

By: Canales

H.B. No. 1717

A BILL TO BE ENTITLED

AN ACT

relating to wind energy conversion systems and facilities and the rights of owners of land on which the systems and facilities are located; providing an administrative penalty.

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

SECTION 1. Title 11, Natural Resources Code, is amended by adding Chapter 212 to read as follows:

CHAPTER 212. WIND ENERGY CONVERSION SYSTEMS AND FACILITIES

Sec. 212.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Wind energy conversion system" means a system that converts wind energy into electric energy through the use of a wind turbine generator and includes a turbine, blade, tower, base, and pad transformer, if any.

(3) "Wind energy facility" means an electric generating facility that consists of one or more wind energy conversion systems under common ownership or operating control and the substations, meteorological data towers, aboveground and underground electric transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility.

(4) "Wind energy lease agreement" means an agreement that:

1 (A) provides for the operation of a wind energy
2 conversion system or wind energy facility at least partially on the
3 property of a landowner who is not the owner or operator of the
4 system or facility; and

5 (B) requires the owner or operator of the system
6 or facility to pay the landowner for the use of the property to
7 generate electric energy from the conversion of wind energy based
8 on the amount of electric energy produced from the conversion of
9 wind energy.

10 Sec. 212.002. APPLICABILITY. This chapter applies only to
11 a wind energy conversion system or wind energy facility:

12 (1) the primary purpose of which is to supply electric
13 energy to an off-site customer; and

14 (2) that is the subject of a wind energy lease
15 agreement.

16 Sec. 212.003. RULES. The commission may adopt rules to
17 accomplish the purposes of this chapter.

18 Sec. 212.004. RIGHT OF LANDOWNER TO ACCESS RECORDS. (a) An
19 owner or operator of a wind energy conversion system or wind energy
20 facility shall, on request from the landowner who entered into the
21 wind energy lease agreement, provide the landowner access to the
22 records of the owner or operator relating to the system or facility
23 for the purpose of confirming the accuracy of payments made to the
24 landowner. A landowner may not request access to the records more
25 frequently than once each year.

26 (b) An owner or operator that receives a request under
27 Subsection (a) shall provide the landowner access to all records

1 necessary for the landowner to confirm the accuracy of payments
2 made to the landowner, including documents, data, and other
3 information, or copies of the records, documents, data, or
4 information. The records are subject to any confidentiality
5 requirements in the wind energy lease agreement between the
6 landowner and the owner or operator.

7 (c) The owner or operator shall comply with the landowner's
8 request to access the records within a reasonable time.

9 (d) The owner or operator shall:

10 (1) provide access to the records in a reasonable
11 location and manner that affords the landowner reasonable access to
12 the records during normal business hours; and

13 (2) allow the landowner a reasonable period of time to
14 examine the records.

15 (e) A landowner may not cause undue disruption to the
16 operations of an owner or operator when examining records under
17 this section.

18 (f) Not later than the 10th day before the date an owner or
19 operator of a wind energy conversion system or wind energy facility
20 enters into a wind energy lease agreement with a landowner, the
21 owner or operator must send to the landowner, by first class mail or
22 otherwise, a written statement that the landowner will be entitled
23 to access the records of the owner or operator for the purpose of
24 confirming the accuracy of payments made to the landowner.

25 (g) The statement required by Subsection (f) must be made in
26 a document that is separate from the wind energy lease agreement.

27 Sec. 212.005. FINANCIAL ASSURANCE; DECOMMISSIONING. (a)

The commission by rule shall require each owner or operator of a wind energy conversion system or wind energy facility who enters into a wind energy lease agreement to file with the commission a bond or other form of financial assurance to ensure decommissioning of the system or facility. The commission may accept under this subsection a surety bond, a collateral bond, an escrow account, another form of financial assurance the commission determines to be adequate, or a combination of those types of assurance. The bond or financial assurance must be in an amount and in a form provided by commission rules.

(b) The bond or financial assurance must be conditioned on the owner or operator of the system or facility complying with the commission's rules adopted under this section regarding decommissioning. The bond or other financial assurance must be accompanied by an agreement by which the owner of the land on which the system or facility is installed or is to be installed grants to the owner or operator of the system or facility, and to the commission or its agents in case the commission undertakes decommissioning under Subsection (g), permission to enter onto the land to decommission the system or facility and restore the land to the condition of the land immediately before the system or facility was installed.

