

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 3028

By: McMullen

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5  
6 AS INTRODUCED

7 An Act relating to oil and gas; amending 52 O.S.  
8 2001, Sections 318.3 and 318.5, as amended by Section  
9 16, Chapter 22, O.S.L. 2002 (52 O.S. Supp. 2007,  
10 Section 318.5), which relate to surface damages;  
11 requiring operator to give notice and approximate  
12 date to surface owner of intent to conduct seismic  
13 exploration; requiring good faith negotiations  
14 between surface owner and operator to determine  
15 surface damages and payment of surface damages from  
16 seismic exploration; requiring appraisers to consider  
17 surface damages from seismic exploration; modifying  
18 requirements of report to include seismic  
19 exploration; and providing an effective date.

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

21 SECTION 1. AMENDATORY 52 O.S. 2001, Section 318.3, is  
22 amended to read as follows:

23 Section 318.3 Before entering upon a site for oil or gas  
24 drilling or seismic exploration as defined in Section 318.21 of this  
25 title, as except in instances where there are non-state\_resident  
26 surface owners, non-state\_resident surface tenants, unknown heirs,  
27 imperfect titles, surface owners, or surface tenants whose  
28 whereabouts cannot be ascertained with reasonable diligence, the

1 operator shall give to the surface owner a written notice of his  
2 intent to drill or conduct seismic exploration containing a  
3 designation of the proposed location and the approximate date that  
4 the operator proposes to commence drilling or seismic exploration.

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

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

16 SECTION 2. AMENDATORY 52 O.S. 2001, Section 318.5, as  
17 amended by Section 16, Chapter 22, O.S.L. 2002 (52 O.S. Supp. 2007,  
18 Section 318.5), is amended to read as follows:

19 Section 318.5 A. Prior to entering the site with heavy  
20 equipment, the operator shall negotiate with the surface owner for  
21 the payment of any damages which may be caused by the drilling  
22 operation and seismic exploration, as defined in Section 318.21 of  
23 this title. If the parties agree, and a written contract is signed,  
24 the operator may enter the site to drill. If agreement is not

1 reached, or if the operator is not able to contact all parties, the  
2 operator shall petition the district court in the county in which  
3 the drilling site is located for appointment of appraisers to make  
4 recommendations to the parties and to the court concerning the  
5 amount of damages, if any. Once the operator has petitioned for  
6 appointment of appraisers, the operator may enter the site to drill.

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

16 C. The operator shall select one appraiser, the surface owner  
17 shall select one appraiser, and the two selected appraisers shall  
18 select a third appraiser for appointment by the court, which such  
19 third appraiser shall be a state-certified general real estate  
20 appraiser and be in good standing with the Oklahoma Real Estate  
21 Appraisal Board. Unless for good cause shown, additional time is  
22 allowed by the district court, the three (3) appraisers shall be  
23 selected within twenty (20) days of service of the notice of the  
24 petition to appoint appraisers or within twenty (20) days of the

1 first date of publication of the notice as specified in subsection B  
2 of this section. If either of the parties fails to appoint an  
3 appraiser or if the two appraisers cannot agree on the selection of  
4 the third appraiser within the required time period, the remaining  
5 required appraisers shall be selected by the district court upon  
6 application of either party of which at least one shall be a state-  
7 certified general real estate appraiser and be in good standing with  
8 the Oklahoma Real Estate Appraisal Board. Before entering upon  
9 their duties, such appraisers shall take and subscribe an oath,  
10 before a notary public or some other person authorized to administer  
11 oaths, that they will perform their duties faithfully and  
12 impartially to the best of their ability. They shall inspect the  
13 real property and consider the surface damages which the owner has  
14 sustained or will sustain by reason of entry upon the subject land  
15 and by reason of drilling, seismic exploration, or maintenance of  
16 oil or gas production on the subject tract of land. The appraisers  
17 shall then file a written report within thirty (30) days of the date  
18 of their appointment with the clerk of the court. The report shall  
19 set forth the quantity, boundaries and value of the property entered  
20 on or to be utilized in said oil or gas drilling, or seismic  
21 exploration, and the amount of surface damages done or to be done to  
22 the property. The appraisers shall make a valuation and determine  
23 the amount of compensation to be paid by the operator to the surface  
24 owner and the manner in which the amount shall be paid. Said

1 appraisers shall then make a report of their proceedings to the  
2 court. The compensation of the appraisers shall be fixed and  
3 determined by the court. The operator and the surface owner shall  
4 share equally in the payment of the appraisers' fees and court  
5 costs.

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

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

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

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

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

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

1 sixty (60) days after the filing of such report, file with the clerk  
2 a written demand for a trial by jury, in which case the amount of  
3 damages shall be assessed by a jury. The trial shall be conducted  
4 and judgment entered in the same manner as railroad condemnation  
5 actions tried in the court. A copy of the final judgment shall be  
6 forwarded to the county assessor in the county or counties in which  
7 the property is located. If the party demanding the jury trial does  
8 not recover a more favorable verdict than the assessment award of  
9 the appraisers, all court costs including reasonable attorney fees  
10 shall be assessed against the party.

11 SECTION 3. This act shall become effective November 1, 2008.

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13 51-2-9418 MMP 12/31/07

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