SENATE FLOOR VERSION
February 13, 2014

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1559 By: Branan of the Senate

and

Schwartz of the House

[wind energy - the Oklahoma Wind Energy Development Act - Department of Environmental Quality to adopt rules - codification - effective date]

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 160.12, is amended to read as follows:

Section 160.12. The Legislature finds that:

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

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

3. a. The prudent development of wind energy resources requires addressing the relationship of the needs of the following:

(1) wind energy developers ~~with those of the~~,

(2) landowners, in the vicinity of a wind energy facility, and

(3) mineral estate owners who have the historical right to make reasonable use of the surface estate, including the right of ingress and egress ~~therefor~~, for the purpose of exploring for, severing, capturing and producing, the minerals as reflected in the Exploration Rights Act of 2011, Sections ~~3~~ 801 through ~~7~~ 805 of ~~this act~~ Title 52 of the Oklahoma Statutes, and

b. balancing the needs of wind energy developers with those of the landowners who provide access to the wind energy resource, including assurances that wind turbines and wind energy facilities will be properly decommissioned, that they will have access to adequate information to verify the accuracy of their payments, and that they will be adequately protected against hazards and accidents that may arise from the wind turbines or wind energy facilities;

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

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

6. To protect the public against health and safety hazards, standards for the safe construction, operation, maintenance, and decommissioning of wind energy facilities should be established and assurance of adequate financial resources should be given so that the wind energy systems can be properly constructed, operated, maintained, and decommissioned at the end of their useful life.

SECTION 2. AMENDATORY 17 O.S. 2011, Section 160.13, is amended to read as follows:

Section 160.13. As used in the Oklahoma Wind Energy Development Act:

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

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

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

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

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

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

6. "Owner", with regard to wind energy facilities, means ~~the~~ an entity having **a** ~~majority~~ possessory, operational or an equity

interest in commercial wind energy equipment, including their respective successors and assigns;

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

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

9. "Wind energy facility" means an electrical generation facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, meteorological data towers, aboveground and underground electrical transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility, and whose primary purpose is to supply electricity to an off-site customer or customers. ~~Wind energy facility shall not include a wind energy facility located entirely on property held in fee simple absolute estate by the owner of the wind energy facility.~~

SECTION 3. AMENDATORY 17 O.S. 2011, Section 160.14, is amended to read as follows:

Section 160.14. A. <u>Prior to construction or expansion of a wind energy facility, the owner shall post and maintain, throughout the life of the facility, a bond with the Secretary of State in an</u>

amount sufficient to cover the cost of remediation of the land and which is not less than Twenty-five Thousand Dollars ($25,000.00) for each wind turbine in the wind energy facility.

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

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

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

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

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

1. By the owner of the wind energy facility within twelve (12) months after termination of the lease, abandonment of the wind

energy facility, or the end of the useful life of the commercial wind energy equipment in the wind energy facility; and

2. If the owner of the wind energy facility fails to complete the decommissioning within the period prescribed in paragraph 1 of this subsection, the Corporation Commission shall take such measures as are necessary to complete the decommissioning including, but not limited to, recovering all costs of decommissioning from the owner's bond.

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

SECTION 4. AMENDATORY 17 O.S. 2011, Section 160.15, is amended to read as follows:

Section 160.15. A. After the fifteenth year of operation of a wind energy facility, the owner shall file with the Corporation Commission evidence of financial security to cover the anticipated costs of decommissioning the wind energy facility. Evidence of financial security may be in the form of a surety bond, collateral bond, parent guaranty, or letter of credit, and shall be sufficient, when added to the bond posted with the Secretary of State, to cover the entire cost of decommissioning the wind energy facility.

B. The evidence of financial security shall be accompanied by an estimate of the total cost of decommissioning, minus the salvage

value of the equipment, prepared by a professional engineer licensed in ~~the State of Oklahoma~~ this state. The amount of the evidence of financial security shall be either:

1. The estimate of the total cost of decommissioning minus the salvage value of the equipment which shall be filed with the Commission in the fifteenth year of the project and every tenth year thereafter for the life of the wind energy facility; or

2. One hundred twenty-five percent (125%) of the estimate of the total cost of decommissioning which shall be filed with the Commission in the fifteenth year of the project.

