

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2118 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Charles Ortega _____

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2118

By: Ortega

7 PROPOSED COMMITTEE SUBSTITUTE

8
9 An Act relating to the Corporation Commission;
10 amending Section 2, Chapter 92, O.S.L. 2015, as last
11 amended by Section 1, Chapter 179, O.S.L. 2018 (17
12 O.S. Supp. 2018, Section 160.20), which relates to
13 setback requirements for wind energy facilities;
14 modifying jurisdiction for certain disputes;
15 including individual wind turbines and certain other
16 individual structures in wind energy facility setback
17 requirements; modifying requirements of certain
18 required documentation; modifying agency requiring
19 certain documentation; modifying applicability of act
20 to certain construction; authorizing Oklahoma
21 Aeronautics Commission to promulgate rules;
22 authorizing penalty for violation of act; amending
23 Section 3, Chapter 92, O.S.L. 2015, as last amended
24 by Section 2, Chapter 179, O.S.L. 2018 (17 O.S. Supp.
2018, Section 160.21), which relates to notice of
intent to build a facility; modifying type of
information required in certain notification;
requiring certain notification to the Aeronautics
Commission; exempting certain filings from
requirement; requiring Aeronautics Commission to
provide certain notification to the Oklahoma
Strategic Military Planning Commission; requiring
Strategic Military Planning Commission to notify
certain military base commanders and submit certain
letter; authorizing Aeronautics Commission to impose
certain penalty; and declaring an emergency.

+

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

2 SECTION 1. AMENDATORY Section 2, Chapter 92, O.S.L.
3 2015, as last amended by Section 1, Chapter 179, O.S.L. 2018 (17
4 O.S. Supp. 2018, Section 160.20), is amended to read as follows:

5 Section 160.20 A. After August 21, 2015, no wind energy
6 facility may be constructed if the base of any tower is located at a
7 distance of less than:

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

10 a. a public-use airport as defined in Section 120.2 of
11 Title 3 of the Oklahoma Statutes, or

12 b. an airport owned by a municipality;

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

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

16 B. Attestation of compliance with the setback requirements in
17 this section shall be included in any reports required by the
18 Corporation Commission. Disputes arising under subsection A of this
19 section shall fall under the exclusive jurisdiction of the district
20 courts.

21 C. After ~~the effective date of this act~~ April 3, 2018,
22 construction or operation of a proposed individual wind turbine or
23 any other individual structure requiring a Federal Aviation
24 Administration (FAA) Form 7460-1 that is part of a wind energy

1 facility ~~or proposed wind energy facility expansion~~ shall not
2 encroach upon or otherwise have a significant adverse impact on the
3 mission, training or operations of any military installation or
4 branch of military as determined by the Military Aviation and
5 Installation Assurance Siting Clearinghouse (Clearinghouse) and the
6 ~~Federal Aviation Administration~~ FAA. Areas of impact include but
7 are not limited to military training routes, drop zones, approaches
8 to runways and bombing ranges. No individual wind turbine or any
9 other individual structure that requires an FAA 7460-1 form that is
10 part of a wind energy facility may be constructed or expanded unless
11 ~~an active~~ there is a valid Determination of No Hazard from the
12 ~~Federal Aviation Administration or an approved mitigation plan is~~
13 ~~obtained from the Military Aviation and Installation Assurance~~
14 ~~Siting~~ FAA and objections of the United States Department of Defense
15 have been resolved as evidenced by documentation from the
16 Clearinghouse for the individual wind turbine or other individual
17 structure.

18 1. The Determination of No Hazard ~~or mitigation plan~~ and any
19 necessary documentation from the Clearinghouse shall be submitted to
20 the ~~Corporation~~ Oklahoma Aeronautics Commission.

21 2. The requirements established by this subsection shall not
22 prohibit ~~a wind energy facility~~ the construction ~~or~~ of an individual
23 wind turbine or any other individual structure requiring an FAA
24 7460-1 form that is part of a wind energy facility expansion if

1 ~~these facilities or facility expansions obtain~~ that individual wind
2 turbine or other individual structure has received a written
3 Determination of No Hazard ~~or mitigation plan~~ and objections of the
4 United States Department of Defense have been resolved as evidenced
5 by a documentation from the Clearinghouse on or before ~~the effective~~
6 date of this act April 3, 2018.

