

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2118

6 By: Ortega

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 individual wind turbines and certain other
15 individual structures in wind energy facility setback
16 requirements; modifying requirements of certain
17 required documentation; modifying agency requiring
18 certain documentation; modifying applicability of act
19 to certain construction; authorizing Oklahoma
20 Aeronautics Commission to promulgate rules;
21 authorizing penalty for violation of act; amending
22 Section 3, Chapter 92, O.S.L. 2015, as last amended
23 by Section 2, Chapter 179, O.S.L. 2018 (17 O.S. Supp.
24 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 Oklahoma
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; and declaring an emergency.

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

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

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

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

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

11 b. an airport owned by a municipality;

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

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

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

20 C. After ~~the effective date of this act~~ April 3, 2018,
21 construction or operation of a proposed individual wind turbine or
22 any other individual structure requiring a Federal Aviation
23 Administration (FAA) Form 7460-1 that is part of a wind energy
24 facility ~~or proposed wind energy facility expansion~~ shall not

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

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

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

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

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

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

22 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
23 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
24 O.S. Supp. 2018, Section 160.21), is amended to read as follows:

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

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

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

1 areas of impact, as provided in Section 160.20 of this title, within
2 thirty (30) days of receipt of the notification. The letter from
3 the Oklahoma Strategic Military Planning Commission shall be
4 submitted to the ~~Corporation~~ Aeronautics Commission.

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

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

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

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

1 the wind energy developer intends the construction of the wind
2 energy facility; and

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

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

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

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1 meeting shall be held in one of the counties in which all or a
2 portion of the wind energy facility is to be located.

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

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

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

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

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

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

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

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