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S.B. / H.B. No. _____

(By Senators/Delegates _____)

[Introduced _____ 2009; referred to the Committees on _____
_____.]

See last page for table of contents.

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-5A; to amend and reenact _____ of said code; all relating to _____.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated 22-5A; that _____ of said code be amended and reenacted, to read as follows;

ARTICLE 5A. OIL AND GAS SURFACE OWNER’S BILL OF RIGHTS.

§22-5A-1. Findings and purpose.

(a) The Legislature finds that the owner of the surface of property where an oil or gas lease operator intends to drill a well in many cases does not also own the minerals or any right to the royalty or any other benefit from the drilling of the well on, or the production of oil or gas from under, the surface owner’s property.

(b) Even where the surface owner also owns the minerals, the surface owner may have signed a “standard” lease that provides little or no means to have the surface owners rights recognized.

1 (c) The construction of an oil or gas well site, the
2 construction of access road to the well site, the laying of a
3 pipeline from wells on the surface owners land, and often
4 neighboring lands, has an enormous impact on value, use and
5 enjoyment of the surface owner's land.

6 (d) Under the common law, unless changed by the terms of a
7 severance deed or a lease, the operator who intends to drill an oil
8 or gas well on the surface owner's property only has the right to
9 do what is "fairly necessary" in order to produce the oil or gas;
10 the operator must give "due regard" to or "accommodate" the
11 interest of the surface owner.

12 (e) The only notice to the surface owner required by state
13 code when an operator plans to drill a well on a surface owner is
14 the requirement that the operator give the surface owner a copy of
15 the operator's application to the state for a permit to drill an
16 oil or gas well on the surface owner's land. This notice is only
17 required to be given to the surface owner at the time the
18 application is filed and already contains a well site location and
19 access road location that the operator has already chosen and
20 surveyed, and for which the operator has already prepared a soil
21 erosion and sediment control plan. The operator may come onto the
22 land and even send surveyors to mark well sites and road locations
23 to choose the well site and road locations to put in the permit
24 without notifying or communicating with to the surface owner first.

25 (f) The surface owner has a right to comment on the permit
26 application if he or she can get comments to the Office of Oil and
27 Gas of the Department of Environmental Protection within fifteen
28 days of filing the permit. However, the surface owner has no
29 statutory right to a hearing on the surface owner's comments on the
30 permit application.

31 (g) The surface owner's comments on the operator's drilling
32 permit application cannot cause the state to change the road or

1 well site location on the grounds that the operator is doing more
2 surface disturbance and so onto the surface owner's land than is
3 fairly necessary under the common law. The state can only change
4 the permit for the reasons set out in the next subsection.

5 (h) The state can only change an operator's permit to drill an
6 oil or gas well based on the surface owner's comments if the
7 drilling activity proposed in the permit would cause erosion or
8 sedimentation, if the down hole casing and tubing program would
9 endanger water sources, if the drilling would be a safety hazard,
10 if the drilling would damage public lands, or if the state has
11 issued an actual "violation" against the operator for improper
12 activity relating to other wells.

13 (I) The state cannot change the operator's permit to drill an
14 oil or gas well because the operator's plans fail to recognize the
15 surface owner's common law rights. If the plans set out in the
16 permit do more than is fairly necessary, the surface owner's only
17 recourse is to hire a lawyer and sue in Circuit Court, which may
18 require the posting of a bond.

19 (j) As a result, many operators take advantage of surprise,
20 plus the advantages of more knowledge and years of experience on
21 the part of the operator compared to the surface owner who has
22 never had a well drilled before, plus the operator's vast
23 advantages of resources and lawyers compared to a citizen
24 landowner. As a result of these advantages, many operators fail to
25 give due regard to any preferences of the surface owners and they
26 do more than is fairly necessary to the surface owner and his or
27 her land.

28 (k) Although one statute provides that many surface owners are
29 entitled to compensation for the use of their surface land, under
30 that statute the surface owners are not entitled to their land's
31 full market value or to the diminution in the value that the
32 drilling causes to the lands adjacent to the well site, access road

1 and pipeline, even though the surface owners are the ones who will
2 continue to pay taxes on the disturbed land.

3 (l) Although the gas will be produced from under the surface
4 owners land, and although the gas will be produced out of a well
5 placed on their land and piped to market across their land, surface
6 owners have no right to connect to the well or gathering pipelines
7 for their domestic use of the gas - at any price.

