

By: Puente

H.B. No. 2794

A BILL TO BE ENTITLED

AN ACT

relating to the requirements for granting a certificate of convenience and necessity that includes the construction of an electric generating facility that uses wind power.

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

SECTION 1. The legislature finds that:

(1) the development of wind power in this state is important to this state;

(2) wind-powered electric generating facilities, or wind farms, are expensive to build, represent multimillion-dollar investments, and necessarily have large footprints;

(3) there is not currently in this state a regulatory or permitting structure that ensures that wind farms do not damage any of the ecologically sensitive areas of this state; and

(4) there is a need for this state to implement some regulation and permitting of wind farms to protect the resources of this state and preserve property rights in this state without unnecessarily impinging on or delaying the development of wind power.

SECTION 2. Subchapter B, Chapter 37, Utilities Code, is amended by adding Section 37.0565 to read as follows:

Sec. 37.0565. REQUIREMENTS FOR GRANTING CERTIFICATE FOR CERTAIN GENERATING FACILITIES. (a) This section applies only to an application for a certificate or an amendment of a certificate that

1 includes the construction of an electric generating facility that
2 uses wind power.

3 (b) Notwithstanding Section 37.056, the commission may not
4 approve an application and grant a certificate or amendment that
5 includes the construction of a generating facility described by
6 Subsection (a) unless:

7 (1) the Texas Commission on Environmental Quality
8 issues a certification for the facility to the applicant; and

9 (2) the applicant attaches a copy of the certification
10 to the application.

11 (c) To obtain a certification described by Subsection
12 (b)(1), a person must submit an application to the Texas Commission
13 on Environmental Quality. The application must be on a form adopted
14 by rule by the Texas Commission on Environmental Quality. The form
15 must require the applicant to provide the information necessary to
16 enable the commission to determine whether to issue the
17 certification.

18 (d) The Texas Commission on Environmental Quality shall
19 adopt rules providing for notice, the submission of public
20 comments, and an opportunity for a public hearing on the
21 application.

22 (e) The Texas Commission on Environmental Quality may issue
23 the certification only if the commission determines that the
24 facility will not present an unacceptable risk to the resources of
25 this state or unreasonably interfere with the rights of property
26 owners in the vicinity of the facility. In making the
27 determination, the commission shall consider whether:

1 (1) the facility will be located in an officially
2 designated wildlife area;

3 (2) the facility will be located in an officially
4 designated wildlife preserve;

5 (3) the facility will affect threatened or endangered
6 species or designated critical habitats;

7 (4) the facility will affect districts, sites,
8 buildings, structures, or objects significant in American or Texas
9 history, architecture, archaeology, engineering, or culture that
10 are listed, or are eligible for listing, in the National Register of
11 Historic Places;

12 (5) the facility will affect Indian religious sites;

13 (6) the facility will be located in a floodplain,
14 hurricane, or tornado zone;

15 (7) the facility will involve a significant change in
16 surface features, such as filling in of wetlands, deforestation, or
17 water diversion;

18 (8) the facility will be located in close proximity to
19 property of an adjacent property owner; and

20 (9) the facility will have an effect on migratory
21 wildlife.

22 (f) The Texas Commission on Environmental Quality shall
23 consult with the Parks and Wildlife Department in adopting rules
24 under this section.

25 SECTION 3. This Act applies only to an application for a
26 certificate of convenience and necessity that is filed with the
27 Public Utility Commission of Texas on or after the effective date of

1 this Act. An application for a certificate of convenience and
2 necessity that was filed with the commission before the effective
3 date of this Act is governed by the law in effect on the date the
4 application was filed, and that law is continued in effect for that
5 purpose.

6 SECTION 4. This Act takes effect September 1, 2007.