

BILL ANALYSIS

C.S.H.B. 3168
By: King, Susan
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that there is a lack of state regulation regarding the operation and function of wind turbines. The parties further contend that landowners who lease their land for wind turbine use have no recourse other than to take legal action against the owners of the wind turbines when a conflict arises, a process which can be expensive and counterproductive for all parties involved. C.S.H.B. 3168 seeks to address this issue and to help prevent future conflict by establishing provisions relating to wind energy facilities and the rights of owners of land on which wind energy facilities are located.

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. 3168 amends the Natural Resources Code to set out provisions relating to wind energy facilities applicable only to a wind energy conversion system or wind energy facility the primary purpose of which is to supply electric energy to an off-site customer and that is not located entirely on property held in fee simple by the owner of the wind energy facility. The bill defines "wind energy conversion system" as a system that converts wind energy into electric energy through the use of a wind turbine generator and includes a turbine, blade, tower, base, and pad transformer, if any. The bill defines "wind energy facility" as an electric generating facility that consists of one or more wind energy conversion systems under common ownership or operating control and the substations, meteorological data towers, aboveground and underground electric transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility.

C.S.H.B. 3168 requires an owner or operator of a wind energy conversion system or wind energy facility who pays a landowner for the use of the landowner's property in order to generate electric energy from the conversion of wind energy based on the amount of electric energy produced from the conversion of wind energy, on request from the landowner, to provide the landowner access to the records of the owner or operator relating to the wind energy conversion system or wind energy facility for the purpose of confirming the accuracy of payments made to the landowner. The bill prohibits a landowner from requesting access to the records more frequently than once a year. The bill requires an owner or operator that receives such a request to provide the landowner access to all records necessary for the landowner to confirm the accuracy of payments made to the landowner and makes the records subject to any confidentiality requirements in a lease agreement between the landowner and the owner or operator. The bill requires the owner or operator to comply with the landowner's request within a reasonable time, to provide access to the records in a reasonable location and manner that affords the landowner reasonable access to the records during normal business hours, and to allow the landowner a reasonable period of time to examine the records. The bill prohibits a landowner from causing undue disruption to the operations of an owner or operator when examining records.

C.S.H.B. 3168 requires an owner of a wind energy conversion system or wind energy facility, not later than the 10th day before the date the owner enters into a lease agreement with a landowner that allows the owner to operate the system or facility on the landowner's property, to send to the landowner, as provided by the bill, a written disclosure that the landowner will be entitled to access the records of the owner for the purpose of confirming the accuracy of payments made to the landowner and a written insurance disclosure that states that the owner will not maintain insurance applicable to the system or facility or that the owner will maintain an insurance policy applicable to the system or facility or will maintain a self-insurance plan applicable to the system or facility. The bill requires the disclosures to be made in a document that is separate from the lease. If an owner notifies a landowner that the owner will maintain an insurance policy and the policy allows the landowner to be named as an additional insured on the policy, the bill requires the owner to include with the notice a statement that the landowner may be named as an additional insured on the policy.

C.S.H.B. 3168 authorizes the attorney general to enforce the bill's provisions.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3168 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 402, Government Code, is amended by adding Section 402.0311 to read as follows:

Sec. 402.0311. PREPARATION OF WIND ENERGY GENERATION LANDOWNER BILL OF RIGHTS STATEMENT. (a) The attorney general shall prepare a written statement that includes a bill of rights for a landowner whose land is used for the generation of wind energy by a wind energy facility to which Chapter 212, Natural Resources Code, applies.

(b) The wind energy generation landowner bill of rights must list the rights of the landowner and the obligations of the owner of the wind energy facility to the landowner under Chapter 212, Natural Resources Code.

(c) The statement must include the title "Wind Energy Generation Landowner Bill of Rights."

