

1 **WIND ENERGY FACILITY SITING MODIFICATIONS**
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Jefferson S. Burton
Senate Sponsor: Ann Millner

2
3 **LONG TITLE**

4 **General Description:**

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

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ requires the owner of a wind energy facility to:
 - 9 • undergo the Military Aviation and Installation Assurance Siting Clearinghouse
 - 10 (clearinghouse) process before commencement of construction on a wind turbine or a wind
 - 11 energy facility; and
 - 12 • file documentation with the Department of Veterans and Military Affairs
 - 13 (department) and the Department of Natural Resources that the clearinghouse and the
 - 14 department have determined that the proposed construction does not encroach upon or
 - 15 otherwise have an adverse impact on the military; and
- 16 ▸ provides for penalties if an owner of a wind turbine or a wind energy facility fails to
- 17 comply with the document submission requirements.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 ENACTS:

24 **71A-1-203**, as Utah Code Annotated 1953

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

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

28 **71A-1-203** . Wind turbine and wind energy facility siting -- Military Aviation and

29 **Installation Assurance Siting Clearinghouse.**30 (1) As used in this section:31 (a) "Clearinghouse" means the Military Aviation and Installation Assurance Siting
32 Clearinghouse established by the United States Secretary of Defense under 10 U.S.C.
33 Sec. 183(a).34 (b) (i) "Commencement of construction" means beginning excavation of wind turbine
35 foundations or other actions relating to the actual erection and installation of
36 commercial wind energy equipment.37 (ii) "Commencement of construction" does not include activities related to:38 (A) the erection of meteorological towers;39 (B) environmental assessments;40 (C) surveys;41 (D) preliminary engineering; or42 (E) assessments of the development of the wind resources on a given parcel of
43 property.44 (c) "Determination of no hazard" means the formal response issued by the FAA upon
45 completion of an aeronautical study regarding a facility structure's impact to air
46 navigation affirming that:47 (i) the facility structure does not exceed obstruction standards; and48 (ii) modifications to the facility structure are not required.49 (d) "FAA" means the United States Federal Aviation Administration.50 (e) "Facility structure" means a wind turbine or other structure located on a wind energy
51 facility, the construction or modification of which would require the completion of
52 Form 7460-1.53 (f) "Form 7460-1" means:54 (i) FAA Form 7460-1, Notice of Proposed Construction or Alteration, which the
55 FAA uses to conduct aeronautical studies to promote air safety and the efficient
56 use of navigable airspace, as required under 14 C.F.R. Part 77; or57 (ii) a form designated by the FAA to conduct aeronautical studies to promote air
58 safety and the efficient use of navigable airspace.59 (g) "Mission compatibility certification letter" means the formal response the
60 clearinghouse issues through the clearinghouse's review of proposed projects and
61 facility structures through the clearinghouse's evaluation process.62 (h) "Owner" means a person having a majority equity interest in a commercial wind

- 63 energy facility.
- 64 (i) "Wind energy facility" means an electrical generation consisting of one or more
65 wind turbines under common ownership or operating control.
- 66 (ii) "Wind energy facility" includes the infrastructure necessary to support the
67 generation of electricity by one or more wind turbines, including:
- 68 (A) substations;
- 69 (B) meteorological data towers;
- 70 (C) aboveground and underground electrical transmission lines;
- 71 (D) transformers;
- 72 (E) control systems; and
- 73 (F) other structures used to support the operation of the facility with the primary
74 purpose of supplying electricity to an off-site customer.
- 75 (j) (i) "Wind turbine" means a wind energy conversion system that converts wind
76 energy into electricity through the use of a wind turbine generator.
- 77 (ii) "Wind turbine" includes the turbine, blade, tower, base, and pad transformer.
- 78 (2) Construction or modification of a facility structure may not encroach upon or otherwise
79 have an adverse impact on the mission, training, or operations of any military
80 installation or branch of the military as determined by the clearinghouse and the FAA.
- 81 (3) An adverse impact to a military installation or branch of the military in Subsection (2)
82 includes an adverse impact to:
- 83 (a) a military training route;
- 84 (b) a drop zone;
- 85 (c) an approach to a runway;
- 86 (d) a test or training range;
- 87 (e) a military installation or facility;
- 88 (f) United States Department of Defense special use air space; and
- 89 (g) United States Department of Defense spectral requirements.
- 90 (4) (a) A facility structure may not be constructed or expanded unless:
- 91 (i) there is an active determination of no hazard; or
- 92 (ii) any adverse impacts to the United States Department of Defense, determined in
93 accordance with 32 C.F.R. Sec. 211.6, or the National Defense Authorization Act
94 have been resolved as evidenced by documentation from the clearinghouse for the
95 facility structure and the department.
- 96 (b) For purposes of Subsection (4)(a)(ii), a mission compatibility certification letter may

- 97 serve as evidence that the wind facility has resolved adverse impacts with the United
98 States Department of Defense or successor agency.
- 99 (5) (a) Before expanding or constructing a facility structure, and within 30 days of
100 submitting an application to the FAA, an owner shall file a copy of the FAA
101 application with the department.
- 102 (b) Within 15 days of receiving a copy of the FAA application to construct a wind
103 energy site, the department will provide a copy of the application to the Department
104 of Natural Resources and the affected military entities.
- 105 (c) The department may serve in a coordination role with the owner, the Department of
106 Natural Resources, and the affected military entity.
- 107 (6) Within 30 days of receiving final notification from the FAA or a Notice of Presumed
108 Risk from the Department of Defense the owner shall provide the department a copy of
109 the documentation as well as:
- 110 (a) any determination of no hazard the owner receives related to the facility structure;
111 (b) any documentation the owner receives from the clearinghouse referring to any
112 resolution of adverse impacts created by the facility structure; and
- 113 (c) any documentation the owner receives from the department demonstrating a
114 determination of no impact or no hazard.
- 115 (7) The requirements under this section may not prohibit the construction of a facility
116 structure if the facility structure has received a determination of no hazard or mitigation
117 plan before May 1, 2024.
- 118 (8) (a) The department may make rules in accordance with Title 63G, Chapter 3, Utah
119 Administrative Rulemaking Act, to administer this section.
- 120 (b) The documentation an owner submits in accordance with Subsections (5) and (6):
121 (i) shall only be used and disclosed by the department in accordance with this section;
122 (ii) is confidential, not public, and not open to public inspection; and
123 (iii) is not subject to Title 63G, Chapter 2, Government Records Access and
124 Management Act.
- 125 (9) If an owner fails to submit the documentation described in Subsections (5) and (6) for
126 an individual facility structure:
- 127 (a) the department may charge the owner an administrative penalty not to exceed \$1,500
128 per day, per violation; and
- 129 (b) a stakeholder, including the department, may bring an action in court to:
130 (i) enjoin any action on a facility structure in violation of this section; and

131 (ii) enforce the requirements of this section.

132 Section 2. **Effective date.**

133 This bill takes effect on May 1, 2024.