

SB 1296

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**THE STATE SENATE**  
**Tuesday, February 24, 2004**

**Senate Bill No. 1296**

SENATE BILL NO. 1296 - By: HELTON of the Senate and WELLS of the House.

An Act relating to oil and gas; amending 52 O.S. 2001, Section 318.5, as amended by Section 16, Chapter 22, O.S.L. 2002 (52 O.S. Supp. 2003, Section 318.5), which relates to surface damages; requiring appointment of certain number of state-certified appraisers; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2001, Section 318.5, as amended by Section 16, Chapter 22, O.S.L. 2002 (52 O.S. Supp. 2003, Section 318.5), is amended to read as follows:

Section 318.5 A. Prior to entering the site with heavy equipment, the operator shall negotiate with the surface owner for the payment of any damages which may be caused by the drilling operation. If the parties agree, and a written contract is signed, the operator may enter the site to drill. If agreement is not reached, or if the operator is not able to contact all parties, the operator shall petition the district court in the county in which the drilling site is located for appointment of appraisers to make recommendations to the parties and to the court concerning the amount of damages, if any. Once the operator has petitioned for appointment of appraisers, the operator may enter the site to drill.

1        B. Ten (10) days' notice of the petition to appoint appraisers  
2 shall be given to the opposite party, either by personal service or  
3 by leaving a copy thereof at the party's usual place of residence  
4 with some family member over fifteen (15) years of age, or, in the  
5 case of nonresidents, unknown heirs or other persons whose  
6 whereabouts cannot be ascertained, by publication in one issue of a  
7 newspaper qualified to publish legal notices in said county, as  
8 provided in Section 106 of Title 25 of the Oklahoma Statutes, said  
9 ten-day period to begin with the first publication.

10        C. The operator shall select one appraiser, the surface owner  
11 shall select one appraiser, and the two selected appraisers shall  
12 select a third appraiser for appointment by the court, ~~which such~~  
13 ~~third appraiser.~~ Each appraiser shall be a state-certified general  
14 real estate appraiser and be in good standing with the Oklahoma Real  
15 Estate Appraisal Board. Unless for good cause shown, additional  
16 time is allowed by the district court, the three (3) appraisers  
17 shall be selected within twenty (20) days of service of the notice  
18 of the petition to appoint appraisers or within twenty (20) days of  
19 the first date of publication of the notice as specified in  
20 subsection B of this section. If either of the parties fails to  
21 appoint an appraiser or if the two appraisers cannot agree on the  
22 selection of the third appraiser within the required time period,  
23 the remaining required appraisers shall be selected by the district

1 court upon application of either party ~~of which at least one shall~~  
2 ~~be a state-certified general real estate appraiser and be in good~~  
3 ~~standing with the Oklahoma Real Estate Appraisal Board.~~ Before  
4 entering upon their duties, such appraisers shall take and subscribe  
5 an oath, before a notary public or some other person authorized to  
6 administer oaths, that they will perform their duties faithfully and  
7 impartially to the best of their ability. They shall inspect the  
8 real property and consider the surface damages which the owner has  
9 sustained or will sustain by reason of entry upon the subject land  
10 and by reason of drilling or maintenance of oil or gas production on  
11 the subject tract of land. The appraisers shall then file a written  
12 report within thirty (30) days of the date of their appointment with  
13 the clerk of the court. The report shall set forth the quantity,  
14 boundaries and value of the property entered on or to be utilized in  
15 said oil or gas drilling, and the amount of surface damages done or  
16 to be done to the property. The appraisers shall make a valuation  
17 and determine the amount of compensation to be paid by the operator  
18 to the surface owner and the manner in which the amount shall be  
19 paid. Said appraisers shall then make a report of their proceedings  
20 to the court. The compensation of the appraisers shall be fixed and  
21 determined by the court. The operator and the surface owner shall  
22 share equally in the payment of the appraisers' fees and court  
23 costs.

1           D. Within ten (10) days after the report of the appraisers is  
2 filed, the clerk of the court shall forward to each attorney of  
3 record, each party, and interested party of record, a copy of the  
4 report of the appraisers and a notice stating the time limits for  
5 filing an exception or a demand for jury trial as provided for in  
6 this section. The operator shall provide the clerk of the court  
7 with the names and last-known addresses of the parties to whom the  
8 notice and report shall be mailed, sufficient copies of the notice  
9 and report to be mailed, and pre-addressed, postage-paid envelopes.

10           1. This notice shall be on a form prepared by the  
11 Administrative Director of the Courts, approved by the Oklahoma  
12 Supreme Court, and supplied to all district court clerks.

13           2. If a party has been served by publication, the clerk shall  
14 forward a copy of the report of the appraisers and the notice of  
15 time limits for filing either an exception or a demand for jury  
16 trial to the last-known mailing address of each party, if any, and  
17 shall cause a copy of the notice of time limits to be published in  
18 one issue of a newspaper qualified to publish legal notices as  
19 provided in Section 106 of Title 25 of the Oklahoma Statutes.

20           3. After issuing the notice provided herein, the clerk shall  
21 endorse on the notice form filed in the case the date that a copy of  
22 the report and the notice form was forwarded to each attorney of

1 record, each party, and each interested party of record, or the date  
2 the notice was published.

3 E. The time for filing an exception to the report or a demand  
4 for jury trial shall be calculated as commencing from the date the  
5 report of the appraisers is filed with the court. Upon failure of  
6 the clerk to give notice within the time prescribed, the court, upon  
7 application by any interested party, may extend the time for filing  
8 an exception to the report or filing a demand for trial by jury for  
9 a reasonable period of time not less than twenty (20) days from the  
10 date the application is heard by the court. Appraisers' fees and  
11 court costs may be the subject of an exception, may be included in  
12 an action by the petitioner, and may be set and allowed by the  
13 court.

14 F. The report of the appraisers may be reviewed by the court,  
15 upon written exceptions filed with the court by either party within  
16 thirty (30) days after the filing of the report. After the hearing  
17 the court shall enter the appropriate order either by confirmation,  
18 rejection, modification, or order of a new appraisal for good cause  
19 shown. Provided, that in the event a new appraisal is ordered, the  
20 operator shall have continuing right of entry subject to the  
21 continuance of the bond required herein. Either party may, within  
22 sixty (60) days after the filing of such report, file with the clerk  
23 a written demand for a trial by jury, in which case the amount of

1 damages shall be assessed by a jury. The trial shall be conducted  
2 and judgment entered in the same manner as railroad condemnation  
3 actions tried in the court. A copy of the final judgment shall be  
4 forwarded to the county assessor in the county or counties in which  
5 the property is located. If the party demanding the jury trial does  
6 not recover a more favorable verdict than the assessment award of  
7 the appraisers, all court costs including reasonable attorney fees  
8 shall be assessed against the party.

9 SECTION 2. This act shall become effective July 1, 2004.

10 SECTION 3. It being immediately necessary for the preservation  
11 of the public peace, health and safety, an emergency is hereby  
12 declared to exist, by reason whereof this act shall take effect and  
13 be in full force from and after its passage and approval.

14 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, ENVIRONMENT &  
15 COMMUNICATIONS, dated 2-19-04 - DO PASS, As Coauthored.