

BILL ANALYSIS

Senate Research Center
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S.B. 1003
By: Springer
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background & Purpose

At least 41 states have installed utility-scale wind—and all have accompanying regulations and statutes that establish setback requirements, siting processes, and siting authorities. The states imposed these setbacks to protect people and property from such things as turbine blade failure, ice shedding, and ice throw, as well as property value reductions.

There is the remote possibility of turbine blade failure during operation due to fatigue, severe weather, or other events. If one of these events should occur, the turbine can throw pieces of the turbine's blade. Similarly, wind turbines can accumulate ice under certain atmospheric conditions. A wind turbine may shed accumulated ice due to the gravity and mechanical forces of the rotating blades. Here again, the blades' mechanical forces can throw the ice beyond the turbine's immediate area.

Turbines can cause more than physical damage. They can lower neighboring property values. One case study in Michigan showed a 23 percent value reduction in properties adjacent to a wind project, with no other inappropriate considerations, from an appraisal perspective.

Therefore, to protect neighboring property rights, the legislation requires a wind turbine to be a distance equal to 10 times the maximum blade tip or 5,280 feet from a non-participating property owner. The bill allows the non-participating property owner the right to waive the requirement.

Rulemaking Authority

The author's opinion is that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

Summary Analysis

The legislation requires a wind turbine for electric generation to have a minimum setback from a border property to be greater than 5,280 feet or a distance equal to 10 times the proposed turbine's maximum blade tip height. The bill prescribes how the owner of turbines must take the setback measurements. However, the property owner that is the source of the noncompliance may grant a written waiver.

The legislation also prescribes a process for injunctive relief and makes the new law prospective.

Effective Date

September 1, 2021

As proposed, S.B. 1003 amends current law relating to siting requirements for the construction of a wind turbine.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Utilities Code, by adding Chapter 302, as follows:

CHAPTER 302. WIND TURBINE SITING

Sec. 302.0001. SITING. (a) Prohibits a person from constructing at a site a wind turbine for electric generation unless the site complies with the minimum setback requirements provided by this section.

(b) Provides that the minimum setback for a wind turbine is the greater of:

(1) a distance equal to 10 times the maximum blade tip height of the proposed turbine, measured from the closest structure on each property that borders the property on which the site is located; or

(2) 5,280 feet, measured from the property line of each property that borders the property on which the site is located.

(c) Requires that the setback distances described by Subsection (b) be measured as a straight line from the vertical centerline of the proposed wind turbine to the nearest point on the permanent foundation of a structure or the nearest point on the property line, as applicable.

(d) Provides that this section does not create an offense.

Sec. 302.0002. SITING WAIVER. (a) Authorizes a person to begin construction of a wind turbine at a site that does not comply with the requirements of Section 302.0001 if the person obtains a signed, written waiver from the owner of the property that is the source of the noncompliance.

(b) Prohibits a waiver from being made effective for a period of more than one year after the date the owner signs the waiver. Authorizes a waiver to be retroactive for any period of time.

Sec. 302.0003. INJUNCTION. (a) Authorizes a county or district court by injunction to prevent, restrain, abate, or otherwise remedy a violation of this chapter.

(b) Authorizes a person affected or who may be affected by a violation or threatened violation of this chapter to bring suit under Subsection (a), except as provided by Subsection (c).

(c) Prohibits a person from bringing suit under Subsection (a) if the sole alleged violation relates to a structure on an adjacent property as described by Section 302.0001(b)(1) that was constructed less than one year before the date the wind turbine construction is proposed to begin.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2021.