

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 ENGROSSED SENATE
5 BILL NO. 593

By: Schulz of the Senate

and

McCall of the House

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9 An Act relating to wind energy facilities; amending
10 Section 3, Chapter 92, O.S.L. 2015 (17 O.S. Supp.
11 2016, Section 160.21), which relates to notification
12 of intent to build a wind energy facility; specifying
13 terms of notification of intent to build a wind
14 facility; requiring an affidavit in certain
15 situations; requiring written notice in certain
16 timeline to certain people; requiring certain persons
17 to respond to notice of intent to build a wind
18 facility; amending Section 2, Chapter 92, O.S.L. 2015
19 (17 O.S. Supp. 2016, Section 160.20), which relates
20 to setback requirements of wind energy development;
21 deleting certain location prohibition; amending 52
22 O.S. 2011, Section 803, which relates to surface
23 estates; removing requirement for wind energy
24 developer to follow certain procedures when intending
25 to construct a wind energy facility; removing
26 requirement for certain methods of notification;
27 conforming language; and declaring an 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:

1 Section 160.21. A. The owner of a wind energy facility shall
2 submit notification of intent to build a facility to the Corporation
3 Commission within six (6) months of the initial filing pertaining to
4 commencement of construction with the Federal Aviation
5 Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed
6 Construction or Alteration) or any subsequent form required by the
7 FAA for evaluating the impact a proposed wind energy facility will
8 have on air commerce safety and the preservation of navigable
9 airspace. The Commission shall prescribe the form and submittal
10 requirements of the notification; provided, the information required
11 on the notification form shall include at least the same information
12 required on the FAA form. The owner of the wind energy facility
13 shall submit copies of the notification with the board of county
14 commissioners of every county in which all or a portion of the wind
15 energy facility is to be located within twenty-four (24) hours of
16 filing with the Commission. If all or a portion of the wind energy
17 facility is to be located within the incorporated area of a
18 municipality, copies of the notification shall also be submitted to
19 the governing body of the municipality within twenty-four (24) hours
20 of filing with the Commission.

21 B. Within six (6) months of submitting the notification with
22 the Commission as provided for in subsection A of this section, the
23 owner of the wind energy facility shall cause a copy of the
24 notification to be published in a newspaper of general circulation

1 in the county or counties in which all or a portion of the wind
2 energy facility is to be located. Proof of publication shall be
3 submitted to the Commission.

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

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

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

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

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

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

18 E. With regard to the surface estate upon which the owner of a
19 wind energy facility intends to construct a wind energy facility, at
20 least sixty (60) days before entering upon the surface estate for
21 the purposes of commencement of construction of the wind energy
22 facility, the owner shall provide written notice, by certified mail,
23 of its intent to construct the wind energy facility to:
24

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

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

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

18 The notice shall contain a map or plat of the proposed location,
19 with sufficient specificity of all of the various elements of the
20 wind energy facility to be located on the governmental section which
21 includes all or any part of the tracts of land described in
22 paragraphs 1, 2 and 3 of this subsection and the approximate date
23 that the owner of the wind energy facility proposes to commence
24 construction. If the wind energy developer makes a search with

1 reasonable diligence, and the whereabouts of a party entitled to any
2 notice described in this subsection cannot be ascertained or such
3 notice cannot be delivered, then an affidavit attesting to such
4 diligent search for the parties shall be placed in the records of
5 the county clerk where the surface estate is actually located.
6 Within thirty (30) days of receiving said notice, any operator, as
7 described in paragraphs 1, 2 and 3 of this subsection shall
8 reciprocate, in writing by certified mail, certain site, operational
9 and infrastructure information, with sufficient specificity, to be
10 shared with the owner of the wind energy facility to assist both
11 with the safe construction and operation pertaining to the surface
12 estate. This information should include ALTA surveys of existing
13 subsurface and surface improvements on the property, if any, as well
14 as other technical specifications for existing improvements such as
15 pipe size, material, capacity and depth.

