

1-1 By: Canales, et al. H.B. No. 2845  
 1-2 (Senate Sponsor - Creighton, Campbell)  
 1-3 (In the Senate - Received from the House April 30, 2019;  
 1-4 May 1, 2019, read first time and referred to Committee on Business  
 1-5 & Commerce; May 19, 2019, reported favorably by the following vote:  
 1-6 Yeas 7, Nays 0; May 19, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to the removal of wind power facilities.  
 1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-22 SECTION 1. The Utilities Code is amended by adding Title 6  
 1-23 to read as follows:

1-24 TITLE 6. WIND POWER

1-25 CHAPTER 301. WIND POWER FACILITY AGREEMENTS

1-26 Sec. 301.0001. DEFINITIONS. In this chapter:

1-27 (1) "Grantee" means a person who:

1-28 (A) leases property from a landowner; and

1-29 (B) operates a wind power facility on the  
 1-30 property.

1-31 (2) "Wind power facility" includes:

1-32 (A) a wind turbine generator; and

1-33 (B) a facility or equipment used to support the  
 1-34 operation of a wind turbine generator, including an underground or  
 1-35 aboveground electrical transmission or communications line, an  
 1-36 electric transformer, a battery storage facility, an energy storage  
 1-37 facility, telecommunications equipment, a road, a meteorological  
 1-38 tower with wind measurement equipment, or a maintenance yard.

1-39 (3) "Wind power facility agreement" means a lease  
 1-40 agreement between a grantee and a landowner that authorizes the  
 1-41 grantee to operate a wind power facility on the leased property.

1-42 Sec. 301.0002. WAIVER VOID; REMEDIES. (a) A provision of a  
 1-43 wind power facility agreement that purports to waive a right or  
 1-44 exempt a grantee from a liability or duty established by this  
 1-45 chapter is void.

1-46 (b) A person who is harmed by a violation of this chapter is  
 1-47 entitled to appropriate injunctive relief to prevent further  
 1-48 violation of this chapter.

1-49 (c) The provisions of this section are not exclusive. The  
 1-50 remedies provided in this section are in addition to any other  
 1-51 procedures or remedies provided by other law.

1-52 Sec. 301.0003. REQUIRED AGREEMENT PROVISIONS ON FACILITY  
 1-53 REMOVAL. (a) A wind power facility agreement must provide that the  
 1-54 grantee is responsible for removing the grantee's wind power  
 1-55 facilities from the landowner's property and that the grantee  
 1-56 shall, in accordance with any other applicable laws or regulations,  
 1-57 safely:

1-58 (1) clear, clean, and remove from the property:

1-59 (A) each wind turbine generator, including  
 1-60 towers and pad-mount transformers;

1-61 (B) all liquids, greases, or similar substances

2-1 contained in a wind turbine generator;  
 2-2 (C) each substation; and  
 2-3 (D) all liquids, greases, or similar substances  
 2-4 contained in a substation;  
 2-5 (2) for each tower foundation and pad-mount  
 2-6 transformer foundation installed in the ground:  
 2-7 (A) clear, clean, and remove the foundation from  
 2-8 the ground to a depth of at least three feet below the surface grade  
 2-9 of the land in which the foundation is installed; and  
 2-10 (B) ensure that each hole or cavity created in  
 2-11 the ground by the removal is filled with topsoil of the same type or  
 2-12 a similar type as the predominant topsoil found on the property;  
 2-13 (3) for each buried cable, including power,  
 2-14 fiber-optic, and communications cables, installed in the ground:  
 2-15 (A) clear, clean, and remove the cable from the  
 2-16 ground to a depth of at least three feet below the surface grade of  
 2-17 the land in which the cable is installed; and  
 2-18 (B) ensure that each hole or cavity created in  
 2-19 the ground by the removal is filled with topsoil of the same type or  
 2-20 a similar type as the predominant topsoil found on the property; and  
 2-21 (4) clear, clean, and remove from the property each  
 2-22 overhead power or communications line installed by the grantee on  
 2-23 the property.  
 2-24 (b) The agreement must provide that, at the request of the  
 2-25 landowner, the grantee shall:  
 2-26 (1) clear, clean, and remove each road constructed by  
 2-27 the grantee on the property; and  
 2-28 (2) ensure that each hole or cavity created in the  
 2-29 ground by the removal is filled with topsoil of the same type or a  
 2-30 similar type as the predominant topsoil found on the property.  
 2-31 (c) The agreement must provide that, at the request of the  
 2-32 landowner, if reasonable, the grantee shall:  
 2-33 (1) remove from the property all rocks over 12 inches  
 2-34 in diameter excavated during the decommissioning or removal  
 2-35 process;  
 2-36 (2) return the property to a tillable state using  
 2-37 scarification, V-rip, or disc methods, as appropriate; and  
 2-38 (3) ensure that:  
 2-39 (A) each hole or cavity created in the ground by  
 2-40 the removal is filled with topsoil of the same type or a similar  
 2-41 type as the predominant topsoil found on the property; and  
 2-42 (B) the surface is returned as near as reasonably  
 2-43 possible to the same condition as before the grantee dug holes or  
 2-44 cavities, including by reseeding pastureland with native grasses  
 2-45 prescribed by an appropriate governmental agency, if any.  
 2-46 (d) The landowner shall make a request under Subsection (b)  
 2-47 or (c) not later than the 180th day after the later of:  
 2-48 (1) the date on which the wind power facility is no  
 2-49 longer capable of generating electricity in commercial quantities;  
 2-50 or  
 2-51 (2) the date the landowner receives written notice of  
 2-52 intent to decommission the wind power facility from the grantee.  
 2-53 Sec. 301.0004. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL  
 2-54 ASSURANCE. (a) A wind power facility agreement must provide that  
 2-55 the grantee shall obtain and deliver to the landowner evidence of  
 2-56 financial assurance that conforms to the requirements of this  
 2-57 section to secure the performance of the grantee's obligation to  
 2-58 remove the grantee's wind power facilities located on the  
 2-59 landowner's property as described by Section 301.0003. Acceptable  
 2-60 forms of financial assurance include a parent company guaranty with  
 2-61 a minimum investment grade credit rating for the parent company  
 2-62 issued by a major domestic credit rating agency, a letter of credit,  
 2-63 a bond, or another form of financial assurance acceptable to the  
 2-64 landowner.  
 2-65 (b) The amount of the financial assurance must be at least  
 2-66 equal to the estimated amount by which the cost of removing the wind  
 2-67 power facilities from the landowner's property and restoring the  
 2-68 property to as near as reasonably possible the condition of the  
 2-69 property as of the date the agreement begins exceeds the salvage

