

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 740

By: Schulz of the Senate

3 and

4 Blackwell of the House

5
6
7 An Act relating to airspace property rights; amending
8 Section 1, Chapter 334, O.S.L. 2010 (60 O.S. Supp.
9 2010, Section 820.1), which relates to airspace
10 severance; creating the Airspace Severance
11 Restriction Act; providing short title; clarifying
12 legal information required to be recorded for certain
13 purposes; and declaring an emergency.

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

17 "An Act relating to airspace property rights;
18 amending Section 1, Chapter 334, O.S.L. 2010 (60
19 O.S. Supp. 2010, Section 820.1), which relates to
20 airspace severance; creating the Airspace Severance
21 Restriction Act; providing short title; clarifying
22 legal information required to be recorded for
23 certain purposes; and modifying required contents
24 for certain instruments.

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

SECTION 1. AMENDATORY Section 1, Chapter 334, O.S.L.
2010 (60 O.S. Supp. 2010, Section 820.1), is amended to read as
follows:

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

3 B. It is the intent of this act to restrict the permanent
4 severing of the airspace over any real property located in this
5 state for the purpose of developing and operating commercial wind or
6 solar energy conversion systems. Leasing arrangements for
7 development of wind or solar energy conversion systems may be made
8 only with the legally authorized owner of the surface estate
9 pursuant to the provisions and restrictions provided by this act or
10 otherwise provided by law. The provisions of this act shall not
11 apply to any property owner utilizing wind or solar energy
12 conversion systems for domestic use only.

13 ~~B.~~ C. For the purposes of this act a "wind or solar energy
14 agreement" means a lease agreement, whether or not stated in the
15 form of a restriction, covenant, or condition, in any deed, wind or
16 solar easement, wind or solar option or lease securing land for the
17 study or production of wind or solar-generated energy, or any other
18 instrument executed by or on behalf of any owner of land or airspace
19 for the purpose of allowing another party to study the potential
20 for, or to develop, a wind or solar energy conversion system on the
21 land or in the airspace. A wind or solar energy agreement shall in
22 no way be deemed to contravene, supersede, amend, modify or alter
23 the existing powers, requirements, limitations or other provisions
24 of statutory or common law pertaining to aviation, air

1 transportation, air commerce or air operations, ~~nor shall any wind~~
2 ~~or solar energy agreement interfere with or supersede any entity's~~
3 ~~right to obtain easements as otherwise authorized by law.~~

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

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

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

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

3 6. A description of any decommissioning security ~~as defined in~~
4 ~~Subsection A of this section, or other requirements related to~~
5 ~~decommissioning~~ posted to secure the obligation of a party to
6 decommission any wind energy facilities on the property including,
7 but not limited to, financial security instruments filed pursuant to
8 the Oklahoma Wind Energy Development Act, with such description to
9 include the names of the parties to the security and the institution
10 holding such security, provided that the description of such
11 security need not be recorded until the security has been posted
12 pursuant to the Oklahoma Wind Energy Development Act or the
13 agreement of the parties; and

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

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

21 ~~F.~~ G. The provisions of this ~~section~~ act shall not affect any
22 agreements or contracts entered into pursuant to the provisions of
23 the Oklahoma Airspace Act, Section 801 et seq. of ~~Title 60 of the~~
24 ~~Oklahoma Statutes~~ this title."

1 Passed the House of Representatives the 25th day of April, 2011.

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4 Presiding Officer of the House of
5 Representatives

6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate