

BILL ANALYSIS

Senate Research Center
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S.B. 624
By: Kolkhorst; Middleton
Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent decades solar and wind installations have proliferated across the state. Without clear guidelines for permitting and decommissioning, how installations are installed varies greatly from one site to another. This bill puts in place commonsense guidelines for new wind and solar installations by ensuring that these structures peacefully coexist with nature. These proposed guidelines would also ensure that abandoned installations would be able to be removed from the land at no cost to Texas taxpayers. The bill is a plan to reclaim the land and offer financial assurance that our state's wildlife habitat is protected by simply placing our wind and solar installations on a similar footing as our oil and gas drilling.

Key Provisions

- Standard public notice and permitting provisions similar to that of transmission lines.
- Permitting requirements including:
 - Public Internet website
 - Setbacks of 1,000 feet of the property line
 - Signage at the entrance of facilities
- A renewable impact statement in coordination with the Texas Parks and Wildlife Department and Texas A&M Agrilife Extension.
- Reporting requirements for size and location of projects and any substantive changes made to the project.
- An annual impact fee including funding for a state cleanup fund.
- A decommissioning plan in compliance with Chapters 301 and 302, Utilities Code.

As proposed, S.B. 624 amends current law relating to the permitting of renewable energy generation facilities by the Public Utility Commission of Texas and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 (Sections 35.207, 35.210, and 35.212, Utilities Code) and SECTION 3 of this bill.

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 2 (Section 11.006, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 35, Utilities Code, by adding Subchapter F, as follows:

SUBCHAPTER F. RENEWABLE ENERGY GENERATION FACILITY PERMIT

Sec. 35.201. DEFINITIONS; APPLICABILITY. (a) Defines "permit holder," "person," and "renewable energy generation facility."

(b) Provides that this subchapter applies to a renewable energy generation facility regardless of whether the facility is the subject of a wind power facility agreement or solar power facility agreement entered into under Chapter 301 (Wind Power Facility Agreements) or 302 (Solar Power Facility Agreements).

Sec. 35.202. LEGISLATIVE POLICY AND PURPOSE. Provides that the conservation and development of all the natural resources of this state are declared to be public rights and duties. Provides that it is also declared that the protection of the wildlife, water, and land of this state against the impacts of renewable energy generation facilities is in the public interest. Provides that in the exercise of the police power of this state, it is necessary and desirable to provide additional means so that the installation and removal of renewable energy generation facilities are placed under the authority and direction of the Public Utility Commission of Texas (PUC).

Sec. 35.203. PERMIT REQUIRED; APPLICATION. (a) Prohibits a person from operating a renewable energy generation facility in this state unless the person holds a permit issued by the PUC under this subchapter. Prohibits a person from constructing a renewable energy generation facility in this state unless the person holds a permit to operate a renewable energy generation facility issued by the PUC under this subchapter or the PUC by order approves the construction.

(b) Authorizes a person to apply for a permit to operate a renewable energy generation facility by filing with the PUC:

(1) a description of the location of the facility;

(2) a description of the type of facility;

(3) a copy of any information filed with the Federal Energy Regulatory Commission in connection with registration with that commission;

(4) any assumed business or professional name of the applicant filed under Chapter 71 (Assumed Business or Professional Name), Business and Commerce Code;

(5) an environmental impact statement produced by the Texas Parks and Wildlife Department (TPWD) under Section 11.006, Parks and Wildlife Code;

(6) any wind power facility agreement or solar power facility agreement applicable to the facility entered into under Chapter 301 or 302 by the applicant;

(7) the address of an Internet website that provides information about the proposed facility;

(8) an affidavit that lists the names and addresses of the persons who may be affected by the application and includes the source of the list; and

(9) any other information required by PUC rule, provided that in requiring that information the PUC is required to protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information.

Sec. 35.204. NOTICE AND HEARING ON APPLICATION. (a) Requires the PUC, when an application for a permit is filed under Section 35.203, or when an application for a permit amendment is filed, to give notice of the application to affected parties, including any property owner within 25 miles of the boundary of the facility, and, if requested, set a time and place for a hearing and give notice of the hearing to affected parties, including any property owner within 25 miles of the boundary of the facility.

(b) Requires that the notice, for any application involving a capacity of 15 megawatts or more, be given to the county judge of each county located within 25

miles of the boundary of the facility who has requested in writing that the PUC give that notice.

(c) Prohibits the PUC from acting on an application before the 30th day after the date the PUC gives notice of the application under Subsections (a) and (b), as applicable, regardless of whether a hearing is requested.

