

1 ENGROSSED SENATE
2 BILL NO. 2132

By: Marlatt and Ivester of the
Senate

3 and

4 Sanders of the House

5
6
7 [Corporation Commission - Oklahoma Wind Energy
8 Development Act - codification - noncodification -
9 effective date -

10 emergency]

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

21 The Legislature finds that:

22 1. Oklahoma's wind energy resources are an important asset for
23 the continued economic growth of the state and for the provision of
24

1 clean and renewable power to both the people of the state and the
2 nation as a whole;

3 2. Promotion of the development of our wind energy resources is
4 important to the economic growth of our state;

5 3. The prudent development of wind energy resources requires
6 balancing the needs of wind energy developers with those of the
7 landowners who provide access to the wind energy resource, including
8 assurances that wind turbines and wind energy facilities will be
9 properly decommissioned, that they will have access to adequate
10 information to verify the accuracy of their payments, and that they
11 will be adequately protected against hazards and accidents that may
12 arise from the wind turbines or wind energy facilities;

13 4. The conversion of wind energy into power for utility-scale
14 systems frequently requires large wind energy systems consisting of
15 wind turbines, electrical substations, electrical lines, and other
16 supporting systems;

17 5. Such wind energy systems, if abandoned or not properly
18 maintained, could pose a hazard to public health, safety, and
19 welfare through mechanical failures, electrical hazards, or the
20 release of hazardous substances; and

21 6. To protect the public against such hazards, standards for
22 the safe decommissioning of such wind energy systems should be
23 established and assurance of adequate financial resources to ensure
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1 that such wind energy systems can be properly decommissioned at the
2 end of their useful life.

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

6 As used in the Oklahoma Wind Energy Development Act:

7 1. "Abandonment" means the failure to generate electricity from
8 commercial wind energy equipment for a period of twenty-four (24)
9 consecutive months for reasons other than curtailment, repowering, a
10 valid judicial order or other governmental regulatory action, with
11 no pending negotiations for purchase. A wind energy facility shall
12 not be considered abandoned if the owner or operator has elected not
13 to run the facility, but it has been maintained in proper working
14 order and is capable of generating electricity;

15 2. "Commencement of construction" means beginning excavation of
16 wind turbine foundations or other actions relating to the actual
17 erection and installation of commercial wind energy equipment. It
18 does not include erection of meteorological towers, environmental
19 assessments, surveys, preliminary engineering or other activities
20 associated with assessment of development of the wind resources on a
21 given parcel of property;

22 3. "Commercial generation date" means the date on which the
23 wind turbine in question first generates electrical energy in
24 commercial quantities;

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

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

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

12 7. "Useful life" means the time during which a wind turbine or
13 wind energy facility is generating electricity in commercial
14 quantities;

15 8. "Wind turbine" means a wind energy conversion system which
16 converts wind energy into electricity through the use of a wind
17 turbine generator and includes the turbine, blade, tower, base and
18 pad transformer, if any; and

19 9. "Wind energy facility" means an electrical generation
20 facility consisting of one or more wind turbines under common
21 ownership or operating control, and includes substations,
22 meteorological data towers, aboveground and underground electrical
23 transmission lines, transformers, control systems, and other
24 buildings or facilities used to support the operation of such

1 facility, and whose primary purpose is to supply electricity to an
2 off-site customer or customers.

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

6 A. The owner of a wind energy facility shall be responsible, at
7 its expense, for the proper decommissioning of such facility upon
8 abandonment or the end of the useful life of the commercial wind
9 energy equipment in the wind energy facility.

10 B. Proper decommissioning of a wind energy facility shall
11 include:

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

15 2. Disturbed earth must be graded and reseeded or otherwise
16 restored to substantially the same physical condition as existed
17 prior to owner's construction of the wind energy facility, excluding
18 roads, unless the landowner specifically requests in writing that
19 the roads or other land surface areas be restored.

20 C. The decommissioning of the wind energy facility, or
21 individual pieces of commercial wind energy equipment, shall be
22 completed by:

23

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

4 2. If the owner of the wind energy facility fails to complete
5 the decommissioning within the period prescribed in paragraph 1 of
6 this subsection, the Commission shall take such measures as are
7 necessary to complete the decommissioning.

8 D. A lease or other agreement between a landowner and an owner
9 of a wind energy facility may contain provisions for decommissioning
10 that are more restrictive than this section.

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

14 A. After the tenth year of operation of a wind energy facility,
15 the owner shall file with the Corporation Commission evidence of
16 financial security to cover the anticipated costs of decommissioning
17 the wind energy facility. Evidence of financial security may be in
18 the form of a surety bond, collateral bond, parent guaranty, or
19 letter of credit.

20 B. The evidence of financial security shall be accompanied by
21 an estimate of the total cost of decommissioning net the salvage
22 value of the equipment prepared by a professional engineer licensed
23 in the State of Oklahoma. The evidence of financial security shall
24 be in an amount equal to the decommissioning costs minus the salvage

1 value of the equipment. A revised estimate of the total cost of
2 decommissioning minus the salvage value of the equipment shall be
3 filed with the commission in the tenth year of the project and every
4 five (5) years thereafter for the life of the wind energy facility.

