

1 ENGROSSED HOUSE
2 BILL NO. 2118

By: Ortega, McBride, Miller,
Moore and Caldwell (Chad)
of the House

3
4 and

Stanislowski of the Senate
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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 individual wind turbines and certain other
15 individual structures in wind energy facility setback
16 requirements; modifying requirements of certain
17 required documentation; allowing certain form to
18 serve as evidence of resolution; modifying agencies
19 requiring certain documentation; modifying
20 applicability of act to certain construction;
21 authorizing Corporation Commission and the Oklahoma
22 Aeronautics Commission to promulgate rules;
23 authorizing penalty for violation of act; amending
24 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; requiring Aeronautics Commission to
prescribe requirements for submission of certain
forms; requiring submission of certain subsequent
forms within certain timeframe to the Aeronautics
Commission and the Corporation Commission; exempting
certain filings from requirement; requiring
Aeronautics Commission to provide certain
notification to the Oklahoma Strategic Military
Planning Commission; requiring Strategic Military
Planning Commission to notify certain military base
commanders and submit certain letter to the

1 Aeronautics Commission; modifying penalty; and
2 declaring an emergency.

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

5 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
6 2015, as last amended by Section 1, Chapter 179, O.S.L. 2018 (17
7 O.S. Supp. 2018, Section 160.20), is amended to read as follows:

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

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

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

15 b. an airport owned by a municipality;

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

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

19 B. Attestation of compliance with the setback requirements in
20 this section shall be included in any reports required by the
21 Corporation Commission. ~~Disputes~~ Stakeholder and landowner disputes
22 arising under subsection A of this section shall fall under the
23 exclusive jurisdiction of the district courts. The Corporation
24 Commission may seek enforcement of the submission and attestation

1 requirements of this subsection and subsection C of this section
2 through its administrative court system.

3 C. After the effective date of this act, construction or
4 operation of a proposed individual wind turbine or any other
5 individual structure requiring a Federal Aviation Administration
6 (FAA) Form 7460-1 that is part of a wind energy facility ~~or proposed~~
7 ~~wind energy facility expansion~~ shall not encroach upon or otherwise
8 have a significant adverse impact on the mission, training or
9 operations of any military installation or branch of military as
10 determined by the Military Aviation and Installation Assurance
11 Siting Clearinghouse (Clearinghouse) and the ~~Federal Aviation~~
12 ~~Administration~~ FAA. Areas of impact include but are not limited to
13 military training routes, drop zones, approaches to runways and
14 bombing ranges. No individual wind turbine or any other individual
15 structure that requires a FAA 7460-1 form that is part of a wind
16 energy facility may be constructed or expanded unless there is an
17 active Determination of No Hazard from the ~~Federal Aviation~~
18 ~~Administration or an approved mitigation plan is obtained from the~~
19 ~~Military Aviation and Installation Assurance Siting~~ FAA and
20 objections of the United States Department of Defense have been
21 resolved as evidenced by documentation from the Clearinghouse for
22 the individual wind turbine or other individual structure. The
23 Mission Compatibility Certification Form or successor form may serve
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1 as such evidence of objections being resolved with the Department of
2 Defense or successor agency.

3 1. The Determination of No Hazard ~~or mitigation plan~~ and
4 documentation of the resolution of objections of the Department of
5 Defense shall be submitted to the Corporation Commission and the
6 Oklahoma Aeronautics Commission.

7 2. The requirements established by this subsection shall not
8 prohibit ~~a wind energy facility~~ the construction ~~or~~ of an individual
9 wind turbine or any other individual structure requiring a FAA 7460-
10 1 form that is part of a wind energy facility expansion if ~~those~~
11 ~~facilities or facility expansions obtain~~ that individual wind
12 turbine or other individual structure has received a written
13 Determination of No Hazard or mitigation plan on or before the
14 effective date of this act.

