

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3122

By: Hickman

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5
6 AS INTRODUCED

7 An Act relating to oil and gas; amending 52 O.S.
8 2011, Section 318.2, 318.3, 318.4, 318.5 and 318.9,
9 which relate to surface damage negotiations; enacting
10 the Oklahoma Surface Damages Act; updating statutory
11 language; clarifying statutory language; modifying
12 definitions; adding definitions; changing oil or gas
13 drilling to oil or gas operations; deleting certain
14 exception; expanding requirement for written notice
15 to certain surface tenants; expanding scope of good
16 faith negotiations; adding recommendation to be made
17 by the appraisers; allowing an operator to file an
18 alternative small claims petition for certain seismic
19 operations; providing for the transfer from the small
20 claims docket upon action of the surface owner;
21 limiting the defendants that are required to be
22 named; allowing a surface tenant to intervene upon
23 request; clarifying notice requirements; clarifying
24 grounds for damages; and declaring an emergency.

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

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

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

1 B. For purposes of Sections 1 through 8 of this act the
2 Oklahoma Surface Damages Act:

3 1. "Operator" means a mineral owner or lessee who is engaged in
4 drilling or preparing to drill for oil or gas operations or in the
5 case of seismic exploration, means a persons or entity who is either
6 the owner of the right to conduct seismic exploration or the agent
7 of the owner; and

8 2. "Oil and gas operations" means

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

10 b. conducting new or additional operations affecting the
11 surface estate not included in the original drilling
12 operations, or

13 c. conducting or preparing to conduct seismic
14 exploration;

15 3. "Person" means any individual, executor, administrator,
16 estate, agent, trust, trustee, institution, receiver, business
17 trust, firm, corporation, partnership, limited liability company,
18 cooperative, joint venture, governmental entity or agency,
19 association or any other group or combination acting as a unit;

20 4. "Small claims procedures" means the procedures set forth in
21 Sections 1751 through 1773 of Title 12 of the Oklahoma Statutes;

22 5. "Seismic exploration" means the same as defined in Section
23 318.21 of this title;

1 6. "Surface estate" means the same as defined in Section 802 of
2 this title;

3 7. "Surface owner" means the owner or owners of record of the
4 surface estate of the property on which the ~~drilling operation is~~
5 oil and gas operations are to occur; and

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

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

12 Section 318.3 A. Before entering upon a site for oil or gas
13 ~~drilling operations~~, except in instances where there are ~~non-state~~
14 ~~resident surface owners, non-state resident surface tenants,~~ unknown
15 heirs, imperfect titles, or surface owners, or surface tenants whose
16 whereabouts cannot be ascertained with reasonable diligence, the
17 operator shall give to the surface owner and any surface tenant who
18 has recorded with the county clerk a notice of the tenancy a written
19 notice of ~~his~~ intent to ~~drill containing~~ conduct oil or gas
20 operations. The notices shall contain a designation of the proposed
21 location and the approximate date that the operator proposes to
22 commence ~~drilling~~ the oil and gas operations.

23 ~~Such~~ B. The notice required by subsection A of this section
24 shall be given in writing by certified mail to the ~~surface owner~~

1 party or parties entitle to notice. If the operator makes an
2 affidavit that ~~he has conducted~~ a search has been conducted with
3 reasonable diligence and the whereabouts of the ~~surface owner~~ party
4 entitled to notice cannot be ascertained or ~~such~~ the notice cannot
5 be delivered, then constructive notice of the intent to ~~drill~~
6 conduct oil or gas operations may be given in the same manner as
7 provided for the notice of proceedings to appoint appraisers.

8 C. Within five (5) days of the date of delivery or service of
9 the notice ~~of intent to drill~~ as required in this section, it shall
10 be the duty of the operator and the surface owner to enter into good
11 faith negotiations to determine if the proposed use of the surface
12 by the operator is reasonable under the circumstances and the value
13 of any damages that will be incurred as a result of the proposed
14 operation.

