

1 **SENATE FLOOR VERSION**

2 February 14, 2019

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 904

6 By: Pugh

7 [Corporation Commission - wind energy facilities -
8 jurisdiction - construction and operation -
9 documentation - Aeronautics Commission - legal action
10 - penalty - notification - Strategic Military
11 Planning Commission

emergency]

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 subsection A of this section shall be included in any reports
6 required by the Corporation Commission. ~~Disputes arising under this~~
7 ~~section shall fall under the exclusive jurisdiction of the district~~
8 ~~courts.~~

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

1 ~~Aviation Administration or an approved mitigation plan is obtained~~
2 FAA and objections of the Department of Defense have been resolved
3 as evidenced by documentation from the ~~Military Aviation and~~
4 Installation Assurance Siting Clearinghouse for the individual wind
5 turbine or other individual structure.

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

9 2. The requirements established by this subsection shall not
10 prohibit ~~a wind energy facility~~ the construction of an individual
11 wind turbine or any other individual structure requiring a FAA Form
12 7460-1 that is part of a wind energy facility expansion if ~~those~~
13 ~~facilities or facility expansions obtain~~ that individual wind
14 turbine or other individual structure has received a written
15 Determination of No Hazard or mitigation plan and objections of the
16 Department of Defense have been resolved as evidenced by
17 documentation from the Clearinghouse on or before ~~the effective date~~
18 ~~of this act~~ May 2, 2018.

19 3. The Corporation Commission ~~shall~~ is authorized to promulgate
20 rules and regulations for the implementation of the provisions of
21 ~~this section~~ subsections A and B of this section. The Oklahoma
22 Aeronautics Commission is authorized to promulgate rules and
23 regulations for the implementation of the provisions of subsection C
24 of this section.

1 D. If an owner of a wind energy facility fails to submit a
2 valid Determination of No Hazard and resolve objections of the
3 Department of Defense prior to the start of construction, the owner
4 shall be subject to an administrative penalty not to exceed One
5 Thousand Five Hundred Dollars (\$1,500.00) per day, per violation.
6 In addition, the Aeronautics Commission may institute in any court
7 of general jurisdiction, an action to prevent, restrain, correct or
8 abate any violation of subsection C of this section, or any rules
9 adopted or orders issued by the Aeronautics Commission pursuant to
10 subsection C of this section.

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

1 municipalities unless the subsequent FAA Form 7460-1s expand the
2 project 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 Form
6 7460-1, as provided for in subsection A of this section, the ~~owner~~
7 ~~of the wind energy facility~~ Aeronautics Commission shall ~~cause a~~
8 ~~copy of the notification to be submitted to~~ notify the Oklahoma
9 Strategic Military Planning Commission. The Oklahoma Strategic
10 Military Planning Commission shall notify ~~local~~ affected base
11 commanders upon receipt of the notification. The Oklahoma Strategic
12 Military Planning Commission shall submit a letter to the Military
13 Aviation and Installation Assurance Siting Clearinghouse outlining
14 potential areas of impact, as provided in Section 160.20 of this
15 title, within thirty (30) days of receipt of the notification. The
16 letter from the Oklahoma Strategic Military Planning Commission
17 shall be submitted to the Aeronautics Commission and the Corporation
18 Commission.

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

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

24

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:

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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~~ the notice, any operator,
7 as 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 Aeronautics Commission or the Corporation
22 Commission not to exceed One Thousand Five Hundred Dollars
23 (\$1,500.00) per day.

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

5 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
6 February 14, 2019 - DO PASS AS AMENDED
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