By: Hall S.B. No. 461

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. Section 301.0001, Utilities Code, is amended by amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to read as follows:

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

(1-a) "Grantee" means a person who[~~:~~

[~~(A)~~] leases property from a landowner[~~; and~~

[~~(B) operates a wind power facility on the property~~].

(1-b) [~~(1-a)~~] "Recycle" means the processing of an item to recover a usable product.

SECTION 2. Sections 301.0004(a), (c), (e), and (g), Utilities Code, are amended to read as follows:

(a) A wind power facility agreement must provide that the grantee shall obtain and deliver to the commission [~~landowner~~] evidence of financial assurance payable to the landowner that conforms to the requirements of this section to secure the performance of the grantee's obligations under Section 301.0003. The [~~Acceptable forms of~~] financial assurance may be [~~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 acceptable to the landowner.

(c) The agreement must provide that:

(1) the estimated cost of removing the wind power facilities from the landowner's property, recycling or disposing of all the components of the wind power facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins and the estimated salvage value of the wind power facilities must be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee must deliver to the landowner and the commission an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the costs and salvage value described by Subdivision (1) [~~cost of removal and recycling or disposal of the wind power facilities and the salvage value~~] at least once every five years for the remainder of the term of the agreement; and

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

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

[~~(1) the~~] date on which the wind power facility

agreement begins [~~is terminated; or~~

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

(g) The grantee may not cancel financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's wind power facilities located on the landowner's property as required [~~in the manner provided~~] by this chapter, unless the grantee provides the commission [~~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 wind power facilities, the financial assurance [~~security~~] provided by the grantee shall remain in place until the date evidence of financial assurance [~~security~~] meeting the requirements of this chapter is provided to the commission [~~landowner~~].

SECTION 3. Section 302.0001, Utilities Code, is amended by amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to read as follows:

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

(1-a) "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 solar power facility on the property~~].

(1-b) [~~(1-a)~~] "Recycle" means the processing of an item

to recover a usable product.

SECTION 4. Sections 302.0005(a), (c), (e), and (g), Utilities Code, are amended to read as follows:

(a) A solar power facility agreement must provide that the grantee shall obtain and deliver to the commission [~~landowner~~] evidence of financial assurance payable to the landowner that conforms to the requirements of this section to secure the performance of the grantee's obligations under Section 302.0004. The [~~Acceptable forms of~~] financial assurance may be [~~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.

(c) The agreement must provide that:

(1) the estimated cost of removing the solar power facilities from the landowner's property, recycling or disposing of all the components of the solar power facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins and the estimated salvage value of the solar power facilities must be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee must deliver to the landowner and the commission an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the costs and salvage value described by Subdivision (1) [~~cost of removal and recycling or disposal of the solar power facilities and~~

~~the salvage value~~]:

(A) on or before the 10th anniversary of the commercial operations date of the solar power facilities; and

(B) at least once every five years after the commercial operations date of the solar power facilities for the remainder of the term of the agreement; and

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

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

[~~(1) the~~] date on which the solar power facility agreement begins [~~is terminated; or~~

[~~(2) the 20th anniversary of the commercial operations date of the solar power facilities located on the landowner's leased property~~].

(g) The grantee may not cancel financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's solar power facilities located on the landowner's property as required [~~in the manner provided~~] by this chapter, unless the grantee provides the commission [~~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 solar power facilities, the financial assurance [~~security~~] provided by the grantee shall remain in place until the

date evidence of financial assurance [~~security~~] meeting the requirements of this chapter is provided to the commission [~~landowner~~].

SECTION 5. Section 303.0001, Utilities Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Commission" means the Texas Commission on Environmental Quality.

SECTION 6. Section 303.0005, Utilities Code, is amended by amending Subsections (a), (c), (d), (e), (f), and (g) and adding Subsection (b-1) to read as follows:

(a) A battery energy storage facility agreement must provide that the grantee shall obtain and deliver to the commission [~~landowner~~] evidence of financial assurance payable to the landowner that conforms to the requirements of this section to secure the performance of the grantee's obligations under Section 303.0004. The [~~Acceptable forms of~~] financial assurance may be [~~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-1) In addition to the amount required by Subsection (b), the amount of financial assurance must include an amount sufficient to compensate the landowner for any damages and restoration in the event of a fire, chemical spill or leak, thermal runaway, explosion, or any other hazard caused by the failure of the battery energy storage facility's system. As an alternative to including this amount in the financial assurance, notwithstanding Subsection

(f), the grantee may provide an insurance policy for this amount that designates the landowner as an additional insured.

