

By: Patterson

H.B. No. 3707

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the permitting of renewable energy generation  
3 facilities by the Public Utility Commission of Texas; authorizing  
4 fees.

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

6 SECTION 1. Chapter 35, Utilities Code, is amended by adding  
7 Subchapter F to read as follows:

8 SUBCHAPTER F. RENEWABLE ENERGY GENERATION FACILITY PERMIT

9 Sec. 35.201. DEFINITIONS; APPLICABILITY. (a) In this  
10 subchapter:

11 (1) "Permit holder" means a person who holds a permit  
12 issued under this subchapter.

13 (2) "Person" includes an electric cooperative and a  
14 municipally owned utility.

15 (3) "Renewable energy generation facility" means:

16 (A) a wind power facility as defined by Section  
17 301.0001; or

18 (B) a solar power facility as defined by Section  
19 302.0001.

20 (b) This subchapter applies to a renewable energy  
21 generation facility regardless of whether the facility is the  
22 subject of a wind power facility agreement or solar power facility  
23 agreement entered into under Chapter 301 or 302.

24 Sec. 35.202. LEGISLATIVE POLICY AND PURPOSE. The

1 conservation and development of all the natural resources of this  
2 state are declared to be public rights and duties. It is also  
3 declared that the protection of the wildlife, water, and land of  
4 this state against the impacts of renewable energy generation  
5 facilities is in the public interest. In the exercise of the police  
6 power of this state, it is necessary and desirable to provide  
7 additional means so that the installation and removal of renewable  
8 energy generation facilities is placed under the authority and  
9 direction of the commission.

10 Sec. 35.203. PERMIT REQUIRED; APPLICATION. (a) A person  
11 may not operate a renewable energy generation facility in this  
12 state unless the person holds a permit issued by the commission  
13 under this subchapter. A person may not construct a renewable  
14 energy generation facility in this state unless:

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

18 (2) the commission by order approves the construction.

19 (b) A person may apply for a permit to operate a renewable  
20 energy generation facility by filing with the commission:

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

22 (2) a description of the type of facility;

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

26 (4) any assumed business or professional name of the  
27 applicant filed under Chapter 71, Business & Commerce Code;

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

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

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

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

12           (9) any other information required by commission rule,  
13 provided that in requiring that information the commission shall  
14 protect the competitive process in a manner that ensures the  
15 confidentiality of competitively sensitive information.

16           Sec. 35.204. NOTICE AND HEARING ON APPLICATION. (a) When  
17 an application for a permit is filed under Section 35.203, or when  
18 an application for a permit amendment is filed, the commission  
19 shall:

20           (1) give notice of the application to affected  
21 parties, including any property owner within 25 miles of the  
22 boundary of the facility; and

23           (2) if requested:

24                   (A) set a time and place for a hearing; and

25                   (B) give notice of the hearing to affected  
26 parties, including any property owner within 25 miles of the  
27 boundary of the facility.

1       (b) For any application involving a capacity of 15 megawatts  
2 or more, the notice must be given to the county judge of each county  
3 located within 25 miles of the boundary of the facility who has  
4 requested in writing that the commission give that notice.

5       (c) The commission may not act on an application before the  
6 30th day after the date the commission gives notice of the  
7 application under Subsections (a) and (b), as applicable,  
8 regardless of whether a hearing is requested.

9       (d) Notwithstanding any other provision of this subchapter,  
10 the commission may approve an application to amend a permit without  
11 holding a hearing if:

12               (1) the applicant is not applying to:

13                       (A) significantly increase the amount of  
14 electricity generated under the permit; or

15                       (B) materially change the placement of the  
16 renewable energy generation facility;

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

20               (3) the commission:

21                       (A) gives notice of the application to the county  
22 judge of each county and the governing body of each municipality in  
23 which the facility is located at least 30 days before the date of  
24 the commission's approval of the application; and

25                       (B) allows the county judges and governing bodies  
26 to present information to the commission on the application.

27       Sec. 35.205. APPROVAL OR DENIAL OF APPLICATION. (a) The

1 commission may approve an application only if the commission finds  
2 that issuance or amendment of the permit would not violate state or  
3 federal law or rule and would not interfere with the purpose of this  
4 subchapter.

5 (b) In considering an application for the issuance or  
6 amendment of a permit, the commission shall consider the compliance  
7 history of the applicant.

