

By: Goldman

H.B. No. 4573

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a permit by the commissioner of the General Land Office for a wind power facility on coastal public land; authorizing a fee; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 33, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. COASTAL WIND POWER FACILITY PERMIT

Sec. 33.801. DEFINITIONS. In this subchapter:

(1) "Permittee" means the holder of a permit issued under this subchapter.

(2) "Wind power facility" includes:

(A) a wind turbine generator; and

(B) a facility or equipment used to support the operation of a wind turbine generator, including an electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility, or telecommunications equipment.

Sec. 33.802. PERMIT REQUIRED. (a) A person may not install or operate a wind power facility on coastal public land unless the person obtains a permit from the commissioner under this subchapter.

(b) The commissioner by rule shall:

(1) in collaboration with the Texas Department of

1 Insurance and the Public Utility Commission of Texas, require that
2 a permittee construct and maintain the permitted wind power
3 facility to withstand:

4 (A) a storm that would cause a flood in any area
5 that is:

6 (i) located less than 40 miles from the
7 location of the proposed wind power facility; and

8 (ii) subject to inundation by a flood that
9 has a 0.1 percent or greater chance of occurring in any given year,
10 as determined from maps or other data from the Federal Emergency
11 Management Agency; and

12 (B) a Category 5 hurricane on the Saffir-Simpson
13 Hurricane Wind Scale;

14 (2) prohibit a permittee from constructing or
15 maintaining the permitted wind power facility in a manner that uses
16 cables to secure the facility to coastal public land;

17 (3) prohibit a permittee from connecting the permitted
18 wind power facility to a transmission line that provides
19 electricity to a location outside the ERCOT power region;

20 (4) in collaboration with the Public Utility
21 Commission of Texas, require the permittee to submit to the
22 commissioner regular maintenance evaluations of the permitted wind
23 power facility; and

24 (5) require that a permittee guarantee that the
25 facility carries sufficient thermal nonintermittent base load
26 backup generation to ensure that the facility is generating power
27 at 100 percent of installed capacity.

1 (c) If a wind power facility permitted under this subchapter
2 generates less than the installed capacity as required under
3 Subsection (b)(5), the Public Utility Commission of Texas shall
4 levy a per kilowatt hour intermittency penalty, which shall be the
5 equivalent of the federal per kilowatt hour subsidy or tax credit
6 for wind power described in Section 33.808.

7 (d) The Texas Department of Insurance and the Public Utility
8 Commission of Texas may adopt rules as needed to implement this
9 subchapter.

10 Sec. 33.803. APPLICATION FOR PERMIT. (a) An application
11 for a permit under this subchapter must be made on a form prescribed
12 by the commissioner.

13 (b) An application for a permit under this subchapter must
14 include:

15 (1) a study on the potential environmental impacts of
16 the proposed wind power facility on migratory birds, oceanic life,
17 and soil and water in this state;

18 (2) based on the study required by Subdivision (1):

19 (A) an analysis created by the Texas Commission
20 on Environmental Quality of potential negative impacts of the wind
21 power facility on this state and, if any, recommendations for
22 mitigation of those impacts;

23 (B) an analysis created by the Parks and Wildlife
24 Department of potential negative impacts of the wind power facility
25 on this state and, if any, recommendations for mitigation of those
26 impacts; and

27 (C) an analysis created by the Public Utility

1 Commission of Texas of potential negative impacts of the wind power
2 facility on this state and, if any, recommendations for mitigation
3 of those impacts;

4 (3) a study on the potential economic impacts of the
5 proposed wind power facility on commercial and recreational
6 fishing, water tourism, the workforce, and ports in this state;

7 (4) based on the study required by Subdivision (3):

8 (A) an analysis created by the Texas Commission
9 on Environmental Quality of potential negative impacts of the wind
10 power facility on this state and, if any, recommendations for
11 mitigation of those impacts;

12 (B) an analysis created by the Parks and Wildlife
13 Department of potential negative impacts of the wind power facility
14 on this state and, if any, recommendations for mitigation of those
15 impacts; and

16 (C) an analysis created by the comptroller of
17 public accounts of potential negative impacts of the wind power
18 facility on this state and, if any, recommendations for mitigation
19 of those impacts;

20 (5) a study on the potential impacts of the proposed
21 wind power facility on navigation and shipping lanes in this state;

22 (6) based on the study required by Subdivision (5), an
23 analysis created by the Texas Department of Transportation of
24 potential negative impacts of the wind power facility on this state
25 and, if any, recommendations for mitigation of those impacts;

26 (7) a study on the potential impacts of the proposed
27 wind power facility on infrastructure in this state associated with

1 oil and gas pipelines, offshore production of oil and natural gas,
2 roads, and bridges;

3 (8) based on the study required by Subdivision (7):

4 (A) an analysis created by the Texas Department
5 of Transportation of potential negative impacts of the wind power
6 facility on this state and, if any, recommendations for mitigation
7 of those impacts; and

8 (B) an analysis created by the Railroad
9 Commission of Texas of potential negative impacts of the wind power
10 facility on this state and, if any, recommendations for mitigation
11 of those impacts;

12 (9) an estimate of the electrical energy anticipated
13 to be produced by the proposed wind power facility and provided to
14 this state;

15 (10) a copy of each notice provided by the applicant
16 under Section 33.805; and

17 (11) any additional information required by the
18 commissioner.