7 3. The Corporation Commission ~~shall~~ is authorized to promulgate
8 rules and regulations for the implementation of the provisions of
9 this section subsections A and B of this section. The Oklahoma
10 Aeronautics Commission is authorized to promulgate rules and
11 regulations for the implementation of the provisions of subsection C
12 of this section.

13 D. If an owner of a wind energy facility fails to submit a
14 valid Determination of No Hazard and to resolve objections of the
15 United States Department of Defense prior to the start of
16 construction, the owner shall be subject to an administrative
17 penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00)
18 per day, per violation. In addition, the Aeronautics Commission may
19 institute an action in any court of general jurisdiction to prevent,
20 restrain, correct, or abate any violation of subsection C or any
21 rules adopted or orders issued by the Aeronautics Commission
22 pursuant to subsection C.

23
24

1 SECTION 2. AMENDATORY Section 3, Chapter 92, O.S.L.
2 2015, as last amended by Section 2, Chapter 179, O.S.L. 2018 (17
3 O.S. Supp. 2018, Section 160.21), is amended to read as follows:
4 Section 160.21 A. The owner of a wind energy facility shall
5 submit notification of intent to build a facility to the Corporation
6 Commission within six (6) months of the initial filing ~~pertaining to~~
7 ~~commencement of construction~~ with the Federal Aviation
8 Administration (FAA) of an FAA Form 7460-1 ~~(Notice of Proposed~~
9 ~~Construction or Alteration) or any subsequent form required by the~~
10 ~~FAA for evaluating the impact a proposed wind energy facility will~~
11 ~~have on air commerce safety and the preservation of navigable~~
12 ~~airspace form~~. The Corporation Commission shall prescribe the form
13 and submittal requirements of the notification; provided, the
14 information required on the notification form shall include at least
15 ~~the same information required on the FAA form~~ a map of the project
16 boundary. The owner of a wind energy facility shall submit to the
17 Oklahoma Aeronautics Commission copies of all initial FAA 7460-1
18 forms for all individual wind turbines or any other individual
19 structure that requires an FAA Form 7460-1 that is part of a wind
20 energy facility within thirty (30) days of the initial filing with
21 the FAA. The owner of the wind energy facility shall send copies of
22 the notification with the board of county commissioners of every
23 county in which all or a portion of the wind energy facility is to
24 be located within twenty-four (24) hours of filing with the

1 Corporation Commission. If all or a portion of the wind energy
2 facility is to be located within the incorporated area of a
3 municipality, copies of the notification shall also be sent to the
4 governing body of the municipality within twenty-four (24) hours of
5 filing with the Corporation Commission. If the owner of a wind
6 energy facility is required to file subsequent 7460-1 forms with the
7 FAA due to changing locations or heights of individual structures
8 from the locations or heights originally proposed in the initial
9 7460-1 forms submitted to the Aeronautics Commission, the owner
10 shall, within twenty-four (24) hours of filing with the FAA, submit
11 such subsequent 7460-1 forms to the Aeronautics Commission. A wind
12 energy facility owner shall not be required to start the
13 notification processes over, including notifications for counties
14 and municipalities, as required by subsections C, D, E and F of this
15 section, unless the subsequent 7460-1 forms expand the project
16 beyond its original boundaries submitted to the Corporation
17 Commission.

18 B. Within ~~thirty (30)~~ ten (10) days of ~~submitting the~~
19 ~~notification to the Corporation Commission~~ receiving an FAA 7460-1
20 form, as provided for in subsection A of this section, the ~~owner of~~
21 ~~the wind energy facility~~ Aeronautics Commission shall ~~cause a copy~~
22 ~~of the notification to be submitted to~~ notify the Oklahoma Strategic
23 Military Planning Commission. The Oklahoma Strategic Military
24 Planning Commission shall notify ~~local~~ affected base commanders upon

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

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

15 D. Within six (6) months of submitting the notification with
16 the Corporation Commission as provided in subsection A of this
17 section, the owner of the wind energy facility shall cause a copy of
18 the 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 E. Within sixty (60) days of publishing the notification in a
19 newspaper as provided for in subsection C 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 Corporation Commission. The public
3 meeting shall be held in one of the counties in which all or a
4 portion of the wind energy facility is to be located.

5 F. 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

24

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

3 G. 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 as required
7 in this section, the owner shall be subject to an administrative
8 penalty from the Aeronautics Commission or the Corporation
9 Commission not to exceed One Thousand Five Hundred Dollars
10 (\$1,500.00) per day.

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

15
16 57-1-7810 JBH 02/08/19

17
18
19
20
21
22
23
24