

ESB 1787

THE HOUSE OF REPRESENTATIVES
Thursday, April 1, 2010

ENGROSSED
Senate Bill No. 1787
As Amended

ENGROSSED SENATE BILL NO. 1787 - By: SCHULZ, BALLENGER AND IVESTER of the Senate and JORDAN of the House.

[property - wind and solar energy agreements - airspace property rights -
codification - effective date -
emergency]

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

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 820.1 of Title 60, unless there is created a duplication in numbering,
3 reads as follows:
4 A. It is the intent of this act to restrict the permanent severing of the airspace over
5 any real property located in this state for the purpose of developing and operating
6 commercial wind or solar energy conversion systems. Leasing arrangements for
7 development of wind or solar energy conversion systems may be made only with the
8 legally authorized owner of the surface estate pursuant to the provisions and restrictions
9 provided by this act or otherwise provided by law. The provisions of this act shall not
10 apply to any property owner utilizing wind or solar energy conversion systems for
11 domestic use only.

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

13 C. A wind or solar energy agreement shall run with the land benefitted and
14 burdened and shall terminate upon the conditions stated in the wind or solar agreement,
15 except that the term of such agreement shall not exceed forty (40) years. A wind or solar
16 energy agreement shall terminate if development of a wind or solar energy conversion
17 system has not commenced within five (5) years after the effective date of the agreement,
18 except that this period may be extended by mutual agreement of the parties to the wind
19 or solar energy agreement.

20 D. An instrument creating a land right or an option to secure a land right in real
21 property or the vertical space above real property for a solar energy system, for a wind or
22 solar energy conversion system, or for wind measurement equipment, shall be created in

1 writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in
2 the office of the county clerk in the county in which the real property subject to the
3 instrument is located. The instrument shall include, but not be limited to:

4 1. The names of the parties;

5 2. A legal description of the real property involved;

6 3. The nature of the interest created;

7 4. The consideration paid for the transfer;

8 5. A description of the improvements the developer intends to make on the real
9 property, including, but not limited to, roads, transmission lines, substations, wind
10 turbines and meteorological towers;

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

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

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

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

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

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

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

9 Section 805. ~~All~~ Subject to the limitations relating to wind or solar energy
10 agreements provided in Section 1 of this act, all forms of titles, estates, rights and
11 interests which may presently exist or which may hereafter be created by law or equity
12 or under statutes pertaining to real property may be legally created, transferred and
13 conveyed in airspace, whether or not such airspace is contiguous to the surface of the
14 earth; and the same shall constitute titles, estates, rights and interests in real property
15 under and subject to the laws pertaining thereto.

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY
21 REGULATION, dated 03-31-10 - DO PASS, As Amended and Coauthored.