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

17 Section 318.4 A. Every operator doing business in this state
18 shall file a corporate surety bond, letter of credit from a banking
19 institution, cash, or a certificate of deposit with the Secretary of
20 State in the sum of Twenty-five Thousand Dollars (\$25,000.00)
21 conditioned upon compliance with ~~Sections 318.2 through 318.9 of~~
22 ~~this title~~ the Oklahoma Surface Damages Act for payment of any
23 ~~location~~ damages due which the operator cannot otherwise pay. The
24 Secretary of State shall hold ~~such~~ the corporate surety bond, letter

1 of credit from a banking institution, cash or certificate of deposit
2 for the benefit of the surface owners of this state and shall ensure
3 that ~~such~~ the security is in a form readily payable to a surface
4 owner awarded damages in an action brought pursuant to ~~this act~~ the
5 Oklahoma Surface Damages Act. Each corporate surety bond, letter of
6 credit, cash, or certificate of deposit filed with the Secretary of
7 State shall be accompanied by a filing fee of Ten Dollars (\$10.00).

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

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

22 D. If the damages agreed to by the parties or awarded by the
23 court are greater than the bond, letter of credit, cash, or
24 certificate of deposit posted, the operator shall pay the damages

1 immediately or post an additional bond, letter of credit, cash, or
2 certificate of deposit sufficient to cover the damages. ~~Said~~ The
3 increase in bond, letter of credit, cash, or certificate of deposit
4 shall comply with the requirements of this section.

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

7 Section 318.5 A. Prior to entering the site with heavy
8 equipment for oil or gas operations, the operator shall negotiate
9 with the surface owner for the payment of any damages which may be
10 caused by the ~~drilling operation~~ oil or gas operations. If the
11 parties agree, and a written contract is signed, the operator may
12 enter the site to ~~drill~~ conduct oil or gas operations. If agreement
13 is not reached, or if the operator is not able to contact all
14 parties, the operator shall petition the district court in the
15 county in which the ~~drilling site~~ oil or gas operations is ~~located~~
16 to occur for appointment of appraisers to make recommendations to
17 the parties and to the court concerning the reasonableness of the
18 proposed operation and the amount of damages, if any. If the form
19 of the oil and gas operation is seismic exploration, and the
20 operator asserts the damages are equal to or less than the amount
21 set forth in the small claims procedures, the operator may
22 alternatively petition the district court in the county in which the
23 oil or gas operation is to occur pursuant to the small claims
24 procedures and the action shall be conducted in accordance with the

1 small claims procedures. If the surface owner seeks to, and is
2 allowed to, transfer the action from the small claims docket, the
3 action shall proceed as though the petition was filed for the
4 appointment of appraisers pursuant to this subsection. The operator
5 is only required to name as a defendant or defendants in any action
6 filed pursuant to this subsection the surface owner or owners. Any
7 surface tenant shall be entitled to intervene in the action if so
8 requested. Once the operator has petitioned for appointment of
9 appraisers or filed a small claims petition as allowed by this
10 subsection, the operator may enter the site to ~~drill~~ conduct the oil
11 or gas operation.

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

23 C. ~~The~~ In an action for the appointment of appraisers, the
24 operator shall select one appraiser, the surface owner shall select

1 one appraiser, and the two selected appraisers shall select a third
2 appraiser for appointment by the court, ~~which such~~. The third
3 appraiser shall be a state-certified general real estate appraiser
4 and be in good standing with the Oklahoma Real Estate Appraisal
5 Board. Unless for good cause shown, additional time is allowed by
6 the district court, the three (3) appraisers shall be selected
7 within twenty (20) days of service of the notice of the petition to
8 appoint appraisers or within twenty (20) days of the first date of
9 publication of the notice as specified in subsection B of this
10 section. If either of the parties fails to appoint an appraiser or
11 if the two appraisers cannot agree on the selection of the third
12 appraiser within the required time period, the remaining required
13 appraisers shall be selected by the district court upon application
14 of either party of which at least one shall be a state-certified
15 general real estate appraiser and be in good standing with the
16 Oklahoma Real Estate Appraisal Board. Before entering upon their
17 duties, ~~such~~ the appraisers shall take and subscribe an oath, before
18 a notary public or some other person authorized to administer oaths,
19 that they will perform their duties faithfully and impartially to
20 the best of their ability. They shall inspect the real property and
21 consider the surface damages which the owner has sustained or will
22 sustain by reason of entry upon the subject land and by reason of
23 ~~drilling or maintenance of oil or gas production~~ the oil and gas
24 operations on the subject tract of land. The appraisers shall then

