

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 593, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Schulz

Schulz-MD-FS-Req#1590
3/8/2017 4:16 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

FLOOR SUBSTITUTE
FOR

SENATE BILL NO. 593

By: Schulz of the Senate

and

McCall of the House

FLOOR SUBSTITUTE

[wind energy - notification of intent to build -
surface

emergency]

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

1 on the notification form shall include at least the same information
2 required on the FAA form. The owner of the wind energy facility
3 shall submit copies of the notification with the board of county
4 commissioners of every county in which all or a portion of the wind
5 energy facility is to be located within twenty-four (24) hours of
6 filing with the Commission. If all or a portion of the wind energy
7 facility is to be located within the incorporated area of a
8 municipality, copies of the notification shall also be submitted to
9 the governing body of the municipality within twenty-four (24) hours
10 of filing with the Commission.

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

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

22 1. Any operator, as reflected in the records of the Corporation
23 Commission, who is conducting oil and gas operations upon all or any
24

1 part of the surface estate as to which the wind energy developer
2 intends the construction of the wind energy facility;

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

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

16 If the wind energy developer makes a search with reasonable
17 diligence, and the whereabouts of a party entitled to any notice
18 described in this subsection cannot be ascertained or such notice
19 cannot be delivered, then an affidavit attesting to such diligent
20 search for the parties shall be placed in the records of the county
21 clerk where the surface estate is actually located.

22 D. Within sixty (60) days of publishing the notification in a
23 newspaper as provided for in subsection B of this section, the owner
24 of the wind energy facility shall hold a public meeting. Notice of

1 the public meeting shall be published in a newspaper of general
2 circulation and submitted to the board of county commissioners in
3 the county or counties in which all or a portion of the wind energy
4 facility is to be located. The notice shall contain the place, date
5 and time of the public meeting. Proof of publication of the notice
6 shall be submitted to the Commission. The public meeting shall be
7 held in one of the counties in which all or a portion of the wind
8 energy facility is to be located.

9 E. With regard to the surface estate upon which the owner of a
10 wind energy facility intends to construct a wind energy facility, at
11 least sixty (60) days before entering upon the surface estate for
12 the purposes of commencement of construction of the wind energy
13 facility, the owner shall provide written notice, by certified mail,
14 of its intent to construct the wind energy facility to:

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

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

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

9 The notice shall contain a map or plat of the proposed location,
10 with sufficient specificity of all of the various elements of the
11 wind energy facility to be located on the governmental section which
12 includes all or any part of the tracts of land described in
13 paragraphs 1, 2 and 3 of this subsection and the approximate date
14 that the owner of the wind energy facility proposes to commence
15 construction. If the wind energy developer makes a search with
16 reasonable diligence, and the whereabouts of a party entitled to any
17 notice described in this subsection cannot be ascertained or such
18 notice cannot be delivered, then an affidavit attesting to such
19 diligent search for the parties shall be placed in the records of
20 the county clerk where the surface estate is actually located.
21 Within thirty (30) days of receiving said notice, any operator, as
22 described in paragraphs 1, 2 and 3 of this subsection shall
23 reciprocate, in writing by certified mail, certain site, operational
24 and infrastructure information, with sufficient specificity, to be

1 shared with the owner of the wind energy facility to assist both
2 with the safe construction and operation pertaining to the surface
3 estate. This information should include ALTA surveys of existing
4 subsurface and surface improvements on the property, if any, as well
5 as other technical specifications for existing improvements such as
6 pipe size, material, capacity and depth.

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

14 SECTION 2. AMENDATORY Section 2, Chapter 92, O.S.L. 2015
15 (17 O.S. Supp. 2016, Section 160.20), is amended to read as follows:

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

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

21 a. a public-use airport as defined in Section 120.2 of
22 Title 3 of the Oklahoma Statutes, or
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1 b. ~~a private use airport as defined in Section 157.2 of~~
2 ~~Title 14 of the Code of Federal Regulations and for~~
3 ~~which:~~

4 ~~(1) a notice to the Federal Aviation Administration~~
5 ~~(FAA) has been filed under Section 157.3 of Title~~
6 ~~14 of the Code of Federal Regulations prior to~~
7 ~~the notification of intent to build a facility~~
8 ~~with the Corporation Commission pursuant to~~
9 ~~subsection A of Section 3 of this act, and~~

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

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

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

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

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

22 SECTION 3. AMENDATORY 52 O.S. 2011, Section 803, is
23 amended to read as follows:

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

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

21 C. ~~With regard to the surface estate upon which a wind energy~~
22 ~~developer intends to construct a wind energy facility, at least~~
23 ~~thirty (30) days before entering upon the surface estate for the~~
24 ~~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~~

1 ~~energy facility regardless of the number of separate persons or~~
2 ~~entities which may participate in, or have ownership or operational~~
3 ~~interests in, a wind energy facility.~~

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

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

21 SECTION 4. It being immediately necessary for the preservation
22 of the public peace, health or safety, an emergency is hereby
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1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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