

## **SENATE FLOOR VERSION**

March 1, 2018

3 COMMITTEE SUBSTITUTE  
FOR  
4 SENATE BILL NO. 1576

By: Schulz of the Senate

and

Ortega of the House

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 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, Sections 160.20 and 160.21), which relate to setback requirements and notification of intent to build a facility; prohibiting the construction of certain facilities after certain date; providing exception to prohibition; requiring certain filing; requiring Corporation Commission to promulgate rules; requiring certain notification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.

20 2015, as amended by Section 2, Chapter 45, O.S.L. 2017 (17 O.S.

21 Supp. 2017, Section 160.20), is amended to read as follows:

Section 160.20. A. After the effective date of this act August

23 21, 2015, no wind energy facility may be constructed if the base of  
24 any tower is located at a distance of less than:

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

3           a. a public-use airport as defined in Section 120.2 of

4               Title 3 of the Oklahoma Statutes, or

5           b. an airport owned by a municipality;

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

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

9       B. After the effective date of this act, construction or

10 operation of a proposed wind energy facility or proposed wind energy  
11 facility expansion shall not encroach upon or otherwise have a

12 significant adverse impact on the mission, training or operations of  
13 any military installation or branch of military as determined by the

14 Department of Defense Siting Clearinghouse, the Federal Aviation

15 Administration and the State of Oklahoma. Areas of impact include

16 but are not limited to military training routes, drop zones,

17 approaches to runways and bombing ranges. No wind energy facility

18 may be constructed or expanded unless an active Determination of No

19 Hazard or an approved mitigation plan is obtained.

20       1. The owner of a wind energy facility shall submit to the

21 Department of Defense Siting Clearinghouse a letter from the

22 Oklahoma Strategic Military Planning Commission outlining potential

23 areas of impact as provided in this section. The letter from the

24 Oklahoma Strategic Military Planning Commission and the

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

3      2. The requirements established by this subsection shall not  
4      prohibit the consideration of an application or the issuance of a  
5      permit for a wind energy facility or wind energy facility expansion

6      if those facilities or facility expansions obtain a written

7      Determination of No Hazard or mitigation plan from the Department of  
8      Defense Siting Clearinghouse on or before the effective date of this  
9      act.

10     3. The Corporation Commission shall promulgate rules and  
11     regulations for the implementation of the provisions of this  
12     section.

13     C. Attestation of compliance with the setback requirements in  
14     this section shall be included in any reports required by the  
15     Corporation Commission. Disputes arising under this section shall  
16     fall under the exclusive jurisdiction of the district courts.

17     SECTION 2.      AMENDATORY      Section 3, Chapter 92, O.S.L.

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

20     Section 160.21. A. The owner of a wind energy facility shall  
21     submit notification of intent to build a facility to the Corporation  
22     Commission within six (6) months of the initial filing pertaining to  
23     commencement of construction with the Federal Aviation  
24     Administration (FAA) of an FAA Form 7460-1 (Notice of Proposed

1 Construction or Alteration) or any subsequent form required by the  
2 FAA for evaluating the impact a proposed wind energy facility will  
3 have on air commerce safety and the preservation of navigable  
4 airspace. The Commission shall prescribe the form and submittal  
5 requirements of the notification; provided, the information required  
6 on the notification form shall include at least the same information  
7 required on the FAA form. The owner of the wind energy facility  
8 shall submit copies of the notification with the board of county  
9 commissioners of every county in which all or a portion of the wind  
10 energy facility is to be located and the Oklahoma Strategic Military  
11 Planning Commission within twenty-four (24) hours of filing with the  
12 Commission. The Oklahoma Strategic Military Planning Commission  
13 shall notify local base commanders upon the filing. If all or a  
14 portion of the wind energy facility is to be located within the  
15 incorporated area of a municipality, copies of the notification  
16 shall also be submitted to the governing body of the municipality  
17 within twenty-four (24) hours of filing with the Commission.

18       B. Within six (6) months of submitting the notification with  
19 the Commission as provided for in subsection A of this section, the  
20 owner of the wind energy facility shall cause a copy of the  
21 notification to be published in a newspaper of general circulation  
22 in the county or counties in which all or a portion of the wind  
23 energy facility is to be located. Proof of publication shall be  
24 submitted to the Commission.

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

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

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

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

22       If the wind energy developer makes a search with reasonable  
23 diligence, and the whereabouts of a party entitled to any notice  
24 described in this subsection cannot be ascertained or such notice

1 cannot be delivered, then an affidavit attesting to such diligent  
2 search for the parties shall be placed in the records of the county  
3 clerk where the surface estate is actually located.

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

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

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

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

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

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

1 the county clerk where the surface estate is actually located.  
2 Within thirty (30) days of receiving said notice, any operator, as  
3 described in paragraphs 1, 2 and 3 of this subsection shall  
4 reciprocate, in writing by certified mail, certain site, operational  
5 and infrastructure information, with sufficient specificity, to be  
6 shared with the owner of the wind energy facility to assist both  
7 with the safe construction and operation pertaining to the surface  
8 estate. This information should include ALTA surveys of existing  
9 subsurface and surface improvements on the property, if any, as well  
10 as other technical specifications for existing improvements such as  
11 pipe size, material, capacity and depth.

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON ENERGY  
24 March 1, 2018 - DO PASS AS AMENDED