8 (m) The Legislature therefore exercises its police and other
9 powers to foster, protect, and control the exercise of the parties'
10 common law rights by the enactment of this article.

11 **§22-5A-2. Definitions.**

12 For the purposes of this article the words or terms used in
13 this article, and any variation of those words or terms required by
14 the context, have the meanings ascribed to them in article six of
15 this chapter unless a different meaning clearly appears from the
16 context.

17 **§22-5A-3. Notices.**

18 The notices to the surface owner required by this article
19 shall be given to the same persons or entities and in the same
20 manner as set out for notice to surface owners of the application
21 for a well work permit as provided in article six, section nine-a
22 of this chapter.

23 **§22-5A-4. Surface use and compensation agreement.**

24 (a) A surface use agreement must be in writing or, if the
25 surface owner agrees and has the ability to use it, in the form of
26 an authenticated electronic record.

27 (b) A surface use agreement shall include:

28 (1) The name, physical address, telephone number of the
29 operator, the surface owner and the mineral owner;

30 (2) Locations and dimensions of well sites, access roads,
31 pipelines, land application sites and other uses set out in a
32 format and in sufficient detail for the surface owner to be able to

1 locate them on his or her property and determine and evaluate the
2 effect of the operator's plan on the surface owner's interest,
3 including what soil and timber or other vegetation will be
4 disturbed;

5 (3) Specifications for construction of the well site, pits,
6 disposal areas, access roads, pipelines, and other facilities or
7 uses associated with the well work or for entry on to land by
8 motorized equipment, including without limitation temporary soil
9 erosion and sediment control, dimensions of all cut and fill
10 locations, top soil banking and road grades expressed as a percent
11 of slope, side slope, drainage structures and their frequency, and
12 whether the specifications will require a waiver from the State;

13 (4) Specifications applicable for the life of the well
14 including reclamation of the well site, pits, disposal areas,
15 access roads, pipelines, and other facilities, uses or
16 disturbances of the surface lands associated with the well work
17 including without limitation erosion and sediment control for the
18 life of the well;

19 (5) Specifications for the temporary and permanent re-
20 vegetation of the well site, pits, disposal areas, access roads,
21 pipelines, and other facilities or uses associated with the well
22 work, road surfaces, soil preparation, seed species;

23 (6) Specifications for maintenance of well sites, pipelines
24 and access roads, including frequency or indicators of need for
25 maintenance including, without limitation, gating appliance
26 specifications and gate and access control practices;

27 (7) Particular specifications for maintenance at all times of
28 existing roads used by the surface owner that will also be utilized
29 by the operator, including, without limitation, gating appliance
30 specifications and gate practices;

31 (8) Compensation to the surface owner pursuant to article
32 seven of this chapter or the common law including, without

1 limitation, compensation for the value of the land disturbed by the
2 operator pursuant to the activity for which the well work permit
3 will be sought, the land foreseen for occupation of the land and
4 used by the well site, access road and pipeline or other uses, the
5 foreseen diminution in value of the adjacent land, and foreseen
6 lost or damaged personal property, fixtures, timber and other crops
7 and vegetation.

8 (c) A surface use and compensation agreement may include any
9 other documents that will be included in the well permit
10 application including those regarding casing and cementing and land
11 application of pit waste.

12 (d) A surface use and compensation agreement may include a
13 statement of no objection as provided in article twenty one,
14 section twelve of this chapter.

15 (e) A surface use and compensation agreement may not waive
16 damages for breach of the agreement, for pollution of water sources
17 or supplies not identified in the agreement, for negligence or
18 failure to perform tasks in a workmanlike manner, or for unforeseen
19 damages.

20 **§22-5A-5. Notice of initial entry upon surface lands.**

21 (a) At least fifteen days before entering upon the surface
22 land for inspection, measurements, surveying or other evaluation of
23 proposed access routes and sites for either new well work or roads
24 or other work requiring disturbance of the surface that has not
25 been disturbed before by the operator of an oil or gas well, an
26 operator shall provide notice of the fact that the operator is
27 entering the surface land and of the general purposes for such
28 entry. The fifteen days begins to run from the surface owner's
29 actual receipt of the notice or refusal to accept the notice. The
30 fifteen days notice before entry may be waived by a surface owner
31 in writing. A surface use and compensation agreement is not valid

1 unless it is finalized and signed at least fifteen days after
2 receipt of the notice provided in this section.

