

1 **WIND ENERGY FACILITY SITING AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill enacts a provision related to wind energy facilities.

9 **Highlighted Provisions:**

10 This bill:

11 ▶ requires the owner of a wind turbine or wind energy facility:

12 • to undergo the Military Aviation and Installation Assurance Siting

13 Clearinghouse process prior to commencement of construction on the wind

14 turbine or wind energy facility; and

15 • to file official proof, through the proper documentation, with the Governor's

16 Office of Energy Development that the wind turbine or wind energy facility

17 does not encroach upon or otherwise have a significant adverse impact on the

18 mission, training, or operations of any military installation or branch of the

19 military as determined by the clearinghouse and the United States Aviation

20 Administration; and

21 ▶ provides for penalties if an owner of a wind energy facility or wind turbine fails to

22 submit the proper documentation to the office.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **63M-4-403**, Utah Code Annotated 1953

31

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

33 Section 1. Section **63M-4-403** is enacted to read:

34 **63M-4-403. Wind turbine and wind energy facility siting -- Military aviation and**
35 **Installation Assurance Siting Clearinghouse.**

36 As used in this section:

37 (1) (a) "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 (b) "Commencement of construction" does not include activities related to:

41 (i) the erection of meteorological towers;

42 (ii) environmental assets;

43 (iii) surveys;

44 (iv) preliminary engineering; or

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

47 (c) "Clearinghouse" means the Military Aviation and Installation Assurance Siting
48 Clearinghouse established by the United States Secretary of Defense under 10 U.S.C. Sec.
49 183(a).

50 (d) "Determination of no hazard" means the formal response issued by the FAA upon
51 completion of an aeronautical study regarding a structure's impact to air navigation affirming
52 that:

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

54 (ii) modifications to the structure are not required.

55 (e) "FAA" means the United States Federal Aviation Administration.

56 (f) "Form 7460-1" means FAA Form 7460-1, Notice of Proposed Construction or
57 Alteration, which is utilized by the FAA to conduct aeronautical studies to promote air safety
58 and the efficient use of the navigable airspace, as required under 14 C.F.R. Part 77.

59 (g) "Mission compatibility certification letter" means the formal response issued by the
60 clearinghouse through the clearinghouse's review of proposed projects and structures through
61 the clearinghouse's mission compatibility evaluation process.

62 (h) "Owner" means a person having a majority equity interest in commercial wind
63 energy equipment, including the person's successors and assigns.

64 (i) (i) "Wind energy facility" means an electrical generation facility consisting of one or
65 more wind turbines under common ownership or operating control, and includes:

66 (A) substations;

67 (B) meteorological data towers;

68 (C) aboveground and underground electrical transmission lines;

69 (D) transformers;

70 (E) control systems; and

71 (F) other buildings or facilities used to support the operation of the facility and with the
72 primary purpose to supply electricity to an off-site customer or customers.

73 (ii) "Wind energy facility" does not include an electrical generation facility located
74 entirely on property held in fee simple by the owner of the wind energy facility.

75 (j) "Wind turbine" means a wind energy conversion system which converts wind
76 energy into electricity through the use of a wind turbine generator and includes the turbine,
77 blade, tower, base, and pad transformer.

78 (2) Construction or operation of a proposed individual wind turbine or any other
79 individual structure requiring Form 7460-1 that is part of a wind energy facility may not
80 encroach upon or otherwise have a significant adverse impact on the mission, training, or
81 operations of any military installation or branch of the military as determined by the
82 clearinghouse and the FAA, including:

83 (a) a military training route;

84 (b) a drop zone;

85 (c) an approach to a runway; and

86 (d) a bombing range.

87 (3) (a) An individual wind turbine or any other individual structure that requires a
88 Form 7460-1 that is part of a wind energy facility may not be constructed or expanded unless:

89 (i) there is an active determination of no hazard from the FAA; and

90 (ii) adverse impacts to the United States Department of Defense, pursuant to 32 C.F.R.
91 Sec. 211.6, have been resolved as evidenced by documentation from the clearinghouse for the
92 individual wind turbine or other individual structure.

93 (b) A mission compatibility certification letter may serve as evidence of adverse
94 impacts being resolved with the United States Department of Defense or successor agency
95 under Subsection (3)(a)(ii).

96 (4) The determination of no hazard and documentation of the resolution of adverse
97 impacts to the Department of Defense shall be filed with the office.

98 (5) The requirements under this section may not prohibit the construction of an
99 individual wind turbine or any other individual structure requiring a Form 7460-1 that is part of
100 a wind energy facility if that individual wind turbine or other individual structure has received
101 a determination of no hazard or mitigation plan on or before May 12, 2020.

102 (6) (a) For purposes of administering this section, the office may make rules by
103 following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative
104 Rulemaking Act, to maintain as confidential, and not as a public record, information that the
105 office receives from any source.

106 (b) The office shall maintain information the office receives from any source at the
107 level of confidentiality assigned by the source.

108 (7) If an owner of a wind energy facility fails to submit an active determination of no
109 hazard and documentation that adverse impacts to the Department of Defense have been
110 resolved by the clearinghouse for the individual wind turbine or other individual structure prior
111 to the commencement of construction:

112 (a) the owner shall be subject to an administrative penalty not to exceed \$1,500 per
113 day, per violation from the office; and

114 (b) a stakeholder, including the office, may institute an action in any court of general
115 jurisdiction to prevent, restrain, correct, or abate any violation of this section other than an
116 action taken by the office related to submissions or attestations.