

BILL ANALYSIS

C.S.H.B. 2845
By: Canales
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls for the legislature to do more to regulate the decommissioning of wind power facilities and to establish certain basic landowner rights with regard to facility leases, given the possibility for facility owners to abandon their liabilities if they go out of business or do not have adequate funds to remove the facility at the end of its lifespan. C.S.H.B. 2845 seeks to address this issue by requiring a wind power facility agreement to include specified provisions on facility removal and establishing basic financial obligations with regard to such an agreement.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2845 amends the Utilities Code to require a wind power facility agreement to contain the following provisions with respect to facility removal:

- that the grantee is responsible for removing the grantee's wind power facilities from the landowner's property;
- that the grantee is required to take other actions related to such removal as described by the bill, including actions related to road removal and surface restoration as requested by a landowner and as restricted by the bill; and
- that the grantee is required to obtain and deliver to the landowner a bond or other form of financial assurance to secure the performance of the grantee's obligation to remove the facilities located on the landowner's property in an amount that is at least equal to the estimated amount by which the cost of removing the facilities from the property 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 that value pledged to secure outstanding debt.

The bill sets out additional required agreement provisions relating to the deadline for delivery of the bond or other financial assurance, requiring certain estimated costs to be determined by an independent, third-party professional engineer licensed in Texas, providing for updated estimates, and making the grantee responsible for ensuring that the amount of the bond or other financial assurance remains sufficient to cover the required amount, consistent with those estimates.

C.S.H.B. 2845 makes the grantee responsible for certain associated costs and prohibits the grantee from canceling a bond or other financial assurance before the date the grantee has completed the grantee's obligation to remove the facilities located on the landowner's property in the manner provided by the bill, unless the grantee provides the landowner with a replacement bond or replacement financial assurance at the time of or before the cancellation. The bill requires the financial security provided by the grantee to remain in place in the event of a transfer of ownership of the grantee's wind power facilities until the date evidence of financial security meeting the requirements of the bill's provisions is provided to the landowner.

C.S.H.B. 2845 defines "grantee" as a person who leases property from a landowner and operates a wind power facility on the property and establishes that "wind power facility" includes a wind turbine generator and a facility or equipment used to support the operation of a wind turbine generator.

C.S.H.B. 2845 voids a provision of a wind power facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by the bill's provisions. The bill entitles a person who is harmed by a violation of the bill's provisions to appropriate injunctive relief to prevent further such violation. The bill establishes that these provisions are not exclusive and that the remedies provided by these provisions are in addition to any other procedures or remedies provided by other law.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2845 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the requirement for a wind power facility agreement to provide that an affected surface is returned to a certain condition. The substitute changes the date on which the required limitations period begins for certain landowner requests regarding facility removal.

The substitute, with regard to required agreement provisions that relate to the removal bond or other financial assurance:

- revises the required amount to permit the deduction of unpledged salvage value;
- does not include provisions allowing the landowner and grantee to attempt to agree on an estimated cost before being required to select an independent engineer to determine that cost and providing for the engineer's appointment by a district judge, if necessary;
- includes provisions instead requiring an independent engineer to make the estimates necessary for the agreement, providing for subsequent updates to those estimates, and requiring the grantee to ensure the amount of the bond or other financial assurance remains consistent with such updates;
- does not include required bond adjustment procedures;
- makes a certain revision to the deadline for delivery of the bond or other assurance; and
- includes a contingency provision for a transfer of ownership of the facilities.