

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1787

By: Schulz

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5  
6 AS INTRODUCED

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

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

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

A. It is the intent of this act to restrict the permanent  
severing of the airspace over any real property located in this  
state for the purpose of developing and operating commercial wind or  
solar energy conversion systems. Leasing arrangements for  
development of wind or solar energy conversion systems may be made

1 only with the legally authorized owner of the surface estate  
2 pursuant to the provisions and restrictions provided by this act or  
3 otherwise provided by law. The provisions of this act shall not  
4 apply to any property owner utilizing wind or solar energy  
5 conversion systems for domestic use only.

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

21 C. A wind or solar energy agreement shall run with the land  
22 benefitted and burdened and shall terminate upon the conditions  
23 stated in the wind or solar agreement, except that the term of such  
24 agreement shall not exceed forty (40) years. A wind or solar energy

1 agreement shall terminate if development of a wind or solar energy  
2 conversion system has not commenced within five (5) years after the  
3 effective date of the agreement, except that this period may be  
4 extended by mutual agreement of the parties to the wind or solar  
5 energy 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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