

BILL ANALYSIS

H.B. 1717
By: Canales
Energy Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that a lack of regulation with respect to the use and operation of wind energy conversion systems and facilities has led to expensive and counterproductive litigation and that issues relating to the decommissioning of such systems and facilities need to be addressed. H.B. 1717 seeks to provide for certain regulation of wind energy conversion systems and facilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 of this bill.

ANALYSIS

H.B. 1717 amends the Natural Resources Code to establish provisions relating to wind energy conversion systems and facilities applicable only to a wind energy conversion system or wind energy facility that is the subject of a wind energy lease agreement and the primary purpose of which is to supply electric energy to an off-site customer. The bill defines, among other terms, "wind energy lease agreement" as an agreement that provides for the operation of a wind energy conversion system or wind energy facility at least partially on the property of a landowner who is not the owner or operator of the system or facility and that requires the owner or operator of the system or facility to pay the landowner for the use of the property to generate electric energy from the conversion of wind energy based on the amount of electric energy produced from the conversion of wind energy. The bill authorizes the Railroad Commission of Texas to adopt rules to accomplish the bill's purposes.

H.B. 1717 requires an owner or operator of a wind energy conversion system or wind energy facility, on request from the landowner who entered into the wind energy lease agreement, to provide the landowner access to the owner's or operator's records relating to the system or facility for the purpose of confirming the accuracy of payments made to the landowner. The bill prohibits a landowner from requesting access to the records more frequently than once each year. The bill requires an owner or operator that receives a request to provide the landowner access to all records, or copies of the records, necessary for the landowner to confirm the accuracy of payments made to the landowner, requires the owner's or operator's compliance with the request within a reasonable time, and subjects the records to any confidentiality requirements in the wind energy lease agreement between the landowner and the owner or operator. The bill sets out provisions relating to the manner of the landowner's access to the records. The bill requires an owner or operator of a wind energy conversion system or wind energy facility, not later than the

10th day before the date the owner or operator enters into a wind energy lease agreement with a landowner, to send to the landowner a written statement that the landowner will be entitled to access the records of the owner or operator for the purpose of confirming the accuracy of payments made to the landowner and requires the statement to be made in a document that is separate from the wind energy lease agreement.

H.B. 1717 requires the railroad commission by rule to 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 railroad commission a bond or other form of financial assurance to ensure decommissioning of the system or facility and sets out provisions relating to the form and amount of the bond or other financial assurance. The bill requires the bond or financial assurance to be conditioned on the owner or operator of the system or facility complying with railroad commission rules regarding decommissioning. The bill requires the bond or other financial assurance to 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 railroad commission or its agents in case the railroad commission undertakes decommissioning, 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.

H.B. 1717 requires the owner or operator of a wind energy conversion system or wind energy facility to decommission the system or facility at the owner's or operator's expense in accordance with railroad commission rules not later than the first anniversary of the end of the system's or facility's useful life. The bill sets out provisions relating to the presumed end of a system's or facility's useful life and requirements for the railroad commission's rules governing the decommissioning of a system or facility. The bill authorizes the railroad commission to require a performance bond that is in addition to the bond or other financial assurance required by the bill to ensure that decommissioning activities are properly conducted and sets out provisions relating to such performance bonds, including an authorization for the commission to adopt by rule requirements for such performance bonds. The bill authorizes the railroad commission, if the owner or operator of a system or facility does not complete the decommissioning of the system or facility, to take any necessary action to complete the decommissioning, including requiring forfeiture of a bond or other financial assurance required by the bill. The bill authorizes a wind energy lease agreement to contain provisions for decommissioning or restoration that are more restrictive than the bill's provisions or a rule adopted under such provisions.

H.B. 1717 authorizes the railroad commission to assess an administrative penalty against a person who violates a provision of the bill or a rule or order issued by the railroad commission under the bill's provisions and caps the penalty at \$1,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments. The bill requires the railroad commission to consider, in determining the amount of the penalty, the person's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The bill provides for the manner in which the railroad commission may impose such an administrative penalty.

H.B. 1717 authorizes the railroad commission, if it appears that a person has been or is violating the bill's provisions or a railroad commission rule adopted under such provisions, to institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation and requires the district court, on application for such relief and a finding that a person has violated or is violating such provisions or such a rule, to grant the injunctive relief that the facts warrant. The bill requires the attorney general, at the request of the railroad commission, to institute and conduct a suit in the name of the state.

H.B. 1717 makes its provisions relating to the written statement regarding a landowner's entitlement to access the records of the owner or operator of a wind energy conversion system or

wind energy facility and provisions relating to financial assurance and decommissioning applicable only to a wind energy lease agreement entered into on or after February 1, 2018. The bill requires the railroad commission to prioritize the adoption of rules to implement the bill's provisions so that the railroad commission may begin requiring bonds or other financial assurance under those rules not later than January 31, 2018.

EFFECTIVE DATE

September 1, 2017.