

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 1787

By: Schulz, Ballenger and  
Ivester of the Senate

6 and

7 Jordan, Walker and Faught  
8 of the House

9  
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to property; requiring wind and solar  
12 energy agreements to run with surface estate; stating  
13 intent; stating exception; defining terms; stating  
14 exceptions; providing certain agreements shall run  
15 with the land until terminated; requiring filing of  
16 certain instrument with county clerk; prohibiting  
17 severance of wind or solar energy resource from  
18 surface estate; stating exemption; amending 60 O.S.  
19 2001, Section 803, which relates to the Oklahoma  
20 Airspace Act; limiting ability to transfer airspace  
21 as real property for certain purposes; amending 60  
22 O.S. 2001, Section 805, which relates to airspace  
23 property rights; stating exception; providing for  
24 codification; providing an effective date; and  
declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 820.1 of Title 60, unless there  
is created a duplication in numbering, reads as follows:

1       A. It is the intent of this act to restrict the permanent  
2 severing of the airspace over any real property located in this  
3 state for the purpose of developing and operating commercial wind or  
4 solar energy conversion systems. Leasing arrangements for  
5 development of wind or solar energy conversion systems may be made  
6 only with the legally authorized owner of the surface estate  
7 pursuant to the provisions and restrictions provided by this act or  
8 otherwise provided by law. The provisions of this act shall not  
9 apply to any property owner utilizing wind or solar energy  
10 conversion systems for domestic use only.

11       B. For the purposes of this act a "wind or solar energy  
12 agreement" means a lease agreement, whether or not stated in the  
13 form of a restriction, covenant, or condition, in any deed, wind or  
14 solar easement, wind or solar option or lease securing land for the  
15 study or production of wind or solar-generated energy, or any other  
16 instrument executed by or on behalf of any owner of land or airspace  
17 for the purpose of allowing another party to study the potential  
18 for, or to develop, a wind or solar energy conversion system on the  
19 land or in the airspace. A wind or solar energy agreement shall in  
20 no way be deemed to contravene, supersede, amend, modify or alter  
21 the existing powers, requirements, limitations or other provisions  
22 of statutory or common law pertaining to aviation, air  
23 transportation, air commerce or air operations, nor shall any wind

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1 or solar energy agreement interfere with or supersede any entity's  
2 right to obtain easements as otherwise authorized by law.

3 C. A wind or solar energy agreement shall run with the land  
4 benefitted and burdened and shall terminate upon the conditions  
5 stated in the wind or solar agreement.

6 D. An instrument creating a land right or an option to secure a  
7 land right in real property or the vertical space above real  
8 property for a solar energy system, for a wind or solar energy  
9 conversion system, or for wind measurement equipment, shall be  
10 created in writing, and the instrument, or an abstract, shall be  
11 filed, duly recorded, and indexed in the office of the county clerk  
12 in the county in which the real property subject to the instrument  
13 is located. The instrument shall include, but not be limited to:

- 14 1. The names of the parties;
- 15 2. A legal description of the real property involved;
- 16 3. The nature of the interest created;
- 17 4. The consideration paid for the transfer;
- 18 5. A description of the improvements the developer intends to  
19 make on the real property, including, but not limited to, roads,  
20 transmission lines, substations, wind turbines and meteorological  
21 towers;

22 6. A description of any decommissioning security as defined in  
23 Subsection A of this section, or other requirements related to  
24 decommissioning; and

1           7. The terms or conditions, if any, under which the interest  
2 may be revised or terminated.

3           E. No interest in any resource located on a tract of land and  
4 solely associated with the production or potential production of  
5 wind or solar-generated energy on the tract of land may be severed  
6 from the surface estate except that such rights may be leased for a  
7 definite term pursuant to the provisions of this act.

8           F. The provisions of this section shall not affect any  
9 agreements or contracts entered into pursuant to the provisions of  
10 the Oklahoma Airspace Act, Section 801 et seq. of Title 60 of the  
11 Oklahoma Statutes.

12           SECTION 2.           AMENDATORY           60 O.S. 2001, Section 803, is  
13 amended to read as follows:

14           Section 803. Airspace as defined herein is real property, and  
15 until title thereto or rights, interests or estates therein are  
16 separately transferred, airspace is the property of the person or  
17 persons holding title to the land surface beneath it, subject to the  
18 limitations relating to wind or solar energy agreements provided in  
19 Section 1 of this act.

20           SECTION 3.           AMENDATORY           60 O.S. 2001, Section 805, is  
21 amended to read as follows:

22           Section 805. ~~All~~ Subject to the limitations relating to wind or  
23 solar energy agreements provided in Section 1 of this act, all forms  
24 of titles, estates, rights and interests which may presently exist

1 or which may hereafter be created by law or equity or under statutes  
2 pertaining to real property may be legally created, transferred and  
3 conveyed in airspace, whether or not such airspace is contiguous to  
4 the surface of the earth; and the same shall constitute titles,  
5 estates, rights and interests in real property under and subject to  
6 the laws pertaining thereto.

7 SECTION 4. This act shall become effective July 1, 2010.

8 SECTION 5. It being immediately necessary for the preservation  
9 of the public peace, health and safety, an emergency is hereby  
10 declared to exist, by reason whereof this act shall take effect and  
11 be in full force from and after its passage and approval.

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13 52-2-4046 MJM 5/20/2010 11:54:00 AM

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