By:  Goldman H.B. No. 4573

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a permit by the commissioner of the General Land Office for a wind power facility on coastal public land; authorizing a fee; providing a civil penalty.

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

SECTION 1.  Chapter 33, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. COASTAL WIND POWER FACILITY PERMIT

Sec. 33.801.  DEFINITIONS. In this subchapter:

(1)  "Permittee" means the holder of a permit issued under this subchapter.

(2)  "Wind power facility" includes:

(A)  a wind turbine generator; and

(B)  a facility or equipment used to support the operation of a wind turbine generator, including an electrical transmission or communications line, an electric transformer, a battery storage facility, an energy storage facility, or telecommunications equipment.

Sec. 33.802.  PERMIT REQUIRED. (a) A person may not install or operate a wind power facility on coastal public land unless the person obtains a permit from the commissioner under this subchapter.

(b)  The commissioner by rule shall:

(1)  in collaboration with the Texas Department of Insurance and the Public Utility Commission of Texas, require that a permittee construct and maintain the permitted wind power facility to withstand:

(A)  a storm that would cause a flood in any area that is:

(i)  located less than 40 miles from the location of the proposed wind power facility; and

(ii)  subject to inundation by a flood that has a 0.1 percent or greater chance of occurring in any given year, as determined from maps or other data from the Federal Emergency Management Agency; and

(B)  a Category 5 hurricane on the Saffir-Simpson Hurricane Wind Scale;

(2)  prohibit a permittee from constructing or maintaining the permitted wind power facility in a manner that uses cables to secure the facility to coastal public land;

(3)  prohibit a permittee from connecting the permitted wind power facility to a transmission line that provides electricity to a location outside the ERCOT power region;

(4)  in collaboration with the Public Utility Commission of Texas, require the permittee to submit to the commissioner regular maintenance evaluations of the permitted wind power facility; and

(5)  require that a permittee guarantee that the facility carries sufficient thermal nonintermittent base load backup generation to ensure that the facility is generating power at 100 percent of installed capacity.

(c)  If a wind power facility permitted under this subchapter generates less than the installed capacity as required under Subsection (b)(5), the Public Utility Commission of Texas shall levy a per kilowatt hour intermittency penalty, which shall be the equivalent of the federal per kilowatt hour subsidy or tax credit for wind power described in Section 33.808.

(d)  The Texas Department of Insurance and the Public Utility Commission of Texas may adopt rules as needed to implement this subchapter.

Sec. 33.803.  APPLICATION FOR PERMIT. (a) An application for a permit under this subchapter must be made on a form prescribed by the commissioner.

(b)  An application for a permit under this subchapter must include:

(1)  a study on the potential environmental impacts of the proposed wind power facility on migratory birds, oceanic life, and soil and water in this state;

(2)  based on the study required by Subdivision (1):

(A)  an analysis created by the Texas Commission on Environmental Quality of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(B)  an analysis created by the Parks and Wildlife Department of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts; and

(C)  an analysis created by the Public Utility Commission of Texas of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(3)  a study on the potential economic impacts of the proposed wind power facility on commercial and recreational fishing, water tourism, the workforce, and ports in this state;

(4)  based on the study required by Subdivision (3):

(A)  an analysis created by the Texas Commission on Environmental Quality of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(B)  an analysis created by the Parks and Wildlife Department of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts; and

(C)  an analysis created by the comptroller of public accounts of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(5)  a study on the potential impacts of the proposed wind power facility on navigation and shipping lanes in this state;

(6)  based on the study required by Subdivision (5), an analysis created by the Texas Department of Transportation of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(7)  a study on the potential impacts of the proposed wind power facility on infrastructure in this state associated with oil and gas pipelines, offshore production of oil and natural gas, roads, and bridges;

(8)  based on the study required by Subdivision (7):

(A)  an analysis created by the Texas Department of Transportation of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts; and

(B)  an analysis created by the Railroad Commission of Texas of potential negative impacts of the wind power facility on this state and, if any, recommendations for mitigation of those impacts;

(9)  an estimate of the electrical energy anticipated to be produced by the proposed wind power facility and provided to this state;

(10)  a copy of each notice provided by the applicant under Section 33.805; and

(11)  any additional information required by the commissioner.