(d) Authorizes the PUC, notwithstanding any other provision of this subchapter, to approve an application to amend a permit without holding a hearing if:

(1) the applicant is not applying to significantly increase the amount of electricity generated under the permit or to materially change the placement of the renewable energy generation facility;

(2) the PUC determines that the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of the permit; and

(3) the PUC gives notice of the application to the county judge of each county and the governing body of each municipality in which the facility is located at least 30 days before the date of the PUC's approval of the application and the PUC allows the county judges and governing bodies to present information to the PUC on the application.

Sec. 35.205. APPROVAL OR DENIAL OF APPLICATION. (a) Authorizes the PUC to approve an application only if the PUC finds that issuance or amendment of the permit would not violate state or federal law or rule and would not interfere with the purpose of this subchapter.

(b) Requires the PUC, in considering an application for the issuance or amendment of a permit, to consider the compliance history of the applicant.

(c) Provides that a permit holder does not have a vested right in a permit.

Sec. 35.206. CONDITIONS OF PERMIT. (a) Requires the PUC, for each permit, to prescribe the conditions under which it is issued, including the boundary of the permitted facility location, the maximum number of renewable energy generation facilities authorized by the permit, and any monitoring and reporting requirements prescribed by the PUC for the permit holder.

(b) Authorizes the PUC, on its own motion after reasonable notice and hearing, to require a permit holder to conform to new or additional conditions to comply with this subchapter or rules adopted under this subchapter.

(c) Requires a permit holder to:

(1) ensure that the permitted facility is located at least 500 feet from any property line, unless the permit holder has obtained a written waiver from each owner of property located less than 500 feet from the permitted facility, and 1,000 feet from any habitable structure, unless the permit holder has obtained a written waiver from each owner of the habitable structure;

(2) provide a publicly accessible Internet website that displays a map of the boundaries of the permitted facility, any interconnection request numbers assigned to the permitted facility, the name of the owner of the permitted facility, and any other information required by the PUC; and

(3) post at each entrance to the permitted facility a sign that:

(A) includes the name of the facility, the name of the owner of the facility, the name, business address, and telephone number of the operator of the facility, a general description of the property on which the facility is located, including the boundaries of the property, and emergency contact information for the facility; and

(B) uses contrasting colors with block letters at least one inch in height, and

(C) is displayed in a conspicuous manner clearly visible to the public.

Sec. 35.207. MONITORING AND REPORTING. Authorizes the PUC by rule, in coordination with TPWD, to require a permit holder to monitor, record, and report on environmental impacts created by the permitted facility, conduct wildlife assessments around the permitted facility, and provide to the PUC other information about the operation of the permitted facility.

Sec. 35.208. FACILITY REMOVAL BY COMMISSION. (a) Authorizes the PUC to determine after reasonable notice and hearing that a permit holder has not removed a renewable energy generation facility according to the requirements of an applicable wind power facility agreement or solar power facility agreement entered into under Chapter 301 or 302 and that the permit holder has not delivered financial assurance required under Chapter 301 or 302, as applicable. Authorizes the PUC, after making the determination, to:

(1) order the permit holder to comply with the wind power facility agreement or solar power facility agreement; or

(2) fulfill the requirements of the wind power facility agreement or solar power facility agreement if the permit holder cannot be found or does not have assets with which to comply with the wind power facility agreement or solar power facility agreement.

(b) Authorizes the PUC or its employees or agents, on proper identification, to enter the land of another for the purpose of implementing Subsection (a)(2).

(c) Provides that removal of a renewable energy generation facility by the PUC under this section does not prevent the PUC from seeking penalties or other relief provided by law from the permit holder.

(d) Provides that the PUC and its employees and agents are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.

(e) Authorizes the PUC, if the PUC removes a renewable energy generation facility under this section, to recover all costs incurred by the PUC from the permit holder. Authorizes the PUC by order to require the permit holder to reimburse the PUC for those costs or to request the attorney general to file suit against the permit holder to recover those costs. Authorizes the attorney general, at the request of the PUC, to file suit to enforce an order issued by the PUC under this subsection. Authorizes a suit under this subsection to be filed in Travis County. Requires that the costs recovered under this subsection be deposited to the renewable energy generation facility cleanup fund.

Sec. 35.209. RENEWABLE ENERGY GENERATION FACILITY CLEANUP FUND. (a) Provides that the renewable energy generation facility cleanup fund is a dedicated account in the general revenue fund.

(b) Provides that the fund consists of environmental impact fees collected under Section 35.210, private contributions, and legislative appropriations.

(c) Authorizes money in the fund to be used only by the PUC to implement this subchapter.

