

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1549

By: Sears and McBride of the
House

4 and

5 Bingman, Quinn and Mazzei
6 of the Senate

7
8 An Act relating to wind energy; amending 17 O.S.
9 2011, Sections 160.13 and 160.15, which relate to the
10 Oklahoma Wind Energy Development Act;***Corporation
11 Commission; directing the Commission to prescribe the
12 notification form and filing requirements; specifying
13 inclusion of certain information; requiring copies of
14 notification to be filed with certain counties and
15 municipalities***providing for codification; and
16 providing an effective date.

17 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
18 entire bill and insert

19 "An Act relating to energy; amending 52 O.S. 2011,
20 Section 803, which relates to surface estate
21 restrictions; modifying time period required for
22 certain notice of wind energy facility construction;
23 and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2011, Section 803, is
amended to read as follows:

1 Section 803. A. Unless specifically provided otherwise in an
2 instrument transferring or retaining title to the mineral estate
3 separate from the surface estate, and subject to, and consistent
4 with, the provisions of the surface damages statutes and all other
5 applicable laws, rules and regulations, within a tract of real
6 property, the mineral owner has had, and shall hereafter continue to
7 have, the right to make reasonable use of the surface estate,
8 including the right of ingress and egress therefor, for the purpose
9 of exploring, severing, capturing and producing the minerals
10 underlying the tract of real property or lands spaced or pooled
11 therewith.

12 B. Notwithstanding any provision in a wind or solar energy
13 agreement in effect on, or entered into after, the effective date of
14 this act, or the provisions of the Oklahoma Wind Energy Development
15 Act, as the same is in effect or hereafter amended, the lessee of a
16 wind or solar energy agreement or the wind energy developer shall
17 not unreasonably interfere with the mineral owner's right to make
18 reasonable use of the surface estate, including the right of ingress
19 and egress therefor, for the purpose of exploring, severing,
20 capturing and producing the minerals.

21 C. With regard to the surface estate upon which a wind energy
22 developer intends to construct a wind energy facility, at least
23 ~~thirty (30)~~ one hundred eighty (180) days before entering upon the
24 surface estate for the purposes of beginning construction of a wind

1 energy facility, the wind energy developer shall provide written
2 notice, by certified mail, of its intent to construct the wind
3 energy facility to:

4 1. Any operator, as reflected in the records of the Corporation
5 Commission, who is conducting oil and gas operations upon all or any
6 part of the surface estate as to which the wind energy developer
7 intends the construction of the wind energy facility;

8 2. Any operator, as reflected in the records of the Corporation
9 Commission, of an unspaced unit, or a unit created by order of the
10 Corporation Commission, who is conducting oil and gas operations for
11 the unit where all or any part of the unit area is within the
12 geographical boundaries of the surface estate as to which the wind
13 energy developer intends the construction of the wind energy
14 facility; and

15 3. As to tracts of land not described in paragraphs 1 and 2 on
16 which the wind energy developer intends to construct a wind energy
17 facility, all lessees of oil and gas leases covering the mineral
18 estate underlying any part of the tracts of land that are filed of
19 record with county clerk in the county where the tracts are located
20 and whose primary term has not expired.

21 The notice shall contain a map or plat of the proposed location
22 of all of the various elements of the wind energy facility to be
23 located on the governmental section which includes all or any part
24 of the tracts of land described in paragraphs 1, 2 and 3 of this

1 subsection and the approximate date that the wind energy developer
2 proposes to commence construction. If the wind energy developer
3 makes a search with reasonable diligence, and the whereabouts of a
4 party entitled to any notice described in this subsection cannot be
5 ascertained or such notice cannot be delivered, then an affidavit
6 attesting to such diligent search for the parties shall be placed in
7 the records of the county clerk where the surface estate is actually
8 located. The provisions of this subsection shall not be applicable
9 to a wind energy facility that has been constructed or is under
10 construction prior to November 1, 2011.

11 D. The wind energy developer also shall publish notice of the
12 intent to begin construction of a wind energy facility in one issue
13 of a newspaper qualified to publish legal notices in the county
14 where the wind energy facility is intended to be constructed, as
15 provided in Section 106 of Title 25 of the Oklahoma Statutes, which
16 notice shall be published at least thirty (30) days before entering
17 upon the surface estate for the purpose of beginning construction of
18 a wind energy facility and which notice shall include the legal
19 description of the surface estate as to which the wind energy
20 developer intends the construction of the wind energy facility. The
21 provisions of this subsection shall not be applicable to a wind
22 energy facility that has been constructed or is under construction
23 prior to November 1, 2011.

