

BILL ANALYSIS

C.S.H.B. 4511
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that Texas is the leading state in the production of wind energy, providing landowners with opportunities to lease the rights to develop the kinetic energy generated by wind above their properties, and that this has led to significant economic benefits, making wind energy a multi-billion dollar resource for both Texas and its landowners. The bill author has also informed the committee that despite the growth of the wind energy sector over the past decade, there remains considerable uncertainty in Texas law regarding the nature and ownership of "wind rights" due to differing interpretations of whether these rights are severable from a surface estate or if they are inherently part of the surface estate itself. C.S.H.B. 4511 seeks to address this issue by clarifying the legal status of wind rights for Texas property owners and creating a specific procedure for property owners to assign their rights to wind energy developers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4511 amends the Utilities Code to establish that the owner of a surface estate has an inherent right, either directly or through a wind energy developer under a wind energy agreement, to capture and employ the kinetic energy of the wind, and that this right is not severable from the surface estate.

C.S.H.B. 4511 establishes that a wind energy agreement is subject to statutory and other rules of law to the same extent as other agreements creating interests in or rights to use real property. The bill requires, if a wind energy agreement expires or is terminated, each wind energy developer that owned the agreement at the time the agreement expired or terminated to record a release of the expired or terminated agreement in the county clerk's office in the county where the land subject to the agreement is located. If such a developer fails to record a release as required, the owner of the surface estate or the owner's agent may request the developer of record for the agreement to record the release. The request must be in writing and delivered to the last-known address of the developer personally or by certified mail, first class postage prepaid, and return receipt requested.

C.S.H.B. 4511 requires a wind energy developer who receives such a request in the absence of a good faith claim that the wind energy agreement is in force and effect to, not later than 90 days

after the date the request is received, record the release or inform the owner of the surface estate or the owner's agent of the following:

- that the wind energy developer no longer owns the wind energy agreement; and
- the name of the party that succeeded to the wind energy developer's interest.

C.S.H.B. 4511 authorizes an owner of the surface estate or the owner's agent that receives such notice of non-ownership from a wind energy developer to request the successor in interest to record a release in the manner provided by the bill's provisions. If the interest of the wind energy developer has been transferred by an instrument that has not been recorded, a transferee must do the following:

- first record the instrument by which the transferee acquired the interest or record a notice of the transfer and then record the required release; or
- cause the wind energy developer shown as the wind energy developer of record for the agreement to record the release.

The bill requires a release recorded under the bill's provisions to identify the wind energy agreement with reasonable clarity and include the names of the parties, the legal description of the land subject to the agreement, and the applicable recording information of the agreement.

C.S.H.B. 4511 establishes that nothing in the bill's provisions does the following:

- restricts the transfer of any interest of a party to a wind energy agreement, including the transfer of the right of the owner of the surface estate to receive payments under the wind energy agreement; or
- affects the validity of an agreement entered into before the bill's effective date.

C.S.H.B. 4511 defines the following terms:

- "wind energy agreement" as a lease, license, easement, or other agreement between the owner of a surface estate and a wind energy developer to develop wind-powered energy generation by means of the installation of equipment and necessary facilities on the subject property;
- "wind energy developer" as the lessee, grantee, easement holder, licensee, or similar party under a wind energy agreement; and
- "wind-powered energy generation" as the generation of electricity by means of a turbine or other device that captures and employs the kinetic energy of the wind.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4511 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and the substitute include definitions applicable to the bill's provisions, those definitions differ as follows:

- whereas the introduced defined "wind energy agreement" as a lease, license, easement, or other agreement between the owner of a wind energy right and a wind energy developer to develop wind-powered energy generation, the substitute defines such term as a lease, license, easement, or other agreement between the owner of a surface estate and a wind energy developer to develop wind-powered energy generation by means of the installation of equipment and necessary facilities on the subject property;
- the substitute includes a grantee under a wind energy agreement in the definition of "wind energy developer," whereas the introduced did not specify the inclusion of such a person; and

- the substitute omits the following definitions that were present in the introduced:
 - "wind energy developer of record" as the wind energy developer named in a recorded wind energy agreement or, if the wind energy agreement has been transferred by a recorded document, the most recent transferee of the rights of the original wind energy developer identified in the recorded document; and
 - "wind energy right" as the right of the owner of a surface estate, either directly or through a wind energy developer under a wind energy agreement, to capture and employ the kinetic energy of the wind or a person to whom that right has been transferred.

The substitute replaces certain references to the term "wind energy developer of record," as in the introduced, with references to the term "wind energy developer."

Whereas the introduced established that a wind energy right is severable from the surface estate and may be transferred, encumbered, or modified by agreement, the substitute establishes that the owner of a surface estate has an inherent right to capture and employ the kinetic energy of the wind and that the right is not severable from the surface estate.

While both the introduced and the substitute establish that a wind energy agreement is subject to statutory and other rules of law, the substitute omits provisions present in the introduced that did the following:

- authorized a wind energy agreement to be recorded in the county clerk's office in the county where the land subject to the agreement is located;
- voided a non-recorded wind energy agreement as to any person who subsequently purchases rights in or to the land for a valuable consideration, except as between the parties to the agreement and as to those having notice of the agreement;
- required a county clerk to index a wind energy agreement in both the grantor and grantee indices under the name of each party to the wind energy agreement; and
- established that those applicable provisions applied to any modification, assignment, or encumbrance of a wind energy agreement.

Whereas the introduced required a wind energy developer of record to record a release in the county clerk's office in the county where the land subject to the agreement is located if a wind energy agreement expires or is terminated, the substitute requires each wind energy developer that owned the wind energy agreement at the time the agreement expired or terminated to record a release of the expired or terminated agreement in the county clerk's office in the applicable county. The substitute omits the authorization for the owner of a wind energy right that is subject to the agreement to request the wind energy developer of record to record the release.

While both the introduced and the substitute require an applicable wind energy developer who receives a request to record a release of an expired or terminated agreement by a prescribed deadline, the substitute specifies that this requirement exists in the absence of a good faith claim that the wind energy agreement is in force and effect, and includes an alternative to the requirement to record the release to allow for a developer to instead inform the applicable person that the wind energy developer no longer owns the wind energy agreement and provide the name of the party that succeeded to the developer's interest. The substitute includes a provision absent from the introduced authorizing an owner of a surface estate or the owner's agent that receives such notice of non-ownership to request the successor in interest to record a release in the specified manner.

While both the introduced and the substitute require the transferee of the interest of a wind energy developer through a specified instrument to first record the instrument by which the transferee acquired the interest, the substitute includes as an alternative to this requirement recording a notice of the transfer.

The substitute omits the following provisions present in the introduced with respect to the termination and release of a wind energy agreement:

- a requirement for the applicable county clerk to index the release in both the grantor and grantee indices under the name of each party identified in the release;
- a provision making the wind energy developer of record who receives a request to record the release and fails to do so liable to the owner of the surface estate and the owner of the wind energy right that is the subject of the agreement for any damages caused by the failure; and
- provisions establishing that the wind energy developer of record and every applicable transferee are jointly and severally liable for any damages caused by the failure of the developer to record a release or a transferee to comply with the bill's recordation requirements.