Sec. 35.210. ENVIRONMENTAL IMPACT FEE. (a) Provides that an annual environmental impact fee is imposed on each permit holder.

(b) Requires that the environmental impact fees, except as provided by Subsection (c), be deposited in the renewable energy generation facility cleanup fund.

(c) Requires the PUC to designate 20 percent of the revenue collected from environmental impact fees to be deposited in the renewable energy generation facility cleanup fund and used only for the removal of renewable energy generation facilities under Section 35.208. Authorizes the PUC, if the PUC determines that the renewable energy generation facility cleanup fund has a sufficient amount of money to fund removal of renewable energy generation facilities under Section 35.208, to instead deposit 20 percent of the revenue from environmental impact fees in the county and road district highway fund.

(d) Provides that the fee for each year is imposed on each permit in effect during any part of the year. Authorizes the PUC to establish reduced fees for inactive permits.

(e) Requires the PUC by rule to adopt a fee schedule for determining the amount of the fee to be charged. Authorizes the PUC, in determining the amount of a fee under this section, to consider the efficiency of the renewable energy generation facility, the area and size of the renewable energy generation facility, the renewable energy generation facility's environmental impact score provided under Section 11.006, Parks and Wildlife Code, and expenses necessary to implement this subchapter.

Sec. 35.211. FEDERAL FUNDS. Authorizes the PUC to execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, or construction related to methods, procedures, mitigation, and facilities for the removal of renewable energy generation facilities. Authorizes the PUC to accept federal funds for these purposes and for other purposes consistent with the objectives of this subchapter and to use the funds as prescribed by law or as provided by agreement.

Sec. 35.212. POWER TO REGULATE AND SUPERVISE. (a) Provides that for purposes of this subchapter, a provision of Subchapter B (Practice and Procedure) or E (Audits and Inspections), Chapter 14, that authorizes the PUC to regulate a public utility also applies to a person required to obtain a permit under this subchapter, including an electric cooperative and a municipally owned utility.

(b) Authorizes the PUC to adopt and enforce rules reasonably required in the exercise of its powers under this subchapter.

Sec. 35.213. ENFORCEMENT AND PENALTIES. Provides that for the purposes of enforcing this subchapter, a reference in Chapter 15 (Judicial Review, Enforcement, and Penalties) to a person includes any person required to obtain a permit under this subchapter, including an electric cooperative and a municipally owned utility.

SECTION 2. Amends Subchapter A, Chapter 11, Parks and Wildlife Code, by adding Section 11.006, as follows:

Sec. 11.006. ENVIRONMENTAL IMPACT STATEMENTS FOR RENEWABLE ENERGY GENERATION FACILITIES. Requires the Texas Parks and Wildlife Commission by rule to adopt a system for providing an environmental impact statement to an applicant for a renewable energy generation facility permit under Section 35.203, Utilities Code. Requires that the system establish:

- (1) a process for a person to apply for and receive from TPWD an environmental impact statement;
- (2) criteria for TPWD to evaluate the environmental impact of a proposed renewable energy generation facility, including:
 - (A) conservation of natural resources;
 - (B) continuous use of the land on which a facility is located for agricultural and wildlife purposes; and
 - (C) in coordination with the Texas A&M AgriLife Extension Service, agricultural best practices;
- (3) a method for TPWD to provide an environmental impact score for a renewable energy generation facility, based on the criteria described by Subdivision (2);
- (4) fees for providing the environmental impact statements, in an amount sufficient to cover TPWD's costs of implementing this section; and
- (5) guidelines for TPWD's use of any map applications necessary for the implementation of this section.

SECTION 3. (a) Provides that Subchapter F, Chapter 35, Utilities Code, as added by this Act, except as otherwise provided by rules adopted by the PUC under Subsection (b) of this section, applies to all renewable energy generation facilities in this state, including:

- (1) renewable energy generation facilities that generate renewable energy before the effective date of this Act or are interconnected to a transmission facility before the effective date of this Act; and
- (2) renewable energy generation facilities the construction of which began before the effective date of this Act.

(b) Requires the PUC by rule to authorize a person who operates or constructs a facility described by Subsection (a)(1) or (2) of this section to continue to operate or construct the facility after the effective date of this Act while the person applies for a permit for the facility as required under Subchapter F, Chapter 35, Utilities Code, as added by this Act. Authorizes the rules to require a person who operates or constructs a facility described by Subsection (a)(1) or (2) of this section to apply for a permit for the facility as required under Subchapter F, Chapter 35, Utilities Code, as added by this Act, by a certain date.

SECTION 4. Effective date: September 1, 2023.