

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 904

6 By: Pugh

7 COMMITTEE SUBSTITUTE

8 An Act relating to the Corporation Commission;
9 amending Section 2, Chapter 92, O.S.L. 2015, as last
10 amended by Section 1, Chapter 179, O.S.L. 2018 (17
11 O.S. Supp. 2018, Section 160.20), which relates to
12 setback requirements for wind energy facilities;
13 modifying jurisdiction for certain disputes;
14 including certain individual structures in wind
15 energy facility setback requirements; prohibiting
16 construction and operation of certain individual
17 structures without certain documentation; modifying
18 requirements of certain required documentation;
19 modifying agency requiring documentation; modifying
20 applicability of act to construction without certain
21 documentation; authorizing Aeronautics Commission to
22 promulgate rules; authorizing Aeronautics Commission
23 to institute certain legal action; authorizing
24 penalty for violation of act; updating statutory
references; amending Section 3, Chapter 92, O.S.L.
2015, as last amended by Section 2, Chapter 179,
O.S.L. 2018 (17 O.S. Supp. 2018, Section 160.21),
which relates to notice of intent to build a
facility; modifying type of information required in
certain notification; requiring certain notification
to the Aeronautics Commission; exempting certain
filings from requirement; requiring Aeronautics
Commission to provide certain notification to the
Strategic Military Planning Commission; requiring
Strategic Military Planning Commission to notify
certain military base commanders and submit certain
letter; authorizing Aeronautics Commission to impose
certain penalty; updating statutory language; and
declaring an emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
3 2015, as last amended by Section 1, Chapter 179, O.S.L. 2018 (17
4 O.S. Supp. 2018, Section 160.20), is amended to read as follows:

5 Section 160.20. A. After August 21, 2015, no wind energy
6 facility may be constructed if the base of any tower is located at a
7 distance of less than:

8 1. One and one-half (1 1/2) nautical miles from the center line
9 of any runway located on:

10 a. a public-use airport as defined in Section 120.2 of
11 Title 3 of the Oklahoma Statutes, or

12 b. an airport owned by a municipality;

13 2. One and one-half (1 1/2) nautical miles from any public
14 school which is a part of a public school district; or

15 3. One and one-half (1 1/2) nautical miles from a hospital.

16 B. Attestation of compliance with the setback requirements in
17 subsection A of this section shall be included in any reports
18 required by the Corporation Commission. ~~Disputes arising under this~~
19 ~~section shall fall under the exclusive jurisdiction of the district~~
20 ~~courts.~~

21 C. After ~~the effective date of this act~~ May 2, 2018,
22 construction or operation of a proposed individual wind turbine or
23 any other individual structure requiring a Federal Aviation
24 Administration (FAA) Form 7460-1, (Notice of Proposed Construction

1 or Alteration) that is part of a wind energy facility ~~or proposed~~
2 ~~wind energy facility expansion~~ shall not encroach upon or otherwise
3 have a significant adverse impact on the mission, training or
4 operations of any military installation or branch of military as
5 determined by the Military Aviation and Installation Assurance
6 Siting Clearinghouse (Clearinghouse) and the ~~Federal Aviation~~
7 ~~Administration~~ FAA. Areas of impact include but are not limited to
8 military training routes, drop zones, approaches to runways and
9 bombing ranges. No individual wind turbine or any other individual
10 structure that requires a FAA Form 7460-1 that is part of a wind
11 energy facility may be constructed or expanded unless ~~an active~~
12 there is a valid Determination of No Hazard from the ~~Federal~~
13 ~~Aviation Administration or an approved mitigation plan is obtained~~
14 FAA and objections of the Department of Defense have been resolved
15 as evidenced by documentation from the ~~Military Aviation and~~
16 ~~Installation Assurance Siting Clearinghouse~~ for the individual wind
17 turbine or other individual structure.

18 1. The Determination of No Hazard ~~or mitigation plan~~ and any
19 necessary documentation from the Clearinghouse shall be submitted to
20 the ~~Corporation~~ Oklahoma Aeronautics Commission.

21 2. The requirements established by this subsection shall not
22 prohibit a ~~wind energy facility~~ the construction ~~or~~ of an individual
23 wind turbine or any other individual structure requiring a FAA Form
24 7460-1 that is part of a wind energy facility ~~expansion~~ if these

1 ~~facilities or facility expansions obtain~~ that individual wind
2 turbine or other individual structure has received a written
3 Determination of No Hazard ~~or mitigation plan~~ and objections of the
4 Department of Defense have been resolved as evidenced by
5 documentation from the Clearinghouse on or before ~~the effective date~~
6 of this act May 2, 2018.