3-1 value of the wind power facilities, less any portion of the value of  
3-2 the wind power facilities pledged to secure outstanding debt.

3-3 (c) The agreement must provide that:

3-4 (1) the estimated cost of removing the wind power  
3-5 facilities from the landowner's property and restoring the property  
3-6 to as near as reasonably possible the condition of the property as  
3-7 of the date the agreement begins and the estimated salvage value of  
3-8 the wind power facilities must be determined by an independent,  
3-9 third-party professional engineer licensed in this state;

3-10 (2) the grantee must deliver to the landowner an  
3-11 updated estimate, prepared by an independent, third-party  
3-12 professional engineer licensed in this state, of the cost of  
3-13 removal and the salvage value at least once every five years for the  
3-14 remainder of the term of the agreement; and

3-15 (3) the grantee is responsible for ensuring that the  
3-16 amount of the financial assurance remains sufficient to cover the  
3-17 amount required by Subsection (b), consistent with the estimates  
3-18 required by this subsection.

3-19 (d) The grantee is responsible for the costs of obtaining  
3-20 financial assurance described by this section and costs of  
3-21 determining the estimated removal costs and salvage value.

3-22 (e) The agreement must provide that the grantee shall  
3-23 deliver the financial assurance not later than the earlier of:

3-24 (1) the date the wind power facility agreement is  
3-25 terminated; or

3-26 (2) the 10th anniversary of the commercial operations  
3-27 date of the wind power facilities located on the landowner's leased  
3-28 property.

3-29 (f) For purposes of this section, "commercial operations  
3-30 date" means the date on which the wind power facilities are approved  
3-31 for participation in market operations by a regional transmission  
3-32 organization and does not include the generation of electrical  
3-33 energy or other operations conducted before that date for purposes  
3-34 of maintenance and testing.

3-35 (g) The grantee may not cancel financial assurance before  
3-36 the date the grantee has completed the grantee's obligation to  
3-37 remove the grantee's wind power facilities located on the  
3-38 landowner's property in the manner provided by this chapter, unless  
3-39 the grantee provides the landowner with replacement financial  
3-40 assurance at the time of or before the cancellation. In the event  
3-41 of a transfer of ownership of the grantee's wind power facilities,  
3-42 the financial security provided by the grantee shall remain in  
3-43 place until the date evidence of financial security meeting the  
3-44 requirements of this chapter is provided to the landowner.

3-45 SECTION 2. Chapter 301, Utilities Code, as added by this  
3-46 Act, applies only to a wind power facility agreement entered into on  
3-47 or after the effective date of this Act. A wind power facility  
3-48 agreement entered into before the effective date of this Act is  
3-49 governed by the law as it existed immediately before that date, and  
3-50 that law is continued in effect for that purpose.

3-51 SECTION 3. This Act takes effect September 1, 2019.

3-52 \* \* \* \* \*