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

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

E. The provisions of this section shall apply to ~~any~~ every wind energy facility or portion thereof ~~entering into or renewing a power purchase agreement (PPA) for the energy generated by the wind energy facility on or after the effective date of this act. If a wind~~

~~energy facility does not sell its energy under a power purchase agreement, the provisions of this section shall apply to the wind energy facility or portion thereof which construction commences on or after the effective date of this act~~ in this state.

SECTION 5. AMENDATORY 17 O.S. 2011, Section 160.16, is amended to read as follows:

Section 160.16. For those landowners who are paid based on the amount of electrical energy produced from the conversion of wind energy, the owner or operator of any wind turbine or wind energy facility shall provide a statement within ten (10) business days of the payment to the landowner in consideration for the use of the property of the landowner to generate electrical energy from the conversion of wind energy. The statement shall provide, at a minimum, information reasonably necessary to provide the landowner an understanding of the basis for the payment to the landowner and a means of confirming its accuracy pursuant to Section 160.17 of this title.

SECTION 6. AMENDATORY 17 O.S. 2011, Section 160.18, is amended to read as follows:

Section 160.18. A. The owner or operator of any wind turbine or wind energy facility shall report to the Corporation Commission the power generated from the wind turbine or wind energy facility, the nameplate capacity of the wind turbine or wind energy facility,

and the legal description of the location of the wind turbine or wind energy facility.

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

C. The information required by this section shall be reported on an annual basis, with the information due not later than March 1 of each calendar year.

SECTION 7. NEW LAW A new section of law to be codified as Section 160.20 of Title 17 of the Oklahoma Statutes, unless there is created a duplication in numbering, to read as follows:

A. After the effective date of this act, no wind energy facility may be constructed within one quarter (1/4) of one (1) mile of an occupied dwelling or dwelling under construction without the express written consent of the owner or owners of the dwelling.

B. After the effective date of this act, prior to commencement of construction, every owner of a proposed wind energy facility shall obtain a permit from the Board of County Commissioners of each county in which any part of the wind energy facility will be located. In order to qualify for the permit, the owner must:

1. Present a true and correct copy of each lease or other agreement with each landowner affected by the proposed wind energy facility;

2. Present a true and correct copy of each written consent of the owner or owners of dwellings or dwellings under construction within one quarter (1/4) of one (1) mile of the proposed wind energy facility;

3. Present a certified copy of the bond posted with the Secretary of State; and

4. Post a bond with the County Treasurer in an amount to be determined by the Board of County Commissioners which is sufficient to cover the cost of repair of roads, bridges, and other state and county property which may be damaged during construction of the wind energy facility.

D. After the effective date of this act, prior to commencement of construction, every owner of a proposed wind energy facility shall obtain a permit from the governing body of each municipality in which any part of the wind energy facility will be located, if any. In order to qualify for the permit, the owner must:

1. Comply with all municipal zoning requirements;

2. Present a true and correct copy of each lease or other agreement with each landowner affected by the proposed wind energy facility;

3. Present a true and correct copy of each written consent of the owner or owners of dwellings within one quarter (1/4) of one (1) mile of the proposed wind energy facility;

4. Present a certified copy of the bond posted with the Secretary of State;

5. Present a certified copy of the bond posted with the Board of County Commissioners, and

6. Post a bond with the municipal treasurer in an amount to be determined by the governing body of the municipality which is sufficient to cover the cost of repair of roads, bridges, and other municipal property which may be damaged during construction of the wind energy facility.

SECTION 8. NEW LAW A new section of law to be codified as Section 160.21 of Title 17 of the Oklahoma Statutes, unless there is created a duplication in numbering, to read as follows:

A. After the effective date of this act, no wind energy facility may be constructed which emits sound in excess of fifty (50) decibels (db) at a distance of one thousand (1,000) feet or more.

B. The Department of Environmental Quality shall adopt rules to implement this section.

C. After notice and hearing, the Department of Environmental Quality may assess an administrative penalty of up to One Thousand Dollars ($1,000.00) for each violation of this section or the rules adopted pursuant to this section. Each day a violation occurs shall be a separate offense.

SECTION 9. This act shall become effective September 1, 2014.

COMMITTEE REPORT BY: COMMITTEE ON ENERGY
February 13, 2014 - DO PASS AS AMENDED