

By: Jackson, et al.

S.B. No. 497

A BILL TO BE ENTITLED

AN ACT

relating to the construction or expansion of a wind-powered electric generation facility located near a federally owned or operated radar installation or military installation; providing an administrative penalty.

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

SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 44 to read as follows:

CHAPTER 44. CERTAIN WIND-POWERED ELECTRIC GENERATION FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 44.001. APPLICABILITY OF CHAPTER. This chapter applies to the construction or expansion of a wind-powered electric generation facility if:

(1) the construction or expansion includes a meteorological tower or a structure that will extend 200 feet or higher above ground level; and

(2) any part of the construction or expansion will occur within 25 miles of the boundaries of a federally owned or operated radar installation or military installation included on the notification list described by Section 44.052.

[Sections 44.002-44.050 reserved for expansion]

SUBCHAPTER B. REQUEST FOR NOTIFICATION

Sec. 44.051. REQUEST FOR NOTIFICATION. A federally owned or operated radar installation or military installation may request

1 that the commission notify the installation of a planned
2 construction or expansion project if any part of the construction
3 or expansion will occur within 25 miles of the boundaries of the
4 installation.

5 Sec. 44.052. NOTIFICATION LIST. (a) The commission shall
6 create and maintain a list of federally owned or operated radar
7 installations and military installations that have requested
8 notification from the commission under Section 44.051.

9 (b) The commission shall publish the notification list
10 required by this section on its Internet website and provide a copy
11 of the list to each person who requests a copy.

12 Sec. 44.053. PROCEDURES RELATING TO LIST. The commission
13 may establish procedures to enable federally owned or operated
14 radar installations and military installations to request
15 notification and to be included on the notification list required
16 by Section 44.052, including procedures relating to the information
17 an installation must provide to the commission.

18 [Sections 44.054-44.100 reserved for expansion]

19 SUBCHAPTER C. NOTIFICATION OF CONSTRUCTION OR EXPANSION

20 Sec. 44.101. NOTIFICATION TO COMMISSION. (a) A person who
21 intends to begin a construction or expansion project to which this
22 chapter applies shall provide written notice to the commission of
23 the planned construction or expansion not later than the 120th day
24 before the date the construction or expansion begins.

25 (b) The notice required under Subsection (a) must include:

26 (1) the name of the person planning the construction
27 or expansion;

1 (2) the location of the planned construction or
2 expansion;

3 (3) a detailed description of any construction or
4 expansion that will extend 200 feet or higher above ground level,
5 including the final proposed height of that construction or
6 expansion; and

7 (4) the name and location of each federally owned or
8 operated radar installation or military installation included on
9 the notification list described by Section 44.052 and whose
10 boundaries are within 25 miles of any part of the planned
11 construction or expansion.

12 (c) The commission may charge a fee in an amount provided by
13 commission rule to a person who provides written notice of a
14 construction or expansion project to the commission under this
15 section. The amount of the fee may not exceed an amount reasonably
16 necessary to recover the cost of administering this chapter.

17 Sec. 44.102. NOTIFICATION BY COMMISSION. Not later than
18 the 25th day after the date the commission receives notice of a
19 proposed construction or expansion project under Section 44.101,
20 the commission shall provide a copy of the notice to:

21 (1) any federally owned or operated radar installation
22 or military installation that the commission determines is included
23 on the notification list described by Section 44.052 and that has
24 boundaries within 25 miles of the proposed project;

25 (2) each county or municipality that the commission
26 determines has boundaries within 25 miles of a federally owned or
27 operated radar installation or military installation described by

- 1 Subdivision (1);
- 2 (3) the office of the governor;
- 3 (4) the Texas Military Preparedness Commission;
- 4 (5) the office of the comptroller of public accounts;
- 5 (6) the State Energy Conservation Office;
- 6 (7) the General Land Office; and
- 7 (8) the Energy Siting Clearinghouse of the United
- 8 States Department of Defense.

9 Sec. 44.103. ELECTRONIC REPORTING TO COMMISSION;
10 ELECTRONIC TRANSMISSION OF INFORMATION BY COMMISSION. (a) The
11 commission shall encourage the use of electronic submission through
12 the Internet, to the extent practicable, for submitting the notice
13 required by Section 44.101. The commission may adjust fees
14 assessed under this chapter as necessary to encourage electronic
15 submission. An electronic report must be submitted in a format
16 prescribed by the commission.

17 (b) The commission may transmit electronically the notice
18 required by Section 44.102.

19 [Sections 44.104-44.150 reserved for expansion]

20 SUBCHAPTER D. HAZARD TO AIR NAVIGATION

21 Sec. 44.151. FEDERAL AVIATION ADMINISTRATION
22 DETERMINATION. A person may not begin construction or expansion of
23 a wind-powered electric generation facility to which this chapter
24 applies until the person files with the commission a determination
25 issued by the Federal Aviation Administration under 14 C.F.R.
26 Section 77.31 regarding whether the proposed construction or
27 expansion would be a hazard to air navigation.

1 Sec. 44.152. EXCEPTION IN CASE OF EMERGENCY. (a) Section
2 44.151 does not apply to the emergency construction or expansion of
3 a wind-powered electric generation facility to which this chapter
4 applies that is prompted by an emergency involving essential public
5 services, public health, or public safety.

6 (b) A person who begins emergency construction or expansion
7 under Subsection (a) shall file the determination required by
8 Section 44.151 not later than the fifth day after the date the
9 person begins the construction or expansion.

10 Sec. 44.153. ADMINISTRATIVE PENALTY. The commission may
11 implement penalties and other enforcement actions under Chapter 15
12 against a person who does not comply with this subchapter or a rule
13 or order adopted under this subchapter.

14 Sec. 44.154. RULES. The commission may adopt rules and
15 conduct proceedings necessary to administer and enforce this
16 subchapter.

17 [Sections 44.155-44.200 reserved for expansion]

18 SUBCHAPTER E. PROCEDURES AND DELEGATION

19 Sec. 44.201. CONSULTATION CONCERNING PROCEDURES. The
20 commission shall consult with the office of the governor, the Texas
21 Military Preparedness Commission, the office of the comptroller of
22 public accounts, the State Energy Conservation Office, and the
23 General Land Office in developing and amending procedures to
24 implement and administer this chapter.

25 Sec. 44.202. DELEGATION. (a) For an area in the Electric
26 Reliability Council of Texas power region, the commission may
27 delegate a duty assigned to the commission under this chapter to an

1 independent organization certified under Section 39.151.

2 (b) For an area in this state outside the Electric
3 Reliability Council of Texas power region, the commission may
4 delegate a duty assigned to the commission under this chapter to an
5 appropriate electric utility that provides electric service to a
6 wind-powered electric generation facility or to the area in which
7 construction of a wind-powered electric generation facility is
8 planned.

9 SECTION 2. Not later than January 1, 2012, the Public
10 Utility Commission of Texas shall adopt procedures necessary to
11 implement Chapter 44, Utilities Code, as added by this Act.

12 SECTION 3. This Act applies only to construction or
13 expansion of a wind-powered electric generation facility that
14 begins on or after the effective date of this Act. Construction or
15 expansion of a wind-powered electric generation facility that began
16 before the effective date of this Act is governed by the law in
17 effect on the date the construction or expansion began, and that law
18 is continued in effect for that purpose.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2011.