

An Act

ENROLLED HOUSE
BILL NO. 1821

By: Trebilcock of the House

and

Marlatt and Fields of the
Senate

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

SUBJECT: Exploration rights

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

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

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

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

Section 160.12 The Legislature finds that:

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

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

3. The prudent development of wind energy resources requires addressing the relationship of the needs of wind energy developers with those of the mineral estate owners who have the historical right to make reasonable use of the surface estate, including the right of ingress and egress therefor, for the purpose of exploring, severing, capturing and producing the minerals as reflected in the Exploration Rights Act of 2011, Sections 3 through 7 of this act, and balancing the needs of wind energy developers with those of the landowners who provide access to the wind energy resource, including assurances that wind turbines and wind energy facilities will be properly decommissioned, that they will have access to adequate

information to verify the accuracy of their payments, and that they will be adequately protected against hazards and accidents that may arise from the wind turbines or wind energy facilities;

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

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

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

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

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

SECTION 4. NEW LAW A new section 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 Exploration Rights Act of 2011:

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

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

3. "Mineral estate" means, as to any lands within the State of Oklahoma, the minerals underlying a tract of real property, or the right to capture the minerals underlying a tract of real property, together with the right to make reasonable use of the surface

estate, including the right of ingress and egress therefor, for the purpose of exploring, severing, capturing and producing the minerals, as such rights both have been historically articulated at common law and also included within the surface damage statutes, regardless of whether title to, or ownership of, the minerals is severed from the fee simple or absolute fee as defined by Section 23 of Title 60 of the Oklahoma Statutes;

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

5. "Surface damages statutes" means Sections 318.2 through 318.9 of Title 52 of the Oklahoma Statutes, as the same now exists or may hereafter be amended;

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

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

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

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

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

11. "Wind energy facility" means an electrical generation facility consisting of one or more wind turbines, substations,

meteorological data towers, aboveground and underground electrical transmission lines, transformers, control systems, and other buildings or facilities under common ownership or operating control used to support the operation of the facility, and whose primary purpose is to supply electricity to an off-site customer or customers. Wind energy facility shall not include either:

- a. a wind energy facility located entirely on property held in fee simple absolute estate by the owner of the wind energy facility, or
- b. substations, transmission lines, transformers, and control systems which:
 - (i) are owned and operated by an electric utility regulated by the Oklahoma Corporation Commission, the Grand River Dam Authority, the Oklahoma Municipal Power Authority or an Oklahoma rural electric cooperative, and
 - (ii) which are not constructed or placed pursuant to rights granted through a wind or solar energy agreement; and

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

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

A. Unless specifically provided otherwise in an instrument transferring or retaining title to the mineral estate separate from the surface estate, and subject to, and consistent with, the provisions of the surface damages statutes and all other applicable laws, rules and regulations, within a tract of real property, the mineral owner has had, and shall hereafter continue to have, the right to make reasonable use of the surface estate, including the right of ingress and egress therefor, for the purpose of exploring, severing, capturing and producing the minerals underlying the tract of real property or lands spaced or pooled therewith.

B. Notwithstanding any provision in a wind or solar energy agreement in effect on, or entered into after, the effective date of this act, or the provisions of the Oklahoma Wind Energy Development

Act, as the same is in effect or hereafter amended, the lessee of a wind or solar energy agreement or the wind energy developer shall not unreasonably interfere with the mineral owner's right to make reasonable use of the surface estate, including the right of ingress and egress therefor, for the purpose of exploring, severing, capturing and producing the minerals.

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

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

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

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

The notice shall contain a map or plat of the proposed location of all of the various elements of the wind energy facility to be located on the governmental section which includes all or any part of the tracts of land described in paragraphs 1, 2 and 3 of this subsection and the approximate date that the wind energy developer proposes to commence construction. If the wind energy developer makes a search with reasonable diligence, and the whereabouts of a party entitled to any notice described in this subsection cannot be ascertained or such notice cannot be delivered, then an affidavit attesting to such diligent search for the parties shall be placed in the records of the county clerk where the surface estate is actually

located. The provisions of this subsection shall not be applicable to a wind energy facility that has been constructed or is under construction prior to November 1, 2011.

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

E. Notices required by this section may be provided by a single wind energy developer with the authority to do so for any wind energy facility regardless of the number of separate persons or entities which may participate in, or have ownership or operational interests in, a wind energy facility.

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

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

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

Notwithstanding any other provision of law to the contrary, whether expressly or by implication, except as specifically authorized by Section 36.3 of Title 52 of the Oklahoma Statutes, no mineral estate shall be subject to or taken by eminent domain proceedings, unless the owner of the mineral estate expressly consents to the mineral estate being included in an eminent domain proceeding.

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

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

Passed the House of Representatives the 3rd day of May, 2011.

Presiding Officer of the House of
Representatives

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

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____