5 C. The failure of the owner of a wind energy facility to file
6 such information with the Commission as is required by this section
7 shall be subject to an administrative penalty not to exceed One
8 Thousand Five Hundred Dollars (\$1,500.00) per day.

9 D. In the event of a transfer of ownership of a wind energy
10 facility, the evidence of financial security posted by the
11 transferor shall remain in place and shall not be released until
12 such time as evidence of financial security meeting the requirements
13 of this section is posted by the new owner of the wind energy
14 facility and deemed acceptable by the Commission.

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

18 A. The owner or operator of any wind turbine or wind energy
19 facility shall provide a statement accompanying any payment made to
20 a landowner in consideration of the use of the landowner's property
21 to generate electrical energy from the conversion of wind energy.
22 Such statement shall provide, at a minimum, the following
23 information:
24

- 1 1. The legal description of the property where the wind energy
2 facilities in question are located;
- 3 2. A designation that allows the landowner to readily identify
4 the wind turbine or turbines or other portion of the wind energy
5 facility serving as the basis for the payment;
- 6 3. The fractional interest of the landowner in the property, if
7 less than fee simple absolute;
- 8 4. The total amount of electrical power generated by each wind
9 turbine located on the landowner's property, which is the gross
10 generation, expressed in kilowatt-hours (kWh);
- 11 5. The net amount of electrical power sold from each turbine
12 located on the landowner's property, which is the net generation,
13 expressed in kilowatt-hours (kWh);
- 14 6. A detailed statement of the electrical losses that account
15 for the difference between the gross generation and the net
16 generation of the wind turbine or turbines located on the
17 landowner's property, with any references to amounts of power
18 expressed in kilowatt hours (kWh);
- 19 7. The gross sales price received by the owner or operator for
20 electrical power sold from the wind turbines located on the
21 landowner's property, expressed in dollars per kilowatt hour
22 (\$/kWh);
- 23 8. The value of any renewable energy credits, carbon credits,
24 or any other environmental attributes of the electrical power

1 generated by the wind turbine or wind energy facility that are or
2 may be sold or monetized by the owner or operator. Such values
3 shall be expressed both on a per-turbine basis in dollars per
4 kilowatt hour (\$/kWh);

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

8 10. A detailed itemization of any other deductions from the
9 payment made to the owner, expressed in dollars per kilowatt hour
10 (\$/kWh); and

11 11. Any other information reasonably necessary to provide the
12 landowner an understanding of the basis for the landowner's payment
13 and a means of confirming its accuracy.

14 B. In the event that the owner or operator of the wind turbines
15 or wind energy facility sells its electrical power through an
16 affiliate or other entity, the owner or operator shall remain
17 responsible for obtaining the information necessary to provide the
18 statement set forth in subsection A of this section.

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

22 A. Any landowner who has, through a lease, easement, or other
23 arrangement, allowed a wind turbine or any portion of a wind energy
24 facility to be placed on the landowner's property shall have the

1 right to audit the records of the owner or operator of the wind
2 turbine or wind energy facility for the purposes of confirming the
3 accuracy of any payments made or due to be made to the landowner.

4 B. The owner or operator of any wind turbine or wind energy
5 facility, any portion of which is located in this state, shall
6 maintain within the state such records, documents, data, and other
7 information, or copies thereof, as are necessary for a landowner to
8 conduct the audit specified in subsection A of this section. Such
9 records shall be made available in a location and manner that
10 affords a landowner reasonable access to such records during normal
11 business hours.

12 C. Should a landowner discover that the payments made to him or
13 her by the owner or operator are deficient by an amount of three
14 percent (3%) or more relative to the actual amount that should have
15 been paid, the landowner shall have a claim against the owner or
16 operator for the deficiency and for the reasonable costs incurred by
17 the landowner in conducting the audit. Such costs shall include,
18 but are not limited to, mileage, copying costs, time, and
19 accounting, auditing, and/or legal services.

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

23 A. The owner or operator of any wind turbine or wind energy
24 facility shall report to the Corporation Commission the power

1 generated from the wind turbine or wind energy facility, the
2 nameplate capacity of the wind turbine or wind energy facility, and
3 the location of the wind turbine or wind energy facility.

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

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

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

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

21 B. The owner or operator shall cause the owner of the land
22 where the wind turbine or wind energy facility is located to be
23 named as an additional insured in such policy.

1 C. The owner or operator shall deliver to the landowner a
2 certificate of insurance evidencing the policy, which certificate
3 shall provide that:

4 1. The landowner shall be given at least thirty (30) days'
5 prior notice of any modification, cancellation or termination of
6 such insurance; and

7 2. The insurer waives all rights of subrogation against
8 landowner in connection with any loss or damage covered by such
9 policy.

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

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

15 SECTION 11. This act shall become effective July 1, 2010.

16 SECTION 12. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

1 Passed the Senate the 1st day of March, 2010.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2010.

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8 _____
9 Presiding Officer of the House
10 of Representatives