

SUBJECT: Requiring decommissioning provisions in wind power facility agreements

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King,
Parker, Raymond, E. Rodriguez, Springer

0 nays

2 absent — Hernandez, Smithee

WITNESSES: For — Bryon Barton; George Clay; Lynda Joan Somma; (*Registered, but did not testify*: Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Michael Pacheco, Texas Farm Bureau; Caleb Troxclair, Kyle Stallings; Eric Opiela)

Against — Jeffrey Clark, Advanced Power Alliance; Luke Metzger, Environment Texas; (*Registered, but did not testify*: Mark Stover, Apex Clean Energy; Erika Akpan, Association of Electric Companies of Texas; Janis Carter, Avangrid Renewables; Royce Poinsett, Duke Energy Renewables Inc.; Lisa Hughes, E.ON Climate and Renewables; Eric Wright, EDP Renewables, Lincoln Clean Energy; Lynnae Willette, Electricite de France RE; Mike Meroney, Enel Green Power North America; Shannon Ratliff, Invenergy, LLC; Michael Jewell, Pattern Energy Group; Scott Dunaway, Powering Texas; Adrian Shelley, Public Citizen)

On — Carine Martinez, Texas Public Policy Foundation; (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office)

DIGEST: CSHB 2845 would establish requirements for wind power facility agreements, including provisions related to decommissioning and facility removal bonds.

A wind power facility agreement would mean a lease agreement between a grantee and a landowner that authorized the grantee to operate a wind

power facility on the leased property, where a grantee was a person who operated a wind power facility on property leased from a landowner.

Required agreement provisions on facility removal. The bill would require a wind power facility agreement to provide that the grantee was responsible for removing wind power facilities from the landowner's property. The grantee would have to safely clear, clean, and remove:

- each wind turbine generator, each substation, all liquids contained in a generator or substation, and each installed overhead power or communications line;
- each tower and pad-mount transformer foundation from the ground at least three feet from the grade of the affected land; and
- each buried cable installed in the ground at least three feet below the grade of the affected land.

The agreement would have to provide that, at the request of the landowner, the grantee would clear, clean, and remove each road constructed on the property. If reasonable, the agreement also would have to provide that the grantee, at the request of the landowner, would remove all rocks over 12 inches in diameter excavated during the decommissioning process, return the property to a tillable state using certain methods, and return the surface as near as possible to the same condition as before the grantee dug holes.

For the removal of towers, pad-mount transformers, buried cables, roads, and excavated rocks, the grantee would have to ensure that holes created by the removal were filled with topsoil.

The agreement could not authorize the landowner to make a request under the bill after the first anniversary of the date on which the power facility was no longer capable of generating electricity in commercial quantities.

Required agreement provisions on removal bond. CSHB 2845 would require a wind power facility agreement to provide that the grantee would obtain and deliver to the landowner a bond or other form of financial

assurance that conformed to certain requirements to secure the grantee's obligation to remove the wind power facilities.

The amount of the bond or other financial assistance would have to be at least equal to the estimated amount by which the cost of removing the wind power facilities and restoring the property exceeded the salvage value of the facilities, less any portion of the value of the power facilities pledged to secure outstanding debt.

The agreement would have to provide that:

- the estimated cost of removing the facilities and restoring the property and the estimated salvage value would be determined by an independent, third-party licensed professional engineer;
- the grantee would deliver to the landowner an updated estimate, prepared by the engineer, of the removal cost and salvage value at least once every five years for the remainder of the agreement; and
- the grantee was responsible for ensuring that the bond or other financial assurance remained sufficient to cover the amount required by and consistent with estimates under the bill.

The grantee would be responsible for the costs of obtaining a bond or other financial assurance and determining estimated removal costs and salvage value.

The agreement would have to provide that the grantee would deliver the financial assurance no later than either the date the facility agreement was terminated or the 10th anniversary of the commercial operations date of facilities on the property, whichever was earlier. The commercial operations date would be when the wind power facilities were approved for participation in market operations by a regional transmission organization and would not include the generation of electrical energy or other operations conducted before that date.

The grantee could not cancel a bond or other financial assurance before completing its obligation to remove the power facilities under the bill

unless the grantee provided the landowner with a replacement bond or other financial assurance at the time of or before the cancellation.

In the event of a transfer of power facility ownership, the financial security provided by the grantee would remain in place until evidence of financial security was provided to the landowner.

Waiver void and remedies. A provision of a wind power facility agreement that purported to waive a right or exempt a grantee from a liability or duty established by the bill would be void.

A person who was harmed by a violation of this bill would be entitled to appropriate injunctive relief to prevent further violation.

Remedies provided under the bill would be in addition to any other procedures or remedies provided by other law.

The bill would take effect September 1, 2019, and would apply only to a wind power facility agreement entered into on or after that date.

SUPPORTERS
SAY:

CSHB 2845 would protect Texas landowners by setting minimum standards for the decommissioning of wind turbines by wind project owners. The bill would reflect the best practices in the wind industry by requiring wind power facility agreements to ensure that wind project owners clear, clean, and remove all traces of the project upon decommissioning the facilities and return the land to its pre-project state.

The bill would ensure that wind power projects were properly decommissioned at the end of their useful lives at the owner's expense by requiring the agreement to include that the project owner would provide a landowner with financial assurance securing its obligations to remove the facilities. This requirement would give landowners, communities, and other entities further assurance that if these facilities were abandoned or the company went bankrupt, taxpayers would not carry the financial burden.

Although some contend that requiring provisions related to facility removal in agreements is unnecessary, CSHB 2845 is needed to establish best practices and increase transparency in the wind project decommissioning process. Currently, a landowner has to sign a non-disclosure agreement upon receiving a lease, making it difficult to evaluate whether the decommissioning provisions in contracts are strong enough. The bill simply would place the industry's best practices in statute, ensuring that facility removal provisions always were included in an agreement and providing minimum, agreed-upon standards.

The bill would not involve local governments or agencies in wind power facility agreements so as not to inadvertently expand government. The technical requirements of these agreements are best maintained between the wind industry and landowners.

**OPPONENTS
SAY:**

CSHB 2845 is unnecessary because wind project owners are already incentivized to remove turbines. Components have substantial salvage value, and the legally binding agreements signed by wind project owners and landowners already ensure that project owners are accountable at the end of a turbine's life cycle. In the event of decommissioning, the agreements ensure that project owners, not landowners, the community, or any other entity, are responsible for removing a turbine and returning the land to its pre-construction state and for associated costs.

**OTHER
OPPONENTS
SAY:**

The decommissioning provisions in a wind power facility agreement under CSHB 2845 should be voluntary and actionable at the local level, rather than mandatory. The bill should make it possible for wind power facilities to receive certain benefits upon the completion of decommissioning provisions in lease agreements, while allowing county commissioners courts to waive that mandate in a public meeting.