

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 355

By: Quinn

4
5 AS INTRODUCED

6 An Act relating to wind energy; amending 17 O.S.
7 2011, Sections 160.12, 160.13, 160.14, 160.15, 160.16
8 and 160.18, which relate to the Oklahoma Wind Energy
9 Development Act, legislative findings, definitions,
10 decommissioning of wind energy facilities, required
11 filings, evidence of financial security, the duty to
12 provide certain statements and information,
13 inspection of certain records, reports to the
14 corporation commission, and required insurance;
15 modifying legislative findings concerning prudent
16 wind energy development; clarifying definitions;
17 deleting exception for wind energy facilities on an
18 owner's property; requiring the owner of a wind
19 energy facility to post a bond with the Secretary of
20 State and specifying purposes and amount; requiring
21 financial security sufficient to cover the entire
22 cost of decommissioning of the wind energy facility;
23 clarifying administrative penalty; expanding
24 application to all wind energy facilities in the
state; clarifying information required in certain
statements to certain lessors of land; clarifying
contents of report with regard to the location of
wind energy facilities; prohibiting construction of
wind energy facilities in certain locations;
requiring permit from county commissioners and
specifying requirements for permits; requiring permit
from municipality, if any, and specifying
requirements for permits; and providing an effective
date.

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

23 SECTION 1. AMENDATORY 17 O.S. 2011, Section 160.12, is
24 amended to read as follows:

1 Section 160.12. The Legislature finds that:

2 1. Oklahoma's wind energy resources are an important asset for
3 the continued economic growth of the state and for the provision of
4 clean and renewable power to both the people of the state and the
5 nation as a whole;

6 2. Promotion of the development of wind energy resources is
7 important to the economic growth of the state;

8 3. a. The prudent development of wind energy resources
9 requires addressing the relationship of the needs of
10 the following:

11 (1) wind energy developers ~~with those of the,~~

12 (2) landowners, including adjacent landowners and
13 other landowners in the vicinity of a wind energy
14 facility, and

15 (3) mineral estate owners who have the historical
16 right to make reasonable use of the surface
17 estate, including the right of ingress and egress
18 ~~therefor,~~ for the purpose of exploring for,
19 severing, capturing and producing the minerals as
20 reflected in the Exploration Rights Act of 2011,
21 ~~Sections 3 through 7 of this act, and balancing~~

22 b. Balancing the needs of wind energy developers with
23 those of the landowners who provide access to the wind
24 energy resource, including assurances that wind

1 turbines and wind energy facilities will be properly
2 decommissioned, that they will have access to adequate
3 information to verify the accuracy of their payments,
4 and that they will be adequately protected against
5 hazards and accidents that may arise from the wind
6 turbines or wind energy facilities;

7 4. The conversion of wind energy into power for utility-scale
8 systems frequently requires large wind energy systems consisting of
9 wind turbines, electrical substations, electrical lines, and other
10 supporting systems;

11 5. Wind energy facilities, if abandoned or not properly
12 constructed, operated or maintained, could pose a hazard to public
13 health, safety, and welfare through mechanical failures, electrical
14 hazards, or the release of hazardous substances; and

15 6. To protect the public against health and safety hazards,
16 standards for the safe construction, operation, maintenance and
17 decommissioning of wind energy facilities should be established and
18 assurance of adequate financial resources should be given so that
19 the wind energy systems can be properly constructed, operated, and
20 maintained, and decommissioned at the end of their useful ~~life~~
21 lives.