3 (b) The notice shall include:

4 (1) The name, mailing address and physical address of the
5 operator, and a land line telephone number if one exists, a cell
6 phone number if one exists, and an e-mail address or other
7 electronic contact information if any exist for the actual person
8 or persons who may come onto the land representing the operator,
9 the person with authority to make decisions regarding the access
10 road, well site and pipelines, and their supervisors;

11 (2) The anticipated, approximate dates and times of entry onto
12 the surface land;

13 (3) A copy of the West Virginia Oil and Gas Production
14 Compensation Act;

15 (4)A copy of this article, and other statutes regarding the
16 surface owner's rights to notice of, and to comment upon, the well
17 work permit, together with any rules arising from those statutes;

18 (5) A copy of the soil erosion and sediment control manual of
19 the Office of Oil and Gas of the State of West Virginia;

20 (6) A copy of an explanation of the surface owner's rights to
21 challenge the real property tax assessment of their land after the
22 drilling of the well: Provided that the use of a form prepared by
23 an agency of state government shall be presumed to be proper notice
24 of these rights; and

25 (7) An offer to meet with the surface owner either on the land
26 or, at the option of the surface owner, at another mutually agreed
27 location. The offer to meet shall be to meet prior to or at the
28 time of the first entry.

29 (c) At the meeting the operator shall point out and explain
30 his or her preference for locations of well sites, shall consider
31 the surface owner's suggestions for alternate locations, and if the
32 surface owner's suggestion cannot be used, shall state and make a

1 record of the reasons it cannot be used. The surface owner shall
2 state his or her preference for access roads and pipelines to the
3 proposed sites and consider the operator's suggestions for
4 alternative road locations, and if the surface owner's suggestion
5 cannot be used, the operator shall state and make a record of the
6 reasons it cannot be used.

7 **§22-5A-6. Notice of planned surface use; mediation.**

8 (a) This section does not apply if the operator and the
9 surface owner have entered into an agreed surface use and
10 compensation agreement in compliance with section six of this
11 article that, by separate signature, waives the requirements of
12 this section.

13 (b) Before filing an application for a well work permit the
14 operator shall give the surface owner notice of the planned well
15 work.

16 (c) The notice of the planned well work shall include:

17 (1) The name of the operator, the mailing and physical address
18 of the operator and the name, land line telephone number if any,
19 cell phone number if any, and e-mail or other electronic contact
20 information if any of the individual with authority to negotiate a
21 surface use and compensation agreement plus, at the option of the
22 operator, any other individual working for the operator; and

23 (2) A proposed surface use and compensation agreement as set
24 out in section seven of this article.

25 (d) The notice of planned well work shall include a statement
26 that if the parties cannot agree to a surface use and compensation
27 agreement, then either party may request that the parties enter
28 into private mediation to attempt to reach an agreement not less
29 than fifteen days nor more than thirty days from the receipt of the
30 notice of planned well work by the surface owner, and a statement
31 that the office of oil and gas may have an explanation of the
32 agreed private mediation process.

1 (e) Either party may request that the parties enter into
2 agreed private mediation not less than fifteen nor more than thirty
3 days after the notice of planned well work is received. The
4 mediator may be a person licensed as a real estate agent, a person
5 licensed as a real estate appraiser, or a person licensed as a
6 forester, and each of those licensing agencies is authorized within
7 the limits of existing funding, but not required, to provide
8 mediation training to its licensees, to charge the cost thereof,
9 and to maintain a list of those who have completed the training
10 available that is available to the public. A person who is a member
11 of the West Virginia State Bar who has completed state bar
12 mediation training may also be a mediator. The parties may agree
13 to the use of a mediator who does not meet these requirements. The
14 office of oil and gas may, but is not required, to provide a
15 brochure explaining the mediation process and possible sources of
16 mediators. Any such brochure shall be provided to the surface
17 owner by the operator when the operator requests the mediation, or
18 in response to a surface owner's request for mediation. The office
19 of oil and gas may create a written agreed private mediation form,
20 but the form does not have to be used and the mediation agreement
21 does not have to be in writing. The private mediation agreement
22 shall include a method of sharing the cost. The private mediation
23 agreement shall include an agreement on a mediator or on a person
24 to select a mediator. The mediator shall schedule the mediation
25 within twenty days of the agreement. The mediation shall follow
26 standard mediation practices. Each party must send a person to the
27 mediation with authority to enter into a surface use and
28 compensation agreement. Parties may be represented by an attorney.
29 The mediation shall be completed within 30 days of the request for
30 agreed private mediation. The report of the mediation shall be
31 documented in writing. Agreements reached through mediation are
32 binding and enforceable. If the parties cannot come to a private

1 mediation agreement on the mediator or other aspects of the
2 process, then the mediation shall not proceed.

