

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

5  
6  
7  
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.

3  
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  
24

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.

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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 \_\_\_\_\_  
9 Presiding Officer of the Senate