

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 243

By: Branam of the Senate

and

Trebilcock of the House

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9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to oil and gas; amending 52 O.S.
11 2011, Sections 318.21, 318.22 and 318.23, which
12 relate to the Seismic Exploration Regulation Act;
13 defining terms; providing for attempt to notify;
14 defining term; providing for filing of certain
15 affidavit; requiring certain information be provided
16 in the notice; providing for certain damages;
17 requiring notice to surface owner prior to seismic
18 exploration; providing for acceptance and rejection
19 procedures of certain offers; requiring affidavit of
20 mailing; providing cause of action for damages from
21 seismic exploration; defining prevailing party;
22 directing recovery of certain costs for prevailing
23 party; and declaring an emergency.

24
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 52 O.S. 2011, Section 318.21, is
amended to read as follows:

Section 318.21. ~~This act~~ A. Sections 318.21 through 318.23 of
this title shall be known and may be cited as the "Seismic

1 Exploration Regulation Act". ~~For purposes of this act only,~~
2 "seismic

3 B. As used in the Seismic Exploration Regulation Act:

4 1. "Seismic exploration" means the drilling of seismograph test
5 holes and use of surface energy sources such as weight drop
6 equipment, thumpers, hydropulses or vibrators, and any of the
7 activities associated therewith;

8 2. "Operator" or "applicant" means a person or entity who is
9 either the owner of the right to conduct seismic exploration or
10 acting on behalf of the owner;

11 3. "Surface estate" means the same as defined in Section 802 of
12 this title; and

13 4. "Surface owner" means the owner or owners of record of the
14 surface estate of the property upon which the seismic exploration is
15 to occur, based upon the records of the county clerk of the county
16 within which the surface estate is actually located.

17 SECTION 2. AMENDATORY 52 O.S. 2011, Section 318.22, is
18 amended to read as follows:

19 Section 318.22. A. The Corporation Commission is hereby
20 directed and authorized to promulgate rules governing the operations
21 of seismographic exploration for the purpose of protecting the
22 interests and property of the citizens of this state.

23 B. Any person, firm, corporation or entity desiring to commence
24 any seismographic exploration in this state shall, prior to any such

1 activity, be duly registered with the Corporation Commission and
2 shall be required to apply for a permit for each separate seismic
3 exploration.

4 C. Rules promulgated by the Commission governing all seismic
5 exploration operations shall include, but not be limited to,
6 requirements for:

7 1. Applicants to post a form of financial surety guarantee, the
8 form and amount to be determined by the Commission which shall
9 remain in effect until release is authorized by the Commission;

10 2. Applicants to attempt to notify all ~~surface~~ owners of
11 ~~property~~ the surface estate where the seismic exploration will occur
12 at least fifteen (15) days prior to commencement of seismic
13 exploration. If the applicant has ~~obtained specific written~~
14 ~~permission~~ the right to conduct seismic exploration and has ~~given~~
15 attempted to give actual notice of intent to conduct seismic
16 exploration to the surface owner any time before fifteen (15) days
17 prior to conducting seismic exploration, such action shall be
18 considered sufficient notification for the purposes of this section.
19 ~~Notification by U.S. mail shall be sufficient for~~ For the purposes
20 of this section, ~~provided~~ an attempt to notify shall be considered
21 sufficient when the notification is sent by U.S. mail, the notice is
22 postmarked at least fifteen (15) days prior to commencement of any
23 seismic exploration, and has been given at the last address shown of
24 record for the surface owner in the records of the county clerk in

1 the county where the surface estate is located, or an address that
2 is known by applicant to be more accurate than the foregoing address
3 of record; and

4 3. Applicants to file an affidavit within ninety (90) days of
5 the last mailing of the notice described herein with the county
6 clerk in the county where the property is located, setting out that
7 mailing of the notice has occurred in compliance with this section,
8 and specifically listing the surface owners which were not locatable
9 at the addresses required. Further, in the event that any party is
10 not locatable at said addresses, then such surface owner will be
11 deemed as having rejected the offer provided in the notice required
12 under this section; and

13 4. Applicants to be permitted for each seismic exploration
14 operation.