15 3. The Corporation Commission ~~shall~~ is authorized to promulgate
16 rules and regulations for the implementation of the provisions of
17 this section and Section 160.21 of this title.

18 D. If an owner of a wind energy facility fails to submit an
19 active Determination of No Hazard and documentation that objections
20 of the Department of Defense have been resolved by the Clearinghouse
21 for the individual wind turbine or other individual structure prior
22 to the start of construction, the owner shall be subject to an
23 administrative penalty not to exceed One Thousand Five Hundred
24 Dollars (\$1,500.00) per day, per violation from the Corporation

1 Commission as provided by law. In addition, stakeholders,
2 including, but not limited to, the Corporation Commission or the
3 Aeronautics Commission may institute an action in any court of
4 general jurisdiction to prevent, restrain, correct or abate any
5 violation of subsection C of this section other than Corporation
6 Commission actions related to submissions or attestations.

7 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
8 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
9 O.S. Supp. 2018, Section 160.21), is amended to read as follows:

10 Section 160.21 A. The owner of a wind energy facility shall
11 submit notification of intent to build a facility to the Corporation
12 Commission within six (6) months of the initial filing ~~pertaining to~~
13 ~~commencement of construction~~ with the Federal Aviation
14 Administration (FAA) of ~~an a~~ a FAA Form 7460-1 ~~(Notice of Proposed~~
15 ~~Construction or Alteration)~~ or any subsequent form required by the
16 ~~FAA for evaluating the impact a proposed wind energy facility will~~
17 ~~have on air commerce safety and the preservation of navigable~~
18 ~~airspace~~ form. The Corporation Commission shall prescribe the form
19 and submittal requirements of the notification; provided, the
20 information required on the notification form shall include at least
21 the same information required on the FAA form and a map of the
22 project boundary. The owner of a wind energy facility shall submit
23 to the Oklahoma Aeronautics Commission copies of all initial FAA
24 7460-1 forms for all individual wind turbines or any other

1 individual structure that requires a FAA Form 7460-1 that is part of
2 a wind energy facility within thirty (30) days of the initial filing
3 with the FAA. The Aeronautics Commission shall prescribe the
4 submittal requirements for the 7460-1 form. The owner of the wind
5 energy facility shall send copies of the notification ~~with~~ to the
6 board of county commissioners of every county in which all or a
7 portion of the wind energy facility is to be located within twenty-
8 four (24) hours of filing with the Corporation Commission. If all
9 or a portion of the wind energy facility is to be located within the
10 incorporated area of a municipality, copies of the notification
11 shall also be sent to the governing body of the municipality within
12 twenty-four (24) hours of filing with the Corporation Commission.
13 If the owner of a wind energy facility is required to file
14 subsequent 7460-1 forms with the FAA due to changing locations or
15 heights of individual structures from the locations or heights
16 originally proposed in the initial 7460-1 forms submitted to the
17 Aeronautics Commission, the owner shall, within ten (10) days of
18 filing with the FAA, submit such subsequent 7460-1 forms to the
19 Corporation Commission and Aeronautics Commission. A wind energy
20 facility owner shall not be required to start the notification
21 processes over unless the subsequent 7460-1 forms expand the project
22 beyond its original boundaries submitted to the Corporation
23 Commission.

1 B. Within ~~thirty (30)~~ ten (10) days of ~~submitting the~~
2 ~~notification to the Corporation Commission~~ receiving a FAA 7460-1
3 form, as provided for in subsection A of this section, the ~~owner of~~
4 ~~the wind energy facility~~ Aeronautics Commission shall ~~cause a copy~~
5 ~~of the notification to be submitted to~~ notify the Oklahoma Strategic
6 Military Planning Commission. The Oklahoma Strategic Military
7 Planning Commission shall notify local base commanders upon receipt
8 of ~~the~~ this notification. The Oklahoma Strategic Military Planning
9 Commission shall submit a letter to the Military Aviation and
10 Installation Assurance Siting Clearinghouse outlining potential
11 areas of impact, as provided in Section 160.20 of this title, within
12 thirty (30) days of receipt of the notification. The letter from
13 the Oklahoma Strategic Military Planning Commission shall be
14 submitted to the Corporation Commission, the Aeronautics Commission
15 and the wind energy facility owner.