(d) The office of the attorney general shall:
(1) write the statement in plain language designed to be easily understood by the average property owner; and
(2) make the statement available on the attorney general's Internet website.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 2. Title 11, Natural Resources Code, is amended by adding Chapter 212 to read as follows:

CHAPTER 212. WIND ENERGY FACILITIES

Sec. 212.001. DEFINITIONS. In this chapter:

- (1) "Commencement of construction":
(A) means beginning excavation of wind turbine foundations or other actions relating to the actual erection and installation of a wind tower or turbine; and
(B) does not include erecting meteorological towers, conducting environmental assessments, conducting surveys, or conducting preliminary engineering or other activities associated with assessment of development of wind resources.

(2) "Wind energy conversion system" means a system that converts wind energy into electric energy through the use of a wind turbine generator and includes a turbine, blade, tower, base, and pad transformer, if any.

(3) "Wind energy facility" means an electric generating facility that consists of one or more wind energy conversion systems under common ownership or operating control and the substations, meteorological data towers, aboveground and underground electric transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility.

Sec. 212.002. APPLICABILITY. This chapter applies only to a wind energy conversion system or wind energy facility:

- (1) the primary purpose of which is to supply electric energy to an off-site customer; and
(2) that is not located entirely on property held in fee simple by the owner of the wind energy facility.

Sec. 212.003. INSURANCE. (a) An owner or operator of a wind energy conversion system or wind energy facility consisting of one or more wind towers and turbines any

SECTION 1. Title 11, Natural Resources Code, is amended by adding Chapter 212 to read as follows:

CHAPTER 212. WIND ENERGY FACILITIES

Sec. 212.001. DEFINITIONS. In this chapter:

No equivalent provision.

(1) "Wind energy conversion system" means a system that converts wind energy into electric energy through the use of a wind turbine generator and includes a turbine, blade, tower, base, and pad transformer, if any.

(2) "Wind energy facility" means an electric generating facility that consists of one or more wind energy conversion systems under common ownership or operating control and the substations, meteorological data towers, aboveground and underground electric transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility.

Sec. 212.002. APPLICABILITY. This chapter applies only to a wind energy conversion system or wind energy facility:

- (1) the primary purpose of which is to supply electric energy to an off-site customer; and
(2) that is not located entirely on property held in fee simple by the owner of the wind energy facility.

No equivalent provision.

of which has a total nameplate generating capacity of 500 kilowatts or more shall obtain before the commencement of construction of the system or facility and shall keep in effect:

(1) a commercial general liability insurance policy with a limit consistent with prevailing industry standards; or

(2) a combination of self-insurance and an excess liability insurance policy.

(b) The owner or operator shall cause the owner of the land where the wind energy conversion system or wind energy facility is located to be named as an additional insured in the policy.

(c) The owner or operator shall deliver to the landowner a certificate of insurance evidencing the policy.

(d) Not later than the 30th day before the date the owner or operator modifies, cancels, or terminates the insurance policy, the owner or operator shall give notice to the landowner of the modification, cancellation, or termination.

Sec. 212.004. RIGHTS OF LANDOWNER. (a) An owner or operator of a wind energy conversion system or wind energy facility who pays a landowner for the use of the landowner's property to generate electric energy from the conversion of wind energy based on the amount of electric energy produced from the conversion of wind energy shall:

(1) provide to the landowner not later than 10 business days after each date the owner or operator pays the landowner a statement that includes the information reasonably necessary to provide the landowner an understanding of the basis for the payment to the landowner and a means of confirming the accuracy of the payment; and

(2) allow the landowner to inspect the records of the owner or operator relating to the wind energy conversion system or wind energy facility for the purpose of confirming the accuracy of a payment made to the landowner in the 24 months preceding the date of the inspection.

(b) Not more frequently than once each year, a landowner described by Subsection (a) may request that the owner or operator of a wind energy conversion system or wind energy facility on the landowner's property

Sec. 212.003. RIGHTS OF LANDOWNER. (a) An owner or operator of a wind energy conversion system or wind energy facility who pays a landowner for the use of the landowner's property to generate electric energy from the conversion of wind energy based on the amount of electric energy produced from the conversion of wind energy shall,

on request from the landowner, provide the landowner access to the records of the owner or operator relating to the wind energy conversion system or wind energy facility for the purpose of confirming the accuracy of payments made to the landowner.

