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ENGROSSED HOUSE
BILL NO. 3561

and
Schulz and Pederson of the
Senate

An Act relating to the Corporation Commission; amending Section 2, Chapter 92, O.S.L. 2015, as amended by Section 2, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.20) and Section 3, Chapter 92, O.S.L. 2015, as amended by Section 1, Chapter 45, O.S.L. 2017 (17 O.S. Supp. 2017, Section 160.21), which relate to setback requirements and notification of intent to build a facility; prohibiting the construction or operation of certain facilities after certain date; defining term; requiring active Determination of No Hazard or certain mitigation plan; providing exception to prohibition; requiring certain filing; requiring Corporation Commission to promulgate rules; requiring certain notification; prescribing procedures related to owners of wind energy facilities; imposing duties on Oklahoma Strategic Military Planning Commission; requiring filing of letter with Corporation Commission; and declaring an emergency.

SENATE FLOOR VERSION - HB3561 SFLR
(Bold face denotes Committee Amendments)

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

Section 160.20 A. After ~~the effective date of this act~~ August 21, 2015, 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. 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.

C. After the effective date of this act, construction or operation of a proposed wind energy facility or proposed wind energy facility expansion shall not encroach upon or otherwise have a significant adverse impact on the mission, training or operations of any military installation or branch of military as determined by the Military Aviation and Installation Assurance Siting Clearinghouse

1 and the Federal Aviation Administration. Areas of impact include,
2 but are not limited to, military training routes, drop zones,
3 approaches to runways and bombing ranges. No wind energy facility
4 may be constructed or expanded unless an active Determination of No
5 Hazard from the Federal Aviation Administration or an approved
6 mitigation plan is obtained from the Military Aviation and
7 Installation Assurance Siting Clearinghouse.

8 1. The Determination of No Hazard or mitigation plan shall be
9 filed with the Corporation Commission.

10 2. The requirements established by this subsection shall not
11 prohibit a wind energy facility construction or wind energy facility
12 expansion if those facilities or facility expansions obtain a
13 written Determination of No Hazard or mitigation plan on or before
14 the effective date of this act.

15 3. The Corporation Commission shall promulgate rules and
16 regulations for the implementation of the provisions of this
17 section.

18 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
19 2015, as amended by Section 1, Chapter 45, O.S.L. 2017 (17 O.S.
20 Supp. 2017, Section 160.21), is amended to read as follows:

21 Section 160.21 A. The owner of a wind energy facility shall
22 submit notification of intent to build a facility to the Corporation
23 Commission within six (6) months of the initial filing pertaining to
24 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 Corporation Commission shall prescribe the form and
6 submittal requirements of the notification; provided, the
7 information required on the notification form shall include at least
8 the same information required on the FAA form. The owner of the
9 wind energy facility shall ~~submit~~ send copies of the notification
10 with the board of county commissioners of every county in which all
11 or a portion of the wind energy facility is to be located within
12 twenty-four (24) hours of filing with the Corporation Commission.
13 If all or a portion of the wind energy facility is to be located
14 within the incorporated area of a municipality, copies of the
15 notification shall also be ~~submitted~~ sent to the governing body of
16 the municipality within twenty-four (24) hours of filing with the
17 Commission.

18 B. Within thirty (30) days of submitting the notification to
19 the Corporation Commission, as provided for in subsection A of this
20 section, the owner of the wind energy facility shall cause a copy of
21 the notification to be submitted to the Oklahoma Strategic Military
22 Planning Commission. The Oklahoma Strategic Military Planning
23 Commission shall notify local base commanders upon receipt of the
24 notification. The Oklahoma Strategic Military Planning Commission

1 shall submit a letter to the Military Aviation and Installation
2 Assurance Siting Clearinghouse outlining potential areas of impact,
3 as provided in Section 160.20 of this title, within thirty (30) days
4 of receipt of the notification. The letter from the Oklahoma
5 Strategic Military Planning Commission shall be filed with the
6 Corporation Commission.

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

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

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

22 2. Any operator, as reflected in the records of the Corporation
23 Commission, of an unspaced unit, or a unit created by order of the
24 Corporation Commission, who is conducting oil and gas operations for

1 the unit where all or any part of the unit area is within the
2 geographical boundaries of the surface estate as to which the wind
3 energy developer intends the construction of the wind energy
4 facility; and

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

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

17 ~~D.~~ E. Within sixty (60) days of publishing the notification in
18 a newspaper as provided for in subsection ~~B~~ C of this section, the
19 owner of the wind energy facility shall hold a public meeting.
20 Notice of the public meeting shall be published in a newspaper of
21 general circulation and submitted to the board of county
22 commissioners in the county or counties in which all or a portion of
23 the wind energy facility is to be located. The notice shall contain
24 the place, date and time of the public meeting. Proof of

1 publication of the notice shall be submitted to the Commission. The
2 public meeting shall be held in one of the counties in which all or
3 a portion of the wind energy facility is to be located.

4 ~~E.~~ F. With regard to the surface estate upon which the owner of
5 a wind energy facility intends to construct a wind energy facility,
6 at least sixty (60) days before entering upon the surface estate for
7 the purposes of commencement of construction of the wind energy
8 facility, the owner shall provide written notice, by certified mail,
9 of its intent to construct the wind energy facility to:

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

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

21 3. As to tracts of land not described in paragraphs 1 and 2 of
22 this subsection on which the wind energy developer intends to
23 construct a wind energy facility, all lessees of oil and gas leases
24 covering the mineral estate underlying any part of the tracts of

1 land that are filed of record with county clerk in the county where
2 the tracts are located and whose primary term has not expired.

3 The notice shall contain a map or plat of the proposed location,
4 with sufficient specificity of all of the various elements of the
5 wind energy facility to be located on the governmental section which
6 includes all or any part of the tracts of land described in
7 paragraphs 1, 2 and 3 of this subsection and the approximate date
8 that the owner of the wind energy facility proposes to commence
9 construction. If the wind energy developer makes a search with
10 reasonable diligence, and the whereabouts of a party entitled to any
11 notice described in this subsection cannot be ascertained or such
12 notice cannot be delivered, then an affidavit attesting to such
13 diligent search for the parties shall be placed in the records of
14 the county clerk where the surface estate is actually located.
15 Within thirty (30) days of receiving said notice, any operator, as
16 described in paragraphs 1, 2 and 3 of this subsection shall
17 reciprocate, in writing by certified mail, certain site, operational
18 and infrastructure information, with sufficient specificity, to be
19 shared with the owner of the wind energy facility to assist both
20 with the safe construction and operation pertaining to the surface
21 estate. This information should include ALTA surveys of existing
22 subsurface and surface improvements on the property, if any, as well
23 as other technical specifications for existing improvements such as
24 pipe size, material, capacity and depth.

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

8 SECTION 3. It being immediately necessary for the preservation
9 of the public peace, health or safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
13 March 22, 2018 - DO PASS
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