

1 **SENATE FLOOR VERSION**

2 February 27, 2012

3 As Amended

4 SENATE BILL NO. 1192

5 By: Schulz of the Senate

6 and

7 Jordan of the House

8 **[ airspace rights - Airspace Severance Restriction  
9 Act -**

10 **emergency ]**

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

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

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

16 B. It is the intent of ~~this act~~ the Airspace Severance  
17 Restriction Act to restrict the permanent severing of the airspace  
18 over any real property located in this state for the purpose of  
19 developing and operating commercial wind or solar energy conversion  
20 systems. Leasing arrangements for development of wind or solar  
21 energy conversion systems may be made only with the legally  
22 authorized owner of the surface estate pursuant to the provisions  
23 and restrictions provided by ~~this act~~ the Airspace Severance  
24 Restriction Act or otherwise provided by law. The provisions of  
~~this act~~ the Airspace Severance Restriction Act shall not apply to

1 any property owner utilizing wind or solar energy conversion systems  
2 for domestic use only.

3 C. For the purposes of ~~this act~~ the Airspace Severance  
4 Restriction Act a "wind or solar energy agreement" means a lease  
5 agreement, whether or not stated in the form of a restriction,  
6 covenant, or condition, in any deed, wind or solar easement, wind or  
7 solar option or lease securing land for the study or production of  
8 wind or solar-generated energy, or any other instrument executed by  
9 or on behalf of any owner of land or airspace for the purpose of  
10 allowing another party to study the potential for, or to develop, a  
11 wind or solar energy conversion system on the land or in the  
12 airspace. A wind or solar energy agreement shall in no way be  
13 deemed to contravene, supersede, amend, modify or alter the existing  
14 powers, requirements, limitations or other provisions of statutory  
15 or common law pertaining to aviation, air transportation, air  
16 commerce or air operations. Furthermore, no provision of a wind or  
17 solar energy agreement, in effect on or after the effective date of  
18 this act, shall prohibit the owner of the surface estate or mineral  
19 estate, as defined by Section 802 of Title 52 of the Oklahoma  
20 Statutes, from granting agricultural, hunting or oil and gas leases,  
21 or easements necessary for, or associated with, oil and gas  
22 operations, including the gathering and transportation of oil or  
23 gas, or easements for the transmission of electricity by public  
24 utilities regulated by the Oklahoma Corporation Commission, the

1 Grand River Dam Authority, the Oklahoma Municipal Power Authority,  
2 an Oklahoma rural electric cooperative or another wind energy  
3 developer, as defined by Section 802 of Title 52 of the Oklahoma  
4 Statutes.

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

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

- 19 1. The names of the parties;
- 20 2. A legal description of the real property involved;
- 21 3. The nature of the interest created;
- 22 4. The consideration paid for the transfer;
- 23 5. A description of the improvements the developer intends to  
24 make on the real property, including, but not limited to, roads,

1 transmission lines, substations, wind turbines and meteorological  
2 towers;

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

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

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

14 G. The provisions of ~~this act~~ the Airspace Severance  
15 Restriction Act shall not affect any agreements or contracts entered  
16 into pursuant to the provisions of the Oklahoma Airspace Act,  
17 ~~Section 801 et seq. of this title.~~

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

22 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, dated 2-23-12 - DO PASS,  
23 As Amended and Coauthored.

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