7 3. The Corporation Commission ~~shall~~ is authorized to promulgate
8 rules and regulations for the implementation of the provisions of
9 this section subsections A and B of this section. The Oklahoma
10 Aeronautics Commission is authorized to promulgate rules and
11 regulations for the implementation of the provisions of subsection C
12 of this section.

13 D. If an owner of a wind energy facility fails to submit a valid
14 Determination of No Hazard and resolve objections of the Department
15 of Defense prior to the start of construction, the owner shall be
16 subject to an administrative penalty not to exceed One Thousand Five
17 Hundred Dollars (\$1,500.00) per day, per violation. In addition,
18 the Aeronautics Commission may institute in any court of general
19 jurisdiction, an action to prevent, restrain, correct or abate any
20 violation of subsection C of this section, or any rules adopted or
21 orders issued by the Aeronautics Commission pursuant to subsection C
22 of this section.

23
24

1 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
2 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
3 O.S. Supp. 2018, Section 160.21), is amended to read as follows:
4 Section 160.21. A. The owner of a wind energy facility shall
5 submit notification of intent to build a facility to the Corporation
6 Commission within six (6) months of the initial filing ~~pertaining to~~
7 ~~commencement of construction~~ with the Federal Aviation
8 Administration (FAA) of an FAA Form 7460-1 ~~(Notice of Proposed~~
9 ~~Construction or Alteration)~~ or any subsequent form required by the
10 ~~FAA for evaluating the impact a proposed wind energy facility will~~
11 ~~have on air commerce safety and the preservation of navigable~~
12 ~~airspace~~. The Corporation Commission shall prescribe the form and
13 submittal requirements of the notification; provided, the
14 information required on the notification form shall include at least
15 ~~the same information required on the FAA form~~ a map of the project
16 boundary. The owner of a wind energy facility shall submit copies
17 of all initial FAA Form 7460-1 for all individual wind turbines or
18 any other individual structure that requires a FAA Form 7460-1 that
19 is part of a wind energy facility within thirty (30) days of the
20 initial filing with FAA to the Oklahoma Aeronautics Commission. The
21 owner of the wind energy facility shall send copies of the
22 notification with the board of county commissioners of every county
23 in which all or a portion of the wind energy facility is to be
24 located within twenty-four (24) hours of filing with the Corporation

1 Commission. If all or a portion of the wind energy facility is to
2 be located within the incorporated area of a municipality, copies of
3 the notification shall also be sent to the governing body of the
4 municipality within twenty-four (24) hours of filing with the
5 Corporation Commission. If the owner of a wind energy facility is
6 required to file subsequent FAA Form 7460-1 with the FAA due to
7 changing locations or heights of individual structures from the
8 locations or heights originally proposed in the initial FAA Form
9 7460-1s submitted to the Aeronautics Commission, the owner shall
10 within twenty-four (24) hours of filing with the FAA, submit such
11 subsequent FAA Form 7460-1s to the Aeronautics Commission. A wind
12 energy facility owner shall not be required to start the
13 notification processes over as required by subsections C, D, E and F
14 of this section, and for the above notifications to counties and
15 municipalities unless the subsequent FAA Form 7460-1s expand the
16 project beyond its original boundaries submitted to the Corporation
17 Commission.

18 B. Within ~~thirty (30)~~ ten (10) days of ~~submitting the~~
19 ~~notification to the Corporation Commission~~ receiving a FAA Form
20 7460-1, as provided for in subsection A of this section, the ~~owner~~
21 ~~of the wind energy facility~~ Aeronautics Commission shall ~~cause a~~
22 ~~copy of the notification to be submitted to~~ notify the Oklahoma
23 Strategic Military Planning Commission. The Oklahoma Strategic
24 Military Planning Commission shall notify ~~local~~ affected base

1 commanders upon receipt of the notification. The Oklahoma Strategic
2 Military Planning Commission shall submit a letter to the Military
3 Aviation and Installation Assurance Siting Clearinghouse outlining
4 potential areas of impact, as provided in Section 160.20 of this
5 title, within thirty (30) days of receipt of the notification. The
6 letter from the Oklahoma Strategic Military Planning Commission
7 shall be submitted to the Aeronautics Commission and the Corporation
8 Commission.

9 C. Within six (6) months of submitting the notification with
10 the Corporation Commission as provided for in subsection A of this
11 section, the owner of the wind energy facility shall cause a copy of
12 the notification to be published in a newspaper of general
13 circulation in the county or counties in which all or a portion of
14 the wind energy facility is to be located. Proof of publication
15 shall be submitted to the Commission.