(c) The owner or operator of a system or facility at the owner's or operator's expense shall decommission the system or facility in accordance with commission rules not later than the first anniversary of the end of the system's or facility's useful life. The system's or facility's useful life is presumed to be at an

1 end if the system or facility has not generated electricity for a
2 continuous period of one year, unless the commission has approved
3 the owner's or operator's plan to return the system or facility to
4 service.

5 (d) The commission's rules governing decommissioning a
6 system or facility must provide that the owner or operator:

7 (1) shall remove all material related to the installed
8 system or facility to a depth of at least 48 inches beneath the soil
9 surface;

10 (2) shall restore the area disturbed by the
11 installation or removal of the system or facility to substantially
12 the same physical condition of the land immediately before the
13 system or facility was installed, including by grading and
14 reseeding, except as provided by rules adopted under Subdivision
15 (3); and

16 (3) is not required to restore access roads or other
17 features not directly related to the system or facility that the
18 landowner requests in writing remain unrestored.

19 (e) In addition to the bond or other financial assurance
20 required under Subsection (a), the commission may require a
21 performance bond to ensure that decommissioning activities are
22 properly conducted. The commission may accept under this
23 subsection a surety bond, a collateral bond, an escrow account,
24 another form of financial assurance the commission determines to be
25 adequate, or a combination of those types of assurance.

26 (f) The commission by rule may adopt requirements for
27 performance bonds described by Subsection (e). The rules may

1 include methods for determining the amount of a bond, for updating
2 estimated decommissioning costs and bond amounts over time, and for
3 ensuring that money will be available for a decommissioning
4 project. In determining the amount of a performance bond, the
5 commission may consider:

6 (1) the anticipated length of a decommissioning
7 project;

8 (2) the estimated decommissioning costs, including
9 restoration costs;

10 (3) the anticipated manner in which the
11 decommissioning project will be conducted; and

12 (4) other factors the commission determines are
13 relevant.

14 (g) If the owner or operator of a system or facility does not
15 complete the decommissioning of the system or facility, the
16 commission may take any necessary action to complete the
17 decommissioning, including requiring forfeiture of a bond or other
18 financial assurance required under this section.

19 (h) A wind energy lease agreement may contain provisions for
20 decommissioning or restoration that are more restrictive than the
21 provisions of this chapter or a rule adopted under this chapter.

22 Sec. 212.006. ADMINISTRATIVE PENALTY. (a) A person who
23 violates a provision of this chapter or a rule or order issued by
24 the commission under this chapter may be assessed an administrative
25 penalty by the commission.

26 (b) The penalty may not exceed \$1,000 a day for each
27 violation. Each day a violation continues may be considered a

1 separate violation for purposes of penalty assessments.

2 (c) In determining the amount of the penalty, the commission
3 shall consider the person's history of previous violations, the
4 seriousness of the violation, any hazard to the health or safety of
5 the public, and the demonstrated good faith of the person charged.

6 (d) The commission may impose an administrative penalty
7 under this section in the manner provided by Sections
8 81.0532-81.0534.

9 Sec. 212.007. ENFORCEMENT BY COMMISSION AND ATTORNEY
10 GENERAL. (a) If it appears that a person has been or is violating
11 this chapter or a rule of the commission adopted under this chapter,
12 the commission may institute a civil suit in a district court for
13 injunctive relief to restrain the person from continuing the
14 violation.

15 (b) On application for injunctive relief and a finding that
16 a person has violated or is violating this chapter or a rule of the
17 commission under this chapter, the district court shall grant the
18 injunctive relief that the facts warrant.

19 (c) At the request of the commission, the attorney general
20 shall institute and conduct a suit under this section in the name of
21 the state.

22 SECTION 2. (a) Sections 212.004(f) and (g) and 212.005,
23 Natural Resources Code, as added by this Act, apply only to a wind
24 energy lease agreement entered into on or after February 1, 2018. A
25 wind energy lease agreement entered into before February 1, 2018,
26 is governed by the law as it existed immediately before that date,
27 and that law is continued in effect for that purpose.

1 (b) The Railroad Commission of Texas shall prioritize the
2 adoption of rules to implement Chapter 212, Natural Resources Code,
3 as added by this Act, so that the commission may begin requiring
4 bonds or other financial assurance under those rules not later than
5 January 31, 2018.

6 SECTION 3. This Act takes effect September 1, 2017.