

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 808

By: Bingman and Fields of the
Senate

and

Sears of the House

COMMITTEE SUBSTITUTE

An Act relating to wind energy; amending 17 O.S. 2011, Section 160.15, which relates to the Oklahoma Wind Energy Development Act; changing the time for the submission of evidence of financial security for wind energy facilities commenced after a certain date; modifying certain types of evidence of financial security; establishing the amount of evidence of financial security for wind energy facilities commenced after a certain date; updating statutory references; stating certain setback requirements for certain wind energy facilities; providing for the reporting of certain compliance; specifying jurisdiction for certain disputes; requiring the owner of a wind energy facility to submit certain notification with the Corporation Commission; directing the Commission to prescribe the notification form and filing requirements; specifying inclusion of certain information; requiring copies of 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; authorizing the Commission to promulgate rules and act fees; and providing for codification.

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

2 SECTION 1. AMENDATORY 17 O.S. 2011, Section 160.15, is
3 amended to read as follows:

4 Section 160.15 A. ~~After the fifteenth year of operation~~ The
5 owner of a wind energy facility, the owner shall file with submit to
6 the Corporation Commission evidence of financial security to cover
7 the anticipated costs of decommissioning the wind energy facility.
8 For a wind energy facility or portion thereof which reaches the
9 commercial generation date prior to December 31, 2016, the evidence
10 of financial security shall be submitted after the fifteenth year of
11 operation of the facility. For a wind energy facility or portion
12 thereof which reaches the commercial generation date on or after
13 December 31, 2016, the evidence of financial security shall be
14 submitted by the fifth year of operation of the facility. Evidence
15 of financial security may be in the form of a surety bond,
16 collateral bond, parent guaranty, ~~or letter of credit~~ cash,
17 cashier's check, certificate of deposit, bank joint custody receipt
18 or other approved negotiable instrument as established in rules
19 promulgated by the Commission.

20 B. ~~The~~ 1. For a wind energy facility which reaches the
21 commercial generation date prior to December 31, 2016, the evidence
22 of financial security shall be accompanied by an estimate of the
23 total cost of decommissioning, minus the salvage value of the
24 equipment, prepared by a professional engineer licensed in ~~the State~~

1 ~~of Oklahoma~~ this state. The amount of the evidence of financial
2 security shall be either:

3 ~~1. The~~

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

10 ~~2. One~~

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

15 2. For a wind energy facility which reaches the commercial
16 generation date on or after December 31, 2016, the evidence of
17 financial security shall be accompanied by an estimate of the total
18 cost of decommissioning and an estimate of the salvage value of the
19 equipment prepared by a professional engineer licensed in this
20 state. The amount of the evidence of financial security shall be
21 one hundred twenty-five percent (125%) of the estimate of the total
22 cost of decommissioning, minus the salvage value of the equipment,
23 which shall be submitted to the Commission by the fifth year after
24

1 reaching the commercial generation date and thereafter upon request
2 by the Commission.

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

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

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

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

1 A. After the effective date of this act, no wind energy
2 facility may be constructed if the base of any tower is located at a
3 distance of less than:

4 1. One and one-half (1 1/2) nautical miles from the center line
5 of any runway located on:

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

8 b. a private-use airport as defined in Section 157.2 of
9 Title 14 of the Code of Federal Regulations and for
10 which:

11 (1) a notice to the Federal Aviation Administration
12 (FAA) has been filed under Section 157.3 of Title
13 14 of the Code of Federal Regulations prior to
14 the notification of intent to build a facility
15 with the Corporation Commission pursuant to
16 subsection A of Section 3 of this act, and

17 (2) an airport determination has been issued by the
18 FAA with a determination of no objection or a
19 conditional determination or the airport
20 determination remains pending, or

21 c. an airport owned by a municipality;

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

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

1 B. Attestation of compliance with the setback requirements in
2 this section shall be included in any reports required by the
3 Corporation Commission. Disputes arising under this section shall
4 fall under the exclusive jurisdiction of the district courts.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 160.21 of Title 17, unless there
7 is created a duplication in numbering, reads as follows:

8 A. The owner of a wind energy facility shall submit
9 notification of intent to build a facility to the Corporation
10 Commission within six (6) months of the initial filing pertaining to
11 commencement of construction with the Federal Aviation
12 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed
13 Construction or Alteration) or any subsequent form required by the
14 FAA for evaluating the impact a proposed wind energy facility will
15 have on air commerce safety and the preservation of navigable
16 airspace. The Commission shall prescribe the form and submittal
17 requirements of the notification; provided, the information required
18 on the notification form shall include at least the same information
19 required on the FAA form. The owner of the wind energy facility
20 shall submit copies of the notification with the board of county
21 commissioners of every county in which all or a portion of the wind
22 energy facility is to be located within twenty-four (24) hours of
23 filing with the Commission. If all or a portion of the wind energy
24 facility is to be located within the incorporated area of a

1 municipality, copies of the notification shall also be submitted to
2 the governing body of the municipality within twenty-four (24) hours
3 of filing with the Commission.

4 B. Within six (6) months of submitting the notification with
5 the Commission as provided for in subsection A of this section, the
6 owner of the wind energy facility shall cause a copy of the
7 notification to be published in a newspaper of general circulation
8 in the county or counties in which all or a portion of the wind
9 energy facility is to be located. Proof of publication shall be
10 submitted to the Commission.

11 C. Within sixty (60) days of publishing the notification in a
12 newspaper as provided for in subsection B of this section, the owner
13 of the wind energy facility shall hold a public meeting. Notice of
14 the public meeting shall be published in a newspaper of general
15 circulation and submitted to the board of county commissioners in
16 the county or counties in which all or a portion of the wind energy
17 facility is to be located. The notice shall contain the place, date
18 and time of the public meeting. Proof of publication of the notice
19 shall be submitted to the Commission. The public meeting shall be
20 held in one of the counties in which all or a portion of the wind
21 energy facility is to be located.

22 D. The owner of a wind energy facility shall not commence
23 construction on the facility until the notification and public
24 meeting requirements of this section have been met. If an owner of

1 a wind energy facility fails to submit the information with the
2 Commission as required in this section, the owner shall be subject
3 to an administrative penalty not to exceed One Thousand Five Hundred
4 Dollars (\$1,500.00) per day.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 160.22 of Title 17, unless there
7 is created a duplication in numbering, reads as follows:

8 The Corporation Commission shall have authority to promulgate
9 rules as necessary to implement the provisions of the Oklahoma Wind
10 Energy Development Act and to set fees necessary to carry out the
11 duties and responsibilities of the Commission pursuant to the act.

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