16 D. Within six (6) months of submitting the notification with
17 the Corporation Commission as provided in subsection A of this
18 section, the owner of the wind energy facility shall cause a copy of
19 the notification to be sent, by certified mail, to:

20 1. Any operator, as reflected in the records of the Corporation
21 Commission, who is conducting oil and gas operations upon all or any
22 part of the surface estate as to which the wind energy developer
23 intends the construction of the wind energy facility;

24

1 2. Any operator, as reflected in the records of the
2 Corporation Commission, of an unspaced unit, or a unit created by
3 order of the Corporation Commission, who is conducting oil and gas
4 operations for the unit where all or any part of the unit area is
5 within the geographical boundaries of the surface estate as to which
6 the wind energy developer intends the construction of the wind
7 energy facility; and

8 3. As to tracts of land not described in paragraphs 1 and 2 of
9 this subsection on which the wind energy developer intends to
10 construct a wind energy facility, all lessees of oil and gas leases
11 covering the mineral estate underlying any part of the tracts of
12 land that are filed of record with county clerk in the county where
13 the tracts are located and whose primary term has not expired.

14 If the wind energy developer makes a search with reasonable
15 diligence, and the whereabouts of a party entitled to any notice
16 described in this subsection cannot be ascertained or such notice
17 cannot be delivered, then an affidavit attesting to such diligent
18 search for the parties shall be placed in the records of the county
19 clerk where the surface estate is actually located.

20 E. Within sixty (60) days of publishing the notification in a
21 newspaper as provided for in subsection C of this section, the owner
22 of the wind energy facility shall hold a public meeting. Notice of
23 the public meeting shall be published in a newspaper of general
24 circulation and submitted to the board of county commissioners in

1 the county or counties in which all or a portion of the wind energy
2 facility is to be located. The notice shall contain the place, date
3 and time of the public meeting. Proof of publication of the notice
4 shall be submitted to the Corporation Commission. The public
5 meeting shall be held in one of the counties in which all or a
6 portion of the wind energy facility is to be located.

7 F. With regard to the surface estate upon which the owner of a
8 wind energy facility intends to construct a wind energy facility, at
9 least sixty (60) days before entering upon the surface estate for
10 the purposes of commencement of construction of the wind energy
11 facility, the owner shall provide written notice, by certified mail,
12 of its intent to construct the wind energy facility to:

13 1. Any operator, as reflected in the records of the Corporation
14 Commission, who is conducting oil and gas operations upon all or any
15 part of the surface estate as to which the wind energy developer
16 intends the construction of the wind energy facility;

17 2. Any operator, as reflected in the records of the Corporation
18 Commission, of an unspaced unit, or a unit created by order of the
19 Corporation Commission, who is conducting oil and gas operations for
20 the unit where all or any part of the unit area is within the
21 geographical boundaries of the surface estate as to which the wind
22 energy developer intends the construction of the wind energy
23 facility; and

24

1 3. As to tracts of land not described in paragraphs 1 and 2 of
2 this subsection on which the wind energy developer intends to
3 construct a wind energy facility, all lessees of oil and gas leases
4 covering the mineral estate underlying any part of the tracts of
5 land that are filed of record with county clerk in the county where
6 the tracts are located and whose primary term has not expired.

7 The notice shall contain a map or plat of the proposed location,
8 with sufficient specificity of all of the various elements of the
9 wind energy facility to be located on the governmental section which
10 includes all or any part of the tracts of land described in
11 paragraphs 1, 2 and 3 of this subsection and the approximate date
12 that the owner of the wind energy facility proposes to commence
13 construction. If the wind energy developer makes a search with
14 reasonable diligence, and the whereabouts of a party entitled to any
15 notice described in this subsection cannot be ascertained or such
16 notice cannot be delivered, then an affidavit attesting to such
17 diligent search for the parties shall be placed in the records of
18 the county clerk where the surface estate is actually located.

19 Within thirty (30) days of receiving ~~said~~ the notice, any operator,
20 as described in paragraphs 1, 2 and 3 of this subsection shall
21 reciprocate, in writing by certified mail, certain site, operational
22 and infrastructure information, with sufficient specificity, to be
23 shared with the owner of the wind energy facility to assist both
24 with the safe construction and operation pertaining to the surface

1 estate. This information should include ALTA surveys of existing
2 subsurface and surface improvements on the property, if any, as well
3 as other technical specifications for existing improvements such as
4 pipe size, material, capacity and depth.

5 G. The owner of a wind energy facility shall not commence
6 construction on the facility until the notification and public
7 meeting requirements of this section have been met. If an owner of
8 a wind energy facility fails to submit the information as required
9 in this section, the owner shall be subject to an administrative
10 penalty from the Aeronautics Commission or the Corporation
11 Commission not to exceed One Thousand Five Hundred Dollars
12 (\$1,500.00) per day.

13 SECTION 3. It being immediately necessary for the preservation
14 of the public peace, health or safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17
18 57-1-1891 CB 9/30/2019 9:33:18 AM

19
20
21
22
23
24