

House Bill 249

By: Representatives Dickey of the 134th, Anderson of the 10th, Huddleston of the 72nd,
Drenner of the 85th, and Campbell of the 171st

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 3 of Title 46 of the Official Code of Georgia Annotated,
2 relating to generation and distribution of electricity generally, so as to revise provisions
3 relating to solar power facility agreements; to revise provisions relating to the waiver of
4 certain requirements of such agreements; to provide for the certification by the
5 Environmental Protection Division of the Department of Natural Resources that solar power
6 facility agreements meet certain requirements; to provide civil penalties; to revise and
7 provide for definitions; to provide an effective date; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to
12 generation and distribution of electricity generally, is amended by revising Part 5, relating
13 to solar power facility agreements, as follows:

14 "Part 5

15 46-3-67.

16 As used in this part, the term:

17 (1) 'Commercial operations date' means the date on which a solar power facility
18 generates electrical energy for sale to an electric supplier. Such term does not include the
19 generation of electrical energy or other operations conducted before that date for purposes
20 of maintenance or testing.

21 (2) 'Division' means the Environmental Protection Division of the Department of Natural
22 Resources.

23 (3) 'Electric supplier' has the same meaning as provided in Code Section 46-3-3.

24 ~~(3)~~(4) 'Financial assurance' means a surety or performance bond that:

25 (A) Renews automatically; and

26 (B) Is issued by a company that is:

27 (i) Licensed as an insurance company under Title 33; and

28 (ii) Listed ~~listed~~ on the United States Department of the Treasury's List of Certified
29 Companies and that has a financial strength rating of at least an 'A' as rated by A.M.
30 Best Company, Inc.; Moody's Investors Service, Inc.; Standard and Poor's
31 Corporation; or a similar rating agency.

32 ~~(4)~~(5) 'Grantee' means a person who leases property from a landowner and who operates
33 a solar power facility on said property.

34 ~~(5)~~(6) 'Solar energy device' means a solar energy collector or solar energy system that
35 provides for the collection of solar energy or the subsequent use of such energy as
36 thermal, mechanical, or electrical energy.

37 ~~(6)~~(7) 'Solar power facility' means a solar energy device that does not meet the definition
38 of solar technology pursuant to Code Section 46-3-62, or the integrated collection of such
39 devices, together with any equipment or other personal property and improvements under

40 common ownership that are used to support the operation of such a solar energy device
41 or solar energy devices, including, but not limited to, underground or aboveground
42 electrical transmission or communications lines, electric transformers, battery storage
43 facilities, telecommunications equipment, roads, meteorological towers, and maintenance
44 yards.

45 ~~(7)~~(8) 'Solar power facility agreement' means any lease agreement for real property in
46 this state between a grantee and a landowner that authorizes the grantee to operate a solar
47 power facility on the leased property.

48 46-3-68.

49 (a) The provisions of this part shall only apply to solar power facility agreements that are
50 executed or renewed on or after July 1, 2024.

51 (b) ~~Any~~ Except as provided in subsection (e) of Code Section 46-3-69, any provision in
52 a solar power facility agreement that purports to waive a right or exempt a grantee from a
53 liability or duty established by this part shall be void.

54 (c) Any person who is harmed by a violation of this part shall be entitled to appropriate
55 injunctive relief to prevent further violation of this part.

56 (d) The provisions of this Code section are not exclusive. The remedies provided in this
57 Code section are in addition to any other procedures or remedies provided by law.

58 46-3-69.

59 (a) A solar power facility agreement shall provide that the grantee shall be responsible for
60 removing the grantee's solar power facilities from the landowner's property upon the
61 termination of the lease and that the grantee shall, in accordance with any other applicable
62 laws or regulations, safely:

- 63 (1) Clear, clean, and remove from the property all grantee owned solar energy devices
64 and all grantee owned equipment, personal property, and improvements used to support
65 such devices;
- 66 (2) For each foundation of a solar energy device, transformer, or substation installed on
67 the property by the grantee:
- 68 (A) Clear, clean, and remove the foundation from the ground to a depth of at least three
69 feet below the surface grade of the land in which the foundation is installed; and
- 70 (B) Ensure that each hole or cavity created in the ground by such removal is filled with
71 soil of the same type or a similar type as the predominant soil found on the property;
- 72 (3) For each cable, including power, fiber-optic, and communications cables, installed
73 underground by the grantee:
- 74 (A) Clear, clean, and remove the cable from the ground to a depth of at least three feet
75 below the surface grade of the land in which the cable is installed; and
- 76 (B) Ensure that each hole or cavity created in the ground by such removal is filled with
77 soil of the same type or a similar type as the predominant soil found on the property;
78 and
- 79 (4) Clear, clean, and remove from the property each overhead power or communications
80 line installed on the property by the grantee.
- 81 (b) A solar power facility agreement shall provide that, at the request of the landowner, the
82 grantee shall:
- 83 (1) Clear, clean, and remove each road constructed on the property by the grantee; and
84 (2) Ensure that each hole or cavity created in the ground by such removal is filled with
85 soil of the same type or a similar type as the predominant soil found on the property.
- 86 (c) A solar power facility agreement shall provide that, at the request of the landowner, the
87 grantee shall:
- 88 (1) Remove from the property all rocks more than 12 inches in diameter excavated
89 during the decommissioning or removal of the grantee's solar power facilities; and

90 (2) Ensure that:

91 (A) Each hole or cavity created in the ground by such decommissioning or removal is
92 filled with soil of the same type or a similar type as the predominant soil found on the
93 property; and

94 (B) The surface is returned, as near as reasonably possible, to the same condition as
95 before the grantee dug holes or cavities, including, but not limited to, by reseeding
96 pastureland with native, naturalized, and introduced grasses and legumes prescribed by
97 ~~an appropriate~~ the division or other governmental agency, if any.

