

An Act

ENROLLED SENATE
BILL NO. 593

By: Schulz of the Senate

and

McCall of the House

An Act relating to wind energy facilities; 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 timeline to certain people; requiring certain persons to respond to notice of intent to build a wind facility; amending Section 2, Chapter 92, O.S.L. 2015 (17 O.S. Supp. 2016, Section 160.20), which relates to setback requirements of wind energy development; deleting certain location prohibition; 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 declaring an emergency.

SUBJECT: Wind energy facility procedures

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 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed

Construction or Alteration) or any subsequent form required by the FAA for evaluating the impact a proposed wind energy facility will have on air commerce safety and the preservation of navigable airspace. The Commission shall prescribe the form and submittal requirements of the notification; provided, the information required on the notification form shall include at least the same information required on the FAA form. The owner of the wind energy facility shall submit copies of the notification with the board of county commissioners of every county in which all or a portion of the wind energy facility is to be located within twenty-four (24) hours of filing with the Commission. If all or a portion of the wind energy facility is to be located within the incorporated area of a municipality, copies of the notification shall also be submitted to the governing body of the municipality within twenty-four (24) hours of filing with the Commission.

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

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

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.

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

E. With regard to the surface estate upon which the owner of a wind energy facility intends to construct a wind energy facility, at least sixty (60) days before entering upon the surface estate for the purposes of commencement of construction of the wind energy facility, the owner 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 of this subsection 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, with sufficient specificity 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 owner of the wind energy facility 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. Within thirty (30) days of receiving said notice, any operator, as described in paragraphs 1, 2 and 3 of this subsection shall reciprocate, in writing by certified mail, certain site, operational and infrastructure information, with sufficient specificity, to be shared with the owner of the wind energy facility to assist both with the safe construction and operation pertaining to the surface estate. This information should include ALTA surveys of existing subsurface and surface improvements on the property, if any, as well as other technical specifications for existing improvements such as pipe size, material, capacity and depth.

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

SECTION 2. AMENDATORY Section 2, Chapter 92, O.S.L. 2015 (17 O.S. Supp. 2016, Section 160.20), is amended to read as follows:

Section 160.20. A. After the effective date of this act, no wind energy facility may be constructed if the base of any tower is located at a distance of less than:

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

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

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

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

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

~~e.~~ an airport owned by a municipality;

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

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

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

SECTION 3. 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~~ May 10, 2011, 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) 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~~ the Exploration Rights Act of 2011 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. D. For any alleged breach or violation of ~~this act~~ the Exploration Rights Act of 2011, 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 4. It being immediately necessary for the preservation of the public peace, health or 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 9th day of March, 2017.

Presiding Officer of the Senate

Passed the House of Representatives the 10th day of April, 2017.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____