

An Act

ENROLLED HOUSE
BILL NO. 3561

By: Ortega, Murdock, Perryman,
Pfeiffer and Moore of the
House

and

Schulz and Pederson of the
Senate

An Act relating to the Corporation Commission; amending Section 2, Chapter 92, O.S.L. 2015, as amended by Section 2, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.20) and Section 3, Chapter 92, O.S.L. 2015, as amended by Section 1, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.21), which relate to setback requirements and notification of intent to build a facility; prohibiting the construction or operation of certain facilities after certain date; defining term; requiring active Determination of No Hazard or certain mitigation plan; providing exception to prohibition; requiring certain filing; requiring Corporation Commission to promulgate rules; requiring certain notification; prescribing procedures related to owners of wind energy facilities; imposing duties on Oklahoma Strategic Military Planning Commission; requiring filing of letter with Corporation Commission; and declaring an emergency.

SUBJECT: Wind energy facilities

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

SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L. 2015, as amended by Section 2, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.20), is amended to read as follows:

Section 160.20 A. ~~After the effective date of this act August 21, 2015,~~ no wind energy facility may be constructed if the base of any tower is located at a distance of less than:

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

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

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

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

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

C. After the effective date of this act, construction or operation of a proposed wind energy facility or proposed wind energy facility expansion shall not encroach upon or otherwise have a significant adverse impact on the mission, training or operations of any military installation or branch of military as determined by the Military Aviation and Installation Assurance Siting Clearinghouse and the Federal Aviation Administration. Areas of impact include, but are not limited to, military training routes, drop zones, approaches to runways and bombing ranges. No wind energy facility may be constructed or expanded unless an active Determination of No Hazard from the Federal Aviation Administration or an approved mitigation plan is obtained from the Military Aviation and Installation Assurance Siting Clearinghouse.

1. The Determination of No Hazard or mitigation plan shall be filed with the Corporation Commission.

2. The requirements established by this subsection shall not prohibit a wind energy facility construction or wind energy facility expansion if those facilities or facility expansions obtain a written Determination of No Hazard or mitigation plan on or before the effective date of this act.

3. The Corporation Commission shall promulgate rules and regulations for the implementation of the provisions of this section.

SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L. 2015, as amended by Section 1, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.21), is amended to read as follows:

Section 160.21 A. The owner of a wind energy facility shall submit notification of intent to build a facility to the Corporation Commission within six (6) months of the initial filing pertaining to commencement of construction with the Federal Aviation Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) or any subsequent form required by the FAA for evaluating the impact a proposed wind energy facility will have on air commerce safety and the preservation of navigable airspace. The Corporation Commission shall prescribe the form and submittal requirements of the notification; provided, the information required on the notification form shall include at least the same information required on the FAA form. The owner of the wind energy facility shall ~~submit~~ send copies of the notification with the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of filing with the Corporation Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be ~~submitted~~ sent to the governing body of the municipality within twenty-four (24) hours of filing with the Commission.

B. Within thirty (30) days of submitting the notification to the Corporation Commission, as provided for in subsection A of this section, the owner of the wind energy facility shall cause a copy of the notification to be submitted to the Oklahoma Strategic Military Planning Commission. The Oklahoma Strategic Military Planning Commission shall notify local base commanders upon receipt of the notification. The Oklahoma Strategic Military Planning Commission shall submit a letter to the Military Aviation and Installation Assurance Siting Clearinghouse outlining potential areas of impact, as provided in Section 160.20 of this title, within thirty (30) days of receipt of the notification. The letter from the Oklahoma Strategic Military Planning Commission shall be filed with the Corporation Commission.

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

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

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

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

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

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

~~D.~~ E. Within sixty (60) days of publishing the notification in a newspaper as provided for in subsection ~~B~~ C of this section, the owner of the wind energy facility shall hold a public meeting. Notice of the public meeting shall be published in a newspaper of general circulation and submitted to the board of county

commissioners in the county or counties in which all or a portion of the wind energy facility is to be located. The notice shall contain the place, date and time of the public meeting. Proof of publication of the notice shall be submitted to the Commission. The public meeting shall be held in one of the counties in which all or a portion of the wind energy facility is to be located.

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

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

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

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

The notice shall contain a map or plat of the proposed location, with sufficient specificity of all of the various elements of the wind energy facility to be located on the governmental section which includes all or any part of the tracts of land described in paragraphs 1, 2 and 3 of this subsection and the approximate date that the owner of the wind energy facility proposes to commence construction. If the wind energy developer makes a search with reasonable diligence, and the whereabouts of a party entitled to any notice described in this subsection cannot be ascertained or such notice cannot be delivered, then an affidavit attesting to such diligent search for the parties shall be placed in the records of

the county clerk where the surface estate is actually located. Within thirty (30) days of receiving said notice, any operator, as described in paragraphs 1, 2 and 3 of this subsection shall reciprocate, in writing by certified mail, certain site, operational and infrastructure information, with sufficient specificity, to be shared with the owner of the wind energy facility to assist both with the safe construction and operation pertaining to the surface estate. This information should include ALTA surveys of existing subsurface and surface improvements on the property, if any, as well as other technical specifications for existing improvements such as pipe size, material, capacity and depth.

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

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.

Passed the House of Representatives the 12th day of March, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the 28th day of March, 2018.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____