

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3561

By: Ortega, Murdock and
Perryman

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9 COMMITTEE SUBSTITUTE

10 An Act relating to the Corporation Commission;
11 amending Section 2, Chapter 92, O.S.L. 2015, as
12 amended by Section 2, Chapter 45, O.S.L. 2017 (17
13 O.S. Supp. 2017, Section 160.20) and Section 3,
14 Chapter 92, O.S.L. 2015, as amended by Section 1,
15 Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section
16 160.21), which relate to setback requirements and
17 notification of intent to build a facility;
18 prohibiting the construction of certain facilities
19 after certain date; providing exception to
20 prohibition; requiring certain filing; requiring
21 Corporation Commission to promulgate rules; requiring
22 certain notification; and declaring an emergency.

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

26 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
27 2015, as amended by Section 2, Chapter 45, O.S.L. 2017 (17 O.S.
28 Supp. 2017, Section 160.20), is amended to read as follows:

1 Section 160.20 A. ~~After the effective date of this act~~ August
2 21, 2015, no wind energy facility may be constructed if the base of
3 any tower is located at a 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, or

8 b. an airport owned by a municipality;

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

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

12 B. After the effective date of this act, construction or
13 operation of a proposed wind energy facility or proposed wind energy
14 facility expansion shall not encroach upon or otherwise have a
15 significant adverse impact on the mission, training or operations of
16 any military installation or branch of military. No wind energy
17 facility may be constructed or expanded unless an active
18 Determination of No Hazard or an approved mitigation plan is
19 obtained from the Department of Defense Siting Clearinghouse.

20 1. The Determination or mitigation plan shall be filed with the
21 Corporation Commission.

22 2. The requirements established by this subsection shall not
23 prohibit a wind energy facility or wind energy facility expansion if
24 those facilities or facility expansions that obtained a written

1 Determination or mitigation plan from the Department of Defense
2 Siting Clearinghouse on or before the effective date of this act.

3 3. The Corporation Commission shall promulgate rules and
4 regulations for the implementation of the provisions of this
5 section.

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

10 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
11 2015, as amended by Section 1, Chapter 45, O.S.L. 2017 (17 O.S.
12 Supp. 2017, Section 160.21), is amended to read as follows:

13 Section 160.21 A. The owner of a wind energy facility shall
14 submit notification of intent to build a facility to the Corporation
15 Commission within six (6) months of the initial filing pertaining to
16 commencement of construction with the Federal Aviation
17 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed
18 Construction or Alteration) or any subsequent form required by the
19 FAA for evaluating the impact a proposed wind energy facility will
20 have on air commerce safety and the preservation of navigable
21 airspace. The Commission shall prescribe the form and submittal
22 requirements of the notification; provided, the information required
23 on the notification form shall include at least the same information
24 required on the FAA form. The owner of the wind energy facility

1 shall submit copies of the notification with the board of county
2 commissioners of every county in which all or a portion of the wind
3 energy facility is to be located and the Military Strategic Planning
4 Commission within twenty-four (24) hours of filing with the
5 Commission. The Military Strategic Planning Commission shall notify
6 local base commanders upon the filing. If all or a portion of the
7 wind energy facility is to be located within the incorporated area
8 of a municipality, copies of the notification shall also be
9 submitted to the governing body of the municipality within twenty-
10 four (24) hours 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
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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 Corporation
4 Commission, of an unspaced unit, or a unit created by order of the
5 Corporation Commission, who is conducting oil and gas operations for
6 the unit where all or any part of the unit area is within the
7 geographical boundaries of the surface estate as to which the wind
8 energy developer intends the construction of the wind energy
9 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 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 3. It being immediately necessary for the preservation
15 of the public peace, health or 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.

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19 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/26/2018 - DO PASS,
20 As Amended and Coauthored.
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