

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 HOUSE BILL NO. 1821

By: Trebilcock of the House

and

Marlatt of the Senate

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9 An Act relating to exploration rights; stating
10 Legislative findings; amending Section 2, Chapter
11 319, O.S.L. 2010 (17 O.S. Supp. 2010, Section
12 160.12), which relates to legislative findings;
13 modifying certain legislative findings relating to
14 development of wind energy resources; creating the
15 Exploration Rights Act of 2011; providing short
16 title; defining terms; specifying certain mineral
17 owner rights; prohibiting certain interference with
18 certain mineral owner rights; requiring notice by
19 certain date prior to beginning construction of wind
20 energy facility; stating notice requirements; stating
21 exception; requiring wind energy developers to
22 publish notice by certain date; stating requirements
23 for publication; stating exception; authorizing
24 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; providing for
codification; and declaring an emergency.

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:

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

20 SECTION 2. AMENDATORY Section 2, Chapter 319, O.S.L.
21 2010 (17 O.S. Supp. 2010, Section 160.12), is amended to read as
22 follows:

23 Section 160.12 The Legislature finds that:
24

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

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

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

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

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

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

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

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

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

18 As used in the Exploration Rights Act of 2011:

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

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

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

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

17 5. "Surface damages statutes" means Sections 318.2 through
18 319.9 of Title 52 of the Oklahoma Statutes, as the same now exists
19 or may hereafter be amended;

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

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

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

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

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

17 11. "Wind energy facility" means an electrical generation
18 facility consisting of one or more wind turbines, substations,
19 meteorological data towers, aboveground and underground electrical
20 transmission lines, transformers, control systems, and other
21 buildings or facilities under common ownership or operating control
22 used to support the operation of the facility, and whose primary
23 purpose is to supply electricity to an off-site customer or
24 customers. Wind energy facility shall not include either:

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

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

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

19 A. Unless specifically provided otherwise in an instrument
20 transferring or retaining title to the mineral estate separate from
21 the surface estate, and subject to, and consistent with, the
22 provisions of the surface damages statutes and all other applicable
23 laws, rules and regulations, within a tract of real property, the
24 mineral owner has had, and shall hereafter continue to have, the

1 right to make reasonable use of the surface estate, including the
2 right of ingress and egress therefor, for the purpose of exploring,
3 severing, capturing and producing the minerals underlying the tract
4 of real property or lands spaced or pooled therewith.

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

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

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

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

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

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

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

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

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

22 F. It is the intent of this act to confirm the mineral owner's
23 historical right to make reasonable use of the surface estate,
24 including the right of ingress and egress therefor, for the purpose

1 of exploring, severing, capturing and producing the minerals, and
2 nothing in this act is intended to expand or diminish those
3 historical rights. Further, nothing in this act shall amend or
4 modify the surface damages statutes or be interpreted to grant,
5 expand or diminish any person's rights therein.

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

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

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

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, dated 4-7-11 - DO PASS, As
12 Amended.

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