ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1192 By: Schulz of the Senate

and

Jordan of the House

(airspace rights - Airspace Severance Restriction Act -

emergency)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"An Act relating to airspace rights; amending 60 O.S. 2011, Section 820.1, which relates to the Airspace Severance Restriction Act; clarifying statutory language; prohibiting certain wind or solar agreements which prohibit surface and mineral owners from granting certain leases or easements; and declaring an emergency.

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

SECTION 1. AMENDATORY 60 O.S. 2011, Section 820.1, is amended to read as follows:

Section 820.1 A. This act shall be known and may be cited as the "Airspace Severance Restriction Act".

B. It is the intent of ~~this act~~ the Airspace Severance Restriction 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 only with the legally authorized owner of the surface estate pursuant to the provisions and restrictions provided by ~~this act~~ the Airspace Severance Restriction Act or otherwise provided by law. The provisions of ~~this act~~ the Airspace Severance Restriction Act shall not apply to any property owner utilizing wind or solar energy conversion systems for domestic use only.

C. For the purposes of ~~this act~~ the Airspace Severance Restriction Act, a "wind or solar energy agreement" means a lease agreement, whether or not stated in the form of a restriction, covenant, or condition, in any deed, wind or solar easement, wind or solar option or lease securing land for the study or production of wind- or solar-generated energy, or any other instrument executed by or on behalf of any owner of land or airspace for the purpose of allowing another party to study the potential for, or to develop, a wind or solar energy conversion system on the land or in the airspace. A wind or solar energy agreement shall in no way be deemed to contravene, supersede, amend, modify or alter the existing powers, requirements, limitations or other provisions of statutory

or common law pertaining to aviation, air transportation, air commerce or air operations. Furthermore, no provision of a wind or solar energy agreement entered into after November 1, 2012, shall prohibit the owner of the surface estate or mineral estate, as defined by Section 802 of Title 52 of the Oklahoma Statutes, from granting agricultural, hunting or oil and gas leases, or easements necessary for, or associated with, oil and gas operations, including the gathering and transportation of oil or gas, or easements for the transmission of electricity by public utilities regulated by the Oklahoma Corporation Commission, the Grand River Dam Authority, the Oklahoma Municipal Power Authority, an Oklahoma rural electric cooperative or another wind energy developer, as defined by Section 802 of Title 52 of the Oklahoma Statutes.

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

E. An instrument entered into subsequent to July 1, 2010, that creates a land right or an option to secure a land right in real property or the vertical space above real property for a solar energy system, for a wind or solar energy conversion system, or for wind measurement equipment, shall be created in writing, and the instrument, or related memorandum of easement, or an abstract, shall be filed, duly recorded, and indexed in the office of the county clerk in the county in which the real property subject to the

instrument is located. The instrument, but not the related memorandum of easement or abstract, shall include but not be limited to:

1. The names of the parties;

2. A legal description of the real property involved;

3. The nature of the interest created;

4. The consideration paid for the transfer;

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

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

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

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

G. The provisions of ~~this act~~ the Airspace Severance Restriction Act shall not affect any agreements or contracts entered

into pursuant to the provisions of the Oklahoma Airspace Act~~, Section 801 et seq. of this title~~.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 10th day of April, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate