

By: Hall

S.B. No. 1979

A BILL TO BE ENTITLED

AN ACT

relating to renewable energy generation facilities; authorizing fees.

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

SECTION 1. Subchapter C, Chapter 15, Utilities Code, is amended by adding Section 15.053 to read as follows:

Sec. 15.053. COMPLAINT REGARDING RENEWABLE ENERGY GENERATION FACILITIES. (a) An affected person may complain to the commission in writing setting forth an act or omission by an owner or operator of renewable generation in violation or claimed violation of Subchapter F, Chapter 35.

(b) The commission shall keep for a reasonable period an information file about each complaint filed with the commission relating to an owner or operator of battery energy storage.

(c) The commission, at least quarterly and until final disposition of the written complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 2. Chapter 35, Utilities Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. RENEWABLE ENERGY GENERATION FACILITY PERMIT

Sec. 35.201. DEFINITIONS; APPLICABILITY. (a) In this subchapter:

(1) "Battery energy storage facility" includes a

1 facility or equipment used to support the operation of battery
2 energy storage, including an underground or aboveground electrical
3 transmission or communications line, an electric transformer,
4 telecommunications equipment, a road, a meteorological tower, or a
5 maintenance yard.

6 (2) "Battery energy storage facility agreement" means
7 a lease agreement between a grantee and a landowner that authorizes
8 the grantee to operate a battery energy storage facility on the
9 leased property.

10 (3) "Grantee" means a person who:

11 (A) leases property from a landowner; and

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

14 (4) "Permit holder" means a person who holds a permit
15 issued under this subchapter.

16 (5) "Person" includes an electric cooperative and a
17 municipally owned utility.

18 (6) "Renewable energy generation facility" for
19 purposes of this chapter means:

20 (A) a wind power facility as defined by Section
21 301.0001;

22 (B) a solar power facility as defined by Section
23 302.0001;

24 (C) a battery energy storage facility; or

25 (D) a facility that generates electric energy
26 using a renewable energy technology, as defined by Section 39.916,
27 Utilities Code, other than a technology that relies exclusively on

1 wind or solar energy.

2 (b) The permit requirements of this subchapter apply to a
3 renewable energy generation facility regardless of whether the
4 facility is the subject of a facility agreement entered into under
5 Chapter 301 or 302 or this subchapter.

6 (c) This subchapter applies only to a renewable energy
7 generation facility that is intended to be used to sell energy or
8 ancillary services at wholesale.

9 Sec. 35.202. PERMIT REQUIRED. (a) A person may not
10 interconnect a renewable energy generation facility to a
11 transmission facility unless the person holds a permit to operate a
12 renewable energy generation facility issued by the commission under
13 this subchapter.

14 (b) The commission by rule shall require each permitted
15 renewable energy generation facility to be installed only in a
16 location that:

17 (1) for a solar power facility, is at least:
18 (A) 500 feet from any property line, unless the
19 permit holder has obtained a written waiver from each owner of
20 property located less than 500 feet from the permitted facility;
21 and

22 (B) 500 feet from any habitable structure, unless
23 the permit holder has obtained a written waiver from each owner of
24 the habitable structure;

25 (2) for a wind power facility, is at least twice the
26 height of the wind turbine, including the blades of the turbine,
27 from the property line of each property that borders the property on

1 which the permitted facility is located, unless the permit holder
2 has obtained a written waiver from each owner of property located in
3 the applicable area; and

4 (3) for a battery energy storage facility, is at
5 least:

6 (A) 500 feet from any property line, unless the
7 permit holder has obtained a written waiver from each owner of
8 property located less than 500 feet from the permitted facility;
9 and

10 (B) 500 feet from:

11 (i) public ways;

12 (ii) buildings;

13 (iii) stored combustible materials;

14 (iv) hazardous materials;

15 (v) high-piled stock; and

16 (vi) other exposure hazards not associated
17 with electrical grid infrastructure.

