

WIND ENERGY FACILITY SITING MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Ann Millner

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; and

• file documentation with the Department of Natural Resources (department) that the clearinghouse has determined that the proposed construction does not encroach upon or otherwise have a significant 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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



28 79-2-407, Utah Code Annotated 1953

29

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

31 Section 1. Section **79-2-407** is enacted to read:

32 **79-2-407. Wind turbine and wind energy facility siting -- Military Aviation and**
33 **Installation Assurance Siting Clearinghouse.**

34 (1) As used in this section:

35 (a) "Clearinghouse" means the Military Aviation and Installation Assurance Siting
36 Clearinghouse established by the United States Secretary of Defense under 10 U.S.C. Sec.
37 183(a).

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

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

42 (A) the erection of meteorological towers;

43 (B) environmental assessments;

44 (C) surveys;

45 (D) preliminary engineering; or

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

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

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

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

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

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

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

58 (i) FAA Form 7460-1, Notice of Proposed Construction or Alteration, which the FAA

59 uses to conduct aeronautical studies to promote air safety and the efficient use of navigable
60 airspace, as required under 14 C.F.R. Part 77; or

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

63 (g) "Mission compatibility certification letter" means the formal response the
64 clearinghouse issues through the clearinghouse's review of proposed projects and facility
65 structures through the clearinghouse's evaluation process.

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

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

70 (ii) "Wind energy facility" includes:

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

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

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

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

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

88 (a) a military training route;

89 (b) a drop zone;

90 (c) an approach to a runway; and

91 (d) a bombing range.

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

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

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

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

100 (5) Before expanding or constructing a facility structure, an owner shall file with the
101 department:

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

103 or

104 (b) any documentation the owner receives from the clearinghouse referring to any
105 resolution of adverse impacts created by the facility structure.

106 (6) The requirements under this section may not prohibit the construction of a facility
107 structure if the facility structure has received a determination of no hazard or mitigation plan
108 before May 3, 2023.

109 (7) (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah
110 Administrative Rulemaking Act, to administer this section.

111 (b) The documentation an owner submits in accordance with Subsection (5) is not
112 subject to Title 63G, Chapter 2, Government Records Access and Management Act.

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

115 (a) the department shall charge the owner an administrative penalty not to exceed
116 \$1,500 per day, per violation; and

117 (b) a stakeholder, including the department, may bring an action in an appropriate court
118 of general jurisdiction to:

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

120 (ii) enforce the requirements of this section.