(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, and the estimated costs described by Subsection (b-1) must be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee must deliver to the landowner and the commission the estimated costs and [~~cost of removal and recycling or disposal of the battery energy storage facilities and the~~] salvage value described by Subdivision (1) 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 costs [~~cost~~] and salvage value described by Subdivision (1) [~~(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 determining the estimated removal, recycling, and disposal costs and salvage value and costs described by Subsection (b-1).

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

[~~(1) the~~] date on which the battery energy storage facility agreement begins [~~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 Subsections [~~Subsection~~] (b) and (b-1), 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 as required [~~in the manner provided~~] by this chapter, unless the grantee provides the commission [~~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 commission [~~landowner~~].

SECTION 7. Title 6, Utilities Code, is amended by adding Chapters 304 and 305 to read as follows:

CHAPTER 304. ELECTRIC ENERGY STORAGE AND RENEWABLE POWER FACILITY AGREEMENTS

Sec. 304.0001. DEFINITIONS. In this chapter:

(1) "Commercial operations date" means the date on which a renewable power facility is approved for participation in market operations by a regional transmission organization and does not include the generation of electric energy or other operations conducted before that date for purposes of maintenance and testing.

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

(3) "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.

(4) "Grantee" means a person who leases property from a landowner.

(5) "Operations date" means the date on which an electric energy storage resource is first used for its intended purposes.

(6) "Recycle" means the processing of an item to recover a usable product.

(7) "Renewable power facility" means a facility that:

(A) generates electric energy using a renewable energy technology, as defined by Section 39.916, other than a technology that relies exclusively on wind or solar energy; and

(B) is not an electric energy storage facility.

(8) "Renewable power facility agreement" means a lease

agreement between a grantee and a landowner that authorizes the grantee to operate a renewable power facility on the leased property.

Sec. 304.0002. APPLICABILITY. (a) This chapter applies only to an electric energy storage facility or a renewable power facility that is intended to provide energy or ancillary services at wholesale for a power grid.

(b) This chapter does not apply to an agreement that is subject to Chapter 301, 302, or 303.

Sec. 304.0003. WAIVER VOID; REMEDIES. (a) A provision of an electric energy storage facility agreement or a renewable power facility agreement that purports to waive a right or exempt a grantee from 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 law.

Sec. 304.0004. REQUIRED AGREEMENT PROVISIONS ON ELECTRIC ENERGY STORAGE OR RENEWABLE POWER FACILITY REMOVAL. An electric energy storage facility agreement or renewable power facility agreement must provide that the grantee is responsible for:

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

(2) restoring the property to as near as reasonably

possible the condition of the property as of the date the agreement begins.

Sec. 304.0005. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL ASSURANCE. (a) An electric energy storage facility agreement or a renewable power facility agreement must provide that the grantee shall obtain and deliver to the commission evidence of financial assurance payable to the landowner that conforms to the requirements of this section to secure the performance of the grantee's obligations under Section 304.0004. The financial assurance may be a bond or another form of financial assurance reasonably acceptable to the landowner.

(b) The amount of the financial assurance must be at least equal to the estimated amount by which the cost of removing the facilities from the landowner's property, recycling or disposing of all the components of the facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins exceeds the salvage value of the facilities, less any portion of the value of the facilities pledged to secure outstanding debt.

(c) In addition to the amount required by Subsection (b), the amount of financial assurance for an electric energy storage facility must include an amount sufficient to compensate the landowner for any damages and restoration in the event of a fire, chemical spill or leak, thermal runaway, explosion, or any other hazard caused by the failure of the electric energy storage facility's system. As an alternative to including this amount in the financial assurance, notwithstanding Subsection (d)(3), the

grantee may provide an insurance policy for this amount that designates the landowner as an additional insured.

(d) The agreement must provide that:

(1) the estimated cost of removing the facilities from the landowner's property, recycling or disposing of all the components of the facilities, and restoring the property to as near as reasonably possible the condition of the property as of the date the agreement begins, the estimated salvage value of the facilities, and the estimated costs described by Subsection (c) must be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee must deliver to the landowner and the commission an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the costs and salvage value described by Subdivision (1):

(A) on or before the 10th anniversary of the operations date or commercial operations date, as applicable, of the facilities; and

(B) at least once every five years after the operations date or commercial operations date, as applicable, of the facilities for the remainder of the term of the agreement; and

(3) the grantee is responsible for ensuring that the amount of the financial assurance remains sufficient to cover the amount required by Subsections (b) and (c), consistent with the estimates required by this subsection.

