

By: Jackson, et al.
(Pickett)

S.B. No. 497

Substitute the following for S.B. No. 497:

By: Pickett

C.S.S.B. No. 497

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the construction or expansion of a wind-powered
3 electric generation facility located near a federally owned or
4 operated radar installation or military installation; providing an
5 administrative penalty.

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

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

9 CHAPTER 44. CERTAIN WIND-POWERED ELECTRIC GENERATION FACILITIES

10 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

21 [Sections 44.002-44.050 reserved for expansion]

22 SUBCHAPTER B. REQUEST FOR NOTIFICATION

23 Sec. 44.051. REQUEST FOR NOTIFICATION. A federally owned or
24 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 (d) The commission may establish an expedited process to
18 allow a person who provides written notice to the commission of a
19 construction or expansion project under this section to alter the
20 notice to reflect a change in the information required to be
21 included in the notice.

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

26 (1) any federally owned or operated radar installation
27 or military installation that the commission determines is included

1 on the notification list described by Section 44.052 and that has
2 boundaries within 25 miles of the proposed project;

3 (2) each county or municipality that the commission
4 determines has boundaries within 25 miles of a federally owned or
5 operated radar installation or military installation described by
6 Subdivision (1);

7 (3) the office of the governor;

8 (4) the Texas Military Preparedness Commission;

9 (5) the office of the comptroller of public accounts;

10 (6) the State Energy Conservation Office;

11 (7) the General Land Office; and

12 (8) the Energy Siting Clearinghouse of the United
13 States Department of Defense.

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

22 (b) The commission may transmit electronically the notice
23 required by Section 44.102.

24 [Sections 44.104-44.150 reserved for expansion]

25 SUBCHAPTER D. FEDERAL AVIATION ADMINISTRATION DETERMINATION

26 Sec. 44.151. FEDERAL AVIATION ADMINISTRATION
27 DETERMINATION. A person may not begin construction or expansion of

1 a wind-powered electric generation facility to which this chapter
2 applies until the person files with the commission a copy of a
3 Determination of No Hazard to Air Navigation issued by the Federal
4 Aviation Administration under 14 C.F.R. Part 77 for the proposed
5 construction or expansion.

6 Sec. 44.152. EXCEPTION IN CASE OF EMERGENCY. (a) Section
7 44.151 does not apply to the emergency construction or expansion of
8 a wind-powered electric generation facility to which this chapter
9 applies that is prompted by an emergency involving essential public
10 services, public health, or public safety.

11 (b) A person who begins emergency construction or expansion
12 under Subsection (a) shall file the copy of the determination
13 required by Section 44.151 in a manner determined by the
14 commission.

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

19 Sec. 44.154. RULES. The commission may adopt rules and
20 conduct proceedings necessary to administer and enforce this
21 subchapter.

22 [Sections 44.155-44.200 reserved for expansion]

23 SUBCHAPTER E. PROCEDURES AND DELEGATION

24 Sec. 44.201. CONSULTATION CONCERNING PROCEDURES. The
25 commission shall consult with the office of the governor, the Texas
26 Military Preparedness Commission, the office of the comptroller of
27 public accounts, the State Energy Conservation Office, and the

1 General Land Office in developing and amending procedures to
2 implement and administer this chapter.

3 Sec. 44.202. DELEGATION. (a) For an area in the Electric
4 Reliability Council of Texas power region, the commission may
5 delegate a duty assigned to the commission under this chapter to an
6 independent organization certified under Section 39.151.

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

14 SECTION 2. As soon as practicable after the effective date
15 of this Act and not later than January 1, 2012, the Public Utility
16 Commission of Texas shall adopt procedures necessary to implement
17 Chapter 44, Utilities Code, as added by this Act.

18 SECTION 3. This Act applies only to construction or
19 expansion of a wind-powered electric generation facility that
20 begins on or after the effective date of this Act. Construction or
21 expansion of a wind-powered electric generation facility that began
22 before the effective date of this Act is governed by the law in
23 effect on the date the construction or expansion began, and that law
24 is continued in effect for that purpose.

25 SECTION 4. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2011.