

By: Hall

S.B. No. 1478

A BILL TO BE ENTITLED

AN ACT

relating to the removal of certain power facilities operated on leased property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 301, Utilities Code, is transferred to Subtitle B, Title 5, Health and Safety Code, redesignated as Chapter 375, Health and Safety Code, and amended to read as follows:

CHAPTER 375 [~~301~~]. [~~WIND~~] POWER FACILITY AGREEMENTS AND FINANCIAL ASSURANCE

Sec. 375.0001 [~~301.0001~~]. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(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 who [+  
[~~(A)~~] leases property from a landowner [~~, and~~  
[~~(B)~~] ~~operates a wind power facility on the~~  
~~property~~].

(4) "Renewable power facility" means a facility that:  
(A) generates electric energy using a renewable energy technology, as defined by Section 39.916, Utilities Code, other than a technology that relies exclusively on wind or solar

1 energy; and

2 (B) is not an electric energy storage facility.

3 (5) "Renewable power facility agreement" means a lease  
4 agreement between a grantee and a landowner that authorizes the  
5 grantee to operate a renewable power facility on the leased  
6 property.

7 (6) "Solar energy device" has the meaning assigned by  
8 Section 185.001, Utilities Code.

9 (7) "Solar power facility" includes:

10 (A) a solar energy device; and

11 (B) a facility or equipment, other than a  
12 facility or equipment owned by an electric utility, as defined by  
13 Section 31.002, Utilities Code, used to support the operation of a  
14 solar energy device, including an underground or aboveground  
15 electrical transmission or communications line, an electric  
16 transformer, a battery storage facility, an energy storage  
17 facility, telecommunications equipment, a road, a meteorological  
18 tower, or a maintenance yard.

19 (8) "Solar power facility agreement" means a lease  
20 agreement between a grantee and a landowner that authorizes the  
21 grantee to operate a solar power facility on the leased property.

22 (9) [~~(2)~~] "Wind power facility" includes:

23 (A) a wind turbine generator; and

24 (B) a facility or equipment used to support the  
25 operation of a wind turbine generator, including an underground or  
26 aboveground electrical transmission or communications line, an  
27 electric transformer, a battery storage facility, an energy storage

1 facility, telecommunications equipment, a road, a meteorological  
2 tower with wind measurement equipment, or a maintenance yard.

3 (10) [~~3~~] "Wind power facility agreement" means a  
4 lease agreement between a grantee and a landowner that authorizes  
5 the grantee to operate a wind power facility on the leased property.

6 Sec. 375.0002. APPLICABILITY. This chapter applies only to  
7 an electric energy storage facility, a renewable power facility, a  
8 solar power facility, or a wind power facility that is intended to  
9 provide energy or ancillary services at wholesale for a power grid.

10 Sec. 375.0003 [~~301.0002~~]. WAIVER VOID; REMEDIES. (a) A  
11 provision of an electric energy storage facility agreement, a  
12 renewable power facility agreement, a solar power facility  
13 agreement, or a wind power facility agreement that purports to  
14 wave a right or exempt a grantee from a liability or duty  
15 established by this chapter is void.

16 (b) A person who is harmed by a violation of this chapter is  
17 entitled to appropriate injunctive relief to prevent further  
18 violation of this chapter.

19 (c) The provisions of this section are not exclusive. The  
20 remedies provided in this section are in addition to any other  
21 procedures or remedies provided by other law.

22 Sec. 375.0004 [~~301.0003~~]. REQUIRED AGREEMENT PROVISIONS ON  
23 WIND POWER FACILITY REMOVAL. (a) A wind power facility agreement  
24 must provide that the grantee is responsible for removing the  
25 grantee's wind power facilities from the landowner's property and  
26 that the grantee shall, in accordance with any other applicable  
27 laws or regulations, safely:

1 (1) clear, clean, and remove from the property:

2 (A) each wind turbine generator, including  
3 towers and pad-mount transformers;

4 (B) all liquids, greases, or similar substances  
5 contained in a wind turbine generator;

6 (C) each substation; and

7 (D) all liquids, greases, or similar substances  
8 contained in a substation;

9 (2) for each tower foundation and pad-mount  
10 transformer foundation installed in the ground:

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

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

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

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

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

25 (4) clear, clean, and remove from the property each  
26 overhead power or communications line installed by the grantee on  
27 the property.

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

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

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

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

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

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

15 (3) ensure that:

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

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

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

25 (1) the date on which the wind power facility is no  
26 longer capable of generating electricity in commercial quantities;

27 or

1 (2) the date the landowner receives written notice of  
2 intent to decommission the wind power facility from the grantee.

