

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1968

By: O'Donnell

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5  
6 AS INTRODUCED

7 An Act relating to wind energy; amending 17 O.S.  
8 2011, Sections 160.12, 160.13, 160.14, 160.15, 160.16  
9 and 160.18, which relate to the Oklahoma Wind Energy  
10 Development Act; modifying legislative findings  
11 concerning prudent wind energy development; updating  
12 statutory citations; modifying definitions; deleting  
13 exception for wind energy facilities on the property  
14 of an owner; requiring the owner of a wind energy  
15 facility to post a bond with the Secretary of State  
16 and specifying purposes and amount; expanding  
17 decommissioning requirement; authorizing the  
18 Corporation Commission to recover certain costs from  
19 the bond of the owner; requiring financial security  
20 sufficient to cover the entire cost of  
21 decommissioning of the wind energy facility; deleting  
22 allowance for salvage value of equipment; changing  
23 time of certain filing; clarifying administrative  
24 penalty; expanding 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; defining term; authorizing certain  
counties and municipalities to adopt stricter set  
back distances; requiring permit from county  
commissioners and specifying requirements for  
permits; requiring permit from municipality, if any,  
and specifying requirements for permits; providing  
for codification; and providing an effective date.

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

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

4 Section 160.12 The Legislature finds that:

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

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

11 3. a. The prudent development of wind energy resources  
12 requires addressing the relationship of the needs of  
13 the following:

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

15 (2) landowners, including adjacent landowners and  
16 other landowners in the vicinity of a wind energy  
17 facility, and

18 (3) mineral estate owners who have the historical  
19 right to make reasonable use of the surface  
20 estate, including the right of ingress and egress  
21 ~~therefor,~~ for the purpose of exploring for,  
22 severing, capturing and producing the minerals as  
23 reflected in the Exploration Rights Act of 2011,

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1                   Sections ~~3~~ 801 through ~~7~~ 805 of ~~this act~~ Title 52  
2                   of the Oklahoma Statutes, and

3           b.   balancing the needs of wind energy developers with  
4           those of the landowners who provide access to the wind  
5           energy resource, including assurances that wind  
6           turbines and wind energy facilities will be properly  
7           decommissioned, that they will have access to adequate  
8           information to verify the accuracy of their payments,  
9           and that they will be adequately protected against  
10          hazards and accidents that may arise from the wind  
11          turbines or wind energy facilities;

12          4.   The conversion of wind energy into power for utility-scale  
13          systems frequently requires large wind energy systems consisting of  
14          wind turbines, electrical substations, electrical lines, and other  
15          supporting systems;

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

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

3 SECTION 2. AMENDATORY 17 O.S. 2011, Section 160.13, is  
4 amended to read as follows:

5 Section 160.13 As used in the Oklahoma Wind Energy Development  
6 Act:

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

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

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

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

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

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

15           7. "Useful life" means the time during which a wind turbine or  
16 wind energy facility is generating electricity in commercial  
17 quantities;

18           8. "Wind turbine" means a wind energy conversion system which  
19 converts wind energy into electricity through the use of a wind  
20 turbine generator and includes the turbine, blade, tower, base and  
21 pad transformer, if any; and

22           9. "Wind energy facility" means an electrical generation  
23 facility consisting of one or more wind turbines under common  
24 ownership or operating control, and includes substations,

1 meteorological data towers, aboveground and underground electrical  
2 transmission lines, transformers, control systems, and other  
3 buildings or facilities used to support the operation of the  
4 facility, and whose primary purpose is to supply electricity to an  
5 off-site customer or customers. ~~Wind energy facility shall not  
6 include a wind energy facility located entirely on property held in  
7 fee simple absolute estate by the owner of the wind energy facility.~~

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

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

16 B. The owner of a wind energy facility shall be responsible, at  
17 its expense, for the proper decommissioning of the facility upon  
18 termination of the lease, abandonment of the wind energy facility,  
19 or the end of the useful life of the commercial wind energy  
20 equipment in the wind energy facility.

21 ~~B.~~ C. Proper decommissioning of a wind energy facility shall  
22 include:  
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1 1. Removal of wind turbines, towers, buildings, cabling,  
2 electrical components, foundations and any other associated  
3 facilities, to a depth of thirty (30) inches below grade; and

4 2. Disturbed earth being graded and reseeded or otherwise  
5 restored to substantially the same physical condition as existed  
6 prior to the construction of the wind energy facility by the owner,  
7 excluding roads, unless the landowner specifically requests in  
8 writing that the roads or other land surface areas be restored.

9 ~~C.~~ D. The decommissioning of the wind energy facility, or  
10 individual pieces of commercial wind energy equipment, shall be  
11 completed as follows:

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

16 2. If the owner of the wind energy facility fails to complete  
17 the decommissioning within the period prescribed in paragraph 1 of  
18 this subsection, the Corporation Commission shall take such measures  
19 as are necessary to complete the decommissioning including, but not  
20 limited to, recovering all costs of decommissioning from the owner's  
21 bond.

