

1 STATE OF OKLAHOMA

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

3 SENATE BILL NO. 904

By: Pugh

4
5
6 AS INTRODUCED

7 An Act relating to the Corporation Commission;
8 amending Section 2, Chapter 92, O.S.L. 2015, as last
9 amended by Section 1, Chapter 179, O.S.L. 2018 (17
10 O.S. Supp. 2018, Section 160.20), which relates to
11 setback requirements for wind energy facilities;
12 modifying jurisdiction for certain disputes;
13 including individual wind turbines and certain other
14 individual structures in wind energy facility setback
15 requirements; modifying requirements of certain
16 required documentation; modifying agency requiring
17 certain documentation; modifying applicability of act
18 to certain construction; authorizing Aeronautics
19 Commission to promulgate rules; authorizing penalty
20 for violation of act; amending Section 3, Chapter 92,
21 O.S.L. 2015, as last amended by Section 2, Chapter
22 179, O.S.L. 2018 (17 O.S. Supp. 2018, Section
23 160.21), which relates to notice of intent to build a
24 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
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 this section shall
18 fall under the exclusive jurisdiction of the district courts.~~

19 C. After ~~the effective date of this act~~ May 2, 2018,
20 construction or operation of a proposed individual wind turbine or
21 any other individual structure that requires Federal Aviation
22 Administration (FAA) form 7460-1, (Notice of Proposed Construction
23 or Alteration) that is part of a wind energy facility ~~or proposed~~
24 ~~wind energy facility expansion~~ shall not encroach upon or otherwise

1 have a significant adverse impact on the mission, training or
2 operations of any military installation or branch of military as
3 determined by the Military Aviation and Installation Assurance
4 Siting Clearinghouse and the Federal Aviation Administration. Areas
5 of impact include but are not limited to military training routes,
6 drop zones, approaches to runways and bombing ranges. No individual
7 wind turbine or any other individual structure that requires FAA
8 form 7460-1 that is part of a wind energy facility may be
9 constructed or expanded unless an active Determination of No Hazard
10 from the Federal Aviation Administration or an approved mitigation
11 plan is obtained from the Military Aviation and Installation
12 Assurance Siting Clearinghouse for the specific site location of the
13 structures described in this subsection.

14 1. The Determination of No Hazard or mitigation plan shall be
15 submitted to the ~~Corporation~~ Oklahoma Aeronautics Commission.

16 2. The requirements established by this subsection shall not
17 prohibit ~~a wind energy facility~~ construction of an individual wind
18 turbine or any other individual structure that requires FAA form
19 7460-1 that is part of a ~~or~~ wind energy facility ~~expansion~~ if those
20 ~~facilities or facility expansions obtain~~ structures have received a
21 written Determination of No Hazard or mitigation plan for those
22 specific site locations on or before ~~the effective date of this act~~
23 May 2, 2018.

24

1 3. The Corporation Commission ~~shall~~ is authorized to promulgate
2 rules and regulations for the implementation of the provisions of
3 ~~this section~~ subsections A and B of this section. The Oklahoma
4 Aeronautics Commission is authorized to promulgate rules and
5 regulations for the implementation of the provisions of subsection C
6 of this section.

7 D. If an owner of a wind energy facility fails to submit the
8 information required in this section or does not have the
9 appropriate determination of no hazard or an approved mitigation
10 plan prior to the start of construction, the owner shall be subject
11 to an administrative penalty not to exceed One Thousand Five Hundred
12 Dollars (\$1,500.00) per day.