24

1 E. Notices required by this section may be provided by a single
2 wind energy developer with the authority to do so for any wind
3 energy facility regardless of the number of separate persons or
4 entities which may participate in, or have ownership or operational
5 interests in, a wind energy facility.

6 F. It is the intent of this act to confirm the mineral owner's
7 historical right to make reasonable use of the surface estate,
8 including the right of ingress and egress therefor, for the purpose
9 of exploring, severing, capturing and producing the minerals, and
10 nothing in this act is intended to expand or diminish those
11 historical rights. Further, nothing in this act shall amend or
12 modify the surface damages statutes or be interpreted to grant,
13 expand or diminish any person's rights therein.

14 G. For any alleged breach or violation of this act, any
15 affected person may petition the district court in the county in
16 which the real property is located for either declaratory relief
17 pursuant to Sections 1651 through 1657 of Title 12 of the Oklahoma
18 Statutes, or injunctive relief pursuant to Sections 1381 through
19 1397 of Title 12 of the Oklahoma Statutes, or both, in addition to
20 any other remedies at law or in equity that may otherwise be
21 available.

22 SECTION 2. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby
24

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6
7 An Act relating to wind energy; amending 17 O.S.
8 2011, Sections 160.13 and 160.15, which relate to the
9 Oklahoma Wind Energy Development Act; adding
10 definition; changing the time for the filing of
11 evidence of financial security for wind energy
12 facilities commenced after a certain date; modifying
13 acceptable types of financial security; establishing
14 the amount of evidence of financial security for wind
15 energy facilities commenced after a certain date;
16 updating statutory references; prohibiting
17 construction of wind energy facilities in certain
18 locations; requiring the owner of a wind energy
19 facility to file certain notification with the
20 Corporation Commission; directing the Commission to
21 prescribe the notification form and filing
22 requirements; specifying inclusion of certain
23 information; requiring copies of notification to be
24 filed with certain counties and municipalities within
a certain time; requiring copies of the notification
to be published in certain newspapers; directing the
owner of the wind energy facility to hold a public
meeting; listing conditions for the public meeting;
prohibiting commencement of construction until the
notification and public meeting requirements are met;
establishing penalty; providing for codification; and
providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 2011, Section 160.13, is
amended to read as follows:

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

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

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

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

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

24

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

6 6. "Interconnection agreement" means a signed agreement with
7 the Southwest Power Pool relating to the interconnection of a wind
8 energy facility;

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

12 ~~7.~~ 8. "Useful life" means the time during which a wind turbine
13 or wind energy facility is generating electricity in commercial
14 quantities;

15 ~~8.~~ 9. "Wind turbine" means a wind energy conversion system
16 which converts wind energy into electricity through the use of a
17 wind turbine generator and includes the turbine, blade, tower, base
18 and pad transformer, if any; and

19 ~~9.~~ 10. "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 the

1 facility, and whose primary purpose is to supply electricity to an
2 off-site customer or customers. Wind energy facility shall not
3 include a wind energy facility located entirely on property held in
4 fee simple absolute estate by the owner of the wind energy facility.

5 SECTION 2. AMENDATORY 17 O.S. 2011, Section 160.15, is
6 amended to read as follows:

7 Section 160.15 A. ~~After the fifteenth year of operation of a~~
8 ~~wind energy facility, the~~ The owner of a wind energy facility shall
9 file with the Corporation Commission evidence of financial security
10 to cover the anticipated costs of decommissioning the wind energy
11 facility. For a wind energy facility or portion thereof which has
12 entered into an interconnection agreement prior to January 1, 2016,
13 the evidence of financial security shall be filed after the
14 fifteenth year of operation of the facility. For a wind energy
15 facility or portion thereof which enters into an interconnection
16 agreement on or after January 1, 2016, the evidence of financial
17 security shall be filed prior to commencement of construction.
18 Evidence of financial security may be in the form of a surety bond,
19 collateral bond, parent guaranty, ~~or letter of credit~~ cash,
20 cashier's check, certificate of deposit, bank joint custody receipt
21 or other approved negotiable instrument as established in rules
22 promulgated by the Commission.

23 B. ~~The~~ 1. For a wind energy facility which has entered into an
24 interconnection agreement prior to January 1, 2016, the evidence of

1 financial security shall be accompanied by an estimate of the total
2 cost of decommissioning, minus the salvage value of the equipment,
3 prepared by a professional engineer licensed in ~~the State of~~
4 ~~Oklahoma~~ this state. The amount of the evidence of financial
5 security shall be either:

6 ~~1. The~~

7 a. the estimate of the total cost of decommissioning
8 minus the salvage value of the equipment which shall
9 be filed with the Commission in the fifteenth year of
10 the project and every tenth year thereafter for the
11 life of the wind energy facility~~+~~, or

12 ~~2. One~~

13 b. one hundred twenty-five percent (125%) of the estimate
14 of the total cost of decommissioning which shall be
15 filed with the Commission in the fifteenth year of the
16 project.