3 Sec. 375.0005. REQUIRED AGREEMENT PROVISIONS ON SOLAR POWER  
4 FACILITY REMOVAL. (a) A solar power facility agreement must  
5 provide that the grantee is responsible for removing the grantee's  
6 solar power facilities from the landowner's property and that the  
7 grantee shall, in accordance with any other applicable laws or  
8 regulations, safely:

9 (1) clear, clean, and remove from the property each  
10 solar energy device, transformer, and substation;

11 (2) for each foundation of a solar energy device,  
12 transformer, or substation installed in the ground:

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

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

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

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

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

27 (4) clear, clean, and remove from the property each

1 overhead power or communications line installed by the grantee on  
2 the property.

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

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

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

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

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

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

17 (3) ensure that:

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

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

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

27 (1) the date on which the solar power facility is no

1 longer capable of generating electricity in commercial quantities;  
2 or

3 (2) the date the landowner receives written notice of  
4 intent to decommission the solar power facility from the grantee.

5 Sec. 375.0006. REQUIRED AGREEMENT PROVISIONS ON ELECTRIC  
6 ENERGY STORAGE OR RENEWABLE POWER FACILITY REMOVAL. An electric  
7 energy storage facility agreement or renewable power facility  
8 agreement must provide that the grantee is responsible for:

9 (1) removing the grantee's electric energy storage  
10 facilities or renewable power facilities, as applicable, from the  
11 landowner's property; and

12 (2) restoring the property to as near as reasonably  
13 possible the condition of the property as of the date the agreement  
14 begins.

15 Sec. 375.0007 [~~301.0004~~]. REQUIRED AGREEMENT PROVISIONS ON  
16 FINANCIAL ASSURANCE. (a) An electric energy storage facility  
17 agreement, a renewable power facility agreement, a solar power  
18 facility agreement, or a [A] wind power facility agreement must  
19 provide that the grantee shall obtain and deliver to the commission  
20 [~~landowner~~] evidence of financial assurance payable to the  
21 landowner that conforms to the requirements of this section to  
22 secure the performance of the grantee's obligation to remove the  
23 grantee's electric energy storage facilities, renewable power  
24 facilities, solar power facilities, or wind power facilities  
25 located on the landowner's property as required by this chapter [~~as~~  
26 described by Section ~~301.0003~~]. The [~~Acceptable forms of~~]  
27 financial assurance may be [~~include a parent company guaranty with~~

1 ~~a minimum investment grade credit rating for the parent company~~  
2 ~~issued by a major domestic credit rating agency, a letter of~~  
3 ~~credit,~~ a bond~~[7]~~ or another form of financial assurance  
4 acceptable to the landowner.

5 (b) The amount of the financial assurance must be at least  
6 equal to the estimated amount by which the cost of removing the  
7 ~~[wind power]~~ facilities from the landowner's property and restoring  
8 the property to as near as reasonably possible the condition of the  
9 property as of the date the agreement begins exceeds the salvage  
10 value of the ~~[wind power]~~ facilities, less any portion of the value  
11 of the ~~[wind power]~~ facilities pledged to secure outstanding debt.

12 (c) The agreement must provide that:

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

19 (2) the grantee must deliver to the landowner and the  
20 commission an updated estimate, prepared by an independent,  
21 third-party professional engineer licensed in this state, of the  
22 cost of removal and the salvage value at least once every five years  
23 for the 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 to the commission not later than  
6 the 30th day after [~~earlier of:~~

7 [~~(1)~~] the date the [~~wind power facility~~] agreement  
8 begins [~~is terminated; or~~

9 [~~(2)~~] ~~the 10th anniversary of the commercial operations~~  
10 ~~date of the wind power facilities located on the landowner's leased~~  
11 ~~property~~].

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

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

1 provided to the commission [~~landowner~~].

2 Sec. 375.0008. RELEASE OF FINANCIAL ASSURANCE TO GRANTEE.

3 (a) At any time, a grantee may file an application with the  
4 commission for the release of all or part of a bond or other  
5 financial assurance provided to the commission by the grantee for a  
6 landowner under this chapter.

7 (b) The application must be on a form prescribed by the  
8 commission and, in addition to other information the commission may  
9 require, must include the type and the approximate date of removal  
10 and restoration work performed and a description of the results  
11 achieved.

12 (c) The grantee shall provide a copy of the application to  
13 the landowner not later than the 30th day after the date the grantee  
14 files the application with the commission.

15 (d) Not later than the 45th day after the date the grantee  
16 files the application, the commission shall conduct an inspection  
17 and evaluation of the removal and restoration work performed.

18 (e) The commission may release all or part of the financial  
19 assurance if the commission determines that the grantee has  
20 completed all or part of the grantee's obligations under the  
21 agreement entered into under Section 375.0004, 375.0005, or  
22 375.0006, as applicable.

23 (f) If the commission disapproves the application for  
24 release of the financial assurance, the commission shall notify the  
25 grantee in writing of the reasons for disapproval and recommend  
26 corrective actions necessary to secure the release of the financial  
27 assurance.

