

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1170

By: McBride

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6 AS INTRODUCED

7 An Act relating to energy; amending 52 O.S. 2011,
8 Section 803, which relates to surface estate
9 restrictions; modifying time period required for
certain notice of wind energy facility construction;
and declaring an emergency.

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

13 SECTION 1. AMENDATORY 52 O.S. 2011, Section 803, is
14 amended to read as follows:

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

3 B. Notwithstanding any provision in a wind or solar energy
4 agreement in effect on, or entered into after, the effective date of
5 this act, or the provisions of the Oklahoma Wind Energy Development
6 Act, as the same is in effect or hereafter amended, the lessee of a
7 wind or solar energy agreement or the wind energy developer shall
8 not unreasonably interfere with the mineral owner's right to make
9 reasonable use of the surface estate, including the right of ingress
10 and egress therefor, for the purpose of exploring, severing,
11 capturing and producing the minerals.

12 C. With regard to the surface estate upon which a wind energy
13 developer intends to construct a wind energy facility, at least
14 ~~thirty (30)~~ one hundred eighty (180) days before entering upon the
15 surface estate for the purposes of beginning construction of a wind
16 energy facility, the wind energy developer shall provide written
17 notice, by certified mail, of its intent to construct the wind
18 energy facility to:

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

23 2. Any operator, as reflected in the records of the Corporation
24 Commission, of an unspaced unit, or a unit created by order of the

1 Corporation Commission, who is conducting oil and gas operations for
2 the unit where all or any part of the unit area is within the
3 geographical boundaries of the surface estate as to which the wind
4 energy developer intends the construction of the wind energy
5 facility; and

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

12 The notice shall contain a map or plat of the proposed location
13 of all of the various elements of the wind energy facility to be
14 located on the governmental section which includes all or any part
15 of the tracts of land described in paragraphs 1, 2 and 3 of this
16 subsection and the approximate date that the wind energy developer
17 proposes to commence construction. If the wind energy developer
18 makes a search with reasonable diligence, and the whereabouts of a
19 party entitled to any notice described in this subsection cannot be
20 ascertained or such notice cannot be delivered, then an affidavit
21 attesting to such diligent search for the parties shall be placed in
22 the records of the county clerk where the surface estate is actually
23 located. The provisions of this subsection shall not be applicable

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1 to a wind energy facility that has been constructed or is under
2 construction prior to November 1, 2011.

3 D. The wind energy developer also shall publish notice of the
4 intent to begin construction of a wind energy facility in one issue
5 of a newspaper qualified to publish legal notices in the county
6 where the wind energy facility is intended to be constructed, as
7 provided in Section 106 of Title 25 of the Oklahoma Statutes, which
8 notice shall be published at least thirty (30) days before entering
9 upon the surface estate for the purpose of beginning construction of
10 a wind energy facility and which notice shall include the legal
11 description of the surface estate as to which the wind energy
12 developer intends the construction of the wind energy facility. The
13 provisions of this subsection shall not be applicable to a wind
14 energy facility that has been constructed or is under construction
15 prior to November 1, 2011.

16 E. Notices required by this section may be provided by a single
17 wind energy developer with the authority to do so for any wind
18 energy facility regardless of the number of separate persons or
19 entities which may participate in, or have ownership or operational
20 interests in, a wind energy facility.

21 F. It is the intent of this act to confirm the mineral owner's
22 historical right to make reasonable use of the surface estate,
23 including the right of ingress and egress therefor, for the purpose
24 of exploring, severing, capturing and producing the minerals, and

1 nothing in this act is intended to expand or diminish those
2 historical rights. Further, nothing in this act shall amend or
3 modify the surface damages statutes or be interpreted to grant,
4 expand or diminish any person's rights therein.

5 G. For any alleged breach or violation of this act, any
6 affected person may petition the district court in the county in
7 which the real property is located for either declaratory relief
8 pursuant to Sections 1651 through 1657 of Title 12 of the Oklahoma
9 Statutes, or injunctive relief pursuant to Sections 1381 through
10 1397 of Title 12 of the Oklahoma Statutes, or both, in addition to
11 any other remedies at law or in equity that may otherwise be
12 available.

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

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