

1 **WIND ENERGY FACILITY SITING AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

7 **General Description:**

8 This bill enacts a provision related to wind energy facilities.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ requires an owner or operator of a wind energy facility to:

12 • undergo the Military Aviation and Installation Assurance Siting Clearinghouse  
13 (clearinghouse) process before commencement of construction on a wind  
14 turbine or a wind energy facility; and

15 • file documentation with the Department of Natural Resources that the  
16 clearinghouse has determined that the proposed construction does not encroach  
17 upon or otherwise have a significant adverse impact on the military; and

18 ▶ provides for penalties if an owner of a wind turbine or a wind energy facility fails to  
19 submit the proper documentation to the department.  
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21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **79-2-405**, Utah Code Annotated 1953



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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **79-2-405** is enacted to read:

**79-2-405. Wind turbine and wind energy facility siting -- Military Aviation and Installation Assurance Siting Clearinghouse.**

As used in this section:

(1) (a) "Commencement of construction" means beginning excavation of wind turbine foundations or other actions relating to the actual erection and installation of commercial wind energy equipment.

(b) "Commencement of construction" does not include activities related to:

(i) the erection of meteorological towers;

(ii) environmental assessments;

(iii) surveys;

(iv) preliminary engineering; or

(v) assessments of the development of the wind resources on a given parcel of property.

(c) "Clearinghouse" means the Military Aviation and Installation Assurance Siting Clearinghouse established by the United States Secretary of Defense under 10 U.S.C. Sec. 183(a).

(d) "Determination of no hazard" means the formal response issued by the FAA upon completion of an aeronautical study regarding a facility structure's impact to air navigation affirming that:

(i) the facility structure does not exceed obstruction standards; and

(ii) modifications to the facility structure are not required.

(e) "FAA" means the United States Federal Aviation Administration.

(f) "Facility structure" means a wind turbine or other structure located on a wind energy facility, the construction or modification of which would require the completion of Form 7460-1.

(g) "Form 7460-1" means:

(i) FAA Form 7460-1, Notice of Proposed Construction or Alteration, which the FAA uses to conduct aeronautical studies to promote air safety and the efficient use of navigable

59 airspace, as required under 14 C.F.R. Part 77; or

60 (ii) a form designated by the FAA to conduct aeronautical studies to promote air safety  
61 and the efficient use of navigable airspace.

62 (h) "Mission compatibility certification letter" means the formal response the  
63 clearinghouse issues through the clearinghouse's review of proposed projects and facility  
64 structures through the clearinghouse's evaluation process.

65 (i) "Owner" means a person having a majority equity interest in commercial wind  
66 energy equipment, including the person's successors and assigns.

67 (j) (i) "Wind energy facility" means an electrical generation facility consisting of one or  
68 more wind turbines under common ownership or operating control.

69 (ii) "Wind energy facility" includes:

70 (A) substations;

71 (B) meteorological data towers;

72 (C) aboveground and underground electrical transmission lines;

73 (D) transformers;

74 (E) control systems; and

75 (F) other structures used to support the operation of the facility and with the primary  
76 purpose of supplying electricity to an off-site customer.

77 (iii) "Wind energy facility" does not include an electrical generation facility located  
78 entirely on property held in fee simple by the owner of the wind energy facility.

79 (k) (i) "Wind turbine" means a wind energy conversion system that converts wind  
80 energy into electricity through the use of a wind turbine generator.

81 (ii) "Wind turbine" includes the turbine, blade, tower, base, and pad transformer.

82 (2) Construction or modification of a facility structure may not encroach upon or  
83 otherwise have an adverse impact on the mission, training, or operations of any military  
84 installation or branch of the military as determined by the clearinghouse and the FAA.

85 (3) An adverse impact to a military installation or branch of the military in Subsection  
86 (2) includes an adverse impact to:

87 (a) a military training route;

88 (b) a drop zone;

89 (c) an approach to a runway; and

90 (d) a bombing range.  
91 (4) (a) A facility structure may not be constructed or expanded unless:  
92 (i) there is an active determination of no hazard; or  
93 (ii) any adverse impacts to the United States Department of Defense, determined in  
94 accordance with 32 C.F.R. Sec. 211.6, have been resolved as evidenced by documentation from  
95 the clearinghouse for the facility structure.

96 (b) For purposes of Subsection (4)(a)(ii), a mission compatibility certification letter  
97 may serve as evidence that the wind facility has resolved adverse impacts with the United  
98 States Department of Defense or successor agency.

99 (5) Before expanding or constructing a facility structure, an owner shall file with the  
100 department:

101 (a) any determination of no hazard the owner receives related to the facility structure;  
102 and

103 (b) any documentation the owner receives from the clearinghouse referring to any  
104 resolution of adverse impacts created by the facility structure.

105 (6) The requirements under this section may not prohibit the construction of a facility  
106 structure if the facility structure has received a determination of no hazard or mitigation plan  
107 before May 5, 2021.

108 (7) (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
109 Administrative Rulemaking Act, to administer this section.

110 (b) The documentation an owner submits in accordance with Subsection (5) is not  
111 subject to Title 63G, Chapter 2, Government Records Access and Management Act.

112 (8) If an owner fails to submit the documentation described in Subsection (5) for an  
113 individual facility structure before the commencement of construction:

114 (a) the department shall charge the owner an administrative penalty not to exceed  
115 \$1,500 per day, per violation; and

116 (b) a stakeholder, including the department, may bring an action in an appropriate court  
117 of general jurisdiction to:

118 (i) enjoin any action on a facility structure in violation of this section; and

119 (ii) enforce the requirements of this section.