

BILL ANALYSIS

Senate Research Center
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S.B. 760
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires oil, gas, coal, and wind energy companies to pay to decommission and properly dispose of equipment that will no longer be used when the parts have worn out or the project has been completed.

These requirements, which already applied to fossil fuel generators, were extended to wind companies during the 86th Legislative Session, but not to solar.

Most solar equipment cannot be recycled, and solar panels can leach toxic chemicals into the environment.

Nationwide, eight million tons of solar panels will be sent to landfills by the end of the decade, according to a recent study, ballooning to 80 million tons by 2050. This is nearly double current annual plastic pollution or e-waste. Since the Lone Star State is in the top five solar-producing states, a large portion of this waste burden will fall on Texas.

S.B. 760 will correct this oversight and level the playing field by extending existing decommissioning requirements to solar energy to maintain a predictable regulatory climate and ensure waste is disposed of properly.

As proposed, S.B. 760 amends current law relating to the removal of solar power facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Title 6, Utilities Code, to read as follows:

TITLE 6. PRIVATE POWER AGREEMENTS

SECTION 2. Amends Title 6, Utilities Code, by adding Chapter 302, as follows:

CHAPTER 302. SOLAR POWER FACILITY AGREEMENTS

Sec. 302.0001. DEFINITIONS. Defines "grantee," "solar energy device," "solar power facility," and "solar power facility agreement."

Sec. 302.0002. WAIVER VOID; REMEDIES. (a) Provides that a provision of a solar power facility agreement that purports to waive a right or exempt a grantee from a liability or duty established by this chapter is void.

(b) Provides that 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) Provides that the provisions of this section are not exclusive. Provides that the remedies provided in this section are in addition to any other procedures or remedies provided by other law.

Sec. 302.0003. REQUIRED AGREEMENT PROVISIONS ON FACILITY REMOVAL.

(a) Requires that a solar power facility agreement provide that the grantee is responsible for removing the grantee's solar power facilities from the landowner's property and require the grantee, in accordance with any other applicable laws or regulations, to safely:

(1) clear, clean, and remove from the property each solar energy device, transformer, and substation;

(2) for each foundation of a solar energy device, 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 topsoil of the same type or a similar type as the predominant topsoil found on the property;

(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 topsoil of the same type or a similar type as the predominant topsoil 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) Requires that the agreement provide that, at the request of the landowner, the grantee is required to clear, clean, and remove each road constructed by the grantee on the property; and ensure that each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil found on the property.

(c) Requires that the agreement provide that, at the request of the landowner, if reasonable, the grantee is required to:

(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

(3) ensure that:

(A) each hole or cavity created in the ground by the removal is filled with topsoil of the same type or a similar type as the predominant topsoil 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 reseeded pastureland with native grasses prescribed by an appropriate governmental agency, if any.

(d) Requires the landowner to make a request under Subsection (b) or (c) not later than the 180th day after the later of the date on which the solar power facility is no longer capable of generating electricity in commercial quantities; or the date the landowner receives written notice of intent to decommission the solar power facility from the grantee.

Sec. 302.0004. REQUIRED AGREEMENT PROVISIONS ON FINANCIAL ASSURANCE. (a) Requires that a solar power facility agreement 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 obligation to remove the grantee's solar power facilities located on the landowner's property as described by Section 302.0003. Provides that 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 acceptable to the landowner.

(b) Requires that the amount of the financial assurance be at least equal to the estimated amount by which the cost of removing the solar power facilities from the landowner's 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 solar power facilities, less any portion of the value of the solar power facilities pledged to secure outstanding debt.

(c) Requires that the agreement provide that:

(1) the estimated cost of removing the solar power facilities from the landowner's property 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 are required to be determined by an independent, third-party professional engineer licensed in this state;

(2) the grantee is required to deliver to the landowner an updated estimate, prepared by an independent, third-party professional engineer licensed in this state, of the cost of removal 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.

(d) Provides that the grantee is responsible for the costs of obtaining financial assurance described by this section and costs of determining the estimated removal costs and salvage value.

(e) Requires that the agreement provide that the grantee is required to deliver the financial assurance not later than the earlier of the date the solar power facility agreement is terminated; or the 10th anniversary of the commercial operations date of the solar power facilities located on the landowner's leased property.

(f) Provides that, for purposes of this section, "commercial operations date" means the date on which the solar power facilities are 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.

(g) Prohibits the grantee from canceling 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 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. Requires that, in the event of a transfer of ownership of the grantee's solar power facilities, the financial security provided by the grantee remain in place until the date evidence of financial security meeting the requirements of this chapter is provided to the landowner.

SECTION 3. Makes application of Chapter 302, Utilities Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.