

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1733

By: Boren and Morgan (Danny)

AS INTRODUCED

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. 2002, Section 318.5), which relates to negotiating surface damages; changing jurisdiction for surface damage determinations from the district court to the Oklahoma Corporation Commission; limiting the amount of compensation for surface damages; 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. 2002, 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~~ Oklahoma Corporation Commission 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.

B. Ten (10) days' notice of the petition to appoint appraisers shall be given to the opposite party, either by personal service or

by leaving a copy thereof at the party's usual place of residence with some family member over fifteen (15) years of age, or, in the case of nonresidents, unknown heirs or other persons whose whereabouts cannot be ascertained, by publication in one issue of a newspaper qualified to publish legal notices in said county, as provided in Section 106 of Title 25 of the Oklahoma Statutes, said ten-day period to begin with the first publication.

C. The operator shall select one appraiser, the surface owner shall select one appraiser, and the two selected appraisers shall select a third appraiser for appointment by the ~~court~~ Commission, which such third appraiser shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Unless for good cause shown, additional time is allowed by the ~~district court~~ Commission, the three (3) appraisers shall be selected within twenty (20) days of service of the notice of the petition to appoint appraisers or within twenty (20) days of the first date of publication of the notice as specified in subsection B of this section. If either of the parties fails to appoint an appraiser or if the two appraisers cannot agree on the selection of the third appraiser within the required time period, the remaining required appraisers shall be selected by the ~~district court~~ Commission upon application of either party of which at least one shall be a state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board. Before entering upon their duties, such appraisers shall take and subscribe an oath, before a notary public or some other person authorized to administer oaths, that they will perform their duties faithfully and impartially to the best of their ability. They shall inspect the real property and consider the surface damages which the owner has sustained or will sustain by reason of entry upon the subject land and by reason of drilling or maintenance of oil or gas production on the subject tract of land.

The appraisers shall then file a written report within thirty (30) days of the date of their appointment with the clerk of the court. The report shall set forth the quantity, boundaries and value of the property entered on or to be utilized in said oil or gas drilling, and the amount of surface damages done or to be done to the property. The appraisers shall make a valuation and determine the amount of compensation to be paid by the operator to the surface owner and the manner in which the amount shall be paid. The amount of compensation to be paid by the operator to the surface owner shall not exceed one and one-half times the current fair market value of the property based on a per-acre valuation of the property actually utilized for the oil and gas drilling. Said appraisers shall then make a report of their proceedings to the ~~court~~ Commission. The compensation of the appraisers shall be fixed and determined by the ~~court~~ Commission. The operator and the surface owner shall share equally in the payment of the appraisers' fees and ~~court~~ any other costs required by the Commission.

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

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

2. If a party has been served by publication, the ~~clerk~~ Commission shall forward a copy of the report of the appraisers and

the notice of time limits for filing either an exception or a demand for ~~jury trial~~ a hearing to the last-known mailing address of each party, if any, and shall cause a copy of the notice of time limits to be published in one issue of a newspaper qualified to publish legal notices as provided in Section 106 of Title 25 of the Oklahoma Statutes.

3. After issuing the notice provided herein, the ~~clerk~~ Commission shall endorse on the notice form filed in the case the date that a copy of the report and the notice form was forwarded to each attorney of record, each party, and each interested party of record, or the date the notice was published.

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

F. The report of the appraisers may be reviewed by the ~~court~~ Commission, upon written exceptions filed with the ~~court~~ Commission by either party within thirty (30) days after the filing of the report. After the hearing the ~~court~~ Commission shall enter the appropriate order either by confirmation, rejection, modification, or order of a new appraisal for good cause shown. ~~Provided, that in~~ In the event a new appraisal is ordered, the operator shall have continuing right of entry subject to the continuance of the bond required herein. Either party may, within sixty (60) days after the

filing of such report, file with the ~~clerk~~ Commission a written demand for a ~~trial by jury hearing~~, in which case the amount of damages shall be assessed by a ~~jury~~ the Commission. ~~The trial shall be conducted and judgment entered in the same manner as railroad condemnation actions tried in the court.~~ A copy of the final judgment shall be forwarded to the county assessor in the county or counties in which the property is located. If the party demanding the ~~jury trial~~ hearing does not recover a more favorable verdict than the assessment award of the appraisers, all ~~court~~ costs including reasonable attorney fees shall be assessed against the party.

SECTION 2. This act shall become effective July 1, 2003.

SECTION 3. 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.

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