

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 624
By: Kolkhorst; Middleton
Business & Commerce
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Committee Report (Substituted)

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 with regulations similar to those placed on other industries.

Key Provisions:

- Standard public notice and permitting provisions similar to that of transmission lines.
- Permitting requirements including:
 - o Public Internet website
 - o Setbacks of 1,000 feet of the property line
 - o Signage at the entrance of facilities
- A renewable impact statement in coordination with Texas Parks and Wildlife Department (TPWD) and the 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.

Committee Substitute Changes:

- Makes clear that bill only applies to utility scale facilities greater than 10 megawatts.
- Only applies to new generation that is interconnected on or after the effective date of the act.
- Permitting requirements no longer include required signage at entrance to facilities.
- Eliminates the requirement to contact all landowners within 25 miles of the project. Instead, it requires publication of notice in a newspaper in two editions and public meeting held by the developer with the goal of increasing community.
- Setbacks are significantly reduced from the filed version, setbacks from a private residence is reduced from 1,000 feet to 200 feet, to match a private residence setback provision in Section 253.005, Local Government Code. Additionally setbacks from fence lines are reduced from 500 feet to 100 feet.
- Eliminates the state-overseen decommissioning based on input from industry desire to keep things in private agreements and instead strengthens Chapter 301 and Chapter 302 decommissioning standards to ensure financial assurance in the form of bonds, instead of lines of credit that can change on a daily basis.
- Incorporates input from TPWD to improve environmental impact review to ensure that facilities can coexist with their natural environment.
 - o Changes process to Environmental Impact Review instead of Environmental Impact Statement.
 - o Incorporates best practices of TPWD and the Texas A&M AgriLife Extension so that facilities can operate in line with their natural environment.

C.S.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 35.204, 35.207, 35.209, and 35.211, Utilities Code) of this bill.

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 2 (Section 12.0012, 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 interconnecting a renewable energy generation facility with a capacity of 10 megawatts or more to a transmission facility unless:

(1) the person holds a permit to operate a renewable energy generation facility issued by the PUC under this subchapter; or

(2) 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; and

(8) 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.

(c) Requires a person who interconnected a renewable energy generation facility to a transmission facility before September 1, 2023, notwithstanding Subsection (a), to apply for a permit under this subchapter only if the person:

(1) increases the amount of electricity generated by the facility by five megawatts or more; or

(2) materially changes the placement of the renewable energy generation facility.

Sec. 35.204. NOTICE AND MEETING. (a) Requires the PUC by rule to require an applicant for a permit or a permit amendment to:

(1) provide notice of the application to the county judge of each county located within 25 miles of the boundary of the renewable energy generation facility that is the subject of the permit;

(2) hold a public meeting to obtain public input on the proposed permit or permit amendment; and

(3) after applying for the permit or permit amendment, publish for at least two consecutive publications in a newspaper of general circulation in each county in which the renewable energy generation facility that is the subject of the permit will be or is located a notice that includes:

(A) the time and place of the public meeting; and

(B) a link to a publicly accessible Internet website that provides information about the facility and information regarding the public meeting.

(b) Requires that a public meeting held under this section be held in a location that is:

(1) not more than 25 miles from the boundary of the renewable energy generation facility that is the subject of the permit; or

(2) if a suitable meeting place is not available in a location described by Subdivision (1), in the nearest suitable meeting location.

(c) Prohibits the PUC from approving or denying an application for a permit or permit amendment before the 30th day after the date the applicant conducts the public meeting required by this section.

(d) Authorizes the PUC, notwithstanding any other provision of this subchapter, to approve an application to amend a permit without requiring a public meeting 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 100 feet from any property line, unless the permit holder has obtained a written waiver from each owner of property located less than 100 feet from the permitted facility, and 200 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) provide evidence to the PUC that the permit holder has complied with Chapter 301 (Wind Power Facility Agreements) or 302 (Solar Power Facility Agreements), as applicable, by providing financial assurance in the form of a bond.

Sec. 35.207. MONITORING AND REPORTING. Authorizes the PUC by rule, in coordination with TPWD, to require a permit holder to:

(1) monitor, record, and report on environmental impacts created by the permitted facility;

(2) conduct wildlife assessments around the permitted facility and provide assessment results to TPWD in a form and according to deadlines required by TPWD;

(3) adapt operations based on information obtained under Subdivisions (1) and (2) to minimize facility effects on bats, birds, and other wildlife; and

(4) provide to the PUC and TPWD other information about the operation of the permitted facility.

Sec. 35.208. RENEWABLE ENERGY GENERATION FACILITY CLEANUP FUND.

(a) Provides that the renewable energy generation facility cleanup fund (fund) is a dedicated account in the general revenue fund.

(b) Provides that the fund consists of:

(1) environmental impact fees collected under Section 35.209;

(2) gifts, grants, and donations; and

(3) legislative appropriations.

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

Sec. 35.209. ENVIRONMENTAL IMPACT FEE. (a) Provides that an annual environmental impact fee is imposed on each permit holder.

(b) Requires that the environmental impact fees be deposited in the fund.

(c) 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.

(d) 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 12.0012, Parks and Wildlife Code, and expenses necessary to implement this subchapter.

Sec. 35.210. 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. 35.211. POWER TO REGULATE AND SUPERVISE. (a) Provides that a provision of Subchapter B (Practice and Procedure) or E (Audits and Inspections), Chapter 14, that authorizes the PUC to regulate a public utility, for purposes of this subchapter, 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. 35.212. ENFORCEMENT AND PENALTIES. Provides that a reference in Chapter 15 (Judicial Review, Enforcement, and Penalties) to a person, for the purposes of enforcing this subchapter, 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 12, Parks and Wildlife Code, by adding Section 12.0012, as follows:

Sec. 12.0012. ENVIRONMENTAL IMPACT REVIEW FOR RENEWABLE ENERGY GENERATION FACILITIES. Requires the Texas Parks and Wildlife Commission (TPWC) by rule to adopt a system for providing an environmental impact review in a format established by TPWC to an applicant for a renewable energy generation facility permit under Section 35.203, Utilities Code, based on materials provided by the applicant. Requires that the system establish:

- (1) a process for a person to apply for and receive from TPWD an environmental impact review;
- (2) criteria for TPWD to evaluate the environmental impact of a proposed renewable energy generation facility, including:
 - (A) the facility's prioritization of conservation of natural resources;
 - (B) continuous use of the land on which a facility is located for agricultural purposes and wildlife conservation purposes; and
 - (C) the applicant's commitment to and planned implementation of avoidance and minimization measures to conserve natural resources; and
 - (D) agricultural best practices developed by TPWD in coordination with the Texas A&M AgriLife Extension Service;
- (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 reviews, 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, including the applicant's mapping of specific areas and other aspects required by TPWD to produce an effective and timely review.

SECTION 3. Effective date: September 1, 2023.