18 (c) The commission by rule shall require each permitted
19 renewable energy generation facility to be installed only in a
20 location that, in the event of an emergency at the site of the
21 permitted renewable energy generation facility, will not block the
22 only access point to a residential area. If an emergency could block
23 access to a residential area, a different access point to the
24 facility must be constructed.

25 (d) A person may apply for a permit under this subchapter by
26 filing with the commission:

27 (1) a description of the proposed location of the

1 renewable energy generation facility;

2 (2) a description of the type of renewable energy
3 generation facility;

4 (3) a statement identifying the fire department, as
5 defined by Section 419.021, Government Code, volunteer fire
6 department, fire marshal, or other first responder entity that may
7 reasonably be expected to be the primary first responder to a fire
8 at the location of the renewable energy generation facility;

9 (4) a statement that the person has provided written
10 notice to the entity identified in Subdivision (3) of the
11 applicant's intent to install a renewable energy generation
12 facility;

13 (5) evidence of insurance coverage sufficient to
14 insure against losses arising from the operation of the renewable
15 energy generation facility; and

16 (6) any other information required by commission rule.

17 (e) When an application for a permit, or an amendment to a
18 permit issued under this section, is filed, the commission shall
19 give notice of the application to the county judge of the county in
20 which all or a majority of the renewable energy generation facility
21 is proposed to be located. The county shall publish the notice on
22 their website in perpetuity and, in accordance with Chapter 2051,
23 Government Code, in a newspaper for a minimum of three consecutive
24 days.

25 (f) The commission may hold one or more public meetings on a
26 permit application in the county in which the renewable energy
27 generation facility is proposed to be located. The commission

1 shall hold a public meeting:

2 (1) on the request of a member of the legislature who
3 represents the area in which the renewable energy generation
4 facility is proposed to be located; or

5 (2) if the commission determines there is substantial
6 public interest in the proposed permit.

7 (g) The commission by order or rule may delegate to the
8 executive director or another commission employee the authority to
9 hold a public meeting under this section.

10 (h) The commission may approve an application for a permit
11 only if the commission finds that:

12 (1) issuance of the permit would not violate state or
13 federal law; and

14 (2) the location of the proposed renewable energy
15 generation facility complies with rules adopted under Subsections
16 (b) and (c).

17 (i) The commission by rule shall adopt a fee to be imposed on
18 each permit applicant to cover costs associated with implementing
19 this section.

20 (j) For purposes of this subchapter:

21 (1) a provision of Subchapter B or E, Chapter 14, that
22 authorizes the commission to regulate a public utility also applies
23 to a person required to obtain a permit under this section,
24 including an electric cooperative or a municipally owned utility;
25 and

26 (2) a reference in Chapter 15 to a person includes a
27 person required to obtain a permit under this section, including an

1 electric cooperative or a municipally owned utility.

2 Sec. 35.203. FIRE SAFETY STANDARDS FOR BATTERY ENERGY
3 STORAGE. (a) The commission shall adopt and periodically update
4 fire safety standards and testing requirements for battery energy
5 storage operating under a permit issued under this subchapter. The
6 standards and requirements must be based on:

7 (1) model code requirements for battery energy storage
8 established by UL Solutions, such as UL 9540 and UL 9540A
9 performance criteria;

10 (2) minimum standards related to the installation,
11 design, and maintenance of stationary energy storage systems and
12 electrical equipment established by the National Fire Protection
13 Association, such as NFPA 70 and NFPA 855;

14 (3) fire hazard management standards, such as the
15 International Fire Code and NFPA 1;

16 (4) explosion prevention and mitigation standards,
17 such as NFPA 68 and NFPA 69;

18 (5) fire and explosion prevention standards for
19 battery energy storage that is integrated with a photovoltaic
20 energy system, such as NFPA 585;

21 (6) lithium ion battery safety standards, such as UL
22 1642; and

23 (7) industry best practices for security fencing and
24 signage near battery energy storage.

