment, a road, 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) "Battery energy storage resource" means a battery energy storage system, whether connected at the transmission or distribution level, that is used to provide energy or ancillary

1 services at wholesale and is not registered with the independent
2 organization certified under Section 39.151 for the ERCOT power
3 region as a self-generator.

4 (4) "Commercial operations date" means the date on
5 which the battery energy storage resource is approved for
6 participation in market operations by a regional transmission
7 organization and does not include the generation of electrical
8 energy or other operations conducted before that date for purposes
9 of maintenance and testing.

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

12 (A) leases property from a landowner; and

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

15 (6) "Recycle" means the processing, including
16 disassembling, dismantling, and shredding of battery energy
17 storage cells, modules or other equipment, or their components, to
18 recover a usable product.

19 Sec. 303.0002. APPLICABILITY. An agreement that authorizes
20 the grantee to operate a battery energy storage facility:

21 (1) in the same modeled generation station and
22 interconnected at the same point of interconnection as a wind power
23 facility is subject to Chapter 301 and this chapter; or

24 (2) in the same modeled generation station and
25 interconnected at the same point of interconnection as a solar
26 power facility is subject to Chapter 302 and this chapter.

27 Sec. 303.0003. WAIVER VOID; REMEDIES. (a) 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) 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) The provisions of this section are not exclusive. 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) A battery energy storage facility agreement must 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:

(1) clear, clean, and remove from the property each battery energy storage resource, transformer, and substation;

(2) for each foundation of a battery energy storage resource, transformer, or substation installed in the ground:

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

(B) 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;

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

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

4 (B) ensure that each hole or cavity created in
5 the ground by the removal is filled with soil of the same type or a
6 similar type as the predominant soil found on the property; and

7 (4) clear, clean, and remove from the property each
8 overhead power or communications line installed by the grantee on
9 the property.

10 (b) The agreement must provide that the grantee is
11 responsible for:

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

16 (2) properly disposing of components of the battery
17 energy storage facility not practicably capable of being reused or
18 recycled:

19 (A) at a facility authorized under state and
20 federal law to dispose of hazardous substances for a component
21 considered hazardous under those laws; or

22 (B) for nonhazardous components, at a municipal
23 solid waste landfill or other appropriate waste disposal facility
24 authorized under state and federal law to dispose of that type of
25 component.

26 (c) The agreement must provide that, at the request of the
27 landowner, the grantee shall:

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

3 (2) ensure that each hole or cavity created in the
4 ground by the removal is filled with soil of the same type or a
5 similar type as the predominant soil found on the property.

6 (d) The agreement must provide that, at the request of the
7 landowner, if reasonable, the grantee shall:

8 (1) remove from the property all rocks over 12 inches
9 in diameter excavated during the decommissioning or removal
10 process;

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

13 (3) ensure that:

14 (A) each hole or cavity created in the ground by
15 the removal is filled with soil of the same type or a similar type as
16 the predominant soil found on the property; and

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

21 (e) The landowner shall make a request under Subsection (c)
22 or (d) not later than the 180th day after the later of:

23 (1) the date on which the battery energy storage
24 resource is no longer capable of generating electricity in
25 commercial quantities; or

26 (2) the date the landowner receives written notice of
27 intent to decommission the battery energy storage facility from the

1 grantee.

2 Sec. 303.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
3 ASSURANCE. (a) A battery energy storage facility agreement must
4 provide that the grantee shall obtain and deliver to the landowner
5 evidence of financial assurance that conforms to the requirements
6 of this section to secure the performance of the grantee's
7 obligations under Section 303.0004. Acceptable forms of financial
8 assurance include a parent company guaranty with a minimum
9 investment grade credit rating for the parent company issued by a
10 major domestic credit rating agency, a letter of credit, a bond, or
11 another form of financial assurance reasonably acceptable to the
12 landowner.

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

23 (c) The agreement must provide that:

24 (1) the estimated cost of removing the battery energy
25 storage facilities from the landowner's property, recycling or
26 disposing of all the components of the battery energy storage
27 facilities, and restoring the property to as near as reasonably

1 possible the condition of the property as of the date the agreement
2 begins, as described by Section 303.0004, and the estimated salvage
3 value of the battery energy storage facilities must be determined
4 by an independent, third-party professional engineer licensed in
5 this state;

6 (2) the grantee must deliver to the landowner the
7 estimated cost of removal and recycling or disposal of the battery
8 energy storage facilities and the salvage value on or before the
9 10th anniversary of the commercial operations date of the battery
10 energy storage facilities; and

11 (3) the grantee must deliver an updated estimate of
12 the cost and salvage value described by Subdivision (2) at least
13 once every five years after the initial estimate for the remainder
14 of the term of the agreement.

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

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

20 (1) the date the battery energy storage facility
21 agreement is terminated; or

22 (2) the 15th anniversary of the commercial operations
23 date of the battery energy storage facilities located on the
24 landowner's leased property.

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

1 by this section.

2 (g) The grantee may not cancel financial assurance before
3 the date the grantee has completed the grantee's obligation to
4 remove the grantee's battery energy storage facilities located on
5 the landowner's property in the manner provided by this chapter,
6 unless the grantee provides the landowner with replacement
7 financial assurance at the time of or before the cancellation. In
8 the event of a transfer of ownership of the grantee's battery energy
9 storage facilities, financial assurance provided by the grantee
10 shall remain in place until the date evidence of financial
11 assurance meeting the requirements of this chapter is provided to
12 the landowner.

13 SECTION 2. Chapter 303, Utilities Code, as added by this
14 Act, applies only to a battery energy storage facility agreement
15 entered into on or after the effective date of this Act.

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