17 2. For a wind energy facility which enters into an
18 interconnection agreement on or after January 1, 2016, the evidence
19 of financial security shall be accompanied by an estimate of the
20 total cost of decommissioning and an estimate of the salvage value
21 of the equipment prepared by a professional engineer licensed in
22 this state. The amount of the evidence of financial security shall
23 be one hundred twenty-five percent (125%) of the estimate of the
24 total cost of decommissioning, minus the salvage value of the

1 equipment, which shall be filed with the Commission prior to
2 commencement of construction and every fifth year thereafter for the
3 life of the wind energy facility.

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

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

14 E. The provisions of this section shall apply to any wind
15 energy facility or portion thereof entering into or renewing a power
16 purchase agreement (PPA) for the energy generated by the wind energy
17 facility on or after ~~the effective date of this act~~ January 1, 2011.
18 If a wind energy facility does not sell its energy under a power
19 purchase agreement, the provisions of this section shall apply to
20 the wind energy facility or portion thereof which construction
21 commences on or after ~~the effective date of this act~~ January 1,
22 2011.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 160.20 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 After the effective date of this act, no wind energy facility
5 may be constructed if the base of any tower is located at a distance
6 of less than:

7 1. One and one-half (1 1/2) nautical miles from the centerline
8 of any runway located on:

9 a. a public-use airport as defined in Section 120.2 of
10 Title 3 of the Oklahoma Statutes,

11 b. a private-use airport as defined in Section 157.2 of
12 Title 14 of the Code of Federal Regulations and for
13 which:

14 (1) a notice to the Federal Aviation Administration
15 (FAA) has been filed under Section 157.3 of Title
16 14 of the Code of Federal Regulations prior to
17 the notification of intent to build a facility
18 with the Corporation Commission pursuant to
19 subsection A of Section 4 of this act, and

20 (2) an airport determination has been issued by the
21 FAA with a determination of no objection or a
22 conditional determination or the airport
23 determination remains pending, or

24 c. an airport owned by a municipality;

1 2. One and one-half (1 1/2) nautical miles from any public
2 school which is a part of a public school district; or

3 3. One and one-half (1 1/2) nautical miles from a hospital.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 160.21 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 file notification
8 of intent to build a facility with the Corporation Commission within
9 six (6) months of the initial filing with the Federal Aviation
10 Administration (FAA) of a Form FAA 7460-1 (Notice of Proposed
11 Construction or Alteration) or any subsequent form required by the
12 FAA for evaluating the impact a proposed wind energy facility will
13 have on air commerce safety and the preservation of navigable
14 airspace. The Commission shall prescribe the form and filing
15 requirements of the notification; provided, the information required
16 on the notification form shall include at least the same information
17 required on the FAA form. Copies of the notification shall also be
18 filed with the board of county commissioners of every county in
19 which all or a portion of the wind energy facility is to be located
20 within twenty-four (24) hours of filing with the Commission. If all
21 or a portion of the wind energy facility is to be located within the
22 incorporated area of a municipality, copies of the notification
23 shall also be filed with the governing body of the municipality
24 within twenty-four (24) hours of filing with the Commission.

1 B. Within six (6) months of filing the notification with the
2 Commission as provided for in subsection A of this section, the
3 owner of the wind energy facility shall cause a copy of the
4 notification to be published in a newspaper of general circulation
5 in the county or counties in which all or a portion of the wind
6 energy facility is to be located.

7 C. Within sixty (60) days of publishing the notification in a
8 newspaper as provided for in subsection B of this section, the owner
9 of the wind energy facility shall hold a public meeting. Notice of
10 the public meeting shall be published in a newspaper of general
11 circulation in the county or counties in which all or a portion of
12 the wind energy facility is to be located. The notice shall contain
13 the place, date and time of the public meeting. The public meeting
14 shall be held in one of the counties in which all or a portion of
15 the wind energy facility is to be located.

16 D. The owner of a wind energy facility shall not commence
17 construction on the facility until the notification and public
18 meeting requirements of this section have been met. If an owner of
19 a wind energy facility commences construction of the facility prior
20 to meeting the notification and public meeting requirements of this
21 section, the owner shall be subject to an administrative penalty not
22 to exceed One Thousand Five Hundred Dollars (\$1,500.00) for every
23 day of construction.

24 SECTION 5. This act shall become effective September 1, 2015.

1 Passed the House of Representatives the 11th day of March, 2015.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2015.

6
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8 _____
9 Presiding Officer of the Senate