

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1192

By: Schulz of the Senate

and

Jordan of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to airspace rights; amending 60 O.S.
11 2011, Section 820.1, which relates to the Airspace
12 Severance Restriction Act; clarifying statutory
13 language; prohibiting certain wind or solar
14 agreements which prohibit surface and mineral owners
15 from granting certain leases or easements; and
16 declaring an emergency.

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

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

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

22 B. It is the intent of ~~this act~~ the Airspace Severance
23 Restriction Act to restrict the permanent severing of the airspace
24 over any real property located in this state for the purpose of
developing and operating commercial wind or solar energy conversion

1 systems. Leasing arrangements for development of wind or solar
2 energy conversion systems may be made only with the legally
3 authorized owner of the surface estate pursuant to the provisions
4 and restrictions provided by ~~this act~~ the Airspace Severance
5 Restriction Act or otherwise provided by law. The provisions of
6 ~~this act~~ the Airspace Severance Restriction Act shall not apply to
7 any property owner utilizing wind or solar energy conversion systems
8 for domestic use only.

9 C. For the purposes of ~~this act~~ the Airspace Severance
10 Restriction Act a "wind or solar energy agreement" means a lease
11 agreement, whether or not stated in the form of a restriction,
12 covenant, or condition, in any deed, wind or solar easement, wind or
13 solar option or lease securing land for the study or production of
14 wind_ or solar-generated energy, or any other instrument executed by
15 or on behalf of any owner of land or airspace for the purpose of
16 allowing another party to study the potential for, or to develop, a
17 wind or solar energy conversion system on the land or in the
18 airspace. A wind or solar energy agreement shall in no way be
19 deemed to contravene, supersede, amend, modify or alter the existing
20 powers, requirements, limitations or other provisions of statutory
21 or common law pertaining to aviation, air transportation, air
22 commerce or air operations. Furthermore, no provision of a wind or
23 solar energy agreement entered into after November 1, 2012, shall
24 prohibit the owner of the surface estate or mineral estate, as

1 defined by Section 802 of Title 52 of the Oklahoma Statutes, from
2 granting agricultural, hunting or oil and gas leases, or easements
3 necessary for, or associated with, oil and gas operations, including
4 the gathering and transportation of oil or gas, or easements for the
5 transmission of electricity by public utilities regulated by the
6 Oklahoma Corporation Commission, the Grand River Dam Authority, the
7 Oklahoma Municipal Power Authority, an Oklahoma rural electric
8 cooperative or another wind energy developer, as defined by Section
9 802 of Title 52 of the Oklahoma Statutes.

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

13 E. An instrument entered into subsequent to July 1, 2010, that
14 creates a land right or an option to secure a land right in real
15 property or the vertical space above real property for a solar
16 energy system, for a wind or solar energy conversion system, or for
17 wind measurement equipment, shall be created in writing, and the
18 instrument, or related memorandum of easement, or an abstract, shall
19 be filed, duly recorded, and indexed in the office of the county
20 clerk in the county in which the real property subject to the
21 instrument is located. The instrument, but not the related
22 memorandum of easement or abstract, shall include but not be limited
23 to:

24 1. The names of the parties;

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

2 3. The nature of the interest created;

3 4. The consideration paid for the transfer;

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

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

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

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

19 G. The provisions of ~~this act~~ the Airspace Severance
20 Restriction Act shall not affect any agreements or contracts entered
21 into pursuant to the provisions of the Oklahoma Airspace Act,
22 ~~Section 801 et seq. of this title.~~

23 SECTION 2. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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