

SUBJECT: Early notice of a wind-powered facility near radar or military installations

COMMITTEE: Defense and Veterans' Affairs — committee substitute recommended

VOTE: 8 ayes — Pickett, Sheffield, Berman, Farias, Landtroop, Perry, Scott,
V. Taylor

0 nays

1 absent — Flynn

SENATE VOTE: On final passage, April 4 — 30-1 (Patrick)

WITNESSES: *(On House companion bill, HB 1509:)*

For — Sam Fugate, City of Kingsville; George Holt, 136th AW, NAS Ft. Worth; Captain Mark McLaughlin, U.S. Navy at NAS Kingsville; Dick Messbarger, Texas Defense, Aviation, Aerospace Alliance; *(Registered, but did not testify:* Duane Galligher, Port San Antonio; Rudy Garza, City of Corpus Christi; Larry McGinnis, The Boeing Company;

Against — Patrick Woodson, E. On Climate and Renewables;

On — Paul Sadler, The Wind Coalition; *(Registered, but did not testify:* Glenn Jones, Paul Kite, Naval Air Station Kingsville Texas; Robert Martinez, Texas Commission on Environmental Quality; Patrick Paddock, Naval Air Station Kingsville Radar and Navaid's Expert; Robert Wood, Comptroller of Public Accounts; Donald Zimmerman, Naval Air Station Corpus Christi)

DIGEST: CSSB 497 would amend the Utilities Code relating to the construction or expansion of a wind-powered electric generation facility located within 25 miles of a federally owned or operated radar installation or military installation.

The bill would allow federally owned or operated radar or military installations to request that the Public Utility Commission (PUC) notify the installation of a planned construction or expansion project if any part of the construction would occur within 25 miles of the boundaries of the

installation. The PUC would be required to create, maintain, and publish on the agency's website a list of federally owned or operated entities that requested this notification.

The bill would require wind-powered electric generating facilities with structures at least 200 feet above ground level and within 25 miles of a federally owned or operated radar or military installation to provide notice of construction or expansion projects to the PUC within 120 days of construction. Within 25 days of receiving notice, the PUC would be required provide a copy of the notice to certain entities as provided by the bill.

Construction or expansion of a wind energy project could not begin until a copy of a Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration (FAA) was filed with the PUC.

The PUC would be allowed to charge a fee to a person who provided a notice of construction or expansion.

The PUC could impose an administrative penalty for noncompliance. The PUC could adopt rules to implement the provisions of the bill and would have to adopt procedures no later than January 1, 2012.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply only to construction or expansion of a wind-powered electric generation facility that began on or after the effective date.

**SUPPORTERS
SAY:**

Radar is susceptible to wind turbine interference because the radar equipment cannot differentiate between a large wind turbine with turning blades and a moving aircraft. The Federal Aviation Administration (FAA) gives only 30 days' notice of construction or expansion projects, which is not enough time to determine compatible siting of the wind turbines in relation to a military radar installation. Also, the FAA regulation is not enforceable and would affect only the financing of the project. CSSB 497 would provide for early notification by requiring wind-powered electric generating facilities to provide notice of construction or expansion projects within 25 miles of a federal aviation installation or military installation to the PUC within 120 days of construction. The PUC then would notify the installations.

OPPONENTS
SAY:

CSSB 497 would add a layer of state bureaucracy by duplicating a notice provision that already is required by the Federal Aviation Administration (FAA). The FAA regulates air space and requires notification of the construction of any structure with a height of 200 feet or more. When notified of such a structure, the FAA then notifies certain agencies, including all military branches. If a suspected hazard is determined by the agencies or military branches, the process is brought to a halt, and the facility has to resolve the hazard with the FAA and the concerned agency. For wind energy generation, this would be on a turbine by turbine basis. It would be unnecessary to require the Public Utility Commission (PUC) to set up a list of those military installations that would like to have notification of a wind energy project and then require the project to notify the PUC. The existing FAA regulations are sufficient to ensure safe air space and prevent interference of radar equipment.

While there are concerns that the notification that the FAA gives does not provide enough time to determine compatible siting of wind turbines, if a notified agency raised a concern about a suspected hazard, construction would stop until the issue was resolved. Further, the planning for a wind energy project takes well over a year, and the financing is dependent on the “no hazard” determination from the FAA. As a practical matter, the wind developer must get the FAA determination well before 30 days of completion of the project.

NOTES:

The companion bill, HB 1509 by Pickett, was considered in a public hearing by the House Defense and Veterans’ Affairs Committee on March 24.

The House committee substitute differs from the Senate-passed version by:

- including a provision authorizing the Public Utility Commission of Texas (PUC) to establish an expedited process to allow a person who provided written notice to the PUC of certain construction or expansion of a wind-powered electric generation facility to alter the notice to reflect a change in the information required to be included in the notice; and
- requiring a person who began emergency construction or expansion of a wind-powered electric generation facility to file the copy of a Determination of No Hazard to Air Navigation in a manner determined by the PUC. The Senate-passed version would have

required the filing of a determination not later than the fifth day after the date the person began the construction or expansion.