

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 1821

By: Trebilcock of the House

and

4 Marlatt of the Senate
5

6
7
8 (energy - Oil and Gas Exploration Rights Act of 2011
9 - solar energy agreement - exploration rights -
eminent domain -

codification)

10

11 AUTHOR: Add the following Senate Coauthor: Fields

12 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

13

14 "An Act relating to exploration rights; stating
Legislative findings; amending Section 2, Chapter
15 319, O.S.L. 2010 (17 O.S. Supp. 2010, Section
160.12), which relates to legislative findings;
16 modifying certain legislative findings relating to
development of wind energy resources; creating the
17 Exploration Rights Act of 2011; providing short
title; defining terms; specifying certain mineral
owner rights; prohibiting certain interference with
18 certain mineral owner rights; requiring notice by
certain date prior to beginning construction of wind
19 energy facility; stating notice requirements; stating
exception; requiring wind energy developers to
20 publish notice by certain date; stating requirements
for publication; stating exception; authorizing
21 notice by certain wind energy developer; confirming
certain mineral owner rights; providing for
22 declaratory or injunctive relief for violations;
prohibiting mineral estate subject to eminent domain
23 proceedings; stating exception; stating construction
of act; providing for noncodification; providing for
24 codification; and declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law not to be
3 codified in the Oklahoma Statutes reads as follows:

4 The Legislature recognizes the tremendous value of Oklahoma's
5 vast and diverse land resources and the industries that depend on
6 those resources. These industries include, but are not limited to,
7 farming and ranching operations, exploration and production of oil
8 and gas, and the emerging wind industry capturing the kinetic energy
9 from the wind to generate electricity. Each of these industries has
10 a vital role in the future and well-being of our economy. As the
11 wind industry continues to develop, there is risk for potential
12 conflicts between the wind energy developer and the right of mineral
13 owners to reasonable use of the surface for oil and gas exploration
14 and production. It is the intent of the Legislature that the
15 Exploration Rights Act of 2011 codify the historical rights of the
16 mineral estate to make reasonable use of the surface estate,
17 including the right to ingress and egress, subject to the surface
18 damages statutes, in connection with exploring for and producing the
19 mineral estate and to mitigate the risk of potential conflicts
20 between the important industries that rely upon the reasonable use
21 of the surface estate and are vital to the future and well-being of
22 this great State of Oklahoma.
23
24

1 SECTION 2. AMENDATORY Section 2, Chapter 319, O.S.L.
2 2010 (17 O.S. Supp. 2010, Section 160.12), is amended to read as
3 follows:

4 Section 160.12 The Legislature finds that:

5 1. Oklahoma's wind energy resources are an important asset for
6 the continued economic growth of the state and for the provision of
7 clean and renewable power to both the people of the state and the
8 nation as a whole;

9 2. Promotion of the development of wind energy resources is
10 important to the economic growth of the state;

11 3. The prudent development of wind energy resources requires
12 addressing the relationship of the needs of wind energy developers
13 with those of the mineral estate owners who have the historical
14 right to make reasonable use of the surface estate, including the
15 right of ingress and egress therefor, for the purpose of exploring,
16 severing, capturing and producing the minerals as reflected in the
17 Exploration Rights Act of 2011, Sections 3-7 of this act, and
18 balancing the needs of wind energy developers with those of the
19 landowners who provide access to the wind energy resource, including
20 assurances that wind turbines and wind energy facilities will be
21 properly decommissioned, that they will have access to adequate
22 information to verify the accuracy of their payments, and that they
23 will be adequately protected against hazards and accidents that may
24 arise from the wind turbines or wind energy facilities;

1 4. The conversion of wind energy into power for utility-scale
2 systems frequently requires large wind energy systems consisting of
3 wind turbines, electrical substations, electrical lines, and other
4 supporting systems;

5 5. Wind energy facilities, if abandoned or not properly
6 maintained, could pose a hazard to public health, safety, and
7 welfare through mechanical failures, electrical hazards, or the
8 release of hazardous substances; and

9 6. To protect the public against health and safety hazards,
10 standards for the safe decommissioning of wind energy facilities
11 should be established and assurance of adequate financial resources
12 should be given so that the wind energy systems can be properly
13 decommissioned at the end of their useful life.

