

1 ENGROSSED SENATE
2 BILL NO. 1035

By: Justice and Fields of the
Senate

3 and

4 Hickman of the House

5
6 [oil and gas - Oklahoma Surface Use and Damages Act
7 - effective date - emergency]

8
9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. AMENDATORY 52 O.S. 2011, Section 318.2, is
11 amended to read as follows:

12 Section 318.2. ~~For purposes of Sections 1 through 8 of this~~
13 ~~act:~~

14 A. Sections 318.2 through 318.9 of this title shall be known
15 and may be cited as the "Oklahoma Surface Use and Damages Act".

16 B. As used in the Oklahoma Surface Use and Damages Act:

17 1. "Operator" means a mineral owner or lessee who is engaged in
18 ~~drilling or preparing to drill for oil or gas; and~~ operations, or in
19 the case of seismic exploration, means a person or entity who is
20 either the owner of the right to conduct seismic exploration or the
21 agent of the owner;

22 2. "Oil and gas operations" means:

23 a. drilling or preparing to drill for oil or gas,
24

1 b. conducting new or additional operations affecting the
2 surface estate not included in the original drilling
3 operations, or

4 c. conducting or preparing to conduct seismic
5 exploration;

6 3. "Person" means any individual, executor, administrator,
7 estate, agent, trust, trustee, institution, receiver, business
8 trust, firm, corporation, partnership, limited liability company,
9 cooperative, joint venture, governmental entity or agency,
10 association or any other group or combination acting as a unit;

11 4. "Seismic exploration" means the same as defined in Section
12 318.21 of this title;

13 5. "Surface estate" means the same as defined in Section 802 of
14 this title;

15 6. "Surface owner" means the owner or owners of record of the
16 surface estate of the property on which the ~~drilling operation is~~
17 oil or gas operations are to occur; and

18 7. "Surface tenant" means any person who has a possessory
19 interest in the surface estate for agricultural purposes or through
20 a wind or solar agreement, as defined in Section 802 of this title.

21 SECTION 2. AMENDATORY 52 O.S. 2011, Section 318.3, is
22 amended to read as follows:

23 Section 318.3. A. Before entering upon a site for oil or gas
24 ~~drilling operations~~, except in instances where there are ~~non-state~~

1 ~~resident surface owners, non-state resident surface tenants,~~ unknown
2 heirs, imperfect titles, or surface owners, or surface tenants whose
3 whereabouts cannot be ascertained with reasonable diligence, the
4 operator shall give to the surface owner, and any surface tenant who
5 has recorded with the county clerk a notice of the tenancy, a
6 written notice of his intent to ~~drill~~ conduct oil or gas operations
7 containing a designation of the proposed location and the
8 approximate date that the operator proposes to commence ~~drilling the~~
9 oil or gas operations.

10 ~~Such~~ B. The notice required by subsection A of this section
11 shall be given in writing by certified mail to the ~~surface owner~~
12 party or parties entitled to the notice. If the operator makes an
13 affidavit that he or she has conducted a search with reasonable
14 diligence and the whereabouts of ~~the surface owner~~ a party entitled
15 to notice cannot be ascertained or such notice cannot be delivered,
16 then constructive notice of the intent to ~~drill~~ conduct oil or gas
17 operations may be given in the same manner as provided for the
18 notice of proceedings to appoint appraisers.

19 C. Within five (5) days of the date of delivery or service of
20 the notice ~~of intent to drill~~ required by this section, it shall be
21 the duty of the operator and the surface owner to enter into good
22 faith negotiations to determine if the proposed use of the surface
23 by the operator is reasonable under the circumstances and the value
24

1 of any damages that will be incurred as a result of the proposed
2 operation.

3 SECTION 3. AMENDATORY 52 O.S. 2011, Section 318.4, is
4 amended to read as follows:

5 Section 318.4. A. Every operator doing business in this state
6 shall file a corporate surety bond, letter of credit from a banking
7 institution, cash, or a certificate of deposit with the Secretary of
8 State in the sum of Twenty-five Thousand Dollars (\$25,000.00)
9 conditioned upon compliance with Sections 318.2 through 318.9 of
10 this title for payment of any ~~location~~ damages due which the
11 operator cannot otherwise pay. The Secretary of State shall hold
12 such corporate surety bond, letter of credit from a banking
13 institution, cash or certificate of deposit for the benefit of the
14 surface owners of this state and shall ensure that such security is
15 in a form readily payable to a surface owner awarded damages in an
16 action brought pursuant to ~~this act~~ the Oklahoma Surface Use and
17 Damages Act. Each corporate surety bond, letter of credit, cash, or
18 certificate of deposit filed with the Secretary of State shall be
19 accompanied by a filing fee of Ten Dollars (\$10.00).

20 B. The bonding company or banking institution shall file, for
21 such fee as is provided for by law, a certificate that said bond or
22 letter of credit is in effect or has been canceled, or that a claim
23 has been made against it in the office of the court clerk in each
24 county in which the operator is ~~drilling or planning to drill~~

1 conducting or planning to conduct oil or gas operations. Said bond
2 or letter of credit must remain in full force and effect as long as
3 the operator continues drilling operations in this state. Each such
4 filing shall be accompanied by a filing fee of Ten Dollars (\$10.00).

