

1 **SENATE FLOOR VERSION**

2 March 2, 2017

3 **AS AMENDED**

4 SENATE BILL NO. 593

5 By: Schulz

6 **[wind energy - notification of intent to build -**
7 **surface estates - effective date]**

8
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. AMENDATORY Section 3, Chapter 92, O.S.L. 2015
11 (17 O.S. Supp. 2016, Section 160.21), is amended to read as follows:

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

1 commissioners of every county in which all or a portion of the wind
2 energy facility is to be located within twenty-four (24) hours of
3 filing with the Commission. If all or a portion of the wind energy
4 facility is to be located within the incorporated area of a
5 municipality, copies of the notification shall also be submitted to
6 the governing body of the municipality within twenty-four (24) hours
7 of filing with the Commission.

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

15 C. Within six (6) months of submitting the notification with
16 the Commission as provided in subsection A of this section, the
17 owner of the wind energy facility shall cause a copy of the
18 notification to be sent, by certified mail, 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
24 Corporation Commission, of an unspaced unit, or a unit created by

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

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

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

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

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

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

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

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

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

1 covering the mineral estate underlying any part of the tracts of
2 land that are filed of record with county clerk in the county where
3 the tracts are located and whose primary term has not expired.

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

16 Within thirty (30) days of receiving said notice, any operator, as
17 described in paragraphs 1, 2 and 3 of this subsection shall
18 reciprocate, in writing by certified mail, certain site, operational
19 and infrastructure information, with sufficient specificity, to be
20 shared with the owner of the wind energy facility to assist both
21 with the safe construction and operation pertaining to the surface
22 estate. This information should include ALTA surveys of existing
23 subsurface and surface improvements on the property, if any, as well

1 as other technical specifications for existing improvements such as
2 pipe size, material, capacity and depth.

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

10 SECTION 2. AMENDATORY 52 O.S. 2011, Section 803, is
11 amended to read as follows:

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

23 B. Notwithstanding any provision in a wind or solar energy
24 agreement in effect on, or entered into after, ~~the effective date of~~

1 ~~this act~~ May 10, 2011, or the provisions of the Oklahoma Wind Energy
2 Development Act, as the same is in effect or hereafter amended, the
3 lessee of a wind or solar energy agreement or the wind energy
4 developer shall not unreasonably interfere with the mineral owner's
5 right to make reasonable use of the surface estate, including the
6 right of ingress and egress therefor, for the purpose of exploring,
7 severing, capturing and producing the minerals.

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

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

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

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

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

21 ~~D. The wind energy developer also shall publish notice of the~~
22 ~~intent to begin construction of a wind energy facility in one issue~~
23 ~~of a newspaper qualified to publish legal notices in the county~~
24 ~~where the wind energy facility is intended to be constructed, as~~

1 ~~provided in Section 106 of Title 25 of the Oklahoma Statutes, which~~
2 ~~notice shall be published at least thirty (30) days before entering~~
3 ~~upon the surface estate for the purpose of beginning construction of~~
4 ~~a wind energy facility and which notice shall include the legal~~
5 ~~description of the surface estate as to which the wind energy~~
6 ~~developer intends the construction of the wind energy facility. The~~
7 ~~provisions of this subsection shall not be applicable to a wind~~
8 ~~energy facility that has been constructed or is under construction~~
9 ~~prior to November 1, 2011.~~

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

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

24

1 ~~G. D.~~ For any alleged breach or violation of ~~this act~~ the
2 Exploration Rights Act of 2011, any affected person may petition the
3 district court in the county in which the real property is located
4 for either declaratory relief pursuant to Sections 1651 through 1657
5 of Title 12 of the Oklahoma Statutes, or injunctive relief pursuant
6 to Sections 1381 through 1397 of Title 12 of the Oklahoma Statutes,
7 or both, in addition to any other remedies at law or in equity that
8 may otherwise be available.

9 SECTION 3. This act shall become effective November 1, 2017.

10 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
11 March 2, 2017 - DO PASS AS AMENDED
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