

WIND ENERGY FACILITY SITING MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill enacts a provision related to wind energy facilities.

Highlighted Provisions:

This bill:

▸ requires the owner of a wind energy facility to:

- undergo the Military Aviation and Installation Assurance Siting Clearinghouse (clearinghouse) process before commencement of construction on a wind turbine or a wind energy facility;
- file documentation with the Utah Department of Veterans and Military Affairs (department) and the Department of Natural Resources that the clearinghouse and the department have determined that the proposed construction does not encroach upon or otherwise have an adverse impact on the military; and
- provides for penalties if an owner of a wind turbine or a wind energy facility fails to submit the proper documentation to the Department of Natural Resources.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

71A-1-203, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **71A-1-203** is enacted to read:

71A-1-203. Wind turbine and wind energy facility siting -- Military Aviation and Installation Assurance Siting Clearinghouse.

33 (1) As used in this section:

34 (a) "Clearinghouse" means the Military Aviation and Installation Assurance Siting
35 Clearinghouse established by the United States Secretary of Defense under 10 U.S.C. Sec.
36 183(a).

37 (b) (i) "Commencement of construction" means beginning excavation of wind turbine
38 foundations or other actions relating to the actual erection and installation of commercial wind
39 energy equipment.

40 (ii) "Commencement of construction" does not include activities related to:

41 (A) the erection of meteorological towers;

42 (B) environmental assessments;

43 (C) surveys;

44 (D) preliminary engineering; or

45 (E) assessments of the development of the wind resources on a given parcel of
46 property.

47 (c) "Determination of no hazard" means the formal response issued by the FAA upon
48 completion of an aeronautical study regarding a facility structure's impact to air navigation
49 affirming that:

50 (i) the facility structure does not exceed obstruction standards; and

51 (ii) modifications to the facility structure are not required.

52 (d) "FAA" means the United States Federal Aviation Administration.

53 (e) "Facility structure" means a wind turbine or other structure located on a wind
54 energy facility, the construction or modification of which would require the completion of
55 Form 7460-1.

56 (f) "Form 7460-1" means:

57 (i) FAA Form 7460-1, Notice of Proposed Construction or Alteration, which the FAA
58 uses to conduct aeronautical studies to promote air safety and the efficient use of navigable
59 airspace, as required under 14 C.F.R. Part 77; or

60 (ii) a form designated by the FAA to conduct aeronautical studies to promote air safety
61 and the efficient use of navigable airspace.

62 (g) "Mission compatibility certification letter" means the formal response the
63 clearinghouse issues through the clearinghouse's review of proposed projects and facility

64 structures through the clearinghouse's evaluation process.

65 (h) "Owner" means a person having a majority equity interest in a commercial wind
66 energy facility.

67 (i) (i) "Wind energy facility" means an electrical generation consisting of one or more
68 wind turbines under common ownership or operating control.

69 (ii) "Wind energy facility" includes the infrastructure necessary to support the
70 generation of electricity by one or more wind turbines, including:

71 (A) substations;

72 (B) meteorological data towers;

73 (C) aboveground and underground electrical transmission lines;

74 (D) transformers;

75 (E) control systems; and

76 (F) other structures used to support the operation of the facility with the primary
77 purpose of supplying electricity to an off-site customer.

78 (j) (i) "Wind turbine" means a wind energy conversion system that converts wind
79 energy into electricity through the use of a wind turbine generator.

80 (ii) "Wind turbine" includes the turbine, blade, tower, base, and pad transformer.

81 (2) Construction or modification of a facility structure may not encroach upon or
82 otherwise have an adverse impact on the mission, training, or operations of any military
83 installation or branch of the military as determined by the clearinghouse and the FAA.

84 (3) An adverse impact to a military installation or branch of the military in Subsection
85 (2) includes an adverse impact to:

86 (a) a military training route;

87 (b) a drop zone;

88 (c) an approach to a runway;

89 (d) a test or training range;

90 (e) a military installation or facility;

91 (f) United States Department of Defense special use air space; and

92 (g) United States Department of Defense spectral requirements.

93 (4) (a) A facility structure may not be constructed or expanded unless:

94 (i) there is an active determination of no hazard; or

95 (ii) any adverse impacts to the United States Department of Defense, determined in
96 accordance with 32 C.F.R. Sec. 211.6, or the National Defense Authorization Act have been
97 resolved as evidenced by documentation from the clearinghouse for the facility structure and
98 the department.

99 (b) For purposes of Subsection (4)(a)(ii), a mission compatibility certification letter
100 may serve as evidence that the wind facility has resolved adverse impacts with the United
101 States Department of Defense or successor agency.

102 (5) Before expanding or constructing a facility structure, an owner shall file with the
103 Department of Natural Resources and Utah Department of Veterans and Military Affairs for
104 review and approval:

105 (a) any determination of no hazard the owner receives related to the facility structure;

106 (b) any documentation the owner receives from the clearinghouse referring to any
107 resolution of adverse impacts created by the facility structure; and

108 (c) any documentation the owner receives from the department demonstrating a
109 determination of no impact or no hazard.

110 (6) The requirements under this section may not prohibit the construction of a facility
111 structure if the facility structure has received a determination of no hazard or mitigation plan
112 before May 1, 2024.

113 (7) (a) The Department of Natural Resources and the department may make rules in
114 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer this
115 section.

116 (b) The documentation an owner submits in accordance with Subsection (5):

117 (i) shall only be used and disclosed by the Department of Natural Resources in
118 accordance with this section;

119 (ii) is confidential, not public, and not open to public inspection; and

120 (iii) is not subject to Title 63G, Chapter 2, Government Records Access and
121 Management Act.

122 (8) If an owner fails to submit the documentation described in Subsection (5) for an
123 individual facility structure before the commencement of construction:

124 (a) the department shall charge the owner an administrative penalty not to exceed
125 \$1,500 per day, per violation; and

126 (b) a stakeholder, including the department, may bring an action in court to:

127 (i) enjoin any action on a facility structure in violation of this section; and

128 (ii) enforce the requirements of this section.

129 Section 2. **Effective date.**

130 This bill takes effect on May 1, 2024.