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

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

5 Section 160.15 A. After the fifteenth year of operation of a  
6 wind energy facility, the owner shall file with the Corporation  
7 Commission evidence of financial security to cover the anticipated  
8 costs of decommissioning the wind energy facility. Evidence of  
9 financial security may be in the form of a surety bond, collateral  
10 bond, parent guaranty, or letter of credit and shall be sufficient,  
11 when added to the bond posted with the Secretary of State, to cover  
12 the entire cost of decommissioning the wind energy facility.

13 B. The evidence of financial security shall be accompanied by  
14 an estimate of the total cost of decommissioning, ~~minus the salvage~~  
15 ~~value of the equipment,~~ prepared by a professional engineer licensed  
16 ~~in the State of Oklahoma~~ this state. The amount of the evidence of  
17 financial security shall be either:

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

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



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

5 D. In the event of a transfer of ownership of a wind energy  
6 facility, the evidence of financial security posted by the  
7 transferor shall remain in place and shall not be released until  
8 such time as evidence of financial security meeting the requirements  
9 of this section is posted by the new owner of the wind energy  
10 facility and deemed acceptable by the Commission.

11 E. The provisions of this section shall apply to ~~any every~~ wind  
12 energy facility or portion thereof ~~entering into or renewing a power~~  
13 ~~purchase agreement (PPA) for the energy generated by the wind energy~~  
14 ~~facility on or after the effective date of this act. If a wind~~  
15 ~~energy facility does not sell its energy under a power purchase~~  
16 ~~agreement, the provisions of this section shall apply to the wind~~  
17 ~~energy facility or portion thereof which construction commences on~~  
18 ~~or after the effective date of this act~~ in this state.

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

21 Section 160.16 For those landowners who are paid based on the  
22 amount of electrical energy produced from the conversion of wind  
23 energy, the owner or operator of any wind turbine or wind energy  
24 facility shall provide a statement within ten (10) business days of

1 the payment to the landowner in consideration for the use of the  
2 property of the landowner to generate electrical energy from the  
3 conversion of wind energy. The statement shall provide, at a  
4 minimum, information reasonably necessary to provide the landowner  
5 an understanding of the basis for the payment to the landowner and a  
6 means of confirming its accuracy pursuant to Section 160.17 of this  
7 title.

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

10 Section 160.18 A. The owner or operator of any wind turbine or  
11 wind energy facility shall report to the Corporation Commission the  
12 power generated from the wind turbine or wind energy facility, the  
13 nameplate capacity of the wind turbine or wind energy facility, and  
14 the legal description of the location of the wind turbine or wind  
15 energy facility.

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

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

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

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

6           1. Is within three (3) miles of a residential dwelling,  
7 occupied structure or residential dwelling under construction,  
8 except with the express written consent of all owners of the  
9 property on which the dwelling or structure is located. In no case  
10 shall a wind energy facility be located within two hundred percent  
11 (200%) of the maximum height of the tower from a residential  
12 dwelling or occupied structure;

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

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

18           4. Is less than three (3) miles from the limits of any city,  
19 town or community consisting of five (5) or more residential  
20 structures;

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

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

1           7. Is located within two hundred percent (200%) of the maximum  
2 height of the tower from any oil or gas well or other above ground  
3 oil or gas facility without the written consent of the person  
4 holding title to the oil or gas well or other above-ground oil or  
5 gas facility.

6           B. For purposes of this section, the "height of a tower" shall  
7 be measured from the base of the tower to the tip of the blades at  
8 the highest point on the arc of travel of the blades.

9           C. The board of county commissioners of counties which have not  
10 created a planning commission or metropolitan area planning  
11 commission pursuant to Title 19 of the Oklahoma Statutes and the  
12 governing body of municipalities which have not created a planning  
13 commission, may adopt set back distance greater than those required  
14 by this section in order to promote the health, safety, peace and  
15 general welfare of the public.

16           D. After the effective date of this act, prior to commencement  
17 of construction, every owner of a proposed wind energy facility  
18 shall obtain a permit from the board of county commissioners of each  
19 county in which any part of the wind energy facility will be  
20 located. In order to qualify for the permit, the owner shall:

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

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

3           3. Present a certified copy of the bond posted with the  
4 Secretary of State; and

5           4. Post a bond with the county treasurer in an amount to be  
6 determined by the board of county commissioners which is sufficient  
7 to cover the cost of repair of roads, bridges, and other state and  
8 county property which may be damaged during construction of the wind  
9 energy facility.

10          E. After the effective date of this act, prior to commencement  
11 of construction, every owner of a proposed wind energy facility  
12 shall obtain a permit from the governing body of each municipality  
13 in which any part of the wind energy facility will be located, if  
14 any. In order to qualify for the permit, the owner shall:

15           1. Comply with all municipal or county zoning requirements;

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

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

21           4. Present a certified copy of the bond posted with the  
22 Secretary of State;

23           5. Present a certified copy of the bond posted with the board  
24 of county commissioners, and

1           6. Post a bond with the municipal treasurer in an amount to be  
2 determined by the governing body of the municipality which is  
3 sufficient to cover the cost of repair of roads, bridges and other  
4 municipal property which may be damaged during construction of the  
5 wind energy facility.

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

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