

Representative Jefferson S. Burton proposes the following substitute bill:

WIND ENERGY FACILITY SITING MODIFICATIONS

2024 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 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 comply with the document submission requirements.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **71A-1-203**, Utah Code Annotated 1953



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

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

32 **71A-1-203. 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 consisting of one or more
69 wind turbines under common ownership or operating control.

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

72 (A) substations;

73 (B) meteorological data towers;

74 (C) aboveground and underground electrical transmission lines;

75 (D) transformers;

76 (E) control systems; and

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

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

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

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

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

87 (a) a military training route;

- 88 (b) a drop zone;
- 89 (c) an approach to a runway;
- 90 (d) a test or training range;
- 91 (e) a military installation or facility;
- 92 (f) United States Department of Defense special use air space; and
- 93 (g) United States Department of Defense spectral requirements.

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

- 95 (i) there is an active determination of no hazard; or
- 96 (ii) any adverse impacts to the United States Department of Defense, determined in
- 97 accordance with 32 C.F.R. Sec. 211.6, or the National Defense Authorization Act have been
- 98 resolved as evidenced by documentation from the clearinghouse for the facility structure and
- 99 the department.

100 (b) For purposes of Subsection (4)(a)(ii), a mission compatibility certification letter

101 may serve as evidence that the wind facility has resolved adverse impacts with the United

102 States Department of Defense or successor agency.

103 (5) (a) Before expanding or constructing a facility structure, and within 30 days of

104 submitting an application to the FAA, an owner shall file a copy of the FAA application with

105 the department.

106 (b) Within 15 days of receiving a copy of the FAA application to construct a wind

107 energy site, the department will provide a copy of the application to the Department of Natural

108 Resources and the affected military entities.

109 (c) The department may serve in a coordination role with the owner, the Department of

110 Natural Resources, and the affected military entity.

111 (6) Within 30 days of receiving final notification from the FAA or a Notice of

112 Presumed Risk from the Department of Defense the owner shall provide the department a copy

113 of the documentation as well as:

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

115 (b) any documentation the owner receives from the clearinghouse referring to any

116 resolution of adverse impacts created by the facility structure; and

117 (c) any documentation the owner receives from the department demonstrating a

118 determination of no impact or no hazard.

119 (7) The requirements under this section may not prohibit the construction of a facility
120 structure if the facility structure has received a determination of no hazard or mitigation plan
121 before May 1, 2024.

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

124 (b) The documentation an owner submits in accordance with Subsection (5):
125 (i) shall only be used and disclosed by the department in accordance with this section;
126 (ii) is confidential, not public, and not open to public inspection; and
127 (iii) is not subject to Title 63G, Chapter 2, Government Records Access and
128 Management Act.

129 (9) If an owner fails to submit the documentation described in Subsections (5) and (6)
130 for an individual facility structure before the commencement of construction:

131 (a) the department shall charge the owner an administrative penalty not to exceed
132 \$1,500 per day, per violation; and

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

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

135 (ii) enforce the requirements of this section.

136 Section 2. **Effective date.**

137 This bill takes effect on May 1, 2024.