98 (d) A landowner shall make any request provided by a solar power facility agreement
99 pursuant to subsection (b) or (c) of this Code section no later than 12 months after the later
100 of:

101 (1) The date on which the solar power facility is no longer capable of generating
102 electricity in commercial quantities, except when such inability to generate electricity is
103 the result of an event of force majeure or when the grantee is in the process of repairing
104 the solar power facility, provided that, in either case, the solar power facility resumes
105 generating electricity in commercial quantities within 180 days;

106 (2) The date the landowner receives written notice of intent to decommission the solar
107 power facility from the grantee; or

108 (3) The date the solar power facility agreement is terminated.

109 (e) The requirements of this Code section applicable to a solar power facility agreement
110 may be waived or modified through a written, notarized agreement between the grantee and
111 landowner, which may be the solar power facility agreement if such waiver or modification
112 is clearly denoted; provided, however, that no such agreement shall waive or modify the
113 grantee's obligation to remove the grantee's solar power facilities from the landowner's
114 property upon the termination of the solar power facility agreement. Any such agreement
115 shall be recorded with the clerk of the superior court of the county where the solar power
116 facility is located.

117 46-3-69.1.

118 (a) A solar power facility agreement shall provide that:

119 (1) The grantee shall obtain and deliver to the landowner and record with the clerk of the
120 superior court of the county where the solar power facility is located evidence of financial
121 assurance that conforms to the requirements of this subsection to secure the performance
122 of the grantee's obligation to remove the grantee's solar power facilities located on the
123 landowner's property and, if applicable, to restore the property to the conditions described
124 in pursuant to Code Section 46-3-69;

125 (2) The amount of the financial assurance shall be:

126 (A) At least equal to the estimated cost of removing the solar power facilities from the
127 landowner's property and, if applicable, restoring the property to the conditions
128 described in Code Section 46-3-69:

129 (i) Minus the salvage value of the solar power facilities; and

130 (ii) Plus any portion of the value of the solar power facilities pledged to secure
131 outstanding debt; and

132 (B) Determined by an independent, third-party professional engineer licensed in this
133 state;

134 (3) The grantee shall deliver to the landowner an updated estimate, prepared by an
135 independent, third-party professional engineer licensed in this state, of the ~~removal costs~~
136 ~~and the salvage value of the solar power facilities~~ required amount of financial assurance
137 under subparagraph (A) of paragraph (2) of this subsection:

138 (A) No later than 20 years after the commercial operations date of the solar power
139 facilities; and

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

142 (4) The grantee shall be responsible for ensuring that the amount of the financial
143 assurance remains sufficient to cover the amount required by paragraph (2) of this

144 subsection, consistent with the updated estimates required by paragraph (3) of this
145 subsection;

146 (5) The grantee shall be responsible for the costs of obtaining financial assurance and
147 costs of determining the estimated removal and, if applicable, restoration costs and the
148 salvage value described in paragraph (2) of this subsection and the costs of updating such
149 estimates pursuant to paragraph (3) of this subsection; and

150 (6) The grantee shall deliver the financial assurance not later than the commercial
151 operations date of the solar power facilities.

152 (b) No county or municipal corporation shall impose on a grantee who has entered into a
153 solar power facility agreement that conforms to the requirements of this Code section
154 financial assurance requirements relating to the removal or decommissioning of solar
155 power facilities.

156 (c) No grantee shall cancel the financial assurance delivered to the landowner pursuant to
157 this Code section before the date the grantee has completed the grantee's obligation to
158 remove the grantee's solar power facilities located on the landowner's property in the
159 manner provided by this part, unless the grantee provides the landowner with replacement
160 financial assurance at the time of or before such cancellation. In the event of a transfer of
161 ownership of the grantee's solar power facilities, the financial assurance provided by the
162 grantee shall remain in place until the date on which evidence of substitute financial
163 assurance meeting the requirements of this part is ~~provided~~ delivered to the landowner.

164 46-3-69.2.

165 (a) Prior to installing or otherwise constructing any solar power facilities on the property
166 of a landowner pursuant to a solar power facility agreement, the grantee shall obtain from
167 the division a certification that the solar power facility agreement complies with the
168 requirements of this part.

169 (b) The division shall issue to a grantee the certification required under subsection (a) of
170 this Code section within ten days of receiving a fully executed solar power facility
171 agreement from the grantee along with any other information that the division may require.
172 If the division determines that such solar power facility agreement does not comply with
173 the requirements of this part, the grantee shall cure such deficiency through a written
174 modification of the solar power facility agreement that is signed by the grantee and the
175 landowner. The division shall, within ten days of receiving such written modification and
176 any other information the division may require, determine if such modification brings the
177 solar power facility agreement in compliance with the requirements of this part and, if so,
178 issue to the grantee the certification required under subsection (a) of this Code section.

179 (c)(1) Any grantee that installs or otherwise constructs any solar power facilities on the
180 property of a landowner pursuant to a solar power facility agreement prior to obtaining
181 a certification from the division under subsection (a) of this Code section shall be subject
182 to a civil penalty of \$1,000.00 per day until the earlier of:

183 (A) The date on which such grantee obtains a certification from the division under
184 subsection (a) of this Code section; or

185 (B) The date all solar power facilities are removed from the property of the landowner.

186 (2) The civil penalty provided for in paragraph (1) of this subsection shall be recoverable
187 in a civil action brought in any court of competent jurisdiction by the Attorney General,
188 the division, or any district attorney."

189 **SECTION 2.**

190 This Act shall become effective upon its approval by the Governor or upon its becoming law
191 without such approval.

192 **SECTION 3.**

193 All laws and parts of laws in conflict with this Act are repealed.