14 SECTION 3. NEW LAW A new section to be codified in the
15 Oklahoma Statutes as Section 801 of Title 52, unless there is
16 created a duplication in numbering, reads as follows:

17 Sections 3 through 7 of this act shall be known and may be cited
18 as the "Exploration Rights Act of 2011".

19 SECTION 4. NEW LAW A new section to be codified in the
20 Oklahoma Statutes as Section 802 of Title 52, unless there is
21 created a duplication in numbering, reads as follows:

22 As used in the Exploration Rights Act of 2011:

23 1. "Act" means the Exploration Rights Act of 2011;

24

1 2. "Minerals" means oil, natural gas and other minerals of
2 similar type or character that may be produced or associated with
3 the oil or natural gas, regardless of whether title to, or ownership
4 of, the minerals is severed from the fee simple or absolute fee as
5 defined by Section 23 of Title 60 of the Oklahoma Statutes.

6 3. "Mineral estate" means, as to any lands within the State of
7 Oklahoma, the minerals underlying a tract of real property, or the
8 right to capture the minerals underlying a tract of real property,
9 together with the right to make reasonable use of the surface
10 estate, including the right of ingress and egress therefor, for the
11 purpose of exploring, severing, capturing and producing the
12 minerals, as such rights both have been historically articulated at
13 common law and also included within the surface damage statutes,
14 regardless of whether title to, or ownership of, the minerals is
15 severed from the fee simple or absolute fee as defined by Section 23
16 of Title 60 of the Oklahoma Statutes.

17 4. "Mineral owner" means a person owning the mineral estate or
18 a right to explore, sever, capture and produce the minerals, whether
19 such right is derived from ownership of the mineral estate, from an
20 oil and gas lease or from a force pooling order issued by the
21 Corporation Commission, and includes the operator;

22 5. "Surface damages statutes" means Sections 318.2 through
23 319.9 of Title 52 of the Oklahoma Statutes, as the same now exists
24 or may hereafter be amended;

1 6. "Oil and gas operations" means, for purposes of this act
2 only, (a) conducting drilling, completion and operation of a well or
3 wells for the purpose of exploring, severing, capturing and
4 producing minerals, or (b) conducting seismic exploration;

5 7. "Operator" means a person engaged in the exploration,
6 severance, capture or production of the minerals for that person
7 alone, for other persons only, or for that person and others;

8 8. "Person" means any individual, executor, administrator,
9 estate, agent, trust, trustee, institution, receiver, business
10 trust, firm, corporation, partnership, limited liability company,
11 cooperative, joint venture, governmental entity or agency,
12 association or any other group or combination acting as a unit;

13 9. "Surface estate" means, as to any lands within the State of
14 Oklahoma, the fee simple or absolute fee ownership of a tract of
15 real property, as defined by Sections 5 and 23 of Title 60 of the
16 Oklahoma Statutes, less and excluding the mineral estate.

17 10. "Wind energy developer" means a person who is developing or
18 constructing, pursuant to rights granted by a wind or solar energy
19 agreement, a wind energy facility, or has constructed and is now
20 operating a wind energy facility;

21 11. "Wind energy facility" means an electrical generation
22 facility consisting of one or more wind turbines, substations,
23 meteorological data towers, aboveground and underground electrical
24 transmission lines, transformers, control systems, and other

1 buildings or facilities under common ownership or operating control
2 used to support the operation of the facility, and whose primary
3 purpose is to supply electricity to an off-site customer or
4 customers. Wind energy facility shall not include either:

5 a. a wind energy facility located entirely on property
6 held in fee simple absolute estate by the owner of the
7 wind energy facility, or

8 b. substations, transmission lines, transformers, and
9 control systems which:

10 (i) are owned and operated by an electric utility
11 regulated by the Oklahoma Corporation Commission,
12 the Grand River Dam Authority, the Oklahoma
13 Municipal Power Authority or an Oklahoma rural
14 electric cooperative, and

15 (ii) which are not constructed or placed pursuant to
16 rights granted through a wind or solar energy
17 agreement;

18 12. "Wind or solar energy agreement" means the same as defined
19 in Section 820.1 of Title 60 of the Oklahoma Statutes.

20 SECTION 5. NEW LAW A new section to be codified in the
21 Oklahoma Statutes as Section 803 of Title 52, unless there is
22 created a duplication in numbering, reads as follows:

23 A. Unless specifically provided otherwise in an instrument
24 transferring or retaining title to the mineral estate separate from

1 the surface estate, and subject to, and consistent with, the
2 provisions of the surface damages statutes and all other applicable
3 laws, rules and regulations, within a tract of real property, the
4 mineral owner has had, and shall hereafter continue to have, the
5 right to make reasonable use of the surface estate, including the
6 right of ingress and egress therefor, for the purpose of exploring,
7 severing, capturing and producing the minerals underlying the tract
8 of real property or lands spaced or pooled therewith.

