

LEGAL UPDATES

PUBLISHED: JUNE 7, 2017

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Texas Passes Bill Restricting Tax Incentives for Wind Farms Near Military Aviation Facilities

On May 29, 2017, the Texas Legislature passed a bill that may significantly impact the siting of wind energy generation facilities in Texas by prohibiting certain tax incentives to owners of wind farms near military aviation facilities. Specifically, if a "wind-powered energy device," which would include wind turbines, is placed within 25 nautical miles (28.7695 miles) of a military aviation facility located in Texas, the owner would not receive property tax incentives under a tax abatement agreement or limitation on appraised value agreement (LAVA) entered into on or after September 1, 2017.

SB 277, authored by Senator Donna Campbell, takes into account existing wind farms in Texas. If a wind-powered energy device is installed or constructed within 25 nautical miles of a military aviation facility as part of an expansion or repowering of an existing project, the prohibition on receiving tax exemptions under a tax abatement agreement executed after September 1, 2017, does not apply. This exception, however, does not apply to LAVAs executed after September 1, 2017.

SB 277 does include a carve-out for tax abatement agreements and applications for LAVAs for which approval is pending on September 1, 2017. The bill stipulates that if a LAVA has not been executed as of September 1, 2017, but its application is pending approval, an owner will still be able to reap the tax benefits regardless of the project's location near a military aviation facility. However, the bill is vague on whether a tax abatement agreement application or the agreement itself must be awaiting approval on September 1, 2017, to remain eligible for property tax exemptions.

Another question is how amendments to existing tax abatement agreements or LAVAs would affect an owner's continued eligibility for property tax

exemptions and limitations under SB 277. Taking this issue further, if a tax abatement agreement or LAVA is executed prior to September 1, 2017, but is *amended and restated* after that date, it is possible that such action would trigger the application of SB 277 if wind-powered energy devices are within 25 nautical miles of a military aviation facility.

It is also important to note that the bill does not contain any provision that would allow the 25-nautical-mile restriction to be circumvented if the U.S. Department of Defense and the owner come to an agreement or understanding. Instead, SB 277 appears to impose a blanket prohibition and leaves no room for authorization from the Department of Defense for wind-powered energy devices within 25 nautical miles of a military aviation facility.

What This Means To You

Governor Greg Abbott has until June 18, 2017, to act on SB 277 by signing it, vetoing it or allowing it to become law without his signature. If the bill becomes law, it will take effect September 1, 2017, and the siting of wind energy facilities that intend to obtain tax incentive agreements will become more complicated and require more due diligence. If a military base, station, fort or camp is located near the planned site of a wind farm, inquiry should be made into whether such facility is conducting aviation training and/or operations and its exact distance from the wind facility.

Similar legislation has been introduced at the federal level. HR 649, S 201 and HR 403 all impose restrictions on wind farms located within a certain distance of military facilities. No action has been taken on these three bills beyond referral to committee.

Contact Us

For more information on how the Texas or federal legislation may impact your business, please contact Cacki Jewart, Patricia A. Sherman Bruce or Madison K. Benedict of Husch Blackwell's Energy & Natural Resources group.