25 (b) Each permit holder that owns or operates permitted
26 battery energy storage shall ensure that the storage meets the fire
27 safety standards and testing requirements adopted by the commission

1 under Subsection (a) at the time of interconnection.

2 (c) On request by a municipality in which the battery energy
3 storage is located, or a county in which the battery energy storage
4 is located if the storage is in an unincorporated area, the permit
5 holder shall contract at the permit holder's expense with an
6 independent, third-party engineer licensed in this state to:

7 (1) evaluate the design, safety, and installation of
8 the battery energy storage to ensure compliance with the
9 requirements of this section;

10 (2) produce a written report on the evaluation; and

11 (3) provide the written report described by
12 Subdivision (2) to the requesting municipality or county.

13 Sec. 35.204. EMERGENCY OPERATIONS PLANS FOR RENEWABLE
14 ENERGY GENERATION FACILITIES. (a) This section applies to a permit
15 holder that owns or operates a renewable energy generation
16 facility.

17 (b) A permit holder to which this section applies shall file
18 with the commission a site-specific emergency operations plan for
19 each facility owned or operated by the permit holder, including
20 emergency response and communications protocols for an equipment
21 failure incident.

22 (c) The permit holder shall offer to local fire departments
23 training regarding responding to a fire at the facility.

24 Sec. 35.205. EVIDENCE OF COMPLIANCE WITH STANDARDS.
25 Evidence of compliance with state or local regulations is not
26 sufficient to support a finding by a trier of fact that an owner or
27 operator of renewable generation equipment or facilities was not

1 negligent in an action arising out of a malfunction of or mitigation
2 of a fire caused by renewable generation equipment or facilities.

3 Sec. 35.206. WAIVER VOID; REMEDIES. (a) A provision of a
4 renewable generation facility agreement that purports to waive a
5 right or exempt a grantee from a liability or duty established by
6 Section 35.207 or 35.208 is void.

7 (b) A person who is harmed by a violation of Section 35.207
8 or 35.208 is entitled to appropriate injunctive relief to prevent
9 further violation of Section 35.207 or 35.208.

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

13 Sec. 35.207. REQUIRED AGREEMENT PROVISIONS ON FACILITY
14 REMOVAL. (a) A renewable generation facility agreement must
15 provide that the grantee is responsible for removing the grantee's
16 renewable generation facilities from the landowner's property and
17 that the grantee shall, in accordance with any other applicable
18 laws or regulations, safely:

19 (1) clear, clean, and remove from the property each
20 piece of renewable generation equipment, including any
21 transformers or substations;

22 (2) for each foundation of renewable generation
23 equipment, including a transformer or substation installed in the
24 ground:

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

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

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

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

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

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

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

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

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

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

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

27 (2) return the property to a tillable state using

1 scarification, V-rip, or disc methods, as appropriate; and

2 (3) ensure that:

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

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

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

12 (1) the date on which the renewable generation
13 facility is no longer capable of generating or storing electricity
14 in commercial quantities; or

15 (2) the date the landowner receives written notice of
16 intent to decommission the renewable generation facility from the
17 grantee.

18 Sec. 35.208. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL
19 ASSURANCE. (a) A renewable generation facility agreement must
20 provide that the grantee shall obtain and deliver to the commission
21 evidence of financial assurance payable to the landowner that
22 conforms to the requirements of this section to secure the
23 performance of the grantee's obligation to remove the grantee's
24 renewable generation facilities located on the landowner's
25 property as described by Section 35.207. The financial assurance
26 may be a bond or another form of financial assurance acceptable to
27 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 renewable generation 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 renewable generation facilities,
7 less any portion of the value of the renewable generation
8 facilities pledged to secure outstanding debt.

9 (c) The agreement must provide that:

10 (1) the estimated cost of removing the renewable
11 generation facilities from the landowner's property and restoring
12 the 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 renewable generation 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 and the
18 commission an updated estimate, prepared by an independent,
19 third-party professional engineer licensed in this state, of the
20 cost of removal and the salvage value at least once every five years
21 for the 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 to the commission not later than
4 the 30th day after the date the agreement begins, or the permit may
5 be denied or revoked.