8 (c) A permit holder does not have a vested right in a permit.

9 Sec. 35.206. CONDITIONS OF PERMIT. (a) For each permit,  
10 the commission shall prescribe the conditions under which it is  
11 issued, including:

12 (1) the boundary of the permitted facility location;

13 (2) the maximum number of renewable energy generation  
14 facilities authorized by the permit; and

15 (3) any monitoring and reporting requirements  
16 prescribed by the commission for the permit holder.

17 (b) The commission, on its own motion after reasonable  
18 notice and hearing, may require a permit holder to conform to new or  
19 additional conditions to comply with this subchapter or rules  
20 adopted under this subchapter.

21 (c) A permit holder shall:

22 (1) ensure that the permitted facility is located at  
23 least:

24 (A) 500 feet from any property line, unless the  
25 permit holder has obtained a written waiver from each owner of  
26 property located less than 500 feet from the permitted facility;

27 and

1                   (B) 1,000 feet from any habitable structure,  
2 unless the permit holder has obtained a written waiver from each  
3 owner of the habitable structure;

4                   (2) provide a publicly accessible Internet website  
5 that displays:

6                   (A) a map of the boundaries of the permitted  
7 facility;

8                   (B) any interconnection request numbers assigned  
9 to the permitted facility;

10                   (C) the name of the owner of the permitted  
11 facility; and

12                   (D) any other information required by the  
13 commission; and

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

16                   (A) includes:

17                                   (i) the name of the facility;

18                                   (ii) the name of the owner of the facility;

19                                   (iii) the name, business address, and  
20 telephone number of the operator of the facility;

21                                   (iv) a general description of the property  
22 on which the facility is located, including the boundaries of the  
23 property; and

24                                   (v) emergency contact information for the  
25 facility; and

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

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

3           Sec. 35.207. MONITORING AND REPORTING. The commission by  
4 rule may, in coordination with the Parks and Wildlife Department,  
5 require a permit holder to:

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

8           (2) conduct wildlife assessments around the permitted  
9 facility; and

10           (3) provide to the commission other information about  
11 the operation of the permitted facility.

12           Sec. 35.208. FACILITY REMOVAL BY COMMISSION. (a) The  
13 commission may determine after reasonable notice and hearing that a  
14 permit holder has not removed a renewable energy generation  
15 facility according to the requirements of an applicable wind power  
16 facility agreement or solar power facility agreement entered into  
17 under Chapter 301 or 302 and that the permit holder has not  
18 delivered financial assurance required under Chapter 301 or 302, as  
19 applicable. After making the determination, the commission may:

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

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

27           (b) The commission or its employees or agents, on proper

1 identification, may enter the land of another for the purpose of  
2 implementing Subsection (a)(2).

3 (c) Removal of a renewable energy generation facility by the  
4 commission under this section does not prevent the commission from  
5 seeking penalties or other relief provided by law from the permit  
6 holder.

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

10 (e) If the commission removes a renewable energy generation  
11 facility under this section, the commission may recover all costs  
12 incurred by the commission from the permit holder. The commission  
13 by order may require the permit holder to reimburse the commission  
14 for those costs or may request the attorney general to file suit  
15 against the permit holder to recover those costs. At the request of  
16 the commission, the attorney general may file suit to enforce an  
17 order issued by the commission under this subsection. A suit under  
18 this subsection may be filed in Travis County. Costs recovered  
19 under this subsection shall be deposited to the renewable energy  
20 generation facility cleanup fund.

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

24 (b) The fund consists of:

25 (1) environmental impact fees collected under Section  
26 35.210;

27 (2) private contributions; and



1           (3) legislative appropriations.

2           (c) Money in the fund may be used only by the commission to  
3 implement this subchapter.

4           Sec. 35.210. ENVIRONMENTAL IMPACT FEE. (a) An annual  
5 environmental impact fee is imposed on each permit holder.

6           (b) Except as provided by Subsection (c), environmental  
7 impact fees must be deposited in the renewable energy generation  
8 facility cleanup fund.

