

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 904, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Pugh

Pugh-CB-FS-Req#2069
3/13/2019 2:05 PM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 904

6 By: Pugh

7 FLOOR SUBSTITUTE

8 [Corporation Commission - wind energy facilities -
9 jurisdiction - construction and operation -
documentation - Aeronautics Commission -
10 emergency]

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
14 2015, as last amended by Section 1, Chapter 179, O.S.L. 2018 (17
15 O.S. Supp. 2018, Section 160.20), is amended to read as follows:

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

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

- 21 a. a public-use airport as defined in Section 120.2 of
22 Title 3 of the Oklahoma Statutes, or
23 b. an airport owned by a municipality;

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

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

4 B. Attestation of compliance with the setback requirements in
5 this section shall be included in any reports required by the
6 Corporation Commission. ~~Disputes~~ Stakeholder and landowner disputes
7 arising under subsection A of this section shall fall under the
8 exclusive jurisdiction of the district courts. The Corporation
9 Commission may seek enforcement of the submission and attestation
10 requirements of this subsection and subsection C of this section
11 through its administrative court system.

12 C. After ~~the effective date of this act~~ May 2, 2018,
13 construction or operation of a proposed individual wind turbine or
14 any other individual structure requiring a Federal Aviation
15 Administration (FAA) Form 7460-1 that is part of a wind energy
16 facility ~~or proposed wind energy facility expansion~~ shall not
17 encroach upon or otherwise have a significant adverse impact on the
18 mission, training or operations of any military installation or
19 branch of military as determined by the Military Aviation and
20 Installation Assurance Siting Clearinghouse (Clearinghouse) and the
21 ~~Federal Aviation Administration~~ FAA. Areas of impact include but
22 are not limited to military training routes, drop zones, approaches
23 to runways and bombing ranges. No individual wind turbine or any
24 other individual structure that requires an FAA Form 7460-1 that is

1 part of a wind energy facility may be constructed or expanded unless
2 an active Determination of No Hazard from the ~~Federal Aviation~~
3 ~~Administration or an approved mitigation plan is obtained from the~~
4 ~~Military Aviation and Installation Assurance Siting FAA and~~
5 objections of the United States Department of Defense have been
6 resolved as evidenced by documentation from the Clearinghouse for
7 the individual wind turbine or other individual structure. The
8 Mission Compatibility Certification Letter or successor letter may
9 serve as such evidence of objections having been resolved with the
10 Department or successor agency.

11 1. The Determination of No Hazard ~~or mitigation plan~~ and
12 documentation of the resolution of objections of the Department of
13 Defense shall be submitted to the Corporation Commission and the
14 Oklahoma Aeronautics Commission.

15 2. The requirements established by this subsection shall not
16 prohibit ~~a wind energy facility~~ the construction of an individual
17 wind turbine or any other individual structure requiring an FAA Form
18 7460-1 that is part of a wind energy facility expansion if these
19 facilities or facility expansions obtain that individual wind
20 turbine or other individual structure has received a written
21 Determination of No Hazard or mitigation plan on or before the
22 effective date of this act May 2, 2018.

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

4 D. If the owner of a wind energy facility fails to submit an
5 active Determination of No Hazard and documentation that any
6 objections of the Department of Defense have been resolved by the
7 Clearinghouse for the individual wind turbine or other individual
8 structure prior to construction, the owner shall be subject to an
9 administrative penalty not to exceed One Thousand Five Hundred
10 Dollars (\$1,500.00) per day, per violation from the Corporation
11 Commission. In addition, stakeholders, including but not limited to
12 the Oklahoma Corporation Commission or the Oklahoma Aeronautics
13 Commission, may institute an action in any court of general
14 jurisdiction to prevent, restrain, correct or abate any violation of
15 the provisions of subsection C of this section, with the exception
16 of Corporation Commission actions related to submissions or
17 attestations.

18 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
19 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
20 O.S. Supp. 2018, Section 160.21), is amended to read as follows:

21 Section 160.21. A. The owner of a wind energy facility shall
22 submit notification of intent to build a facility to the Corporation
23 Commission within six (6) months of the initial filing ~~pertaining to~~
24 ~~commencement of construction~~ with the Federal Aviation

1 Administration (FAA) of an FAA Form 7460-1 ~~(Notice of Proposed~~
2 ~~Construction or Alteration)~~ or any subsequent form required by the
3 ~~FAA for evaluating the impact a proposed wind energy facility will~~
4 ~~have on air commerce safety and the preservation of navigable~~
5 ~~airspace.~~ The Corporation Commission shall prescribe the form and
6 submittal requirements of the notification; provided, the
7 information required on the notification form shall include at least
8 the same information required on the FAA form and a map of the
9 project boundary. The owner of a wind energy facility shall submit
10 to the Oklahoma Aeronautics Commission copies of all initial FAA
11 Form 7460-1s for all individual wind turbines or any other
12 individual structure that requires an FAA Form 7460-1 and that is
13 part of a wind energy facility within thirty (30) days of the
14 initial filing with the FAA. The Oklahoma Aeronautics Commission
15 shall prescribe the submittal requirements for the 7460-1 form. The
16 owner of the wind energy facility shall send copies of the
17 notification with the board of county commissioners of every county
18 in which all or a portion of the wind energy facility is to be
19 located within twenty-four (24) hours of filing with the Corporation
20 Commission. If all or a portion of the wind energy facility is to
21 be located within the incorporated area of a municipality, copies of
22 the notification shall also be sent to the governing body of the
23 municipality within twenty-four (24) hours of filing with the
24 Corporation Commission. If the owner of a wind energy facility is