1 file a written report within thirty (30) days of the date of their
2 appointment with the clerk of the court. The report shall set forth
3 the quantity, boundaries and value of the property entered on or to
4 be utilized in ~~said~~ the oil or gas ~~drilling~~ operations, and the
5 amount of surface damages done or to be done to the property. The
6 appraisers shall make a valuation and determine the amount of
7 compensation to be paid by the operator to the surface owner and the
8 manner in which the amount shall be paid. ~~Said~~ The appraisers shall
9 then make a report of their proceedings to the court. The
10 compensation of the appraisers shall be fixed and determined by the
11 court. The operator and the surface owner shall share equally in
12 the payment of the ~~appraisers'~~ fees for the appraisers and court
13 costs.

14 D. 1. Within ten (10) days after the report of the appraisers
15 is filed, the clerk of the court shall forward to each attorney of
16 record, each party, and interested party of record, a copy of the
17 report of the appraisers and a notice stating the time limits for
18 filing an exception or a demand for jury trial as provided for in
19 this section. The operator shall provide the clerk of the court
20 with the names and last-known addresses of the parties to whom the
21 notice and report shall be mailed, sufficient copies of the notice
22 and report to be mailed, and pre-addressed, postage-paid envelopes.

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1 ~~1.~~ 2. The notice shall be on a form prepared by the
2 Administrative Director of the Courts, approved by the Oklahoma
3 Supreme Court, and supplied to all district court clerks.

4 ~~2.~~ 3. If a party has been served by publication, the clerk
5 shall forward a copy of the report of the appraisers and the notice
6 of time limits for filing either an exception or a demand for jury
7 trial to the last-known mailing address of each party, if any, and
8 shall cause a copy of the notice of time limits to be published in
9 one issue of a newspaper qualified to publish legal notices as
10 provided in Section 106 of Title 25 of the Oklahoma Statutes.

11 ~~3.~~ 4. After issuing the notice as provided herein for in this
12 subsection, the clerk shall endorse on the notice form filed in the
13 case the date that a copy of the report and the notice form was
14 forwarded to each attorney of record, each party, and each
15 interested party of record, or the date the notice was published.

16 E. The time for filing an exception to the report or a demand
17 for jury trial shall be calculated as commencing from the date the
18 report of the appraisers is filed with the court. Upon failure of
19 the clerk to give notice within the time prescribed, the court, upon
20 application by any interested party, may extend the time for filing
21 an exception to the report or filing a demand for trial by jury for
22 a reasonable period of time not less than twenty (20) days from the
23 date the application is heard by the court. ~~Appraisers' fees~~ The
24 fees for the appraisers and court costs may be the subject of an

1 exception, may be included in an action by the petitioner, and may
2 be set and allowed by the court.

3 F. The report of the appraisers may be reviewed by the court,
4 upon written exceptions filed with the court by either party within
5 thirty (30) days after the filing of the report. After the hearing
6 the court shall enter the appropriate order either by confirmation,
7 rejection, modification, or order of a new appraisal for good cause
8 shown. ~~Provided, that in~~ In the event a new appraisal is ordered,
9 the operator shall have continuing right of entry subject to the
10 continuance of the bond required ~~herein~~ pursuant to the Oklahoma
11 Surface Damages Act. Either party may, within sixty (60) days after
12 the filing of ~~such~~ the report, file with the clerk a written demand
13 for a trial by jury, in which case the amount of damages shall be
14 assessed by a jury. The trial shall be conducted and judgment
15 entered in the same manner as railroad condemnation actions tried in
16 the court. A copy of the final judgment shall be forwarded to the
17 county assessor in the county or counties in which the property is
18 located. If the party demanding the jury trial does not recover a
19 more favorable verdict than the assessment award of the appraisers,
20 all court costs including reasonable attorney fees shall be assessed
21 against the party.

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

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

9 B. Any operator who willfully and knowingly fails to keep
10 posted the required bond or who fails to notify the surface owner,
11 prior to entering, or fails to come to an agreement and does not ask
12 the court for appraisers or file a small claims petition pursuant to
13 the Oklahoma Surface Damages Act, shall pay, at the direction of the
14 court, treble damages to the surface owner.

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

18 SECTION 6. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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