13 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
14 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
15 O.S. Supp. 2018, Section 160.21), is amended to read as follows:

16 Section 160.21. A. The owner of a wind energy facility shall
17 submit notification of intent to build a facility to the Corporation
18 Commission within six (6) months of the initial filing ~~pertaining to~~
19 ~~commencement of construction~~ with the Federal Aviation
20 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed
21 Construction or Alteration) or any subsequent form required by the
22 FAA for evaluating the impact ~~a proposed wind energy facility~~
23 individual wind turbines or any other individual structure that
24 requires FAA Form 7460-1 will have on air commerce safety and the

1 preservation of navigable airspace. The Corporation Commission
2 shall prescribe the form and submittal requirements of the
3 notification; provided, the information required on the notification
4 form shall include at least ~~the same information required on the FAA~~
5 form a map of the project boundary. The owner of a wind energy
6 facility shall submit copies of all initial FAA Form 7460-1s for all
7 individual wind turbines or any other individual structure that
8 requires FAA Form 7460-1 that is part of a wind energy facility
9 within thirty (30) days of the initial filing with FAA to the
10 Oklahoma Aeronautics Commission. The owner of the wind energy
11 facility shall send copies of the notification with the board of
12 county commissioners of every county in which all or a portion of
13 the wind energy facility is to be located within twenty-four (24)
14 hours of filing with the Corporation Commission. If all or a
15 portion of the wind energy facility is to be located within the
16 incorporated area of a municipality, copies of the notification
17 shall also be sent to the governing body of the municipality within
18 twenty-four (24) hours of filing with the Corporation Commission.
19 If the owner of a wind energy facility is required to file
20 subsequent 7460-1s with the FAA due to changing locations or heights
21 of individual structures from the locations or heights originally
22 proposed in the initial 7460-1s submitted to the Aeronautics
23 Commission, the owner shall within twenty-four (24) hours of filing
24 with the FAA, submit such subsequent 7460-1s to the Aeronautics

1 Commission. A wind energy facility owner shall not be required to
2 start the notification processes over per subsections C, D, E and F
3 of this section, and for the above notifications to counties and
4 municipalities unless the subsequent 7460-1s expand the project
5 beyond its original boundaries submitted to the Corporation
6 Commission.

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

22 C. Within six (6) months of submitting the notification with
23 the Corporation Commission as provided for in subsection A of this
24 section, the owner of the wind energy facility shall cause a copy of

1 the notification to be published in a newspaper of general
2 circulation in the county or counties in which all or a portion of
3 the wind energy facility is to be located. Proof of publication
4 shall be submitted to the Commission.

5 D. Within six (6) months of submitting the notification with
6 the Corporation Commission as provided in subsection A of this
7 section, the owner of the wind energy facility shall cause a copy of
8 the notification to be sent, by certified mail, 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
14 Corporation Commission, of an unspaced unit, or a unit created by
15 order of the Corporation Commission, who is conducting oil and gas
16 operations for the unit where all or any part of the unit area is
17 within the geographical boundaries of the surface estate as to which
18 the wind energy developer intends the construction of the wind
19 energy 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
24

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

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

20 F. With regard to the surface estate upon which the owner of a
21 wind energy facility intends to construct a wind energy facility, at
22 least sixty (60) days before entering upon the surface estate for
23 the purposes of commencement of construction of the wind energy
24

1 facility, the owner shall provide written notice, by certified mail,
2 of its intent to construct the wind energy facility 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 Corporation
8 Commission, of an unspaced unit, or a unit created by order of the
9 Corporation Commission, who is conducting oil and gas operations for
10 the unit where all or any part of the unit area is within the
11 geographical boundaries of the surface estate as to which the wind
12 energy developer intends the construction of the wind energy
13 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 The notice shall contain a map or plat of the proposed location,
21 with sufficient specificity of all of the various elements of the
22 wind energy facility to be located on the governmental section which
23 includes all or any part of the tracts of land described in
24 paragraphs 1, 2 and 3 of this subsection and the approximate date

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

18 G. The owner of a wind energy facility shall not commence
19 construction on the facility until the notification and public
20 meeting requirements of this section have been met. If an owner of
21 a wind energy facility fails to submit the information as required
22 in this section, the owner shall be subject to an administrative
23 penalty from the Aeronautics Commission or the Corporation

24

1 Commission not to exceed One Thousand Five Hundred Dollars
2 (\$1,500.00) per day.

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

7

8 57-1-857 CB 1/17/2019 3:24:29 PM

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24