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

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

17 SECTION 4. AMENDATORY 52 O.S. 2011, Section 318.5, is
18 amended to read as follows:

19 Section 318.5. A. Prior to entering the site with heavy
20 equipment for oil or gas operations, the operator shall negotiate
21 with the surface owner for the payment of any damages which may be
22 caused by the ~~drilling operation~~ oil or gas operations. If the
23 parties agree, and a written contract is signed, the operator may
24 enter the site to ~~drill~~ conduct the oil or gas operations. If

1 agreement is not reached, or if the operator is not able to contact
2 all parties, the operator shall petition the district court in the
3 county in which the ~~drilling site~~ oil or gas operation is ~~located to~~
4 occur for appointment of appraisers to make recommendations to the
5 parties and to the court concerning the reasonableness of the
6 proposed operation and the amount of damages, if any. If the form
7 of the oil or gas operation is seismic exploration, and the operator
8 asserts the damages are equal to or less than the amount set forth
9 in the small claims procedures, the operator may alternatively file
10 the petition in the district court in the county in which the oil or
11 gas operation is to occur pursuant to the Oklahoma Small Claims
12 Procedure Act and the action shall be conducted in accordance with
13 the Oklahoma Small Claims Procedure Act. If the surface owner seeks
14 to and is allowed to transfer the action from the small claims
15 docket, the action shall proceed as though the petition was filed
16 for the appointment of appraisers pursuant to this subsection. The
17 operator is only required to name as a defendant or defendants in
18 any action filed pursuant to this subsection the surface owner or
19 owners; however, any surface tenant shall be entitled to intervene
20 in the action if so requested. Once the operator has petitioned for
21 appointment of appraisers or filed the petition as allowed by this
22 subsection, the operator may enter the site to ~~drill~~ conduct the oil
23 or gas operation.

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

11 C. ~~The~~ In an action for the appointment of appraisers, the
12 operator shall select one appraiser, the surface owner shall select
13 one appraiser, and the two selected appraisers shall select a third
14 appraiser for appointment by the court, which such third appraiser
15 shall be a state-certified general real estate appraiser and be in
16 good standing with the Oklahoma Real Estate Appraisal Board. Unless
17 for good cause shown, additional time is allowed by the district
18 court, the three (3) appraisers shall be selected within twenty (20)
19 days of service of the notice of the petition to appoint appraisers
20 or within twenty (20) days of the first date of publication of the
21 notice as specified in subsection B of this section. If either of
22 the parties fails to appoint an appraiser or if the two appraisers
23 cannot agree on the selection of the third appraiser within the
24 required time period, the remaining required appraisers shall be

1 selected by the district court upon application of either party of
2 which at least one shall be a state-certified general real estate
3 appraiser and be in good standing with the Oklahoma Real Estate
4 Appraisal Board. Before entering upon their duties, such appraisers
5 shall take and subscribe an oath, before a notary public or some
6 other person authorized to administer oaths, that they will perform
7 their duties faithfully and impartially to the best of their
8 ability. They shall inspect the real property and consider the
9 surface damages which the owner has sustained or will sustain by
10 reason of entry upon the subject land and by reason of ~~drilling or~~
11 ~~maintenance of oil or gas production~~ the oil or gas operations on
12 the subject tract of land. The appraisers shall then file a written
13 report within thirty (30) days of the date of their appointment with
14 the clerk of the court. The report shall set forth the quantity,
15 boundaries and value of the property entered on or to be utilized in
16 said oil or gas ~~drilling~~ operations, and the amount of surface
17 damages done or to be done to the property. The appraisers shall
18 make a valuation and determine the amount of compensation to be paid
19 by the operator to the surface owner and the manner in which the
20 amount shall be paid. Said appraisers shall then make a report of
21 their proceedings to the court. The compensation of the appraisers
22 shall be fixed and determined by the court. The operator and the
23 surface owner shall share equally in the payment of the appraisers'
24 fees and court costs.

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

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

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

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

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

12 F. The report of the appraisers may be reviewed by the court,
13 upon written exceptions filed with the court by either party within
14 thirty (30) days after the filing of the report. After the hearing
15 the court shall enter the appropriate order either by confirmation,
16 rejection, modification, or order of a new appraisal for good cause
17 shown. Provided, that in the event a new appraisal is ordered, the
18 operator shall have continuing right of entry subject to the
19 continuance of the bond required herein. Either party may, within
20 sixty (60) days after the filing of such report, file with the clerk
21 a written demand for a trial by jury, in which case the amount of
22 damages shall be assessed by a jury. The trial shall be conducted
23 and judgment entered in the same manner as railroad condemnation
24 actions tried in the court. A copy of the final judgment shall be

1 forwarded to the county assessor in the county or counties in which
2 the property is located. If the party demanding the jury trial does
3 not recover a more favorable verdict than the assessment award of
4 the appraisers, all court costs including reasonable attorney fees
5 shall be assessed against the party.

6 SECTION 5. AMENDATORY 52 O.S. 2011, Section 318.9, is
7 amended to read as follows:

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

16 Any operator who willfully and knowingly fails to keep posted
17 the required bond or who fails to notify the surface owner, prior to
18 entering, or fails to come to an agreement and does not ask the
19 court for appraisers or file a petition pursuant to the Oklahoma
20 Surface Use and Damages Act, shall pay, at the direction of the
21 court, treble damages to the surface owner.

22 Damages collected pursuant to ~~this act~~ the Oklahoma Surface Use
23 and Damages Act shall not preclude the surface owner from collecting
24 any additional damages caused by the operator at a subsequent date.

1 SECTION 6. This act shall become effective July 1, 2012.

2 SECTION 7. It being immediately necessary for the preservation
3 of the public peace, health and safety, an emergency is hereby
4 declared to exist, by reason whereof this act shall take effect and
5 be in full force from and after its passage and approval.

6 Passed the Senate the 8th day of March, 2012.

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2012.

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Presiding Officer of the House
of Representatives

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