

1 **SENATE FLOOR VERSION**

2 April 4, 2019

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2118

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

6 and

7 Stanislawski of the Senate

8
9
10 COMMITTEE SUBSTITUTE

11 An Act relating to the Corporation Commission;
12 amending Section 2, Chapter 92, O.S.L. 2015, as last
13 amended by Section 1, Chapter 179, O.S.L. 2018 (17
14 O.S. Supp. 2018, Section 160.20), which relates to
15 setback requirements for wind energy facilities;
16 modifying jurisdiction for certain disputes;
17 including individual wind turbines and certain other
18 individual structures in wind energy facility setback
19 requirements; modifying requirements of certain
20 required documentation; allowing certain letter to
21 serve as evidence of resolution; modifying agencies
22 requiring certain documentation; modifying
23 applicability of act to certain construction;
24 authorizing Corporation Commission and the Oklahoma
Aeronautics Commission to promulgate rules;
authorizing penalty for violation of act; 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; 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

1 certain filings from requirement; requiring
2 Aeronautics Commission to provide certain
3 notification to the Oklahoma Strategic Military
4 Planning Commission; requiring Strategic Military
5 Planning Commission to notify certain military base
6 commanders and submit certain letter to the
7 Aeronautics Commission; modifying penalty; and
8 declaring an emergency.

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

10 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
11 2015, as last amended by Section 1, Chapter 179, O.S.L. 2018 (17
12 O.S. Supp. 2018, Section 160.20), is amended to read as follows:

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

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

18 a. a public-use airport as defined in Section 120.2 of

19 Title 3 of the Oklahoma Statutes, or

20 b. an airport owned by a municipality;

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

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

24 B. Attestation of compliance with the setback requirements in
this section shall be included in any reports required by the

Corporation Commission. ~~Disputes~~ Stakeholder and landowner disputes

1 arising under subsection A of this section shall fall under the
2 exclusive jurisdiction of the district courts. The Corporation
3 Commission may seek enforcement of the submission and attestation
4 requirements of this subsection and subsection C of this section
5 through its administrative court system.

6 C. After the effective date of this act, construction or
7 operation of a proposed individual wind turbine or any other
8 individual structure requiring a Federal Aviation Administration
9 (FAA) Form 7460-1 that is part of a wind energy facility ~~or proposed~~
10 ~~wind energy facility expansion~~ shall not encroach upon or otherwise
11 have a significant adverse impact on the mission, training or
12 operations of any military installation or branch of military as
13 determined by the Military Aviation and Installation Assurance
14 Siting Clearinghouse (Clearinghouse) and the ~~Federal Aviation~~
15 ~~Administration~~ FAA. Areas of impact include but are not limited to
16 military training routes, drop zones, approaches to runways and
17 bombing ranges. No individual wind turbine or any other individual
18 structure that requires a FAA 7460-1 form that is part of a wind
19 energy facility may be constructed or expanded unless there is an
20 active Determination of No Hazard from the ~~Federal Aviation~~
21 ~~Administration or an approved mitigation plan is obtained from the~~
22 ~~Military Aviation and Installation Assurance Siting~~ FAA and adverse
23 impacts to the United States Department of Defense, pursuant to
24 Title 32 of the Code of Federal Regulations, Section 211.6, have

1 been resolved as evidenced by documentation from the Clearinghouse
2 for the individual wind turbine or other individual structure. The
3 Mission Compatibility Certification Letter or successor form may
4 serve as such evidence of adverse impacts being resolved with the
5 Department of Defense or successor agency.

6 1. The Determination of No Hazard ~~or mitigation plan~~ and
7 documentation of the resolution of adverse impacts to the Department
8 of Defense shall be submitted to the Corporation Commission and the
9 Oklahoma Aeronautics Commission.

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

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

21 D. If an owner of a wind energy facility fails to submit an
22 active Determination of No Hazard and documentation that adverse
23 impacts to the Department of Defense have been resolved by the
24 Clearinghouse for the individual wind turbine or other individual

1 structure prior to the start of construction, the owner shall be
2 subject to an administrative penalty not to exceed One Thousand Five
3 Hundred Dollars (\$1,500.00) per day, per violation from the
4 Corporation Commission as provided by law. In addition,
5 stakeholders, including, but not limited to, the Corporation
6 Commission or the Aeronautics Commission may institute an action in
7 any court of general jurisdiction to prevent, restrain, correct or
8 abate any violation of subsection C of this section other than
9 Corporation Commission actions related to submissions or
10 attestations.

11 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
12 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
13 O.S. Supp. 2018, Section 160.21), is amended to read as follows:

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

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

1 processes over unless the subsequent 7460-1 forms expand the project
2 beyond its original boundaries submitted to the Corporation
3 Commission.

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

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

1 the wind energy facility is to be located. Proof of publication
2 shall be submitted to the Corporation Commission.

3 D. Within six (6) months of submitting the notification with
4 the Corporation Commission as provided in subsection A of this
5 section, the owner of the wind energy facility shall cause a copy of
6 the notification to be sent, by certified mail, 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
12 Corporation Commission, of an unspaced unit, or a unit created by
13 order of the Corporation Commission, who is conducting oil and gas
14 operations for the unit where all or any part of the unit area is
15 within the geographical boundaries of the surface estate as to which
16 the wind energy developer intends the construction of the wind
17 energy 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.

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

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

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

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

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

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

18 The notice shall contain a map or plat of the proposed location,
19 with sufficient specificity of all of the various elements of the
20 wind energy facility to be located on the governmental section which
21 includes all or any part of the tracts of land described in
22 paragraphs 1, 2 and 3 of this subsection and the approximate date
23 that the owner of the wind energy facility proposes to commence
24 construction. If the wind energy developer makes a search with

1 reasonable diligence, and the whereabouts of a party entitled to any
2 notice described in this subsection cannot be ascertained or such
3 notice cannot be delivered, then an affidavit attesting to such
4 diligent search for the parties shall be placed in the records of
5 the county clerk where the surface estate is actually located.
6 Within thirty (30) days of receiving said notice, any operator, as
7 described in paragraphs 1, 2 and 3 of this subsection shall
8 reciprocate, in writing by certified mail, certain site, operational
9 and infrastructure information, with sufficient specificity, to be
10 shared with the owner of the wind energy facility to assist both
11 with the safe construction and operation pertaining to the surface
12 estate. This information should include ALTA surveys of existing
13 subsurface and surface improvements on the property, if any, as well
14 as other technical specifications for existing improvements such as
15 pipe size, material, capacity and depth.

16 G. The owner of a wind energy facility shall not commence
17 construction on the facility until the notification and public
18 meeting requirements of this section have been met. If an owner of
19 a wind energy facility fails to submit the information as required
20 in this section, the owner shall be subject to an administrative
21 penalty from the Corporation Commission not to exceed One Thousand
22 Five Hundred Dollars (\$1,500.00) per day, per violation as provided
23 by law.
24

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

COMMITTEE REPORT BY: COMMITTEE ON ENERGY
April 4, 2019 - DO PASS AS AMENDED