

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 2299

By: McCall

COMMITTEE SUBSTITUTE

An Act relating to wind energy; amending Section 3, Chapter 92, O.S.L. 2015 (17 O.S. Supp. 2016, Section 160.21), which relates to notification of intent to build a wind energy facility; specifying terms of notification of intent to build a wind facility; requiring an affidavit in certain situations; requiring written notice in certain time line to certain people; requiring certain persons to respond to notice of intent to build a wind facility; amending 52 O.S. 2011, Section 803, which relates to surface estates; removing requirement for wind energy developer to follow certain procedures when intending to construct a wind energy facility; removing requirement for certain methods of notification; conforming language; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 92, O.S.L. 2015 (17 O.S. Supp. 2016, Section 160.21), is amended to read as follows:

Section 160.21. A. The owner of a wind energy facility shall submit notification of intent to build a facility to the Corporation Commission within six (6) months of the initial filing pertaining to commencement of construction with the Federal Aviation

1 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed
2 Construction or Alteration) or any subsequent form required by the
3 FAA for evaluating the impact a proposed wind energy facility will
4 have on air commerce safety and the preservation of navigable
5 airspace. The Commission shall prescribe the form and submittal
6 requirements of the notification; provided, the information required
7 on the notification form shall include at least the same information
8 required on the FAA form. The owner of the wind energy facility
9 shall submit copies of the notification with the board of county
10 commissioners of every county in which all or a portion of the wind
11 energy facility is to be located within twenty-four (24) hours of
12 filing with the Commission. If all or a portion of the wind energy
13 facility is to be located within the incorporated area of a
14 municipality, copies of the notification shall also be submitted to
15 the governing body of the municipality within twenty-four (24) hours
16 of filing with the Commission.

17 B. Within six (6) months of submitting the notification with
18 the Commission as provided for in subsection A of this section, the
19 owner of the wind energy facility shall cause a copy of the
20 notification to be published in a newspaper of general circulation
21 in the county or counties in which all or a portion of the wind
22 energy facility is to be located. Proof of publication shall be
23 submitted to the Commission.

24

1 C. Within six (6) months of submitting the notification with
2 the Commission as provided in subsection A of this section, the
3 owner of the wind energy facility shall cause a copy of the
4 notification to be sent, by certified mail, to:

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

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

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

22 If the wind energy developer makes a search with reasonable
23 diligence and the whereabouts of a party entitled to any notice
24 described in this subsection cannot be ascertained or such notice

1 cannot be delivered, then an affidavit attesting to such diligent
2 search for the parties shall be placed in the records of the county
3 clerk in the county where the surface estate is actually located.

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

15 E. With regard to the surface estate upon which the owner of a
16 wind energy facility intends to construct a wind energy facility, at
17 least sixty (60) days before entering upon the surface estate for
18 the purposes of commencement of construction of the wind energy
19 facility, the owner shall provide written notice, by certified mail,
20 of its intent to construct the wind 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 of
9 this subsection on which the wind energy developer intends to
10 construct a wind energy facility, all lessees of oil and gas leases
11 covering the mineral estate underlying any part of the tracts of
12 land that are filed of record with the county clerk in the county
13 where the tracts are located and whose primary term has not expired.

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

1 the county clerk in the county where the surface estate is actually
2 located. Within thirty (30) days of receiving said notice, any
3 operator, as described in paragraphs 1, 2 and 3 of this subsection,
4 shall reciprocate, in writing by certified mail, certain site,
5 operational and infrastructure information, with sufficient
6 specificity, to be shared with the owner of the wind energy facility
7 to assist both with the safe construction and operation pertaining
8 to the surface estate. This information should include ALTA surveys
9 of existing subsurface and surface improvements on the property, if
10 any, as well as other technical specifications for existing
11 improvements such as pipe size, material, capacity and depth.

12 ~~D.~~ F. The owner of a wind energy facility shall not commence
13 construction on the facility until the notification and public
14 meeting requirements of this section have been met. If an owner of
15 a wind energy facility fails to submit the information with the
16 Commission as required in this section, the owner shall be subject
17 to an administrative penalty not to exceed One Thousand Five Hundred
18 Dollars (\$1,500.00) per day.

19 SECTION 2. AMENDATORY 52 O.S. 2011, Section 803, is
20 amended to read as follows:

21 Section 803. A. Unless specifically provided otherwise in an
22 instrument transferring or retaining title to the mineral estate
23 separate from the surface estate, and subject to, and consistent
24 with, the provisions of the surface damages statutes and all other

1 applicable laws, rules and regulations, within a tract of real
2 property, the mineral owner has had, and shall hereafter continue to
3 have, the right to make reasonable use of the surface estate,
4 including the right of ingress and egress therefor, for the purpose
5 of exploring, severing, capturing and producing the minerals
6 underlying the tract of real property or lands spaced or pooled
7 therewith.

8 B. Notwithstanding any provision in a wind or solar energy
9 agreement in effect on, or entered into after, ~~the effective date of~~
10 ~~this act~~ May 10, 2011, or the provisions of the Oklahoma Wind Energy
11 Development Act, as the same is in effect or hereafter amended, the
12 lessee of a wind or solar energy agreement or the wind energy
13 developer shall not unreasonably interfere with the mineral owner's
14 right to make reasonable use of the surface estate, including the
15 right of ingress and egress therefor, for the purpose of exploring,
16 severing, capturing and producing the minerals.

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

23 1. ~~Any operator, as reflected in the records of the Corporation~~
24 ~~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~~

1 ~~attesting to such diligent search for the parties shall be placed in~~
2 ~~the records of the county clerk where the surface estate is actually~~
3 ~~located. The provisions of this subsection shall not be applicable~~
4 ~~to a wind energy facility that has been constructed or is under~~
5 ~~construction prior to November 1, 2011.~~

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

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

1 ~~F.~~ It is the intent of ~~this act~~ the Exploration Rights Act of
2 2011 to confirm the mineral owner's historical right to make
3 reasonable use of the surface estate, including the right of ingress
4 and egress therefor, for the purpose of exploring, severing,
5 capturing and producing the minerals, and nothing in this act is
6 intended to expand or diminish those historical rights. Further,
7 nothing in this act shall amend or modify the surface damages
8 statutes or be interpreted to grant, expand or diminish any person's
9 rights therein.

10 ~~G.~~ D. For any alleged breach or violation of ~~this act~~ the
11 Exploration Rights Act of 2011, any affected person may petition the
12 district court in the county in which the real property is located
13 for either declaratory relief pursuant to Sections 1651 through 1657
14 of Title 12 of the Oklahoma Statutes, or injunctive relief pursuant
15 to Sections 1381 through 1397 of Title 12 of the Oklahoma Statutes,
16 or both, in addition to any other remedies at law or in equity that
17 may otherwise be available.

18 SECTION 3. This act shall become effective November 1, 2017.
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