

1 ENGROSSED HOUSE  
2 BILL NO. 2973

By: Sanders, Scott, Fields,  
Williams, Blackwell,  
Sherrer and Hoskin of the  
House

4 and

5 Marlatt of the Senate

6  
7  
8  
9 An Act relating to the Corporation Commission;  
10 creating the Oklahoma Wind Energy Development Act;  
11 providing short title; stating legislative findings;  
12 defining terms; requiring decommissioning of wind  
13 energy facilities; stating requirements and time  
14 limits for decommissioning; stating requirements and  
15 procedures for remediation of property following  
16 decommissioning of facilities; requiring owners or  
17 operators to make certain financial obligations for  
18 decommissioning activities by certain time period;  
19 stating requirements for financial securities and  
20 related information; providing penalties; requiring  
21 information for certain existing wind facilities by  
22 certain time period; providing for transfer of  
23 ownership; requiring operators to provide statements  
24 to landowners providing information relating to  
electrical energy production; stating procedures and  
requiring certain information; providing for certain  
audits; providing for reporting of certain capacity  
to the Commission; requiring certain amount of  
liability insurance prior to construction of wind  
facilities; authorizing promulgation of rules;  
providing for codification; providing for  
noncodification; providing an effective date; and  
declaring an emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 160.11 of Title 17, unless there  
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma Wind  
5 Energy Development Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 160.12 of Title 17, unless there  
8 is created a duplication in numbering, reads as follows:

9 The Legislature finds that:

10 1. Oklahoma's wind energy resources are an important asset for  
11 the continued economic growth of the state and for the provision of  
12 clean and renewable power to both the people of the state and the  
13 nation as a whole;

14 2. Promotion of the development of wind energy resources is  
15 important to the economic growth of the state;

16 3. The prudent development of wind energy resources requires  
17 balancing the needs of wind energy developers with those of the  
18 landowners who provide access to the wind energy resource, including  
19 assurances that wind turbines and wind energy facilities will be  
20 properly decommissioned, that they will have access to adequate  
21 information to verify the accuracy of their payments, and that they  
22 will be adequately protected against hazards and accidents that may  
23 arise from the wind turbines or wind energy facilities;

24

1           4. The conversion of wind energy into power for utility-scale  
2 systems frequently requires large wind energy systems consisting of  
3 wind turbines, electrical substations, electrical lines, and other  
4 supporting systems;

5           5. Wind energy systems, if abandoned or not properly  
6 maintained, could pose a hazard to public health, safety, and  
7 welfare through mechanical failures, electrical hazards, or the  
8 release of hazardous substances; and

9           6. To protect the public against health and safety hazards,  
10 standards for the safe decommissioning of wind energy systems should  
11 be established and assurance of adequate financial resources to  
12 ensure that the wind energy systems can be properly decommissioned  
13 at the end of their useful life.

14           SECTION 3.       NEW LAW       A new section of law to be codified  
15 in the Oklahoma Statutes as Section 160.13 of Title 17, unless there  
16 is created a duplication in numbering, reads as follows:

17           As used in the Oklahoma Wind Energy Development Act:

18           1. "Abandonment" means the failure to generate electricity from  
19 commercial wind energy equipment for a period of twenty-four (24)  
20 consecutive months for reasons other than curtailment, repowering, a  
21 valid judicial order or other governmental regulatory action, with  
22 no pending negotiations for purchase. A wind energy facility shall  
23 not be considered abandoned if the owner or operator has elected not  
24

1 to run the facility, but it has been maintained in proper working  
2 order and is capable of generating electricity;

3 2. "Commencement of construction" means beginning excavation of  
4 wind turbine foundations or other actions relating to the actual  
5 erection and installation of commercial wind energy equipment. It  
6 shall not include erection of meteorological towers, environmental  
7 assessments, surveys, preliminary engineering or other activities  
8 associated with assessment of development of the wind resources on a  
9 given parcel of property;

10 3. "Commercial generation date" means the date on which the  
11 wind turbine in question first generates electrical energy in  
12 commercial quantities;

13 4. "Commercial wind energy equipment" means a wind tower and  
14 turbine with five hundred kilowatts (500kw) or greater of total  
15 nameplate generating capacity;

16 5. "Commercial quantities" means an amount of electrical energy  
17 sufficient for sale or use off-site from a wind turbine or wind  
18 energy facility, and shall not include amounts of electrical energy  
19 used only for the maintenance or testing of the wind turbine or wind  
20 energy facility itself;

21 6. "Owner" means the entity having a majority equity interest  
22 in commercial wind energy equipment, including their respective  
23 successors and assigns;

24

1 7. "Useful life" means the time during which a wind turbine or  
2 wind energy facility is generating electricity in commercial  
3 quantities;

4 8. "Wind turbine" means a wind energy conversion system which  
5 converts wind energy into electricity through the use of a wind  
6 turbine generator and includes the turbine, blade, tower, base and  
7 pad transformer, if any; and

8 9. "Wind energy facility" means an electrical generation  
9 facility consisting of one or more wind turbines under common  
10 ownership or operating control, and includes substations,  
11 meteorological data towers, aboveground and underground electrical  
12 transmission lines, transformers, control systems, and other  
13 buildings or facilities used to support the operation of the  
14 facility, and whose primary purpose is to supply electricity to an  
15 off-site customer or customers.