22 SECTION 2. AMENDATORY 17 O.S. 2011, Section 160.13, is
23 amended to read as follows:
24

1 Section 160.13. As used in the Oklahoma Wind Energy Development
2 Act:

3 1. "Abandonment" means the failure to generate electricity from
4 commercial wind energy equipment for a period of twenty-four (24)
5 consecutive months for reasons other than curtailment, repowering, a
6 valid judicial order or other governmental regulatory action, with
7 no pending negotiations for purchase. A wind energy facility shall
8 not be considered abandoned if the owner or operator has elected not
9 to run the facility, but it has been maintained in proper working
10 order and is capable of generating electricity;

11 2. "Commencement of construction" with regard to wind energy
12 facilities, means beginning excavation of wind turbine foundations
13 or other actions relating to the actual erection and installation of
14 commercial wind energy equipment. It shall not include erection of
15 meteorological towers, environmental assessments, surveys,
16 preliminary engineering or other activities associated with
17 assessment of the location for development of the wind resources on
18 a given parcel of property;

19 3. "Commercial generation date" means the date on which the
20 wind turbine in question first generates electrical energy in
21 commercial quantities;

22 4. "Commercial wind energy equipment" means a wind tower and
23 turbine with five hundred kilowatts (500kw) or greater of total
24 nameplate generating capacity;

1 5. "Commercial quantities" means an amount of electrical energy
2 sufficient for sale or use off-site from a wind turbine or wind
3 energy facility, and shall not include amounts of electrical energy
4 used only for the maintenance or testing of the wind turbine or wind
5 energy facility itself;

6 6. "Owner" with regard to wind energy facilities, means ~~the~~ an
7 entity having ~~a majority~~ an equity interest in commercial wind
8 energy equipment, including their respective successors and assigns;

9 7. "Useful life" means the time during which a wind turbine or
10 wind energy facility is generating electricity in commercial
11 quantities;

12 8. "Wind turbine" means a wind energy conversion system which
13 converts wind energy into electricity through the use of a wind
14 turbine generator and includes the turbine, blade, tower, base and
15 pad transformer, if any; and

16 9. "Wind energy facility" means an electrical generation
17 facility consisting of one or more wind turbines under common
18 ownership or operating control, and includes substations,
19 meteorological data towers, aboveground and underground electrical
20 transmission lines, transformers, control systems, and other
21 buildings or facilities used to support the operation of the
22 facility, and whose primary purpose is to supply electricity to an
23 off-site customer or customers. ~~Wind energy facility shall not~~
24

1 ~~include a wind energy facility located entirely on property held in~~
2 ~~fee simple absolute estate by the owner of the wind energy facility.~~

3 SECTION 3. AMENDATORY 17 O.S. 2011, Section 160.14, is
4 amended to read as follows:

5 Section 160.14. A. Prior to construction of a wind energy
6 facility, the owner shall post and maintain throughout the life of
7 the facility a bond with the Secretary of State in an amount
8 sufficient to cover the cost of remediation of the land and which is
9 not less than Twenty-five Thousand Dollars (\$25,000.00) for each
10 wind turbine in the wind energy facility.

11 B. The owner of a wind energy facility shall be responsible, at
12 its expense, for the proper decommissioning of the facility upon
13 termination of the lease, abandonment of the wind energy facility,
14 or the end of the useful life of the commercial wind energy
15 equipment in the wind energy facility.

16 ~~B.~~ C. Proper decommissioning of a wind energy facility shall
17 include:

18 1. Removal of wind turbines, towers, buildings, cabling,
19 electrical components, foundations and any other associated
20 facilities, to a depth of thirty ~~(30)~~ inches below grade; and

21 2. Disturbed earth being graded and reseeded or otherwise
22 restored to substantially the same physical condition as existed
23 prior to the construction of the wind energy facility by the owner,
24

1 excluding roads, unless the landowner specifically requests in
2 writing that the roads or other land surface areas be restored.

3 ~~C.~~ D. The decommissioning of the wind energy facility, or
4 individual pieces of commercial wind energy equipment, shall be
5 completed as follows:

6 1. By the owner of the wind energy facility within twelve (12)
7 months after termination of the lease, abandonment of the wind
8 energy facility, or the end of the useful life of the commercial
9 wind energy equipment in the wind energy facility; and

10 2. If the owner of the wind energy facility fails to complete
11 the decommissioning within the period prescribed in paragraph 1 of
12 this subsection, the Corporation Commission shall take such measures
13 as are necessary to complete the decommissioning, including but not
14 limited to recovering all costs of decommissioning from the owner's
15 bond.