1       Sec. 375.0009. FORFEITURE OF FINANCIAL ASSURANCE TO  
2 LANDOWNER. (a) A landowner may file an application with the  
3 commission for the forfeiture of all or part of a bond or other  
4 financial assurance provided to the commission by a grantee for the  
5 landowner under this chapter if:

6           (1) the grantee has not completed the grantee's  
7 obligations under the agreement entered into under Section  
8 375.0004, 375.0005, or 375.0006, as applicable; and

9           (2) the facility that is the subject of the agreement  
10 is no longer being used by the grantee to provide energy or  
11 ancillary services at wholesale for a power grid in the manner  
12 provided by the agreement.

13       (b) The application must be on a form prescribed by the  
14 commission.

15       (c) The landowner shall provide a copy of the application to  
16 the grantee not later than the 30th day after the date the landowner  
17 files the application with the commission.

18       (d) Not later than the 45th day after the date the landowner  
19 files the application, the commission shall conduct an inspection  
20 and evaluation of the property for which the financial assurance  
21 was provided.

22       (e) The commission may approve the forfeiture of all or part  
23 of the financial assurance if the commission determines that:

24           (1) the facility that is the subject of the agreement  
25 is no longer being used in the manner described by Subsection  
26 (a)(2); and

27           (2) the forfeiture is necessary to compensate the

1 landowner for any remaining removal and restoration work the  
2 grantee was required to but did not complete under the agreement.

3 (f) If the commission disapproves the application for  
4 forfeiture of the financial assurance, the commission shall notify  
5 the landowner in writing of the reasons for disapproval.

6 Sec. 375.0010. COMMISSION AUTHORITY. (a) The commission  
7 shall notify the Public Utility Commission of Texas if the  
8 commission requires forfeiture of financial assurance under  
9 Section 375.0009. The commission and the Public Utility Commission  
10 of Texas may not issue to a grantee whose financial assurance was  
11 forfeited under Section 375.0009 any permit, certificate, or  
12 registration under other law that authorizes the grantee to operate  
13 a generation facility to which this chapter applies or renew any  
14 such permit, certificate, or registration.

15 (b) In a suit for receivership, garnishment, or bankruptcy,  
16 or in any other legal action affecting the assets of a grantee that  
17 is a party to an agreement subject to this chapter, the commission  
18 may:

19 (1) inform the appropriate court and parties of the  
20 commission's interest in obtaining notice of the proceedings; and

21 (2) within the time prescribed by the applicable  
22 statutes, rules, and court orders, intervene and participate in any  
23 proceedings that affect a landowner not joined in the suit who is a  
24 party to the agreement with the grantee.

25 SECTION 2. Section 5.013(a), Water Code, is amended to read  
26 as follows:

27 (a) The commission has general jurisdiction over:

1           (1) water and water rights including the issuance of  
2 water rights permits, water rights adjudication, cancellation of  
3 water rights, and enforcement of water rights;

4           (2) continuing supervision over districts created  
5 under Article III, Sections 52(b)(1) and (2), and Article XVI,  
6 Section 59, of the Texas Constitution;

7           (3) the state's water quality program including  
8 issuance of permits, enforcement of water quality rules, standards,  
9 orders, and permits, and water quality planning;

10          (4) the determination of the feasibility of certain  
11 federal projects;

12          (5) the adoption and enforcement of rules and  
13 performance of other acts relating to the safe construction,  
14 maintenance, and removal of dams;

15          (6) conduct of the state's hazardous spill prevention  
16 and control program;

17          (7) the administration of the state's program relating  
18 to inactive hazardous substance, pollutant, and contaminant  
19 disposal facilities;

20          (8) the administration of a portion of the state's  
21 injection well program;

22          (9) the administration of the state's programs  
23 involving underground water and water wells and drilled and mined  
24 shafts;

25          (10) the state's responsibilities relating to regional  
26 waste disposal;

27          (11) the responsibilities assigned to the commission

1 by Chapters 361, 363, 375, 382, 401, 505, 506, and 507, Health and  
2 Safety Code; and

3 (12) any other areas assigned to the commission by  
4 this code and other laws of this state.

5 SECTION 3. (a) The heading to Title 6, Utilities Code, is  
6 repealed.

7 (b) Chapter 302, Utilities Code, is repealed.

8 SECTION 4. The changes in law made by this Act apply only to  
9 an electric energy storage facility agreement, a renewable power  
10 facility agreement, a solar power facility agreement, or a wind  
11 power facility agreement entered into on or after the effective  
12 date of this Act. An agreement entered into before the effective  
13 date of this Act is governed by the law applicable to the agreement  
14 on the date the agreement was entered into, and that law is  
15 continued in effect for that purpose.

16 SECTION 5. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2025.