15 D. The notice required in subsection C of this section shall be
16 sent by U.S. mail, include a copy of the oil or gas lease or seismic
17 permit authorizing the use of the surface for seismic exploration
18 and contain the following information:

19 1. Name of the company conducting seismic exploration;

20 2. Anticipated date of seismic exploration; ~~and~~

21 3. A description of the surface estate of the notice recipient
22 to be entered upon for the seismic exploration to be conducted;

23 4. If there is not a prior written agreement between the
24 surface owner and the operator as to seismic exploration, the

1 following provision with regard to the amount of the damages offered
2 by the operator to the surface owner shall be included in the
3 notice:

4 "Operator will conduct the proposed seismic exploration in
5 a prudent manner and agrees to indemnify and hold you
6 harmless from personal injury or property damage claims
7 that may result from the operator's seismic exploration to
8 the extent that such damage claims are not the result of
9 your acts or omissions. Pursuant to the Seismic
10 Exploration Regulation Act, you, as the surface owner, are
11 entitled to reasonable damages that will be sustained by
12 reason of the operator's seismic exploration. The
13 operator hereby offers you \$ [operator shall fill in
14 the amount] as compensation for the reasonable damages to
15 be sustained by reason of the operator's seismic
16 exploration. If you accept this offer in writing to the
17 operator within fifteen (15) days of the postmark of this
18 letter, you will be deemed to have accepted and agreed to
19 the amount as full consideration for all reasonable
20 damages by reason of the operator's seismic exploration.
21 Operator shall, upon receipt of your timely acceptance of
22 the offer contained herein, remit to you the consideration
23 described in this offer. The acceptance of this amount
24 shall not prohibit you from attempting to recover damages

1 which are unreasonable and caused by reason of the
2 operator's seismic exploration on your surface estate.
3 In the event that you either (a) reject the offer in this
4 letter in writing to the operator within fifteen (15) days
5 of the postmark of this letter, or (b) fail to make a
6 timely acceptance of the offer contained herein, then you
7 will be deemed to have rejected the offer contained
8 herein, and pursuant to the Seismic Exploration Regulation
9 Act, you may initiate an action pursuant to The Small
10 Claims Procedure Act or a civil action pursuant to the
11 Oklahoma Pleading Code, as appropriate, to recover the
12 reasonable damages, if any, actually sustained by reason
13 of the operator's seismic exploration. If an action to
14 recover reasonable damages is commenced accordingly and a
15 judgment is entered in the action for you as to the
16 damages in an amount in excess of the amount set forth in
17 this notice for reasonable damages by reason of the
18 operator's seismic exploration, you shall be considered
19 the prevailing party. If the judgment entered is for an
20 amount equal to or less than the amount set forth in this
21 notice for reasonable damages by reason of the operator's
22 seismic exploration, although you will be entitled to
23 receive the judgment amount, if any, the operator shall be
24 considered the prevailing party. The prevailing party in

1 any court proceeding brought pursuant to the Seismic
2 Exploration Regulation Act shall be entitled to recover
3 the costs of the suit, including but not limited to
4 reasonable attorney and expert witness fees and litigation
5 expenses. If the action should be dismissed other than by
6 way of settlement prior to the entry of judgment, then the
7 surface owner shall forfeit its right to receive any
8 consideration for all reasonable damages by reason of the
9 operator's seismic exploration."; and

10 5. Any other pertinent information the Commission deems
11 appropriate and relevant for the protection of surface owners.

12 E. The Commission is further directed to promulgate rules to
13 implement a system to register complaints against any person, firm
14 or corporation conducting seismic exploration. The Commission may
15 determine if and when a complaint has been adequately resolved.

16 F. Any person, firm, corporation or entity which conducts any
17 seismic exploration without a permit by the Commission, or in any
18 other manner violates the rules of the Commission governing such
19 exploration shall be subject to a penalty of One Thousand Dollars
20 (\$1,000.00) per violation per day by the Commission, in addition to
21 any other legal remedy provided by law.

22 SECTION 3. AMENDATORY 52 O.S. 2011, Section 318.23, is
23 amended to read as follows:

1 Section 318.23. A. It shall be unlawful for any person, firm,
2 corporation or entity to conduct any seismic test hole blasting
3 within two hundred (200) feet of any habitable dwelling, building or
4 water well without written permission from the owner of the
5 property.

