

1 ENGROSSED SENATE
2 BILL NO. 1787

By: Schulz, Ballenger and
Ivester of the Senate

3 and

4 Sanders of the House

5
6
7 [property - wind and solar energy agreements -
8 airspace property rights - codification - effective
9 date -
10 emergency]

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

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SECTION 1. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 820.1 of Title 60, unless there

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is created a duplication in numbering, reads as follows:

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A. It is the intent of this act to restrict the permanent

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severing of the airspace over any real property located in this

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state for the purpose of developing and operating commercial wind or

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solar energy conversion systems. Leasing arrangements for

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development of wind or solar energy conversion systems may be made

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only with the legally authorized owner of the surface estate

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pursuant to the provisions and restrictions provided by this act or

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otherwise provided by law. The provisions of this act shall not

1 apply to any property owner utilizing wind or solar energy
2 conversion systems for domestic use only.

3 B. For the purposes of this act a "Wind or solar energy
4 agreement" means a lease agreement, whether or not stated in the
5 form of a restriction, covenant, or condition, in any deed, wind or
6 solar easement, wind or solar option or lease securing land for the
7 study or production of wind or solar-generated energy, or any other
8 instrument executed by or on behalf of any owner of land or airspace
9 for the purpose of allowing another party to study the potential
10 for, or to develop, a wind or solar energy conversion system on the
11 land or in the airspace. A wind or solar energy agreement shall in
12 no way be deemed to contravene, supersede, amend, modify or alter
13 the existing powers, requirements, limitations or other provisions
14 of statutory or common law pertaining to aviation, air
15 transportation, air commerce or air operations, nor shall any wind
16 or solar energy agreement interfere with or supersede any entity's
17 right to obtain easements as otherwise authorized by law.

18 C. A wind or solar energy agreement shall run with the land
19 benefitted and burdened and shall terminate upon the conditions
20 stated in the wind or solar agreement, except that the term of such
21 agreement shall not exceed forty (40) years. A wind or solar energy
22 agreement shall terminate if development of a wind or solar energy
23 conversion system has not commenced within five (5) years after the
24 effective date of the agreement, except that this period may be

1 extended by mutual agreement of the parties to the wind or solar
2 energy agreement.

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

- 11 1. The names of the parties;
- 12 2. A legal description of the real property involved;
- 13 3. The nature of the interest created;
- 14 4. The consideration paid for the transfer;
- 15 5. A description of the improvements the developer intends to

16 make on the real property, including, but not limited to, roads,
17 transmission lines, substations, wind turbines and meteorological
18 towers;

19 6. A description of any decommissioning security as defined in
20 Subsection A of this section, or other requirements related to
21 decommissioning; and

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

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

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

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

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

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

20 Section 805. ~~All~~ Subject to the limitations relating to wind or
21 solar energy agreements provided in Section 1 of this act, all forms
22 of titles, estates, rights and interests which may presently exist
23 or which may hereafter be created by law or equity or under statutes
24 pertaining to real property may be legally created, transferred and

1 conveyed in airspace, whether or not such airspace is contiguous to
2 the surface of the earth; and the same shall constitute titles,
3 estates, rights and interests in real property under and subject to
4 the laws pertaining thereto.

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

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

10 Passed the Senate the 10th day of March, 2010.

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Presiding Officer of the Senate

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14 Passed the House of Representatives the ____ day of _____,
15 2010.

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Presiding Officer of the House
of Representatives

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