# An Act

ENROLLED SENATE
BILL NO. 1787

By: Schulz, Ballenger and Ivester of the Senate

and

Jordan, Walker and Faught of the House

An Act relating to property; requiring wind and solar energy agreements to run with surface estate; stating intent; stating exception; defining terms; stating exceptions; providing certain agreements shall run with the land until terminated; requiring filing of certain instrument with county clerk; prohibiting severance of wind or solar energy resource from surface estate; stating exemption; amending 60 O.S. 2001, Section 803, which relates to the Oklahoma Airspace Act; limiting ability to transfer airspace as real property for certain purposes; amending 60 O.S. 2001, Section 805, which relates to airspace property rights; stating exception; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 820.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of this act to restrict the permanent severing of the airspace over any real property located in this state for the purpose of developing and operating commercial wind or

solar energy conversion systems. Leasing arrangements for development of wind or solar energy conversion systems may be made only with the legally authorized owner of the surface estate pursuant to the provisions and restrictions provided by this act or otherwise provided by law. The provisions of this act shall not apply to any property owner utilizing wind or solar energy conversion systems for domestic use only.

B. For the purposes of this act a "wind or solar energy agreement" means a lease agreement, whether or not stated in the form of a restriction, covenant, or condition, in any deed, wind or solar easement, wind or solar option or lease securing land for the study or production of wind or solar-generated energy, or any other instrument executed by or on behalf of any owner of land or airspace for the purpose of allowing another party to study the potential for, or to develop, a wind or solar energy conversion system on the land or in the airspace. A wind or solar energy agreement shall in no way be deemed to contravene, supersede, amend, modify or alter the existing powers, requirements, limitations or other provisions of statutory or common law pertaining to aviation, air transportation, air commerce or air operations, nor shall any wind or solar energy agreement interfere with or supersede any entity's right to obtain easements as otherwise authorized by law.

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

D. An instrument creating a land right or an option to secure a land right in real property or the vertical space above real property for a solar energy system, for a wind or solar energy conversion system, or for wind measurement equipment, shall be created in writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in the office of the county clerk in the county in which the real property subject to the instrument is located. The instrument shall include, but not be limited to:

1. The names of the parties;

2. A legal description of the real property involved;

3. The nature of the interest created;

4. The consideration paid for the transfer;

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

6. A description of any decommissioning security as defined in Subsection A of this section, or other requirements related to decommissioning; and

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

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

F. The provisions of this section shall not affect any agreements or contracts entered into pursuant to the provisions of the Oklahoma Airspace Act, Section 801 et seq. of Title 60 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 60 O.S. 2001, Section 803, is amended to read as follows:

Section 803. Airspace as defined herein is real property, and until title thereto or rights, interests or estates therein are separately transferred, airspace is the property of the person or persons holding title to the land surface beneath it, subject to the limitations relating to wind or solar energy agreements provided in Section 1 of this act.

SECTION 3. AMENDATORY 60 O.S. 2001, Section 805, is amended to read as follows:

Section 805. ~~All~~ Subject to the limitations relating to wind or solar energy agreements provided in Section 1 of this act, all forms of titles, estates, rights and interests which may presently exist

or which may hereafter be created by law or equity or under statutes pertaining to real property may be legally created, transferred and conveyed in airspace, whether or not such airspace is contiguous to the surface of the earth; and the same shall constitute titles, estates, rights and interests in real property under and subject to the laws pertaining thereto.

SECTION 4. This act shall become effective July 1, 2010.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 24th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2010.

Presiding Officer of the House
of Representatives

**OFFICE OF THE GOVERNOR**

**Received by the Governor this** 26th
**day of** May, 20 10,
**at** 2:12 **o'clock** P **M.**

**By:**

**Approved by the Governor of the State of Oklahoma the** 6th **day of**
June, 20 10, **at** 2:57 **o'clock** P **M.**

**Governor of the State of Oklahoma**

**OFFICE OF THE SECRETARY OF STATE**

**Received by the Secretary of State this**
7th **day of** June, 20 10,
**at** 2:14 **o'clock** P **M.**

**By:** M. Susan Savage