

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 authorize the Environmental Protection Division
5 of the Department of Natural Resources to issue cease and desist orders; to provide civil
6 penalties; to provide an exception; to revise and provide for definitions; to provide for an
7 effective date; to provide for related matters; to repeal conflicting laws; and for other
8 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 or leased solar energy
64 devices and all grantee owned or leased equipment, personal property, and improvements
65 used to support 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 reseeded
- 96 pastureland with native, naturalized, and introduced grasses and legumes ~~prescribed by~~
- 97 ~~an appropriate governmental agency, if any~~ in accordance with the Manual for Erosion
- 98 and Sediment Control in Georgia published by the State Soil and Water Conservation
- 99 Commission.
- 100 (d) A landowner shall make any request provided by a solar power facility agreement
- 101 pursuant to subsection (b) or (c) of this Code section no later than 12 months after the later
- 102 of:
- 103 (1) The date on which the solar power ~~facility is~~ facilities are no longer capable of
- 104 generating electricity in commercial quantities, except when such inability to generate
- 105 electricity is the result of an event of force majeure or when the grantee is in the process
- 106 of repairing the solar power ~~facility~~ facilities, provided that, in either case, the solar
- 107 power ~~facility resumes~~ facilities resume generating electricity in commercial quantities
- 108 within 180 days;
- 109 (2) The date the landowner receives written notice of intent to decommission the solar
- 110 power ~~facility~~ facilities from the grantee; or
- 111 (3) The date the solar power facility agreement is terminated.
- 112 (e) The requirements of this Code section applicable to a solar power facility agreement
- 113 may be waived or modified through a written, notarized agreement between the grantee and
- 114 landowner, which may be the solar power facility agreement if such waiver or modification
- 115 is clearly denoted; provided, however, that no such agreement shall waive or modify the
- 116 grantee's obligation to remove the grantee's solar power facilities from the landowner's

117 property upon the termination of the solar power facility agreement. Any such agreement
 118 shall be recorded with the clerk of the superior court of the county where the solar power
 119 ~~facility is~~ facilities are located.

120 46-3-69.1.

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

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

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

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

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

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

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

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

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

- 143 (B) At least once every five years after the commercial operations date of the solar
144 power facilities for the remainder of the term of the agreement;
- 145 (4) The grantee shall be responsible for ensuring that the amount of the financial
146 assurance remains sufficient to cover the amount required by paragraph (2) of this
147 subsection, consistent with the updated estimates required by paragraph (3) of this
148 subsection;
- 149 (5) The grantee shall be responsible for the costs of obtaining financial assurance and
150 costs of determining the estimated removal and, if applicable, restoration costs and the
151 salvage value described in paragraph (2) of this subsection and the costs of updating such
152 estimates pursuant to paragraph (3) of this subsection; and
- 153 (6) The grantee shall deliver the financial assurance not later than the commercial
154 operations date of the solar power facilities.
- 155 (b) No county or municipal corporation shall impose on a grantee who has entered into a
156 solar power facility agreement that conforms to the requirements of this Code section
157 financial assurance requirements relating to the removal or decommissioning of solar
158 power facilities.
- 159 (c) No grantee shall cancel the financial assurance delivered to the landowner pursuant to
160 this Code section before the date the grantee has completed the grantee's obligation to
161 remove the grantee's solar power facilities located on the landowner's property in the
162 manner provided by this part, unless the grantee provides the landowner with replacement
163 financial assurance at the time of or before such cancellation. In the event of a transfer of
164 ownership of the grantee's solar power facilities, the financial assurance provided by the
165 grantee shall remain in place until the date on which evidence of substitute financial
166 assurance meeting the requirements of this part is ~~provided~~ delivered to the landowner.

167 46-3-69.2.

168 (a)(1) Prior to the commercial operations date of any solar power facilities that are
169 installed or otherwise constructed on the property of a landowner pursuant to a solar
170 power facility agreement, the grantee shall provide to the division evidence that it has
171 delivered to the landowner the financial assurance required under the solar power facility
172 agreement and that meets the requirements of Code Section 46-3-69.1.

173 (2) The division shall have the authority to issue a cease and desist order to any grantee
174 that:

175 (A) Fails to provide evidence to the division, as required under paragraph (1) of this
176 subsection, that it has delivered to the landowner the financial assurance required under
177 the solar power facility agreement before the commercial operations date of the solar
178 power facilities; or

179 (B) Otherwise violates the provisions of Code Section 46-3-69.1.

180 (3) If a cease and desist order is issued to a grantee by the division pursuant to paragraph
181 (2) of this subsection, the grantee shall, upon being served with such cease and desist
182 order, immediately cease operations of all solar power facilities located on the property
183 of the landowner and shall not resume such operations until such cease and desist order
184 is rescinded by the division upon its determination that the reason or reasons for the
185 issuance of the cease and desist order have been cured by the grantee or upon such cease
186 and desist order being overturned by a court of competent jurisdiction.

187 (4) The issuance of a cease and desist order by the division pursuant to paragraph (2) of
188 this subsection shall constitute a final order subject to judicial review under Chapter 13
189 of Title 50, the 'Georgia Administrative Procedure Act.'

190 (b)(1) Any grantee that operates any solar power facilities in violation of paragraph (3)
191 of subsection (a) of this Code section shall be subject to a civil penalty of \$1,000.00 per
192 day until the earlier of:

193 (A) The date on which the division rescinds the cease and desist order issued to the
194 grantee;
195 (B) The date on which the issuance of the cease and desist order is overturned by a
196 court of competent jurisdiction; or
197 (C) The date the grantee ceases operations of all solar power facilities located on the
198 property of the landowner.
199 (2) The civil penalty provided for in paragraph (1) of this subsection may be assessed by
200 the division against a grantee through an administrative consent order or after notice and
201 hearing as provided by Chapter 13 of Title 50, the 'Georgia Administrative Procedure
202 Act.' Any such civil penalty that is finally assessed against a grantee shall be recoverable
203 by civil action brought in the name of the division in the superior court of the county
204 where the solar power facilities are located."

205 **SECTION 2.**

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

208 **SECTION 3.**

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