16 ~~D.~~ E. A lease or other agreement between a landowner and an
17 owner of a wind energy facility may contain provisions for
18 decommissioning that are more restrictive than provided for in this
19 section.

20 SECTION 4. AMENDATORY 17 O.S. 2011, Section 160.15, is
21 amended to read as follows:

22 Section 160.15. A. After the fifteenth year of operation of a
23 wind energy facility, the owner shall file with the Corporation
24 Commission evidence of financial security to cover the anticipated

1 costs of decommissioning the wind energy facility. Evidence of
2 financial security may be in the form of a surety bond, collateral
3 bond, parent guaranty, or letter of credit, and shall be sufficient,
4 when added to the bond posted with the Secretary of State, to cover
5 the entire cost of decommissioning the wind energy facility.

6 B. The evidence of financial security shall be accompanied by
7 an estimate of the total cost of decommissioning, ~~minus the salvage~~
8 ~~value of the equipment,~~ prepared by a professional engineer licensed
9 in ~~the State of Oklahoma~~ this state. The amount of the evidence of
10 financial security shall be either:

11 1. The estimate of the total cost of decommissioning ~~minus the~~
12 ~~salvage value of the equipment~~ which shall be filed with the
13 Commission in the ~~fifteenth~~ tenth year of the project and every
14 tenth year thereafter for the life of the wind energy facility; or

15 2. One hundred twenty-five percent (125%) of the estimate of
16 the total cost of decommissioning which shall be filed with the
17 Commission in the ~~fifteenth~~ tenth year of the project.

18 C. If the owner of a wind energy facility fails to file the
19 information with the Commission as is required by this section, the
20 owner shall be subject to an administrative penalty not to exceed
21 One Thousand Five Hundred Dollars (\$1,500.00) per day until filed.

22 D. In the event of a transfer of ownership of a wind energy
23 facility, the evidence of financial security posted by the
24 transferor shall remain in place and shall not be released until

1 such time as evidence of financial security meeting the requirements
2 of this section is posted by the new owner of the wind energy
3 facility and deemed acceptable by the Commission.

4 E. The provisions of this section shall apply to ~~any~~ every wind
5 energy facility or portion thereof ~~entering into or renewing a power~~
6 ~~purchase agreement (PPA) for the energy generated by the wind energy~~
7 ~~facility on or after the effective date of this act.~~ If a wind
8 energy facility does not sell its energy under a power purchase
9 agreement, the provisions of this section shall apply to the wind
10 energy facility or portion thereof which construction commences on
11 or after the effective date of this act in this state.

12 SECTION 5. AMENDATORY 17 O.S. 2011, Section 160.16, is
13 amended to read as follows:

14 Section 160.16. For those landowners who are paid based on the
15 amount of electrical energy produced from the conversion of wind
16 energy, the owner or operator of any wind turbine or wind energy
17 facility shall provide a statement within ten (10) business days of
18 the payment to the landowner in consideration for the use of the
19 property of the landowner to generate electrical energy from the
20 conversion of wind energy. The statement shall provide, at a
21 minimum, information reasonably necessary to provide the landowner
22 an understanding of the basis for the payment to the landowner and a
23 means of confirming its accuracy pursuant to Section 160.17 of this
24 title.

1 SECTION 6. AMENDATORY 17 O.S. 2011, Section 160.18, is
2 amended to read as follows:

3 Section 160.18. A. The owner or operator of any wind turbine
4 or wind energy facility shall report to the Corporation Commission
5 the power generated from the wind turbine or wind energy facility,
6 the nameplate capacity of the wind turbine or wind energy facility,
7 and the legal description of the location of the wind turbine or
8 wind energy facility.