16 C. Within six (6) months of submitting the notification with
17 the Corporation Commission as provided for in subsection A of this
18 section, the owner of the wind energy facility shall cause a copy of
19 the notification to be published in a newspaper of general
20 circulation in the county or counties in which all or a portion of
21 the wind energy facility is to be located. Proof of publication
22 shall be submitted to the Corporation Commission.

23 D. Within six (6) months of submitting the notification with
24 the Corporation Commission as provided in subsection A of this

1 section, the owner of the wind energy facility shall cause a copy of
2 the notification to be sent, by certified mail, to:

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

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

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

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

3 E. Within sixty (60) days of publishing the notification in a
4 newspaper as provided for in subsection C of this section, the owner
5 of the wind energy facility shall hold a public meeting. Notice of
6 the public meeting shall be published in a newspaper of general
7 circulation and submitted to the board of county commissioners in
8 the county or counties in which all or a portion of the wind energy
9 facility is to be located. The notice shall contain the place, date
10 and time of the public meeting. Proof of publication of the notice
11 shall be submitted to the Corporation Commission. The public
12 meeting shall be held in one of the counties in which all or a
13 portion of the wind energy facility is to be located.

14 F. With regard to the surface estate upon which the owner of a
15 wind energy facility intends to construct a wind energy facility, at
16 least sixty (60) days before entering upon the surface estate for
17 the purposes of commencement of construction of the wind energy
18 facility, the owner shall provide written notice, by certified mail,
19 of its intent to construct the wind energy facility 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;

1 2. Any operator, as reflected in the records of the Corporation
2 Commission, of an unspaced unit, or a unit created by order of the
3 Corporation Commission, who is conducting oil and gas operations for
4 the unit where all or any part of the unit area is within the
5 geographical boundaries of the surface estate as to which the wind
6 energy developer intends the construction of the wind energy
7 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 The notice shall contain a map or plat of the proposed location,
15 with sufficient specificity of all of the various elements of the
16 wind energy facility to be located on the governmental section which
17 includes all or any part of the tracts of land described in
18 paragraphs 1, 2 and 3 of this subsection and the approximate date
19 that the owner of the wind energy facility proposes to commence
20 construction. If the wind energy developer makes a search with
21 reasonable diligence, and the whereabouts of a party entitled to any
22 notice described in this subsection cannot be ascertained or such
23 notice cannot be delivered, then an affidavit attesting to such
24 diligent search for the parties shall be placed in the records of

1 the county clerk where the surface estate is actually located.
2 Within thirty (30) days of receiving said notice, any operator, as
3 described in paragraphs 1, 2 and 3 of this subsection shall
4 reciprocate, in writing by certified mail, certain site, operational
5 and infrastructure information, with sufficient specificity, to be
6 shared with the owner of the wind energy facility to assist both
7 with the safe construction and operation pertaining to the surface
8 estate. This information should include ALTA surveys of existing
9 subsurface and surface improvements on the property, if any, as well
10 as other technical specifications for existing improvements such as
11 pipe size, material, capacity and depth.

12 G. The owner of a wind energy facility shall not commence
13 construction on the facility until the notification and public
14 meeting requirements of this section have been met. If an owner of
15 a wind energy facility fails to submit the information as required
16 in this section, the owner shall be subject to an administrative
17 penalty from the Corporation Commission not to exceed One Thousand
18 Five Hundred Dollars (\$1,500.00) per day, per violation as provided
19 by law.

20 SECTION 3. It being immediately necessary for the preservation
21 of the public peace, health or safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.
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1 Passed the House of Representatives the 12th day of March, 2019.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 Presiding Officer of the Senate