

CS for SB 2132

1 THE STATE SENATE  
2 Monday, February 22, 2010

3 Committee Substitute for  
4 Senate Bill No. 2132

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2132 - By: Marlatt of the  
6 Senate and Sanders of the House.

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

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

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

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

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

19 The Legislature finds that:

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

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

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

9           4. The conversion of wind energy into power for utility-scale  
10 systems frequently requires large wind energy systems consisting of  
11 wind turbines, electrical substations, electrical lines, and other  
12 supporting systems;

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

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

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

4 As used in the Oklahoma Wind Energy Development Act:

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

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

20 3. "Commercial generation date" means the date on which the  
21 wind turbine in question first generates electrical energy in  
22 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

1 buildings or facilities used to support the operation of such  
2 facility, and whose primary purpose is to supply electricity to an  
3 off-site customer or customers.

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

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

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

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

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

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

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

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

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

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

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

19 A. The owner or operator of any wind turbine or wind energy  
20 facility shall provide a statement accompanying any payment made to  
21 a landowner in consideration of the use of the landowner's property  
22 to generate electrical energy from the conversion of wind energy.

1 Such statement shall provide, at a minimum, the following  
2 information:

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

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

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

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

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

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

21 7. The gross sales price received by the owner or operator for  
22 electrical power sold from the wind turbines located on the

1 landowner's property, expressed in dollars per kilowatt hour  
2 (\$/kWh);

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

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

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

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

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

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

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

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

18          C. Should a landowner discover that the payments made to him or  
19 her by the owner or operator are deficient by an amount of three  
20 percent (3%) or more relative to the actual amount that should have  
21 been paid, the landowner shall have a claim against the owner or  
22 operator for the deficiency and for the reasonable costs incurred by  
23 the landowner in conducting the audit. Such costs shall include,

1 but are not limited to, mileage, copying costs, time, and  
2 accounting, auditing, and/or legal services.

3 SECTION 8. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 160.18 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 report to the Corporation Commission the power  
8 generated from the wind turbine or wind energy facility, the  
9 nameplate capacity of the wind turbine or wind energy facility, and  
10 the location of the wind turbine or wind energy facility.

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

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

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

21 A. Prior to commencing construction of a wind turbine or wind  
22 energy facility, the owner or operator of a wind turbine or wind  
23 energy facility shall obtain and keep in effect a broad-form,

1 comprehensive general liability insurance policy with a limit of no  
2 less than Five Million Dollars (\$5,000,000.00) of combined single-  
3 limit liability coverage per occurrence, accident or incident, with  
4 a commercially reasonable deductible.

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

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

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

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

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

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

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

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

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-17-10 - DO  
6 PASS, As Amended.