3 (f) Notwithstanding provisions of article six, chapter eleven
4 of this chapter, unless the operator submits an agreed surface use
5 and compensation agreement with the permit application that, by
6 separate signature, waives the requirements of this section, no
7 well work permit application shall be submitted to the office of
8 oil and gas until forty-five days after the notice has been
9 received by the surface owner: Provided, that if a party makes a
10 request for agreed private mediation within 30 days of receipt by
11 the surface owner of the notice of planned well work, a permit
12 application may not be submitted until 60 days after the service of
13 the notice of planned surface use. The surface use agreement so
14 submitted may also include a separately signed statement of no
15 objections as provided in article six of this chapter.

16 **§22-5A-7. Effect of surface use and compensation agreement; bond.**

17 (a) If a statement of no objections is included in a surface
18 use and compensation agreement as provided in article six of this
19 chapter, the director may issue a permit at any time without
20 waiting for any comment from the surface owner. However, the
21 surface owner may still comment (1) on any provision of the permit
22 that was not supplied to the surface owner prior to signing the
23 statement of no objection, (2) on any documents that contains
24 provisions inconsistent with the surface use and compensation
25 agreement or documents included with the surface use and
26 compensation agreement. The director shall deny or condition a
27 permit if it is inconsistent with a surface use and compensation
28 agreement or document included with the surface use and
29 compensation agreement.

30 (b) If an agreed upon surface use and compensation agreement
31 is not submitted with the permit application, no permit may issue
32 pursuant to article six chapter eleven of this Chapter unless the

1 operator submits proof that it has furnished a surety bond, letter
2 of credit from a banking institution or a certificate of deposit
3 for the benefit of the surface owner in the amount of twenty
4 thousand dollars for each permitted well work. The surety bond,
5 letter of credit, cash or certificate of deposit shall only be
6 released by the surety company, financial institution or state if:

7 (1) the operator and the surface owner enter into an agreed
8 surface use and compensation agreement before reclamation has been
9 completed;

10 (2)the surface owner signs a release after reclamation has
11 been completed regarding compensation for damages;

12 (3)the operator provides proof that it has paid an amount for
13 surface owner compensation determined by binding arbitration
14 pursuant to article seven of this chapter;

15 (4)the operator provides proof that it has paid a judgement in
16 favor of the surface owner entered by a magistrate court or a
17 circuit court of this state or a federal court; or

18 (5)as provided in article seven, section five-a of this
19 chapter.

20 **§22-5A-8. Purchase of gas by surface owners.**

21 (a) Where the owner of the surface on which a gas well has
22 been drilled is not entitled to or is not given free gas and does
23 not have access to gas from a regulated utility, the surface owner
24 shall have the option of connecting to the well or, at the option
25 of the well operator, to another well or any gathering line to the
26 well or another well in order to obtain gas service for one
27 residence or farm, or residence and associated farm.

28 (b) The surface owner is responsible for all of the reasonable
29 actual costs of making the connection.

30 (c) The operator may set reasonable conditions to assure the
31 safety and integrity of its system in a surface use and
32 compensation agreement or another agreement.

1 (d) The operator may require the surface owner to pay for the
2 gas at a price no greater than that used to determine the royalty
3 owner's payment and may set a maximum amount if the surface owner's
4 use of a greater amount than the maximum would interfere with the
5 operation of or production from the gas well.

6 (e) The operator has the duty to warn of known dangers
7 relating to the surface owner's use of the gas, but is otherwise
8 not liable for ordinary negligence.

9 (f) The operator may have reasonable rules for the safe and
10 reliable purchase and use of the gas by the surface owner.

11 (h) Notwithstanding other statutes or rules or case law, a
12 person who receives well head or gathering line gas pursuant to
13 this section is not a "residential customer" for the purpose of
14 determining whether a natural gas producer is a public utility.