A landowner may not request access to the records more frequently than once each year.

(b) An owner or operator that receives a request under Subsection (a) shall provide

make available in this state all records necessary for the landowner to conduct the inspection described by Subsection (a)(2), including documents, data, and other information, or copies of the records, documents, data, or information. The records are subject to any confidentiality requirements in a lease agreement between the landowner and the owner or operator of the system or facility.

(c) The owner or operator shall comply with the landowner's request to make the records available within a reasonable time.

(d) The owner or operator shall:

(1) make the records available in a location and manner that affords the landowner reasonable access to the records during normal business hours; and

(2) allow the landowner a reasonable period of time to complete the inspection.

(e) A landowner may not cause undue disruption to the operations of an owner or operator during an inspection described by Subsection (a)(2).

(f) Before entering into a lease agreement with a landowner, an owner of a wind energy conversion system or wind energy facility must send to the landowner, by first class mail or otherwise, a wind energy generation landowner bill of rights statement prepared under Section 402.0311, Government Code. The statement must be printed in an easily readable font and type size.

No equivalent provision.

No equivalent provision.

the landowner access to all records necessary for the landowner to confirm the accuracy of payments made to the landowner, including documents, data, and other information, or copies of the records, documents, data, or information. The records are subject to any confidentiality requirements in a lease agreement between the landowner and the owner or operator.

(c) The owner or operator shall comply with the landowner's request to access the records within a reasonable time.

(d) The owner or operator shall:

(1) provide access to the records in a reasonable location and manner that affords the landowner reasonable access to the records during normal business hours; and

(2) allow the landowner a reasonable period of time to examine the records.

(e) A landowner may not cause undue disruption to the operations of an owner or operator when examining records under this section.

(f) Not later than the 10th day before the date an owner of a wind energy conversion system or wind energy facility enters into a lease agreement with a landowner that allows the owner to operate the system or facility on the landowner's property, the owner must send to the landowner, by first class mail or otherwise:

(1) a written disclosure that the landowner will be entitled to access the records of the owner for the purpose of confirming the accuracy of payments made to the landowner; and

(2) a written insurance disclosure that states that the owner:

(A) will not maintain insurance applicable to the system or facility; or

(B) will maintain an insurance policy applicable to the system or facility or will maintain a self-insurance plan applicable to the system or facility.

(g) The disclosure required by Subsection (f) must be made in a document that is separate from the lease.

(h) If an owner notifies a landowner under

Subsection (f)(2) that the owner will maintain an insurance policy and the policy allows the landowner to be named as an additional insured on the policy, the owner must include with the notice a statement that the landowner may be named as an additional insured on the policy.

No equivalent provision.

Sec. 212.004. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general may enforce the provisions of this chapter.

SECTION 3. The attorney general shall prepare the wind energy generation landowner bill of rights statement required by Section 402.0311, Government Code, as added by this Act, not later than September 1, 2014.

No equivalent provision.

SECTION 4. (a) The changes in law made by this Act apply to an owner or operator of a wind energy conversion system or a wind energy facility, as those terms are defined by Section 212.001, Natural Resources Code, as added by this Act, the construction or installation of which began before or begins on or after the effective date of this Act.

No equivalent provision.

(b) An owner or operator of a wind energy conversion system or a wind energy facility as those terms are defined by Section 212.001, Natural Resources Code, as added by this Act, the construction or installation of which began before the effective date of this Act is not required to comply with the provisions of Chapter 212, Natural Resources Code, as added by this Act, until September 1, 2018.

(c) An owner or operator of a wind energy conversion system or a wind energy facility, as those terms are defined by Section 212.001, Natural Resources Code, as added by this Act, the construction or installation of which begins on or after the effective date of this Act is not required to comply with Section 212.004(f), Natural Resources Code, as added by this Act, until October 1, 2014.

No equivalent provision.

SECTION 2. Sections 212.003(f), (g), and (h), Natural Resources Code, as added by

this Act, apply only to a lease agreement entered into on or after the effective date of this Act. A lease agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 3. This Act takes effect January 1, 2014.