ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1549

By: Sears and McBride of the House

and

Bingman, Quinn and Mazzei of the Senate

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

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

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

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 20th day of April, 2016.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2016.

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Presiding Officer of the House
of Representatives