

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1587

By: Adkins

COMMITTEE SUBSTITUTE

An Act relating to oil and gas; amending 52 O.S. 2001, Sections 318.4, 318.5, as amended by Section 16, Chapter 22, O.S.L. 2002, 318.6 and 318.9(52 O.S. Supp. 2004, Section 318.5), which relate to surface damages; changing oversight of undertaking, negotiating surface damage proceedings, and decision process for determining surface damages from the courts to the Corporation Commission; deleting references to jury trials; providing for certain hearings by the Commission; changing venue for appeal to the Oklahoma Supreme Court; and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2001, Section 318.4, is amended to read as follows:

Section 318.4 A. Every operator doing business in this state shall file a corporate surety bond, letter of credit from a banking institution, cash, or a certificate of deposit with the Secretary of State in the sum of Twenty-five Thousand Dollars (\$25,000.00) conditioned upon compliance with Sections 318.2 through 318.9 of this title for payment of any location damages due which the operator cannot otherwise pay. The Secretary of State shall hold such corporate surety bond, letter of credit from a banking institution, cash or certificate of deposit for the benefit of the surface owners of this state and shall ensure that such security is in a form readily payable to a surface owner awarded damages in an action brought pursuant to this act. Each corporate surety bond, letter of credit, cash, or certificate of deposit filed with the

Secretary of State shall be accompanied by a filing fee of Ten Dollars (\$10.00).

B. The bonding company or banking institution shall file, for such fee as is provided for by law, a certificate that said bond or letter of credit is in effect or has been canceled, or that a claim has been made against it in the office of the court clerk in each county in which the operator is drilling or planning to drill. Said bond or letter of credit must remain in full force and effect as long as the operator continues drilling operations in this state. Each such filing shall be accompanied by a filing fee of Ten Dollars (\$10.00).

C. Upon deposit of the bond, letter of credit, cash, or certificate of deposit, the operator shall be permitted entry upon the property and shall be permitted to commence drilling of a well in accordance with the terms and conditions of any lease or other existing contractual or lawful right.

D. If the damages agreed to by the parties or awarded by the ~~court~~ Corporation Commission are greater than the bond, letter of credit, cash, or certificate of deposit posted, the operator shall pay the damages immediately or post an additional bond, letter of credit, cash, or certificate of deposit sufficient to cover the damages. Said increase in bond, letter of credit, cash, or certificate of deposit shall comply with the requirements of this section.

SECTION 2. AMENDATORY 52 O.S. 2001, Section 318.5, as amended by Section 16, Chapter 22, O.S.L. 2002 (52 O.S. Supp. 2004, 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~~ Corporation Commission for appointment of appraisers to make recommendations to the parties and to the ~~court~~ Commission 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~~ Commission. 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. 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 costs~~.

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 request for 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~~ request for 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 request for 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 costs~~ 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~~ 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 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~~ request for a hearing, in which case the amount of damages shall be assessed by a jury 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~~ decision of the Commission 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~~ decision than the assessment award of the appraisers, all ~~court~~ costs including reasonable attorney fees shall be assessed against the party.

SECTION 3. AMENDATORY 52 O.S. 2001, Section 318.6, is amended to read as follows:

Section 318.6 Any aggrieved party may appeal from the decision of the ~~court~~ Corporation Commission on exceptions to the report of the appraisers or the ~~verdict rendered upon jury trial.~~ Such decision of the Commission on a hearing to the Oklahoma Supreme Court. The appeal shall not serve to delay the prosecution of the work on the premises in question if the award of the appraisers or jury Commission has been deposited with the clerk Commission for the use and benefit of the surface owner. ~~In case of review or appeal, a certified copy of the final order or judgment shall be transmitted by the clerk to the appropriate county clerk to be filed and recorded.~~

When an estate is being probated, or when a minor or incompetent person has a legal guardian or conservator, the administrator or executor of the estate, or guardian of the minor or of the

incompetent person or the conservator, shall have the authority to execute all instruments of conveyance provided for in this act on behalf of the estate, or minor or incompetent person with no other proceedings than approval by the judge of the court of jurisdiction being endorsed on the instrument of conveyance.

SECTION 4. AMENDATORY 52 O.S. 2001, Section 318.9, is amended to read as follows:

Section 318.9 Upon presentation of clear, cogent and convincing evidence that the operator willfully and knowingly entered upon the premises for the purpose of commencing the drilling of a well before giving notice of such entry or without the agreement of the surface owner, the ~~court~~ Corporation Commission may, in a separate action, award treble damages. The issue of noncompliance shall be a fact question, ~~determinable without jury,~~ and a de novo issue in the event of appeal.

Any operator who willfully and knowingly fails to keep posted the required bond or who fails to notify the surface owner, prior to entering, or fails to come to an agreement and does not ask the ~~court~~ Commission for appraisers, shall pay, at the direction of the ~~court~~ Commission, treble damages to the surface owner.

Damages collected pursuant to this act shall not preclude the surface owner from collecting any additional damages caused by the operator at a subsequent date.

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.

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