9 B. Notwithstanding any provision in a wind or solar energy
10 agreement in effect on, or entered into after, the effective date of
11 this act, or the provisions of the Oklahoma Wind Energy Development
12 Act, as the same is in effect or hereafter amended, the lessee of a
13 wind or solar energy agreement or the wind energy developer shall
14 not unreasonably interfere with the mineral owner's right to make
15 reasonable use of the surface estate, including the right of ingress
16 and egress therefor, for the purpose of exploring, severing,
17 capturing and producing the minerals.

18 C. With regard to the surface estate upon which a wind energy
19 developer intends to construct a wind energy facility, at least
20 thirty (30) days before entering upon the surface estate for the
21 purposes of beginning construction of a wind energy facility, the
22 wind energy developer shall provide written notice, by certified
23 mail, of its intent to construct the wind energy facility to:
24

1 1. Any operator, as reflected in the records of the Corporation
2 Commission, who is conducting oil and gas operations upon all or any
3 part of the surface estate as to which the wind energy developer
4 intends the construction of the wind energy facility;

5 2. Any operator, as reflected in the records of the Corporation
6 Commission, of an unspaced unit, or a unit created by order of the
7 Corporation Commission, who is conducting oil and gas operations for
8 the unit where all or any part of the unit area is within the
9 geographical boundaries of the surface estate as to which the wind
10 energy developer intends the construction of the wind energy
11 facility; and

12 3. As to tracts of land not described in paragraphs 1 and 2 on
13 which the wind energy developer intends to construct a wind energy
14 facility, all lessees of oil and gas leases covering the mineral
15 estate underlying any part of the tracts of land that are filed of
16 record with County Clerk in the County where the tracts are located
17 and whose primary term has not expired.

18 The notice shall contain a map or plat of the proposed location
19 of all of the various elements of the wind energy facility to be
20 located on the governmental section which includes all or any part
21 of the tracts of land described in paragraphs 1, 2 and 3 of this
22 subsection and the approximate date that the wind energy developer
23 proposes to commence construction. If the wind energy developer
24 makes a search with reasonable diligence, and the whereabouts of a

1 party entitled to any notice described in this subsection cannot be
2 ascertained or such notice cannot be delivered, then an affidavit
3 attesting to such diligent search for the parties shall be placed in
4 the records of the county clerk where the surface estate is actually
5 located. The provisions of this subsection shall not be applicable
6 to a wind energy facility that has been constructed or is under
7 construction prior to November 1, 2011.

8 D. The wind energy developer also shall publish notice of the
9 intent to begin construction of a wind energy facility in one issue
10 of a newspaper qualified to publish legal notices in the county
11 where the wind energy facility is intended to be constructed, as
12 provided in Section 106 of Title 25 of the Oklahoma Statutes, which
13 notice shall be published at least thirty (30) days before entering
14 upon the surface estate for the purpose of beginning construction of
15 a wind energy facility and which notice shall include the legal
16 description of the surface estate as to which the wind energy
17 developer intends the construction of the wind energy facility. The
18 provisions of this subsection shall not be applicable to a wind
19 energy facility that has been constructed or is under construction
20 prior to November 1, 2011.

21 E. Notices required by this section may be provided by a single
22 wind energy developer with the authority to do so for any wind
23 energy facility regardless of the number of separate persons or
24

1 entities which may participate in, or have ownership or operational
2 interests in, a wind energy facility.

3 F. It is the intent of this act to confirm the mineral owner's
4 historical right to make reasonable use of the surface estate,
5 including the right of ingress and egress therefor, for the purpose
6 of exploring, severing, capturing and producing the minerals, and
7 nothing in this act is intended to expand or diminish those
8 historical rights. Further, nothing in this act shall amend or
9 modify the surface damages statutes or be interpreted to grant,
10 expand or diminish any person's rights therein.

11 G. For any alleged breach or violation of this act, any
12 affected person may petition the district court in the county in
13 which the real property is located for either declaratory relief
14 pursuant to Sections 1651 through 1657 of Title 12 of the Oklahoma
15 Statutes, or injunctive relief pursuant to Sections 1381 through
16 1397 of Title 12 of the Oklahoma Statutes, or both, in addition to
17 any other remedies at law or in equity that may otherwise be
18 available.

19 SECTION 6. NEW LAW A new section to be codified in the
20 Oklahoma Statutes as Section 804 of Title 52, unless there is
21 created a duplication in numbering, reads as follows:

22 Notwithstanding any other provision of law to the contrary,
23 whether expressly or by implication, except as specifically
24 authorized by Section 36.3 of Title 52 of the Oklahoma Statutes, no

1 mineral estate shall be subject to or taken by eminent domain
2 proceedings, unless the owner of the mineral estate expressly
3 consents to the mineral estate being included in an eminent domain
4 proceeding.