(c)  The commissioner by rule shall adopt a process for an applicant to request the state agency analyses required by Subsection (b). A state agency named in Subsection (b) shall provide a requested analysis to the requestor in a reasonable time.

Sec. 33.804.  PERMIT APPROVAL CONDITIONS. (a) The commissioner may not approve an application for a permit under this subchapter unless the commissioner determines that the application complies with Sections 33.802 and 33.803.

(b)  Before approving an application for a permit under this subchapter, the commissioner must require the applicant to mitigate or plan to mitigate any negative impacts of the proposed wind power facility on this state based on the recommendations issued by state agencies under Section 33.803.

(c)  The commissioner shall deny a permit application if the commissioner determines, based on the application, that any negative impacts of the proposed wind power facility on this state cannot be mitigated.

Sec. 33.805.  NOTICE TO STATE AND LOCAL OFFICIALS; OBJECTION. (a) A person intending to apply for a permit under this subchapter shall mail notice of intent to obtain the permit to:

(1)  the governor and the attorney general;

(2)  each state senator and representative who represents an area located less than 40 miles from the location of the proposed wind power facility;

(3)  the mayor of each municipality located less than 40 miles from the location of the proposed wind power facility;

(4)  the commissioners court of each county located less than 40 miles from the location of the proposed wind power facility; and

(5)  the board of each port authority or navigation district located less than 40 miles from the location of the proposed wind power facility.

(b)  A person who receives notice under Subsection (a) may submit a letter to the commissioner and the applicant notifying the commissioner and the applicant that the person objects to the approval of the permit. The letter must be submitted to the commissioner and the applicant not later than the 30th day after the date the person receives the notice.

(c)  If the commissioner determines that an objection received under Subsection (b) is based on a reasonable potential negative impact of the proposed wind power facility to this state, the commissioner may not grant the permit unless the applicant mitigates or plans to mitigate the potential negative impact.

Sec. 33.806.  AUTHORITY OF COMMISSIONER. (a) The commissioner:

(1)  as a condition of issuing a permit, may impose an application fee to recover the costs of administering this subchapter;

(2)  may require a permittee to provide to the commissioner copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to a permit; and

(3)  may make any rules relating to permits or permittees the commissioner considers appropriate.

(b)  If a permittee violates a rule of the commissioner or a term of a permit, the commissioner may cancel the permit.

(c)  If the commissioner acquires information under Subsection (a), the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state.

Sec. 33.807.  UNPERMITTED WIND POWER FACILITIES. A state agency or political subdivision may not:

(1)  approve a permit related to a wind power facility for which a permit is required under this subchapter unless the commissioner has issued the permit under this subchapter; or

(2)  unless required by federal law, contract with or in any other manner provide assistance to a federal agency or official with respect to the construction of a wind power facility for which a permit is required under this subchapter unless the commissioner has issued the permit.

Sec. 33.808.  MARKET DISTORTION RESPONSE. (a) The Public Utility Commission of Texas and the ERCOT independent system operator shall adopt rules, operating procedures, and protocols to eliminate or compensate for any distortion in electricity pricing in the ERCOT power region caused by a federal tax credit provided under 26 U.S.C. Section 45 to a permittee.

(b)  Rules, operating procedures, and protocols adopted under this section must ensure that costs imposed on the system by the sale of electricity by a permittee that is eligible for a federal tax credit provided under 26 U.S.C. Section 45, including costs of maintaining sufficient capacity to serve load at peak demand caused by the loss of new investment from below-market prices, are paid by the parties that impose the costs.

Sec. 33.809.  ENFORCEMENT. (a) If a person violates or is threatening to violate this subchapter, a rule adopted under this subchapter, or a permit issued under this subchapter, the commissioner may have a civil suit brought in a district court for injunctive relief, for assessment and recovery of a civil penalty of $10,000 for each act of violation, or for both injunctive relief and a civil penalty. Each day of a continuing violation is a separate violation.

(b)  The attorney general shall bring a suit under this subchapter in the name of the commissioner.

(c)  In addition to the relief authorized under Subsection (a), the court may award reasonable attorney's fees, which must be used to reimburse the operating fund or account from which the expenditure occurred.

SECTION 2.  This Act takes effect September 1, 2023.