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

determining the estimated removal, recycling, and disposal costs and salvage value and costs described by Subsection (c).

(f) The agreement must provide that the grantee shall deliver the financial assurance to the commission not later than the date the electric energy storage facility agreement or the renewable power facility agreement begins.

(g) The grantee may not cancel financial assurance before the date the grantee has completed the grantee's obligation to remove the grantee's facilities located on the landowner's property as required by this chapter, unless the grantee provides the commission with replacement financial assurance at the time of or before the cancellation. In the event of a transfer of ownership of the grantee's 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 commission.

CHAPTER 305. RELEASE OF FINANCIAL ASSURANCE

Sec. 305.0001. DEFINITIONS. In this section:

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

(2) "Grantee" means a person who leases property from a landowner.

Sec. 305.0002. RELEASE OF FINANCIAL ASSURANCE TO GRANTEE. (a) At any time, a grantee may file an application with the commission for the release of all or part of a bond or other financial assurance provided to the commission by the grantee for a landowner under Chapter 301, 302, 303, or 304.

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

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

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

(e) The commission may release all or part of the financial assurance if the commission determines that the grantee has completed all or part of the grantee's obligations under the agreement entered into under Section 301.0003, 302.0004, 303.0004, or 304.0004, as applicable.

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

Sec. 305.0003. FORFEITURE OF FINANCIAL ASSURANCE TO LANDOWNER. (a) A landowner may file an application with the commission for the forfeiture of all or part of a bond or other financial assurance provided to the commission by a grantee for the landowner under this chapter if:

(1) the grantee has not completed the grantee's

obligations under the agreement entered into under Section 301.0003, 302.0004, 303.0004, or 304.0004, as applicable; and

(2) the facility that is the subject of the agreement is no longer being used by the grantee to generate or store energy in the manner provided by the agreement.

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

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

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

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

(1) the facility that is the subject of the agreement is no longer being used to generate or store energy in the manner described by the agreement; and

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

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

Sec. 305.0004. COMMISSION AUTHORITY. (a) The commission shall notify the Public Utility Commission of Texas if the

commission requires forfeiture of financial assurance under Section 305.0003. The commission and the Public Utility Commission of Texas may not issue to a grantee whose financial assurance was forfeited under Section 305.0003 any permit, certificate, or registration under other law that authorizes the grantee to operate a facility to which Chapter 301, 302, 303, or 304 applies or renew any such permit, certificate, or registration.

(b) In a suit for receivership, garnishment, or bankruptcy, or in any other legal action affecting the assets of a grantee that is a party to an agreement subject to Chapter 301, 302, 303, or 304, the commission may:

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

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

SECTION 8. Section 5.013(a), Water Code, is amended to read as follows:

(a) The commission has general jurisdiction over:

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

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

(3) the state's water quality program including

issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning;

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

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

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

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

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

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

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

(11) the responsibilities assigned to the commission by:

(A) Chapters 361, 363, 376, 382, 401, 505, 506, and 507, Health and Safety Code; and

(B) Title 6, Utilities Code; and

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

SECTION 9. (a) The changes in law made by this Act apply

only to a battery energy storage facility agreement, an electric energy storage facility agreement, a renewable power facility agreement, a solar power facility agreement, or a wind power facility 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 applicable to the agreement on the date the agreement was entered into, and that law is continued in effect for that purpose.

(b) Notwithstanding Subsection (a) of this section, a battery energy storage facility, electric energy storage facility, renewable power facility, solar power facility, or wind power facility that has entered into a battery energy storage facility agreement, an electric energy storage facility agreement, a renewable power facility agreement, a solar power facility agreement, or a wind power facility agreement before the effective date of this Act shall deliver the financial assurance required under Section 301.0004, 302.0005, or 303.0005, Utilities Code, as amended by this Act, or Section 304.0005, Utilities Code, as added by this Act, to the Texas Commission on Environmental Quality not later than the earlier of:

(1) the date on which the agreement is amended; or

(2) January 1, 2028.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2027.