

81R12858 SMH-F

By: Geren

H.B. No. 3664

A BILL TO BE ENTITLED

AN ACT

relating to a requirement of a permit or permit amendment from the Texas Commission on Environmental Quality for the construction or modification of an electric generating facility in the coastal zone of this state that uses wind power.

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

SECTION 1. The legislature finds that:

(1) the development of wind power in this state has the potential important to this state;

(2) wind-powered electric generating facilities, or wind farms, are expensive to build, represent multimillion-dollar investments, and large footprints;

(3) there is not currently in this state a regulatory or permitting structure that protects ecologically sensitive coastal zone of this state from wind industrial complexes; and

(4) there is a need for this state to implement regulation and permitting of wind industrial complexes to protect the coastal resources of this state and preserve property rights in this state.

SECTION 2. Chapter 33, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. WIND-POWERED ELECTRIC GENERATING FACILITIES

Sec. 33.701. DEFINITION. In this section, "commission" means the Texas Commission on Environmental Quality.

Sec. 33.702. APPLICABILITY. This section applies only to an electric generating facility located or proposed to be located in the coastal zone that uses wind power.

Sec. 33.703. PERMIT OR PERMIT AMENDMENT REQUIRED. Before work is begun on the construction of a new facility or the modification of an existing facility, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

Sec. 33.704. APPLICATION. (a) To obtain a permit or permit amendment described by Section 33.703, a person must submit an application to the commission.

(b) An application must be on a form adopted by rule by the commission. The form must require the applicant to provide the information necessary to enable the commission to determine whether to issue the permit or permit amendment.

Sec. 33.705. PROCEDURES FOR ACTING ON APPLICATIONS. (a) The commission shall adopt rules providing for notice, the submission of public comments, and an opportunity for a public hearing on an application.

(b) An owner of land adjacent to a facility or proposed facility or a nonprofit organization formed with the goal of protection or enjoyment of natural resources, including a fishing,

conservation, bird-watching, or similar organization, is presumed to have a justiciable interest sufficient to confer standing to participate in a public hearing on an application.

Sec. 33.706. ISSUANCE OF PERMIT OR PERMIT AMENDMENT. (a)

The commission may issue a permit or permit amendment for a facility or proposed facility only if the commission determines that the facility or proposed facility will not present an unacceptable risk to the resources of the coastal zone or unreasonably interfere with the rights of property owners in the vicinity of the facility or proposed facility.

(b) In making a determination under this section, the commission shall consider whether the location of the facility or proposed facility is consistent with the goals and policies of the management program.

(c) The commission shall adopt rules for making determinations under this section. Rules adopted under this section must provide for the consideration and protection of:

- (1) officially designated wildlife areas;
- (2) officially designated wildlife preserves;
- (3) threatened or endangered species or designated critical habitats;
- (4) districts, sites, buildings, structures, or objects significant in American or Texas history, architecture, archaeology, engineering, or culture that are listed, or are eligible for listing, in the National Register of Historic Places;

(5) Indian religious sites;

(6) floodplain, hurricane, or tornado zones;

(7) wetlands, native vegetation, and surface water and groundwater flow;

(8) adjacent property owners; and

(9) migratory wildlife and migration corridors.

Sec. 33.707. CONSULTATION WITH PARKS AND WILDLIFE DEPARTMENT.

The commission shall consult with the Parks and Wildlife Department in adopting rules under this subchapter.

SECTION 3. Section 33.2053(f), Natural Resources Code, is amended to read as follows:

(f) The Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) a wastewater discharge permit;

(2) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;

(3) a permit for solid or hazardous waste treatment, storage, or disposal;

(4) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;

(5) levee improvement or flood control projects;

(6) a certification of a federal permit for the

discharge of dredge or fill material;

(7) a declaration of an emergency and request for an emergency release of water;

(8) a new permit for an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(9) an amendment to a water permit for an increase in an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; ~~[or]~~

(10) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; or

(11) a permit or permit amendment for an electric generating facility that uses wind power.

SECTION 4. This Act applies to electric generating facilities that use wind power for which construction or modification is now or has been started in the past three years. A

H.B. No. 3664  
facility for which construction or modification began before the  
effective date of this Act is governed by this act on its date of  
inception, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect June 1, 2009, if it receives  
a vote of two-thirds of all the members elected to each house, as  
provided by Section 39, Article III, Texas Constitution. If this  
Act does not receive the vote necessary for effect on that date,  
this Act takes effect September 1, 2009.