15 **§22-5A-9. Options for surface use and re-vegetation.**

16 (a) The office of oil and gas shall include in its soil
17 erosion and sediment control manual alternatives for road
18 construction that include the interests of the surface owner for a
19 permanent road intended for regular travel through his or her
20 property or a road that has minimal impacts upon the property, and
21 alternatives for re-vegetation with fast growing, wildlife, or
22 native seed species or other individually negotiated seed species
23 subject to approval by the chief.

24 (b) Any requirement of the soil erosion and sediment control
25 manual that can be waived by the inspector of the office of oil and
26 gas can only be waived if the surface owner also agrees in writing.
27 If the surface owner is a natural person or persons, the waiver
28 must be in writing and separately signed from other waivers.

29 (c) "Daylighting", the practice of clearing woody material
30 back from the roadway in an attempt to accelerate drying of the
31 road surface, may only be used with the written consent of the
32 surface owner.

1 **§22-5A-10. Waiver.**

2 Except as expressly provided, the provisions of this article
3 may not be waived.

4 **§22-5A-11. Effective dates.**

5 Sections one, two, three, four, five, six, seven and nine
6 shall apply to all permits issued more than ninety days from
7 passage. Section eight shall take effect ninety days from passage.
8 Subsections (b) and (c) of section nine take effect from passage.
9 Subsection (a) of section nine takes effect the first day of
10 September, two thousand nine.

11 **ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS;**
12 **ADMINISTRATION; ENFORCEMENT.**

13 **§22-6-6. Permit required for well work; permit fee; application;**
14 **soil erosion control plan.**

15 (a) It is unlawful for any person to commence any well work,
16 including site preparation work which involves any disturbance of
17 land, without first securing from the director a well work permit.
18 An application may propose and a permit may approve two or more
19 activities defined as well work.

20 (b) The application for a well work permit shall be
21 accompanied by applicable bond as prescribed by section twelve,
22 fourteen or twenty-three of this article, and the applicable plat
23 required by section twelve or fourteen of this article.

24 (c) Every permit application filed under this section shall be
25 verified and shall contain the following:

26 (1) The names and addresses of: (I) The well operator; (ii)
27 the agent required to be designated under subsection (e) of this
28 section; and (iii) every person whom the applicant must notify
29 under any section of this article together with a certification and
30 evidence that a copy of the application and all other required
31 documentation has been delivered to all such persons;

1 (2) The name and address of every coal operator operating coal
2 seams under the tract of land on which the well is or may be
3 located, and the coal seam owner of record and lessee of record
4 required to be given notice by section twelve, if any, if said
5 owner or lessee is not yet operating said coal seams;

6 (3) The number of the well or such other identification as the
7 director may require;

8 (4) The type of well;

9 (5) The well work for which a permit is requested;

10 (6) The approximate depth to which the well is to be drilled
11 or deepened, or the actual depth if the well has been drilled;

12 (7) Any permit application fee required by law;

13 (8) If the proposed well work will require casing or tubing to
14 be set, the entire casing program for the well, including the size
15 of each string of pipe, the starting point and depth to which each
16 string is to be set, and the extent to which each such string is to
17 be cemented;

18 (9) If the proposed well work is to convert an oil well or a
19 combination well or to drill a new well for the purpose of
20 introducing pressure for the recovery of oil as provided in section
21 twenty-five of this article, specifications in accordance with the
22 data requirements of section fourteen of this article;

23 (10) If the proposed well work is to plug or replug the well:

24 (I) Specifications in accordance with the data requirements of
25 section twenty-three of this article; (ii) a copy of all logs in
26 the operator's possession as the director may require; and (iii) a
27 work order showing in detail the proposed manner of plugging or
28 unplugging the well, in order that a representative of the director
29 and any interested persons may be present when the work is done.
30 In the event of an application to drill, redrill or deepen a well,
31 if the well work is unsuccessful so that the well must be plugged
32 and abandoned, and if the well is one on which the well work has

1 been continuously progressing pursuant to a permit, the operator
2 may proceed to plug the well as soon as the operator has obtained
3 the verbal permission of the director or the director's designated
4 representative to plug and abandon the well, except that the
5 operator shall make reasonable effort to notify as soon as
6 practicable the surface owner and the coal owner, if any, of the
7 land at the well location, and shall also timely file the plugging
8 affidavit required by section twenty-three of this article;

9 (11) If the proposed well work is to stimulate an oil or gas
10 well, specifications in accordance with the data requirements of
11 section thirteen of this article;

12 (12) The erosion and sediment control plan required under
13 subsection (d) of this section for applications for permits to
14 drill; and

15 (13) Any other relevant information which the director may
16 require by rule.