6 (f) The grantee may not cancel financial assurance before
7 the date the grantee has completed the grantee's obligation to
8 remove the grantee's renewable generation facilities located on the
9 landowner's property as required by this chapter, unless the
10 grantee provides the commission with replacement financial
11 assurance at the time of or before the cancellation. In the event
12 of a transfer of ownership of the grantee's renewable generation
13 facilities, the financial security provided by the grantee shall
14 remain in place until the date evidence of financial security
15 meeting the requirements of this chapter is provided to the
16 commission.

17 Sec. 35.209. RELEASE OF FINANCIAL ASSURANCE TO GRANTEE.

18 (a) At any time, a grantee may file an application with the
19 commission for the release of all or part of a bond or other
20 financial assurance provided to the commission by the grantee for a
21 landowner under this subchapter.

22 (b) The application must be on a form prescribed by the
23 commission and, in addition to other information the commission may
24 require, must include the type and the approximate date of removal
25 and restoration work performed and a description of the results
26 achieved.

27 (c) The grantee shall provide a copy of the application to

1 the landowner not later than the 30th day after the date the grantee
2 files the application with the commission.

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

6 (e) The commission may release all or part of the financial
7 assurance if the commission determines that the grantee has
8 completed all or part of the grantee's obligations under the
9 agreement entered into under this subchapter. All of the financial
10 assurance shall be released if all of the grantee's obligations are
11 completed.

12 (f) If the commission disapproves the application for
13 release of the financial assurance, the commission shall notify the
14 grantee in writing of the reasons for disapproval and recommend
15 corrective actions necessary to secure the release of the financial
16 assurance.

17 Sec. 35.210. FORFEITURE OF FINANCIAL ASSURANCE TO
18 LANDOWNER. (a) A landowner may file an application with the
19 commission for the forfeiture of all or part of a bond or other
20 financial assurance provided to the commission by a grantee for the
21 landowner under this subchapter if:

22 (1) the grantee has not completed the grantee's
23 obligations under the agreement entered into under this subchapter;
24 and

25 (2) the facility that is the subject of the agreement
26 is no longer being used by the grantee to provide energy or
27 ancillary services at wholesale for a power grid in the manner

1 provided by the agreement.

2 (b) The application must be on a form prescribed by the
3 commission.

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

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

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

13 (1) the facility that is the subject of the agreement
14 is no longer being used in the manner described by Subsection
15 (a)(2); and

16 (2) the forfeiture is necessary to compensate the
17 landowner for any remaining removal and restoration work the
18 grantee was required to but did not complete under the agreement.

19 (f) If the commission disapproves the application for
20 forfeiture of the financial assurance, the commission shall notify
21 the landowner in writing of the reasons for disapproval.

22 Sec. 35.211. COMMISSION AUTHORITY. (a) The commission may
23 not issue to a grantee whose financial assurance was forfeited
24 under Section 35.210 any permit, certificate, or registration under
25 other law that authorizes the grantee to operate a generation
26 facility to which this subchapter applies or renew any such permit,
27 certificate, or registration.

1 (b) In a suit for receivership, garnishment, or bankruptcy,
2 or in any other legal action affecting the assets of a grantee that
3 is a party to an agreement subject to this subchapter, the
4 commission may:

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

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

11 SECTION 3. The changes in law made by this Act apply only to
12 a renewable generation facility agreement entered into on or after
13 the effective date of this Act. An agreement entered into before
14 the effective date of this Act is governed by the law applicable to
15 the agreement on the date the agreement was entered into, and that
16 law is continued in effect for that purpose.

17 SECTION 4. As soon as practicable after the effective date
18 of this Act, the Public Utility Commission of Texas shall adopt
19 rules to effectuate the changes in law made by this Act.

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