1 required to file subsequent 7460-1 forms with the FAA due to
2 changing locations or heights of individual structures from the
3 locations or heights originally proposed in the initial 7460-1 form
4 submitted to the Aeronautics Commission, the owner shall, within ten
5 (10) days of filing with the FAA, submit such subsequent 7460-1
6 forms to the Oklahoma Corporation Commission and Oklahoma
7 Aeronautics Commission. A wind energy facility owner shall not be
8 required to start the notification process over as a result of
9 submitting subsequent 7460-1 forms unless the subsequent 7460-1
10 forms expand the project beyond its original project boundaries
11 submitted to the Oklahoma Corporation Commission.

12 B. Within ~~thirty (30)~~ ten (10) days of ~~submitting the~~
13 ~~notification to the Corporation Commission~~ receiving an FAA Form
14 7460-1, as provided for in subsection A of this section, the ~~owner~~
15 ~~of the wind energy facility~~ Oklahoma Aeronautics Commission shall
16 ~~cause a copy of the notification to be submitted to~~ notify the
17 Oklahoma Strategic Military Planning Commission. The Oklahoma
18 Strategic Military Planning Commission shall notify local base
19 commanders upon receipt of the notification. The Oklahoma Strategic
20 Military Planning Commission shall submit a letter to the ~~Military~~
21 ~~Aviation and Installation Assurance Siting~~ Clearinghouse outlining
22 potential areas of impact, as provided in Section 160.20 of this
23 title, within thirty (30) days of receipt of the notification. The
24 letter from the Oklahoma Strategic Military Planning Commission

1 shall be submitted to the Corporation Commission, the Oklahoma
2 Aeronautics Commission, and the wind energy facility owner.

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

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

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

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

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

13 E. Within sixty (60) days of publishing the notification in a
14 newspaper as provided for in subsection C of this section, the owner
15 of the wind energy facility shall hold a public meeting. Notice of
16 the public meeting shall be published in a newspaper of general
17 circulation and submitted to the board of county commissioners in
18 the county or counties in which all or a portion of the wind energy
19 facility is to be located. The notice shall contain the place, date
20 and time of the public meeting. Proof of publication of the notice
21 shall be submitted to the Corporation Commission. The public
22 meeting shall be held in one of the counties in which all or a
23 portion of the wind energy facility is to be located.

1 F. With regard to the surface estate upon which the owner of a
2 wind energy facility intends to construct a wind energy facility, at
3 least sixty (60) days before entering upon the surface estate for
4 the purposes of commencement of construction of the wind energy
5 facility, the owner shall provide written notice, by certified mail,
6 of its intent to construct the wind energy facility to:

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

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

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

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1 The notice shall contain a map or plat of the proposed location,
2 with sufficient specificity of all of the various elements of the
3 wind energy facility to be located on the governmental section which
4 includes all or any part of the tracts of land described in
5 paragraphs 1, 2 and 3 of this subsection and the approximate date
6 that the owner of the wind energy facility proposes to commence
7 construction. If the wind energy developer makes a search with
8 reasonable diligence, and the whereabouts of a party entitled to any
9 notice described in this subsection cannot be ascertained or such
10 notice cannot be delivered, then an affidavit attesting to such
11 diligent search for the parties shall be placed in the records of
12 the county clerk where the surface estate is actually located.
13 Within thirty (30) days of receiving said notice, any operator, as
14 described in paragraphs 1, 2 and 3 of this subsection shall
15 reciprocate, in writing by certified mail, certain site, operational
16 and infrastructure information, with sufficient specificity, to be
17 shared with the owner of the wind energy facility to assist both
18 with the safe construction and operation pertaining to the surface
19 estate. This information should include ALTA surveys of existing
20 subsurface and surface improvements on the property, if any, as well
21 as other technical specifications for existing improvements such as
22 pipe size, material, capacity and depth.

23 G. The owner of a wind energy facility shall not commence
24 construction on ~~the facility~~ an individual turbine until the

1 notification and public meeting requirements of this section have
2 been met. If an owner of a wind energy facility fails to submit the
3 information as required in this section, the owner shall be subject
4 to an administrative penalty from the Corporation Commission not to
5 exceed One Thousand Five Hundred Dollars (\$1,500.00) per day, per
6 violation, as required by law.

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

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