16 SECTION 4. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 160.14 of Title 17, unless there  
18 is created a duplication in numbering, reads as follows:

19 A. The owner of a wind energy facility shall be responsible, at  
20 its expense, for the proper decommissioning of the facility upon  
21 abandonment or the end of the useful life of the commercial wind  
22 energy equipment in the wind energy facility.

23 B. Proper decommissioning of a wind energy facility shall  
24 include:

1 1. Removal of wind turbines, towers, buildings, cabling,  
2 electrical components, foundations and any other associated  
3 facilities, to a depth of thirty (30) inches below grade; and

4 2. Disturbed earth being graded and reseeded or otherwise  
5 restored to substantially the same physical condition as existed  
6 prior to the construction of the wind energy facility by the owner,  
7 excluding roads, unless the landowner specifically requests in  
8 writing that the roads or other land surface areas be restored.

9 C. The decommissioning of the wind energy facility, or  
10 individual pieces of commercial wind energy equipment, shall be  
11 completed as follows:

12 1. By the owner of the wind energy facility within twelve (12)  
13 months after abandonment or the end of the useful life of the  
14 commercial wind energy equipment in the wind energy facility;

15 2. If the owner of the wind energy facility fails to complete  
16 the decommissioning within the period prescribed in paragraph 1 of  
17 this subsection, the Commission shall take such measures as are  
18 necessary to complete the decommissioning.

19 D. A lease or other agreement between a landowner and an owner  
20 of a wind energy facility may contain provisions for decommissioning  
21 that are more restrictive than provided for in this section.

22 SECTION 5. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 160.15 of Title 17, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. After the tenth year of operation of a wind energy facility,  
2 the owner shall file with the Corporation Commission evidence of  
3 financial security to cover the anticipated costs of decommissioning  
4 the wind energy facility. Evidence of financial security may be in  
5 the form of a surety bond, collateral bond, parent guaranty, or  
6 letter of credit.

7       B. The evidence of financial security shall be accompanied by  
8 an estimate of the total cost of decommissioning, net the salvage  
9 value of the equipment, prepared by a professional engineer licensed  
10 in the State of Oklahoma. The evidence of financial security shall  
11 be in an amount equal to the decommissioning costs minus the salvage  
12 value of the equipment. A revised estimate of the total cost of  
13 decommissioning minus the salvage value of the equipment shall be  
14 filed with the commission in the tenth year of the project and every  
15 five (5) years thereafter for the life of the wind energy facility.

16       C. If the owner of a wind energy facility fails to file the  
17 information with the Commission as is required by this section, the  
18 owner shall be subject to an administrative penalty not to exceed  
19 One Thousand Five Hundred Dollars (\$1,500.00) per day.

20       D. In the event of a transfer of ownership of a wind energy  
21 facility, the evidence of financial security posted by the  
22 transferor shall remain in place and shall not be released until  
23 such time as evidence of financial security meeting the requirements  
24

1 of this section is posted by the new owner of the wind energy  
2 facility and deemed acceptable by the Commission.

3 SECTION 6. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 160.16 of Title 17, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. The owner or operator of any wind turbine or wind energy  
7 facility shall provide a statement accompanying any payment made to  
8 a landowner in consideration for the use of the property of the  
9 landowner to generate electrical energy from the conversion of wind  
10 energy. The statement shall provide, at a minimum, the following  
11 information:

12 1. The legal description of the property where the wind energy  
13 facilities in question are located;

14 2. A designation that allows the landowner to readily identify  
15 the wind turbine or turbines or other portion of the wind energy  
16 facility serving as the basis for the payment;

17 3. The fractional interest of the landowner in the property, if  
18 less than fee simple absolute;

19 4. The total amount of electrical power generated by each wind  
20 turbine located on the property of the landowner, which is the gross  
21 generation, expressed in kilowatt-hours (kWh);

22 5. The net amount of electrical power sold from each turbine  
23 located on the property of the landowner, which is the net  
24 generation, expressed in kilowatt-hours (kWh);