6 B. The surface owner shall be entitled to reasonable damages
7 that have been or will be sustained to the surface estate by reason
8 of the operator's seismic exploration.

9 C. At least fifteen (15) days prior to commencement of seismic
10 exploration, the operator shall provide the notice to the surface
11 owner required by Section 318.22 of this title, and, in the absence
12 of an agreement between the surface owner and the operator as to
13 seismic exploration, operator and surface owner shall make a good-
14 faith effort to resolve any reasonable damage issues raised by the
15 surface owner by reason of operator's seismic exploration.

16 D. The surface owner may accept the offer in the notice
17 required by Section 318.22 of this title by accepting the offer in
18 writing to the operator within fifteen (15) days of the postmark of
19 the notice. By the timely acceptance of such offer, the surface
20 owner shall be deemed to have accepted and agreed to such offer as
21 full consideration for all reasonable damages by reason of the
22 operator's seismic exploration and the operator may commence seismic
23 operations. The operator shall, upon receipt of the surface owner's
24 timely acceptance of the offer in the notice, remit the appropriate

1 consideration to the surface owner. The surface owner's acceptance
2 of such offer and consideration shall not prohibit the surface owner
3 from attempting to recover damages which are unreasonable and caused
4 by reason of the operator's seismic exploration on the surface
5 estate of the surface owner.

6 E. If prior to the expiration of the fifteen-day notice period
7 set forth in Section 318.22 of this title, the surface owner rejects
8 the amount tendered with the notice required by Section 318.22 of
9 this title in writing to the operator, or the surface owner fails to
10 make a timely acceptance of the offer contained in the notice, then
11 the surface owner will be deemed to have rejected the offer tendered
12 with the notice, and the operator may enter the property and
13 commence seismic operations.

14 F. Within ninety (90) days of the last mailing of the notice
15 described herein, the applicant shall file an affidavit setting out
16 that mailing of the notice has occurred in compliance with Section
17 318.22 of this title, and specifically listing the surface owners
18 which were not locatable at the addresses required. Further, in the
19 event that any surface owner is not locatable at the addresses, then
20 such surface owner will be deemed as having rejected the offer
21 provided in the notice required under Section 318.22 of this title.

22 G. If the surface owner has properly rejected or has been
23 deemed to have rejected the amount tendered with the notice required
24 by Section 318.22 of this title, the surface owner may initiate an

1 action pursuant to The Small Claims Procedure Act or a civil action
2 pursuant to the Oklahoma Pleading Code, as appropriate, to recover
3 the reasonable damages, if any, actually sustained by reason of the
4 operator's seismic exploration. Venue for such action shall
5 properly be in the county where the surface estate is located.

6 H. If an action to recover the reasonable damages is commenced
7 pursuant to subsection G of this section and a judgment is entered
8 in the action for the surface owner for reasonable damages by reason
9 of the operator's seismic exploration in an amount in excess of the
10 amount set forth in the notice required by Section 318.22 of this
11 title, the surface owner shall be considered the prevailing party;
12 if the judgment entered for reasonable damages by reason of the
13 operator's seismic exploration is for an amount equal to or less
14 than the amount set forth in the notice required by Section 318.22
15 of this title, the operator shall be considered the prevailing
16 party. The prevailing party in any court proceeding brought
17 pursuant to this section shall be entitled to recover the costs of
18 the suit, including but not limited to reasonable attorney and
19 expert witness fees and litigation expenses. If the action should
20 be dismissed other than by way of settlement prior to the entry of
21 judgment, then the surface owner shall forfeit its right to receive
22 any consideration for all reasonable damages by reason of the
23 operator's seismic exploration.

1 I. Nothing in the Seismic Exploration Regulation Act shall
2 modify or restrict an operator's right to enter a surface estate and
3 conduct seismic exploration thereon pursuant to the operator's right
4 to conduct seismic exploration. Additionally, nothing in the
5 response or deemed response of a surface owner to any notice
6 required by Section 318.22 of this title shall restrict or otherwise
7 affect an operator's right to enter a surface estate and conduct
8 seismic operations thereon.

9 SECTION 4. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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