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April 7, 2016

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1549

By: Sears, McBride and Perryman
of the House

and

Bingman, Quinn and Mazzei
of the Senate

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,

1 including the right of ingress and egress therefor, for the purpose
2 of exploring, severing, capturing and producing the minerals
3 underlying the tract of real property or lands spaced or pooled
4 therewith.

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

14 C. With regard to the surface estate upon which a wind energy
15 developer intends to construct a wind energy facility, at least
16 ~~thirty (30)~~ one hundred eighty (180) days before entering upon the
17 surface estate for the purposes of beginning construction of a wind
18 energy facility, the wind energy developer shall provide written
19 notice, by certified mail, of its intent to construct the wind
20 energy facility to:

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

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

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

14 The notice shall contain a map or plat of the proposed location
15 of all of the various elements of the wind energy facility to be
16 located on the governmental section which includes all or any part
17 of the tracts of land described in paragraphs 1, 2 and 3 of this
18 subsection and the approximate date that the wind energy developer
19 proposes to commence construction. If the wind energy developer
20 makes a search with reasonable diligence, and the whereabouts of a
21 party entitled to any notice described in this subsection cannot be
22 ascertained or such notice cannot be delivered, then an affidavit
23 attesting to such diligent search for the parties shall be placed in
24 the records of the county clerk where the surface estate is actually

1 located. The provisions of this subsection shall not be applicable
2 to a wind energy facility that has been constructed or is under
3 construction prior to November 1, 2011.

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

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

22 F. It is the intent of this act to confirm the mineral owner's
23 historical right to make reasonable use of the surface estate,
24 including the right of ingress and egress therefor, for the purpose

1 of exploring, severing, capturing and producing the minerals, and
2 nothing in this act is intended to expand or diminish those
3 historical rights. Further, nothing in this act shall amend or
4 modify the surface damages statutes or be interpreted to grant,
5 expand or diminish any person's rights therein.

6 G. For any alleged breach or violation of this act, any
7 affected person may petition the district court in the county in
8 which the real property is located for either declaratory relief
9 pursuant to Sections 1651 through 1657 of Title 12 of the Oklahoma
10 Statutes, or injunctive relief pursuant to Sections 1381 through
11 1397 of Title 12 of the Oklahoma Statutes, or both, in addition to
12 any other remedies at law or in equity that may otherwise be
13 available.

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

18 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
19 April 7, 2016 - DO PASS AS AMENDED
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