

THE HOUSE OF REPRESENTATIVES
Thursday, February 25, 2010

Committee Substitute for
House Bill No. 2973

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2973 - By: SANDERS of the House and MARLATT of the Senate.

An Act relating to the Corporation Commission; creating the Oklahoma Wind Energy Development Act; providing short title; stating legislative findings; defining terms; requiring decommissioning of wind energy facilities; stating requirements and time limits for decommissioning; stating requirements and procedures for remediation of property following decommissioning of facilities; requiring owners or operators to make certain financial obligations for decommissioning activities by certain time period; stating requirements for financial securities and related information; providing penalties; requiring information for certain existing wind facilities by certain time period; providing for transfer of ownership; requiring operators to provide statements 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 in the Oklahoma
2 Statutes as Section 160.11 of Title 17, unless there is created a duplication in numbering,
3 reads as follows:

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

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

4 The Legislature finds that:

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

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

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

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

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

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

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

8 As used in the Oklahoma Wind Energy Development Act:

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

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

21 3. “Commercial generation date” means the date on which the wind turbine in
22 question first generates electrical energy in commercial quantities;

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

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

7 6. “Owner” means the entity having a majority equity interest in commercial wind
8 energy equipment, including their respective successors and assigns;

9 7. “Useful life” means the time during which a wind turbine or wind energy facility
10 is generating electricity in commercial quantities;

11 8. “Wind turbine” means a wind energy conversion system which converts wind
12 energy into electricity through the use of a wind turbine generator and includes the
13 turbine, blade, tower, base and pad transformer, if any; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 11. Any other information reasonably necessary to provide the landowner an
17 understanding of the basis for the payment to the landowner and a means of confirming
18 its accuracy.

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

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

4 A. Any landowner who has, through a lease, easement, or other arrangement,
5 allowed a wind turbine or any portion of a wind energy facility to be placed on the
6 property of the landowner shall have the right to audit the records of the owner or
7 operator of the wind turbine or wind energy facility for the purposes of confirming the
8 accuracy of any payments made or due to be made to the landowner.

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

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

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

4 A. The owner or operator of any wind turbine or wind energy facility shall report to
5 the Corporation Commission the power generated from the wind turbine or wind energy
6 facility, the nameplate capacity of the wind turbine or wind energy facility, and the
7 location of the wind turbine or wind energy facility.

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

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

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

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

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

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

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

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

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

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY
19 REGULATION, dated 02-24-10 - DO PASS, As Amended and Coauthored.