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S.B. No. 1303

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

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

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

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

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

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

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

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

25           (5) require that a permittee guarantee that the  
26 facility carries sufficient thermal nonintermittent base load  
27 backup generation to ensure that the facility is generating power

1 at 100 percent of installed capacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (7) a study on the potential impacts of the proposed

1 wind power facility on infrastructure in this state associated with  
2 oil and gas pipelines, offshore production of oil and natural gas,  
3 roads, and bridges;

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

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

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

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

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

18 (11) any additional information required by the  
19 commissioner.

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

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

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

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

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

13                (1) the governor and the attorney general;

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

17                (3) the mayor of each municipality located less than  
18 40 miles from the location of the proposed wind power facility;

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

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

25        (b) A person who receives notice under Subsection (a) may  
26 submit a letter to the commissioner and the applicant notifying the  
27 commissioner and the applicant that the person objects to the

1 approval of the permit. The letter must be submitted to the  
2 commissioner and the applicant not later than the 30th day after the  
3 date the person receives the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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



1 and a civil penalty. Each day of a continuing violation is a  
2 separate violation.

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

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

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