

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1764

By: Sweeden

AS INTRODUCED

An Act relating to oil and gas; amending 52 O.S. 2001, Section 318.2, which relates to surface damages; providing short title; defining terms; modifying definitions; amending 52 O.S. 2001, Section 318.3, which relates to notice of intent to drill; modifying requirements relating to reasonable diligence in location of certain surface owners; requiring certain written notice to certain surface tenants of record; amending 52 O.S. 2001, Section 318.4, which relates to bond requirements; updating statutory language; amending 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), which relates to negotiations with surface owners; requiring negotiations with certain surface tenants of record; requiring surface owner and surface tenant of record to be included as parties to certain petition; authorizing surface tenant to intervene in certain action; requiring three appraisers who shall be landowners in certain county; deleting requirement for state-certified general real estate appraisers in certain appraisals; stating requirements for appraisers to inspect all damages sustained by surface owners or surface tenants; including certain diminution in value of certain property; stating requirements for certain report by appraisers; including certain damages to be assessed by a jury; prohibiting damages to be tied to certain railroad condemnation actions; and declaring an emergency.

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

SECTION 1. AMENDATORY 52 O.S. 2001, Section 318.2, is amended to read as follows:

Section 318.2 A. This act shall be known and may be cited as the Oklahoma Surface Damage Act.

B. For purposes of ~~Sections 1 through 8~~ of this act:

1. "Operator" means a mineral owner or lessee who is preparing to, or engaged in:

a. drilling ~~or preparing to drill~~ for oil or gas,

- b. construction of oil and gas production-related facilities,
- c. construction of roadways or pipelines related to the oil and gas operations, and
- d. oil and gas seismic exploration; and

2. "Surface owner" means the owner or owners of record of the surface of the property on which the ~~drilling~~ oil and gas operation is to occur;

3. "Surface tenant of record" means any person or entity, other than the surface owner, who:

- a. is in possession of the surface of the property on which the oil and gas operation is to occur, and
- b. has filed a lease or other notice of status in the records of the county clerk where the property on which the oil and gas operation is to occur, and

4. "Oil and gas operations" means:

- a. drilling or preparing to drill for oil or gas,
- b. construction of oil and gas production-related facilities,
- c. construction of roadways or pipelines related to the oil and gas operations, and
- d. oil and gas seismic exploration.

SECTION 2. AMENDATORY 52 O.S. 2001, Section 318.3, is amended to read as follows:

Section 318.3 Before entering upon a site for oil or gas ~~drilling operations,~~ except in instances where ~~there~~ all surface owners or surface tenants of record are non-state resident surface owners, non-state resident surface tenants, not locatable through reasonable diligence resulting from unknown heirs, imperfect titles, surface owners, or surface tenants or whose whereabouts cannot be ascertained ~~with reasonable diligence,~~ the operator shall give to the locatable surface owner owners and surface tenants of record a

written notice of ~~his~~ intent to drill or conduct oil and gas operations containing a designation of the proposed location and the approximate date that the operator proposes to commence drilling or other oil and gas operations.

Such notice shall be given in writing by certified mail ~~to the surface owner~~. If the operator makes an affidavit that he has conducted a search with reasonable diligence and the whereabouts of ~~the~~ a surface owner or surface tenant of record cannot be ascertained or such notice cannot be delivered, then constructive notice of the intent to drill may be given in the same manner as provided for the notice of proceedings to appoint appraisers.

Within five (5) days of the date of delivery or service of the notice of intent to drill, it shall be the duty of the operator and the surface owner to enter into good faith negotiations to determine the surface damages.

SECTION 3. 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~~ surface 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~~ oil and gas operations 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 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 4. 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 and any surface tenant of record 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 with the surface owner and any surface tenant of record, or if the operator is not able to contact all parties, the operator shall petition the district court, naming

the surface owner and any surface tenant of record as parties, 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. Any surface tenant, whether the lease is of record or not, shall be entitled to intervene in the action. 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 and the surface tenant, if one exists, shall select one appraiser, and the two selected appraisers shall select a third appraiser for appointment by the court, ~~which such third appraiser.~~ Each of the three appraisers shall be state-certified general real estate appraiser and be in good standing with the Oklahoma Real Estate Appraisal Board a landowner in the county where the subject property is located. Unless for good cause shown, additional time is allowed by the district court, 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 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~~ all damages which the surface owner ~~has~~ and surface tenants have sustained or will sustain by reason of entry upon the subject land and by reason of ~~drilling~~ oil and gas operations or maintenance of oil or gas production on the subject tract of land, including but not limited to the diminution in value of the tract entered upon. 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, including but not limited to the diminution in value of the property, and all other damages that were or will be suffered by the surface owner and the surface tenant. The appraisers shall make a valuation and determine the amount of compensation to be paid by the operator to the surface owner and the surface tenant, including the division thereof, and the manner in which the amount shall be paid. Said appraisers shall then make a report of their proceedings to the court. The compensation of the appraisers shall be fixed and determined by the court. The operator and the surface owner, including the surface tenant, shall share equally in the payment of ~~the appraisers'~~ fees of the appraisers and court costs.

D. Within ten (10) days after the report of the appraisers is filed, the clerk of the court 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 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.

2. If a party has been served by publication, the clerk 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 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 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 shall be calculated as commencing from the date the report of the appraisers is filed with the court. Upon failure of the clerk to give notice within the time prescribed, the court, 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 for a reasonable period of time not less than twenty (20) days from the date the application is heard by the court. 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.

F. The report of the appraisers may be reviewed by the court, 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 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 a written demand for a trial by jury, in which case the amount of damages done or to be done to the property from the oil and gas operations, including but not limited to the diminution in value of the property, and all other damages that were or will be suffered by the surface owner and the surface tenant, shall be assessed by a jury. The trial shall be conducted and judgment entered in the same manner as railroad condemnation actions tried in the court; however, damages are not to be limited to those awardable in railroad condemnation actions. 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 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 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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