

ESB 2132

THE HOUSE OF REPRESENTATIVES
Thursday, April 1, 2010

ENGROSSED
Senate Bill No. 2132
As Amended

ENGROSSED SENATE BILL NO. 2132 - By: MARLATT AND IVESTER of the Senate
and SANDERS of the House.

[Corporation Commission - Oklahoma Wind Energy Development Act -
codification - noncodification - effective date -
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".

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

9 The Legislature finds that:

- 1 1. Oklahoma’s wind energy resources are an important asset for the continued
2 economic growth of the state and for the provision of clean and renewable power to both
3 the people of the state and the nation as a whole;
- 4 2. Promotion of the development of our wind energy resources is important to the
5 economic growth of our state;
- 6 3. The prudent development of wind energy resources requires balancing the needs
7 of wind energy developers with those of the landowners who provide access to the wind
8 energy resource, including assurances that wind turbines and wind energy facilities will
9 be properly decommissioned, that they will have access to adequate information to verify
10 the accuracy of their payments, and that they will be adequately protected against
11 hazards and accidents that may arise from the wind turbines or wind energy facilities;
- 12 4. The conversion of wind energy into power for utility-scale systems frequently
13 requires large wind energy systems consisting of wind turbines, electrical substations,
14 electrical lines, and other supporting systems;
- 15 5. Such wind energy systems, if abandoned or not properly maintained, could pose
16 a hazard to public health, safety, and welfare through mechanical failures, electrical
17 hazards, or the release of hazardous substances; and
- 18 6. To protect the public against such hazards, standards for the safe
19 decommissioning of such wind energy systems should be established and assurance of
20 adequate financial resources to ensure that such wind energy systems can be properly
21 decommissioned at the end of their useful life.

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

4 As used in the Oklahoma Wind Energy Development Act:

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

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

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

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

21 5. "Commercial quantities" means an amount of electrical energy sufficient for sale
22 or use off-site from a wind turbine or wind energy facility, and shall not include amounts

1 of electrical energy used only for the maintenance or testing of the wind turbine or wind
2 energy facility itself;

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

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

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

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

15 D. In the event of a transfer of ownership of a wind energy facility, the evidence of
16 financial security posted by the transferor shall remain in place and shall not be released
17 until such time as evidence of financial security meeting the requirements of this section
18 is posted by the new owner of the wind energy facility and deemed acceptable by the
19 Commission.

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

1 A. The owner or operator of any wind turbine or wind energy facility shall provide a
2 statement accompanying any payment made to a landowner in consideration of the use of
3 the landowner's property to generate electrical energy from the conversion of wind
4 energy. Such statement shall provide, at a minimum, the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 A. Any landowner who has, through a lease, easement, or other arrangement,
21 allowed a wind turbine or any portion of a wind energy facility to be placed on the
22 landowner's property shall have the right to audit the records of the owner or operator of

1 the wind turbine or wind energy facility for the purposes of confirming the accuracy of
2 any payments made or due to be made to the landowner.

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

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

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

18 A. The owner or operator of any wind turbine or wind energy facility shall report to
19 the Corporation Commission the power generated from the wind turbine or wind energy
20 facility, the nameplate capacity of the wind turbine or wind energy facility, and the
21 location of the wind turbine or wind energy facility.

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

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

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

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

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

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

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

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

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

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

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY
11 REGULATION, dated 03-31-10 - DO PASS, As Amended.