17 (d) An erosion and sediment control plan shall accompany each
18 application for a well work permit. ~~except for a well work permit~~
19 ~~to plug or replug any well~~ Such plan shall contain methods of
20 stabilization and drainage, including a map of the project area
21 indicating the amount of acreage disturbed, including without
22 limitation acreage disturbed for pipelines and the type and spacing
23 of access road drainage structures. The erosion and sediment
24 control plan shall meet the minimum requirements of the West
25 Virginia erosion and sediment control manual as adopted and from
26 time to time amended by the division, in consultation with the
27 several soil conservation districts pursuant to the control program
28 established in this state through section 208 of the federal Water
29 Pollution Control Act Amendments of 1972 (33 U.S.C. §1288). The
30 erosion and sediment control plan shall become part of the terms
31 and conditions of a well work permit, ~~except for a well work permit~~
32 ~~to plug or replug any well,~~ which is issued and the provisions of

1 the plan shall be carried out where applicable in the operation.
2 The erosion and sediment control plan shall set out the proposed
3 method of reclamation which shall comply with the requirements of
4 section thirty of this article.

5 (e) The well operator named in such application shall
6 designate the name and address of an agent for such operator who
7 shall be the attorney-in-fact for the operator and who shall be a
8 resident of the State of West Virginia upon whom notices, orders or
9 other communications issued pursuant to this article or article
10 eleven, chapter twenty-two, may be served, and upon whom process
11 may be served. Every well operator required to designate an agent
12 under this section shall within five days after the termination of
13 such designation notify the director of such termination and
14 designate a new agent.

15 (f) The well owner or operator shall install the permit number
16 as issued by the director in a legible and permanent manner to the
17 well upon completion of any permitted work. The dimensions,
18 specifications and manner of installation shall be in accordance
19 with the rules of the director.

20 (g) The director may waive the requirements of this section
21 and sections nine, ten and eleven of this article in any emergency
22 situation, if the director deems such action necessary. In such
23 case the director may issue an emergency permit which would be
24 effective for not more than thirty days, but which would be subject
25 to reinsurance by the director.

26 (h) The director shall deny the issuance of a permit if the
27 director determines that the applicant has committed a substantial
28 violation of a previously issued permit, including the erosion and
29 sediment control plan, or a substantial violation of one or more of
30 the rules promulgated hereunder, and whether or not a finding or
31 order has been made pursuant to sections three and four of this
32 article. If a finding or order has been made pursuant to sections

1 three and four of this article, the permit shall not be denied
2 unless the applicant has failed to abate or seek review of the
3 violation within the time prescribed by the director pursuant to
4 the provisions of sections three and four of this article and the
5 rules promulgated hereunder, which time may not be unreasonable:
6 *Provided*, That in the event that the director does find that a
7 substantial violation has occurred and that the operator has failed
8 to abate or seek review of the violation in the time prescribed,
9 the director may suspend the permit on which said violation exists,
10 after which suspension the operator shall forthwith cease all well
11 work being conducted under the permit: *Provided, however*, That the
12 director may reinstate the permit without further notice, at which
13 time the well work may be continued. The director shall make
14 written findings of any such determination and may enforce the same
15 in the circuit courts of this state and the operator may appeal
16 such suspension pursuant to the provisions of section forty of this
17 article. The director shall make a written finding of any such
18 determination.

19 (I) Any person who violates any provision of this section
20 shall be guilty of a misdemeanor and, upon conviction thereof,
21 shall be fined not more than five thousand dollars, or be
22 imprisoned in the county jail not more than twelve months, or both
23 fined and imprisoned.

