

House Bill 3809
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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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) any facility or equipment necessary to support the operation of a battery energy storage resource, other than a facility or equipment owned by an electric utility, as defined by Section 31.002.

(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 an electrochemical device, whether connected at the transmission or distribution level, with a capacity of one megawatt hour or greater that charges from the grid or a colocated generation resource and discharges that energy at a later time.

(4) "Battery operation date" means the date on which a battery energy storage resource is first used for its intended purpose.

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

(A) leases property from a landowner; and

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

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

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

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

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

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

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

(A) leases property from a landowner; and

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

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

Sec. 303.0002. **APPLICABILITY.** 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 or 302.

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

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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; and

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

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

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

(b) The agreement must 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

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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 installed and owned by the grantee;

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

(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; and

(3) for each buried cable, including power, fiber-optic, and communications cables, installed and owned by the grantee:

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

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

(b) The agreement must 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

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(2) properly disposing of components of the battery energy storage facility not practicably capable of being reused or recycled;

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

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

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

(2) 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.

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

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

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

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(2) properly disposing of components of the battery energy storage facility not practicably capable of being reused or recycled;

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

(B) 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) 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 must include the provisions described by Subsection (b) and the financial assurance required by those chapters must be sufficient to secure the performance of the grantee's obligations under that subsection, in the manner provided by Section 303.0005.

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

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

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

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

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

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(3) ensure that:

(A) 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; and

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

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

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

(2) 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) A battery energy storage facility agreement must provide that the grantee shall 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. 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) The amount of financial assurance must be at least equal to the estimated amount by which the cost of removing the

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(3) ensure that:

(A) 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; and

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

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

(1) 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

(2) 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) A battery energy storage facility agreement must provide that the grantee shall 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. 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) The amount of financial assurance must be at least equal to the estimated amount by which the cost of removing the

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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) The agreement must 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 must be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee must 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 commercial operations date of the battery energy storage facilities; and

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

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

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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) The agreement must 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 must be determined by an independent, third-party professional engineer licensed in this state;

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

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

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determining the estimated removal, recycling, and disposal costs and salvage value.

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

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

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

(f) 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) The grantee may not cancel 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. In the event of a transfer of ownership of the grantee's battery energy storage facilities, financial assurance provided by the grantee shall remain in place until the date evidence of financial assurance meeting the requirements of this chapter is provided to the landowner.

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

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determining the estimated removal, recycling, and disposal costs and salvage value.

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

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

(2) the 15th anniversary of the battery operation date of the grantee's battery energy storage resources located on the landowner's property.

(f) 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) The grantee may not cancel 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. In the event of a transfer of ownership of the grantee's battery energy storage facilities, financial assurance provided by the grantee shall remain in place until the date evidence of financial assurance meeting the requirements of this chapter is provided to the landowner.

SECTION 2. The changes in law made by this Act apply only to an agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

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

SECTION 3. Same as House version.