1       6. A detailed statement of the electrical losses that account  
2 for the difference between the gross generation and the net  
3 generation of the wind turbine or turbines located on the property  
4 of the landowner, with any references to amounts of power expressed  
5 in kilowatt-hours (kWh);

6       7. The gross sales price received by the owner or operator for  
7 electrical power sold from the wind turbines located on the property  
8 of the landowner, expressed in dollars per kilowatt-hour (\$/kWh);

9       8. The value of any renewable energy credits, carbon credits,  
10 or any other environmental attributes of the electrical power  
11 generated by the wind turbine or wind energy facility that are or  
12 may be sold or monetized by the owner or operator. The values shall  
13 be expressed on a per-turbine basis in dollars per kilowatt-hour  
14 (\$/kWh);

15       9. A detailed itemization of any taxes that were deducted from  
16 the payment made to the landowner, expressed in dollars per  
17 kilowatt-hour (\$/kWh);

18       10. A detailed itemization of any other deductions from the  
19 payment made to the landowner, expressed in dollars per kilowatt-  
20 hour (\$/kWh); and

21       11. Any other information reasonably necessary to provide the  
22 landowner an understanding of the basis for the payment to the  
23 landowner and a means of confirming its accuracy.

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1 B. In the event that the owner or operator of the wind turbines  
2 or wind energy facility sells its electrical power through an  
3 affiliate or other entity, the owner or operator shall remain  
4 responsible for obtaining the information necessary to provide the  
5 statement as set forth in subsection A of this section.

6 SECTION 7. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 160.17 of Title 17, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. Any landowner who has, through a lease, easement, or other  
10 arrangement, allowed a wind turbine or any portion of a wind energy  
11 facility to be placed on the property of the landowner shall have  
12 the right to audit the records of the owner or operator of the wind  
13 turbine or wind energy facility for the purposes of confirming the  
14 accuracy of any payments made or due to be made to the landowner.

15 B. The owner or operator of any wind turbine or wind energy  
16 facility, any portion of which is located in this state, shall  
17 maintain within the state all records, documents, data, and other  
18 information, or copies thereof, as are necessary for a landowner to  
19 conduct the audit specified in subsection A of this section. The  
20 records shall be made available in a location and manner that  
21 affords a landowner reasonable access to the records during normal  
22 business hours.

23 C. Should a landowner discover that the payments made by the  
24 owner or operator to the landowner are deficient by an amount of

1 three percent (3%) or more relative to the actual amount that should  
2 have been paid, the landowner shall have a claim against the owner  
3 or operator for the deficiency and for the reasonable costs incurred  
4 by the landowner in conducting the audit. Reasonable costs shall  
5 include, but are not limited to, mileage, copying costs, time,  
6 accounting, auditing and legal services.

7 SECTION 8. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 160.18 of Title 17, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. The owner or operator of any wind turbine or wind energy  
11 facility shall report to the Corporation Commission the power  
12 generated from the wind turbine or wind energy facility, the  
13 nameplate capacity of the wind turbine or wind energy facility, and  
14 the location of the wind turbine or wind energy facility.

15 B. In the event that a wind energy facility contains wind  
16 turbines with different nameplate capacities, the information  
17 required in subsection A of this section shall be separated by  
18 generation from each nameplate capacity.

19 C. The information required by this section shall be reported  
20 on a calendar-month basis, with the information due on the last day  
21 of the immediately following calendar month.

22 SECTION 9. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 160.19 of Title 17, unless there  
24 is created a duplication in numbering, reads as follows:

1 A. Prior to commencing construction of a wind turbine or wind  
2 energy facility, the owner or operator of a wind turbine or wind  
3 energy facility shall obtain and keep in effect a broad-form,  
4 comprehensive general liability insurance policy with a limit of no  
5 less than Five Million Dollars (\$5,000,000.00) of combined single-  
6 limit liability coverage per occurrence, accident or incident, with  
7 a commercially reasonable deductible.

8 B. The owner or operator shall cause the owner of the land  
9 where the wind turbine or wind energy facility is located to be  
10 named as an additional insured in the policy.

11 C. The owner or operator shall deliver to the landowner a  
12 certificate of insurance evidencing the policy, which certificate  
13 shall provide that:

14 1. The landowner shall be given at least thirty (30) days prior  
15 notice of any modification, cancellation or termination of the  
16 insurance; and

17 2. The insurer waives all rights of subrogation against  
18 landowner in connection with any loss or damage covered by the  
19 policy.

20 SECTION 10. NEW LAW A new section of law not to be  
21 codified in the Oklahoma Statutes reads as follows:

22 The Corporation Commission or any state agency affected by the  
23 requirements of this act is authorized to promulgate rules as  
24 necessary to implement the provisions of this act.

