

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to HB 249:

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 provide an
7 exception; to revise and provide for definitions; to provide an effective date; to provide for
8 related matters; to repeal 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:

H. B. 249 (SUB)

"Part 5

46-3-67.

As used in this part, the term:

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

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

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

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

(A) Renews automatically; and

(B) Is issued by a company that is:

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

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

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

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

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

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

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

46-3-68.

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

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

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

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

46-3-69.

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

(1) Clear, clean, and remove from the property all grantee owned solar energy devices and all grantee owned equipment, personal property, and improvements used to support such devices;

(2) For each foundation of a solar energy device, transformer, or substation installed on the property by the grantee:

(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 such removal is filled with soil of the same type or a similar type as the predominant soil found on the property;

(3) For each cable, including power, fiber-optic, and communications cables, installed underground by the grantee:

(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 such removal is filled with soil of the same type or a similar type as the predominant soil found on the property; and

(4) Clear, clean, and remove from the property each overhead power or communications line installed on the property by the grantee.

(b) A solar power facility agreement shall provide that, at the request of the landowner, the grantee shall:

(1) Clear, clean, and remove each road constructed on the property by the grantee; and

(2) Ensure that each hole or cavity created in the ground by such removal is filled with soil of the same type or a similar type as the predominant soil found on the property.

(c) A solar power facility agreement shall provide that, at the request of the landowner, the grantee shall:

(1) Remove from the property all rocks more than 12 inches in diameter excavated during the decommissioning or removal of the grantee's solar power facilities; and

(2) Ensure that:

(A) Each hole or cavity created in the ground by such decommissioning or removal is filled with soil of the same type or a similar type as the predominant soil 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, but not limited to, by reseeding pastureland with native, naturalized, and introduced grasses and legumes prescribed by ~~an appropriate~~ the division or other governmental agency, if any.

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

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

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

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

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

46-3-69.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) No grantee shall cancel the financial assurance delivered to the landowner pursuant to this Code section 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 part, unless the grantee provides the landowner with replacement financial assurance at the time of or before such cancellation. In the event of a transfer of ownership of the grantee's solar power facilities, the financial assurance provided by the grantee shall remain in place until the date on which evidence of substitute financial assurance meeting the requirements of this part is ~~provided~~ delivered to the landowner.

46-3-69.2.

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

(b) The division shall issue or refuse to issue to a grantee the certification required under subsection (a) of this Code section within 30 days of receiving a fully executed solar power facility agreement from the grantee along with any other information that the division may require. If the division determines that such solar power facility agreement does not comply with the requirements of this part, the grantee shall cure such deficiency through a written modification of the solar power facility agreement that is signed by the grantee and the landowner. The division shall, within 30 days of receiving such written modification and any other information the division may require, determine if such modification brings the solar power facility agreement in compliance with the requirements of this part and, if so, issue to the grantee the certification required under subsection (a) of this Code section.

(c)(1) Except as provided in paragraph (3) of this subsection, any grantee that installs or otherwise constructs any solar power facilities on the property of a landowner pursuant to a solar power facility agreement prior to obtaining a certification from the division under subsection (a) of this Code section shall be subject to a civil penalty of \$1,000.00 per day until the earlier of:

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

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

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

(3) If the division fails to issue or refuse to issue to a grantee the certification required under subsection (a) of this Code section within 30 days of receiving from the grantee a fully executed solar power facility agreement or a written modification to a solar power facility agreement as required under subsection (b) of this Code section, then the division

197 **SECTION 2.**
198 This Act shall become effective upon its approval by the Governor or upon its becoming law
199 without such approval.

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SECTION 3.

200 **SECTION 3.**
201 All laws and parts of laws in conflict with this Act are repealed.