5 SECTION 7. NEW LAW A new section to be codified in the
6 Oklahoma Statutes as Section 805 of Title 52, unless there is
7 created a duplication in numbering, reads as follows:

8 The provisions of the Exploration Rights Act of 2011, and the
9 rights granted under the act, are intended to be cumulative with all
10 other rights a person may otherwise have at law or in equity.

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

15 Passed the Senate the 19th day of April, 2011.

16

17

Presiding Officer of the Senate

18

19 Passed the House of Representatives the ____ day of _____,
20 2011.

21

22

Presiding Officer of the House
of Representatives

23

24

1 ENGROSSED HOUSE
2 BILL NO. 1821

By: Trebilcock of the House

3 and

4 Marlatt of the Senate

5
6
7 (energy - Oil and Gas Exploration Rights Act of
8 2011 - solar energy agreement - exploration
9 rights - eminent domain -
10 codification)

11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

SECTION 9. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 801 of Title 52, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oil and Gas
Exploration Rights Act of 2011".

SECTION 10. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 802 of Title 52, unless there is
created a duplication in numbering, reads as follows:

As used in the Oil and Gas Exploration Rights Act of 2011:

1. "Act" means the Oil and Gas Exploration Rights Act of 2011;

1 2. "Operator" means a person engaged in the severance of oil or
2 gas for that person alone, for other persons only, or for that
3 person and others;

4 3. "Owner" means a person owning a right to explore for and
5 produce oil and gas, whether the right is derived from ownership of
6 oil and gas, from an oil and gas lease or from a force-pooling order
7 issued by the Corporation Commission. An owner shall also include
8 an operator;

9 4. "Person" means any individual, executor, administrator,
10 estate, agent, trust, trustee, institution, receiver, business
11 trust, firm, corporation, partnership, limited liability company,
12 cooperative, joint venture, governmental entity or agency,
13 association or any other group or combination acting as a unit;

14 5. "Exploration rights" means, as to any lands within the State
15 of Oklahoma, a right, title or interest of an owner, whether legal
16 or equitable, and whether the right, title or interest is derived
17 from ownership of oil and gas, from an oil and gas lease or from a
18 force-pooling order issued by the Corporation Commission, to explore
19 for and produce oil and gas, including, without limitation, the
20 right to enter upon and make use of the surface estate in connection
21 with exploring for and producing oil and gas, whether for that owner
22 alone, for other owners only, or for that owner and others; and

23 6. "Wind or solar energy agreement" means the same as defined
24 in Section 820.1 of Title 60 of the Oklahoma Statutes.

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 803 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Exploration rights shall not be diminished, abrogated or
5 interfered with in any respect by a wind or solar energy agreement
6 except with the prior written consent of the owner of exploration
7 rights, which consent may be granted or withheld for any reason or
8 for no reason. Any consent shall apply only to the exploration
9 rights of the owner giving the consent, and to the successors and
10 assigns of the owner if so provided in the instrument of consent.
11 Any consent shall apply only to the specific wind or solar energy
12 agreement which is the subject of the consent. Any consent shall be
13 evidenced in a written instrument in recordable form and shall be
14 recorded in the records of the county clerk of the county in which
15 the affected property is located. Within thirty (30) days of the
16 expiration of the wind or solar energy agreement which is the
17 subject of the consent, the person granting the consent shall cause
18 to be recorded in the records of the county clerk of the county in
19 which the affected property is located a notice of termination of
20 consent.

21 B. Any rights derived from a wind or solar energy agreement
22 shall be subordinate in all respects to exploration rights except to
23 the extent consent is otherwise given in accordance with this
24 section.

1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 804 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 Notwithstanding any other provision of law to the contrary,
5 whether expressed or by implication, exploration rights shall not be
6 taken by eminent domain proceedings other than pursuant to law
7 specifically enacted for that purpose and specifically granting the
8 power of eminent domain as to exploration rights. The power of
9 eminent domain as to exploration rights shall not be granted or
10 bestowed by implication under any other law, rule, order or
11 regulation.

12 SECTION 13. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 805 of Title 52, unless there is
14 created a duplication in numbering, reads as follows:

15 The provisions of the Oil and Gas Exploration Rights Act of 2011
16 and the rights granted under the act are intended to be cumulative
17 with all other rights an owner may otherwise have at law or in
18 equity. To the extent that there is a conflict between the
19 provisions of the act and any other rights an owner has at law or in
20 equity, then the rights of the owner are to be liberally construed
21 to the end that those rights which afford the owner the most
22 comprehensive protection to secure the exercise of the exploration
23 rights of the owner shall be given preference.

24