9 B. In the event that a wind energy facility contains wind
10 turbines with different nameplate capacities, the information
11 required in subsection A of this section shall be separated by
12 generation from each nameplate capacity.

13 C. The information required by this section shall be reported
14 on an annual basis, with the information due not later than March 1
15 of each calendar year.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 160.20 of Title 17, unless there
18 is created a duplication in numbering, reads as follows:

19 A. After the effective date of this act, no wind energy
20 facility may be constructed if the base of the structure:

21 1. Is within three (3) miles of a residential dwelling,
22 occupied structure or residential dwelling under construction,
23 except with the express written consent of all owners of the
24 property on which the dwelling is located. In no case shall a wind

1 energy facility be located within two hundred percent (200%) of the
2 maximum height of the tower from a residential dwelling occupied
3 structure;

4 2. Is within one-half (1/2) mile from the property line of an
5 adjacent property owner, except with the express written consent of
6 all owners of the adjacent property;

7 3. Is within less than two hundred percent (200%) of the
8 maximum height of the tower from any public road right-of-way;

9 4. Is less than three (3) miles from the limits of any city,
10 town or community consisting of five or more residential structures;

11 5. Is less than three (3) miles from any airport, landing strip
12 or airfield;

13 6. Is located less than three (3) miles from any school or
14 hospital; and

15 7. Is located within two hundred percent (200%) of the maximum
16 height of the tower from any producing oil or gas well or other
17 above ground oil or gas facility without the written consent of the
18 operator.

19 B. For the purpose of this section, the height of a tower shall
20 be measured from the base of the tower to the tip of the blades at
21 the highest point on the arc of travel of the blades.

22 C. The board of county commissioners in counties which have not
23 created a planning commission or metropolitan area planning
24 commission under Title 19 of the Oklahoma Statutes, and the City

1 Council or Town Board in municipalities which have not created a
2 planning commission may adopt set-back distances greater than those
3 required by this section in order to promote the health, safety,
4 peace and general welfare of the public.

5 D. After the effective date of this act, prior to commencement
6 of construction, every owner of a proposed wind energy facility
7 shall obtain a permit from the board of county commissioners of each
8 county in which any part of the wind energy facility will be
9 located. In order to qualify for the permit, the owner must:

10 1. Present a true and correct copy of each lease or other
11 agreement with each landowner affected by the proposed wind energy
12 facility;

13 2. Present a true and correct copy of each written consent
14 required by paragraphs 1, 2 and 7 of subsection A of this section;

15 3. Present a certified copy of the bond posted with the
16 Secretary of State required pursuant to Section 160.14 of Title 17
17 of the Oklahoma Statutes; and

18 4. Post a bond with the county treasurer in an amount to be
19 determined by the board of county commissioners which is sufficient
20 to cover the cost of repair of roads, bridges, and other state and
21 county property which may be damaged during construction of the wind
22 energy facility.

23 E. After the effective date of this act, prior to commencement
24 of construction, every owner of a proposed wind energy facility

1 shall obtain a permit from the governing body of each municipality
2 in which any part of the wind energy facility will be located, if
3 any. In order to qualify for the permit, the owner must:

4 1. Comply with all municipal and county zoning requirements;

5 2. Present a true and correct copy of each lease or other
6 agreement with landowner affected by the proposed wind energy
7 facility;

8 3. Present a true and correct copy of each written consent
9 required by paragraphs 1,2 and 7 of subsection A of this section;

10 4. Present a certified copy of the bond posted with the
11 Secretary of State required pursuant to Section 160.14 of Title 17
12 of the Oklahoma Statutes;

13 5. Present a certified copy of the bond posted with the board
14 of county commissioners; and

15 6. Post a bond with the municipal treasurer in an amount to be
16 determined by the governing body of the municipality which is
17 sufficient to cover the cost of repair of roads, bridges, and other
18 municipal property which may be damaged during construction of the
19 wind energy facility.

20 SECTION 8. This act shall become effective September 1, 2015.

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