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

23 SECTION 2. AMENDATORY Section 2, Chapter 92, O.S.L. 2015
24 (17 O.S. Supp. 2016, Section 160.20), is amended to read as follows:

1 Section 160.20. A. After the effective date of this act, no
2 wind energy facility may be constructed if the base of any tower is
3 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. a private-use airport as defined in Section 157.2 of~~
9 ~~Title 14 of the Code of Federal Regulations and for~~
10 ~~which:~~

11 ~~(1) a notice to the Federal Aviation Administration~~
12 ~~(FAA) has been filed under Section 157.3 of Title~~
13 ~~14 of the Code of Federal Regulations prior to~~
14 ~~the notification of intent to build a facility~~
15 ~~with the Corporation Commission pursuant to~~
16 ~~subsection A of Section 3 of this act, and~~

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

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

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

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

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

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

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

18 B. Notwithstanding any provision in a wind or solar energy
19 agreement in effect on, or entered into after, ~~the effective date of~~
20 ~~this act~~ May 10, 2011, or the provisions of the Oklahoma Wind Energy
21 Development Act, as the same is in effect or hereafter amended, the
22 lessee of a wind or solar energy agreement or the wind energy
23 developer shall not unreasonably interfere with the mineral owner's
24 right to make reasonable use of the surface estate, including the

1 right of ingress and egress therefor, for the purpose of exploring,
2 severing, capturing and producing the minerals.

3 ~~C. With regard to the surface estate upon which a wind energy~~
4 ~~developer intends to construct a wind energy facility, at least~~
5 ~~thirty (30) days before entering upon the surface estate for the~~
6 ~~purposes of beginning construction of a wind energy facility, the~~
7 ~~wind energy developer shall provide written notice, by certified~~
8 ~~mail, of its intent to construct the wind energy facility to:~~

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

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

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

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

3 ~~The notice shall contain a map or plat of the proposed location~~
4 ~~of all of the various elements of the wind energy facility to be~~
5 ~~located on the governmental section which includes all or any part~~
6 ~~of the tracts of land described in paragraphs 1, 2 and 3 of this~~
7 ~~subsection and the approximate date that the wind energy developer~~
8 ~~proposes to commence construction. If the wind energy developer~~
9 ~~makes a search with reasonable diligence, and the whereabouts of a~~
10 ~~party entitled to any notice described in this subsection cannot be~~
11 ~~ascertained or such notice cannot be delivered, then an affidavit~~
12 ~~attesting to such diligent search for the parties shall be placed in~~
13 ~~the records of the county clerk where the surface estate is actually~~
14 ~~located. The provisions of this subsection shall not be applicable~~
15 ~~to a wind energy facility that has been constructed or is under~~
16 ~~construction prior to November 1, 2011.~~

17 ~~D. The wind energy developer also shall publish notice of the~~
18 ~~intent to begin construction of a wind energy facility in one issue~~
19 ~~of a newspaper qualified to publish legal notices in the county~~
20 ~~where the wind energy facility is intended to be constructed, as~~
21 ~~provided in Section 106 of Title 25 of the Oklahoma Statutes, which~~
22 ~~notice shall be published at least thirty (30) days before entering~~
23 ~~upon the surface estate for the purpose of beginning construction of~~
24 ~~a wind energy facility and which notice shall include the legal~~

1 ~~description of the surface estate as to which the wind energy~~
2 ~~developer intends the construction of the wind energy facility. The~~
3 ~~provisions of this subsection shall not be applicable to a wind~~
4 ~~energy facility that has been constructed or is under construction~~
5 ~~prior to November 1, 2011.~~

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

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

20 ~~G.~~ D. For any alleged breach or violation of ~~this act~~ the
21 Exploration Rights Act of 2011, any affected person may petition the
22 district court in the county in which the real property is located
23 for either declaratory relief pursuant to Sections 1651 through 1657
24 of Title 12 of the Oklahoma Statutes, or injunctive relief pursuant

1 to Sections 1381 through 1397 of Title 12 of the Oklahoma Statutes,
2 or both, in addition to any other remedies at law or in equity that
3 may otherwise be available.

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

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9 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04/05/2017 - DO PASS.
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