

ENROLLED HOUSE
BILL NO. 2973

By: Sanders, Scott, Fields,
Williams, Blackwell,
Sherrer, Hoskin and Walker
of the House

and

Marlatt, Garrison and
Ivester of the Senate

An Act relating to the Corporation Commission; creating the Oklahoma Wind Energy Development Act; providing short title; stating legislative findings; defining terms; requiring decommissioning of wind energy facilities; stating requirements and time limits for decommissioning; stating requirements and procedures for remediation of property following decommissioning of facilities; requiring owners or operators to file certain financial security for decommissioning of wind energy facilities by certain time period; requiring certain estimates to be submitted; specifying amount of financial securities; providing penalties; providing for transfer of ownership; providing for application of financial security requirements to certain wind energy facilities; requiring operators to provide statements to certain landowners; specifying information to be included in statement; granting certain landowners the right to inspect certain records for certain purposes; requiring certain owners and operators to make certain data or records available; providing certain restrictions; providing for reporting of certain capacity and location to the Commission; requiring certain liability insurance prior to construction of wind energy facilities; providing for additional insured, delivery of the policy, and certain notice; authorizing promulgation of rules; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.11 of Title 17, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Wind Energy Development Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.12 of Title 17, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that:

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

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

3. The prudent development of wind energy resources requires balancing the needs of wind energy developers with those of the landowners who provide access to the wind energy resource, including assurances that wind turbines and wind energy facilities will be properly decommissioned, that they will have access to adequate information to verify the accuracy of their payments, and that they will be adequately protected against hazards and accidents that may arise from the wind turbines or wind energy facilities;

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

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

6. To protect the public against health and safety hazards, standards for the safe decommissioning of wind energy facilities should be established and assurance of adequate financial resources

should be given so that the wind energy systems can be properly decommissioned at the end of their useful life.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.13 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Wind Energy Development Act:

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

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

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

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

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

6. "Owner" means the entity having a majority equity interest in commercial wind energy equipment, including their respective successors and assigns;

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

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

9. "Wind energy facility" means an electrical generation facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, meteorological data towers, aboveground and underground electrical transmission lines, transformers, control systems, and other buildings or facilities used to support the operation of the facility, and whose primary purpose is to supply electricity to an off-site customer or customers. Wind energy facility shall not include a wind energy facility located entirely on property held in fee simple absolute estate by the owner of the wind energy facility.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.14 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The owner of a wind energy facility shall be responsible, at its expense, for the proper decommissioning of the facility upon abandonment or the end of the useful life of the commercial wind energy equipment in the wind energy facility.

B. Proper decommissioning of a wind energy facility shall include:

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

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

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

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

2. If the owner of the wind energy facility fails to complete the decommissioning within the period prescribed in paragraph 1 of this subsection, the Corporation Commission shall take such measures as are necessary to complete the decommissioning.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.15 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. After the fifteenth year of operation of a wind energy facility, the owner shall file with the Corporation Commission evidence of financial security to cover the anticipated costs of decommissioning the wind energy facility. Evidence of financial security may be in the form of a surety bond, collateral bond, parent guaranty, or letter of credit.

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

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

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

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

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

E. The provisions of this section shall apply to any wind energy facility or portion thereof entering into or renewing a power purchase agreement (PPA) for the energy generated by the wind energy facility on or after the effective date of this act. If a wind energy facility does not sell its energy under a power purchase agreement, the provisions of this section shall apply to the wind energy facility or portion thereof which construction commences on or after the effective date of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.16 of Title 17, unless there is created a duplication in numbering, reads as follows:

For those landowners who are paid based on the amount of electrical energy produced from the conversion of wind energy, the owner or operator of any wind turbine or wind energy facility shall provide a statement within ten (10) business days of the payment to the landowner in consideration for the use of the property of the landowner to generate electrical energy from the conversion of wind energy. The statement shall provide, at a minimum, information reasonably necessary to provide the landowner an understanding of the basis for the payment to the landowner and a means of confirming its accuracy.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.17 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Any landowner who has, through a lease, easement, or other arrangement, allowed a wind turbine foundation to be placed on the property of the landowner and who is paid based on the amount of electrical energy produced from the conversion of wind energy shall have the right to inspect the records of the owner or operator of the wind turbine or wind energy facility for the purposes of confirming the accuracy of any payments made to the landowner within the past twenty-four (24) months.

B. The owner or operator of any wind turbine or wind energy facility, any portion of which is located in this state, upon request of a landowner with the right to inspect records as set forth in subsection A of this section and within a reasonable time, but no more than once per calendar year, shall make available within the state all records, documents, data, and other information, or copies thereof, as are necessary for a landowner to conduct the inspection specified in subsection A of this section. The records shall be made available in a location and manner that affords a landowner reasonable access to the records during normal business hours. The landowner shall be permitted a reasonable length of time to complete the inspection and shall not cause undue disruption to the operations of the owner or operator during the inspection. The records shall be subject to confidentiality requirements contained in the respective landowner lease agreement.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.18 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. The owner or operator of any wind turbine or wind energy facility shall report to the Corporation Commission the power generated from the wind turbine or wind energy facility, the nameplate capacity of the wind turbine or wind energy facility, and the location of the wind turbine or wind energy facility.

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

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 160.19 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Prior to commencing construction of a wind energy facility, the owner or operator of a wind turbine or wind energy facility shall obtain and keep in effect either a:

1. Commercial general liability insurance policy with a limit consistent with prevailing industry standards; or

2. Combination of self insurance and an excess liability insurance policy.

B. The owner or operator shall cause the owner of the land where the wind turbine or wind energy facility is located to be named as an additional insured in the policy.

C. The owner or operator shall deliver to the landowner a certificate of insurance evidencing the policy. The landowner shall be given at least thirty (30) days prior notice of any material modification, cancellation or termination of the insurance.

SECTION 10. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Corporation Commission or any state agency affected by the requirements of this act is authorized to promulgate rules as necessary to implement the provisions of this act.

SECTION 11. This act shall become effective January 1, 2011.

Passed the House of Representatives the 20th day of May, 2010.

Presiding Officer of the House of
Representatives

Passed the Senate the 21st day of May, 2010.

Presiding Officer of the Senate