9           (c) The commission shall designate 20 percent of the revenue  
10 collected from environmental impact fees to be deposited in the  
11 renewable energy generation facility cleanup fund and used only for  
12 the removal of renewable energy generation facilities under Section  
13 35.208. If the commission determines that the renewable energy  
14 generation facility cleanup fund has a sufficient amount of money  
15 to fund removal of renewable energy generation facilities under  
16 Section 35.208, the commission may instead deposit 20 percent of  
17 the revenue from environmental impact fees in the county and road  
18 district highway fund.

19           (d) The fee for each year is imposed on each permit in effect  
20 during any part of the year. The commission may establish reduced  
21 fees for inactive permits.

22           (e) The commission by rule shall adopt a fee schedule for  
23 determining the amount of the fee to be charged. In determining the  
24 amount of a fee under this section, the commission may consider:

25           (1) the efficiency of the renewable energy generation  
26 facility;

27           (2) the area and size of the renewable energy

1 generation facility;

2 (3) the renewable energy generation facility's  
3 environmental impact score provided under Section 11.006, Parks and  
4 Wildlife Code; and

5 (4) expenses necessary to implement this subchapter.

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

17 Sec. 35.212. POWER TO REGULATE AND SUPERVISE. (a) For  
18 purposes of this subchapter, a provision of Subchapter B or E,  
19 Chapter 14, that authorizes the commission to regulate a public  
20 utility also applies to a person required to obtain a permit under  
21 this subchapter, including an electric cooperative and a  
22 municipally owned utility.

23 (b) The commission may adopt and enforce rules reasonably  
24 required in the exercise of its powers under this subchapter.

25 Sec. 35.213. ENFORCEMENT AND PENALTIES. For the purposes  
26 of enforcing this subchapter, a reference in Chapter 15 to a person  
27 includes any person required to obtain a permit under this

1 subchapter, including an electric cooperative and a municipally  
2 owned utility.

3 SECTION 2. Subchapter A, Chapter 11, Parks and Wildlife  
4 Code, is amended by adding Section 11.006 to read as follows:

5 Sec. 11.006. ENVIRONMENTAL IMPACT STATEMENTS FOR RENEWABLE  
6 ENERGY GENERATION FACILITIES. The commission by rule shall adopt a  
7 system for providing an environmental impact statement to an  
8 applicant for a renewable energy generation facility permit under  
9 Section 35.203, Utilities Code. The system must establish:

10 (1) a process for a person to apply for and receive  
11 from the department an environmental impact statement;

12 (2) criteria for the department to evaluate the  
13 environmental impact of a proposed renewable energy generation  
14 facility, including:

15 (A) conservation of natural resources;

16 (B) continuous use of the land on which a  
17 facility is located for agricultural and wildlife purposes; and

18 (C) in coordination with the Texas A&M AgriLife  
19 Extension Service, agricultural best practices;

20 (3) a method for the department to provide an  
21 environmental impact score for a renewable energy generation  
22 facility, based on the criteria described by Subdivision (2);

23 (4) fees for providing the environmental impact  
24 statements, in an amount sufficient to cover the department's costs  
25 of implementing this section; and

26 (5) guidelines for the department's use of any map  
27 applications necessary for the implementation of this section.

1           SECTION 3. (a) Except as otherwise provided by rules  
2 adopted by the Public Utility Commission of Texas under Subsection  
3 (b) of this section, Subchapter F, Chapter 35, Utilities Code, as  
4 added by this Act, applies to all renewable energy generation  
5 facilities in this state, including:

6                   (1) renewable energy generation facilities that:

7                           (A) generate renewable energy before the  
8 effective date of this Act; or

9                           (B) are interconnected to a transmission  
10 facility before the effective date of this Act; and

11                   (2) renewable energy generation facilities the  
12 construction of which began before the effective date of this Act.

13           (b) The Public Utility Commission of Texas by rule shall  
14 authorize a person who operates or constructs a facility described  
15 by Subsection (a)(1) or (2) of this section to continue to operate  
16 or construct the facility after the effective date of this Act while  
17 the person applies for a permit for the facility as required under  
18 Subchapter F, Chapter 35, Utilities Code, as added by this Act. The  
19 rules may require a person who operates or constructs a facility  
20 described by Subsection (a)(1) or (2) of this section to apply for a  
21 permit for the facility as required under Subchapter F, Chapter 35,  
22 Utilities Code, as added by this Act, by a certain date.

23           SECTION 4. This Act takes effect September 1, 2023.