19 (c) The commissioner by rule shall adopt a process for an
20 applicant to request the state agency analyses required by
21 Subsection (b). A state agency named in Subsection (b) shall
22 provide a requested analysis to the requestor in a reasonable time.

23 Sec. 33.804. PERMIT APPROVAL CONDITIONS. (a) The
24 commissioner may not approve an application for a permit under this
25 subchapter unless the commissioner determines that the application
26 complies with Sections 33.802 and 33.803.

27 (b) Before approving an application for a permit under this

1 subchapter, the commissioner must require the applicant to mitigate
2 or plan to mitigate any negative impacts of the proposed wind power
3 facility on this state based on the recommendations issued by state
4 agencies under Section 33.803.

5 (c) The commissioner shall deny a permit application if the
6 commissioner determines, based on the application, that any
7 negative impacts of the proposed wind power facility on this state
8 cannot be mitigated.

9 Sec. 33.805. NOTICE TO STATE AND LOCAL OFFICIALS;
10 OBJECTION. (a) A person intending to apply for a permit under this
11 subchapter shall mail notice of intent to obtain the permit to:

12 (1) the governor and the attorney general;

13 (2) each state senator and representative who
14 represents an area located less than 40 miles from the location of
15 the proposed wind power facility;

16 (3) the mayor of each municipality located less than
17 40 miles from the location of the proposed wind power facility;

18 (4) the commissioners court of each county located
19 less than 40 miles from the location of the proposed wind power
20 facility; and

21 (5) the board of each port authority or navigation
22 district located less than 40 miles from the location of the
23 proposed wind power facility.

24 (b) A person who receives notice under Subsection (a) may
25 submit a letter to the commissioner and the applicant notifying the
26 commissioner and the applicant that the person objects to the
27 approval of the permit. The letter must be submitted to the

1 commissioner and the applicant not later than the 30th day after the
2 date the person receives the notice.

3 (c) If the commissioner determines that an objection
4 received under Subsection (b) is based on a reasonable potential
5 negative impact of the proposed wind power facility to this state,
6 the commissioner may not grant the permit unless the applicant
7 mitigates or plans to mitigate the potential negative impact.

8 Sec. 33.806. AUTHORITY OF COMMISSIONER. (a) The
9 commissioner:

10 (1) as a condition of issuing a permit, may impose an
11 application fee to recover the costs of administering this
12 subchapter;

13 (2) may require a permittee to provide to the
14 commissioner copies of maps, plats, reports, data, and any other
15 information in the possession of the permittee that relates to a
16 permit; and

17 (3) may make any rules relating to permits or
18 permittees the commissioner considers appropriate.

19 (b) If a permittee violates a rule of the commissioner or a
20 term of a permit, the commissioner may cancel the permit.

21 (c) If the commissioner acquires information under
22 Subsection (a), the commissioner shall consider the information to
23 be confidential and may not disclose it, except by authority of a
24 court order, to the public or any other agency of this state.

25 Sec. 33.807. UNPERMITTED WIND POWER FACILITIES. A state
26 agency or political subdivision may not:

27 (1) approve a permit related to a wind power facility

1 for which a permit is required under this subchapter unless the
2 commissioner has issued the permit under this subchapter; or

3 (2) unless required by federal law, contract with or
4 in any other manner provide assistance to a federal agency or
5 official with respect to the construction of a wind power facility
6 for which a permit is required under this subchapter unless the
7 commissioner has issued the permit.

8 Sec. 33.808. MARKET DISTORTION RESPONSE. (a) The Public
9 Utility Commission of Texas and the ERCOT independent system
10 operator shall adopt rules, operating procedures, and protocols to
11 eliminate or compensate for any distortion in electricity pricing
12 in the ERCOT power region caused by a federal tax credit provided
13 under 26 U.S.C. Section 45 to a permittee.

14 (b) Rules, operating procedures, and protocols adopted
15 under this section must ensure that costs imposed on the system by
16 the sale of electricity by a permittee that is eligible for a
17 federal tax credit provided under 26 U.S.C. Section 45, including
18 costs of maintaining sufficient capacity to serve load at peak
19 demand caused by the loss of new investment from below-market
20 prices, are paid by the parties that impose the costs.

21 Sec. 33.809. ENFORCEMENT. (a) If a person violates or is
22 threatening to violate this subchapter, a rule adopted under this
23 subchapter, or a permit issued under this subchapter, the
24 commissioner may have a civil suit brought in a district court for
25 injunctive relief, for assessment and recovery of a civil penalty
26 of \$10,000 for each act of violation, or for both injunctive relief
27 and a civil penalty. Each day of a continuing violation is a

1 separate violation.

2 (b) The attorney general shall bring a suit under this
3 subchapter in the name of the commissioner.

4 (c) In addition to the relief authorized under Subsection
5 (a), the court may award reasonable attorney's fees, which must be
6 used to reimburse the operating fund or account from which the
7 expenditure occurred.

8 SECTION 2. This Act takes effect September 1, 2023.