24 **ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.**

25 **§22-7-3. Compensation of surface owners for drilling operations.**

26 (a) The oil and gas developer shall be obligated to pay the
27 surface owner compensation for:

28 (1) Lost income or expenses incurred as a result of being
29 unable to dedicate land actually occupied by the driller's
30 operation or to which access is prevented by such drilling
31 operation to the uses to which it was dedicated prior to
32 commencement of the activity for which a permit was obtained

1 measured from the date the operator enters upon the land until the
2 date reclamation is completed;

3 (2) The market value of crops destroyed, damaged or prevented
4 from reaching market;

5 (3) Any damage to a water supply in use prior to the
6 commencement of the permitted activity;

7 (4) The cost of repair of personal property up to the value of
8 replacement by personal property of like age, wear and quality; and

9 (5) The diminution in value, if any, of the surface lands and
10 other property after completion of the surface disturbance done
11 pursuant to the activity for which the permit was issued determined
12 according to the ~~actual use made~~ market value thereof ~~by the~~
13 ~~surface owner~~ immediately prior to the commencement of the
14 permitted activity, including the surface lands actually disturbed,
15 and any adjacent surface lands the market value of which is
16 diminished by the presence of the well and the surface disturbance
17 and other appurtenances.

18 The amount of damages may be determined by any formula
19 mutually agreeable between the surface owner and the oil and gas
20 developer.

21 (b) Any reservation or assignment of the compensation provided
22 in this section apart from the surface estate except to a tenant of
23 the surface estate is prohibited.

24 (c) In the case of surface lands owned by more than one person
25 as tenants in common, joint tenants or other coownership, any claim
26 for compensation under this article shall be for the benefit of all
27 such coowners. The resolution of a claim for compensation provided
28 in this article shall operate as a bar to the assertion of
29 additional claims under this section arising out of the same
30 drilling operations.

31 **§22-7-5. Notification of claim.**

1 Any surface owner, to receive compensation under section three
2 of this article, shall notify the oil and gas developer of the
3 damages sustained by the person ~~within~~ at any time after ninety
4 days after the drilling rig is removed from the site, but no later
5 than two years after the date that the oil and gas developer files
6 notice that reclamation is commencing under section thirty, article
7 six of this chapter. Such notice shall be given to surface owners,
8 by delivering it in person, or by registered or certified mail,
9 return receipt requested, and shall be complete upon mailing. If
10 more than three tenants in common or other coowners hold interests
11 in such lands, the developer may give such notice to the person
12 described in the records of the sheriff required to be maintained
13 pursuant to section eight, article one, chapter eleven-a of this
14 code, ~~or~~ and to any other owner requesting a copy or if neither a
15 current location for personal service nor a mailing address for
16 registered or certified mail notice can be obtained after
17 reasonable diligence, and no other owner has requested a copy
18 publish in the county in which the well is located or to be located
19 a Class II legal advertisement as described in section two, article
20 three, chapter fifty-nine of this code, containing such notice and
21 information as the director shall prescribe by rule.

22 **§22-7-5A. Notification of claim by certain operators.**

23 An operator who has posted a bond pursuant to 22-7a-4 that has
24 not been released may make an offer of settlement to the surface
25 owner by hand delivery in the same manner as provided in 22-6-
26 9(a)(2) and (b).

27 (1) If the surface owner accepts the offer and the
28 compensation is paid, then the bond required by 22-7A-4 shall be
29 released.

30 (2) If the surface owner rejects the offer and elects binding
31 arbitration the bond shall be released at the end of the

1 arbitration or one year from the election of arbitration, which
2 ever is earlier.

3 (3) If the surface owner files an action for compensation in
4 circuit court the bond shall be released when the action is
5 dismissed or within two years of the filing of the action,
6 whichever is earlier.

7 (4) If the surface owner neither elects arbitration nor files
8 an action in circuit court the bond shall be released after the
9 later of

10 (A) the last day for the surface owner to elect arbitration
11 under this section, or

12 (B) the last day upon which a surface owner may notify the oil
13 and gas developer of the damages sustained as set out in section
14 five of this article: Provided, that in order for the bond to be
15 released under this subdivision, the operator must have provided a
16 notice to the surface owner not less than three calendar months nor
17 more than one calendar year before the last day which states the
18 last calendar day before the deadline passes and notifies the
19 surface owner that that is the last day to notify the oil and gas
20 developer of the damages sustained to begin a claim for damages
21 pursuant to the oil and gas production damages compensation act.

22 **§22-7-7. Rejection; legal action; arbitration; fees and costs.**

23 (a) Unless the oil and gas developer has paid the surface
24 owner a negotiated settlement of compensation within sixty days
25 after the date the notification of claim was mailed under section
26 five of this article, the surface owner may ~~within eighty days~~
27 ~~after the notification mail date,~~ either: (I) Bring an action for
28 compensation pursuant to this article in the circuit court of the
29 county in which the well is located within the statute of
30 limitations for a common law damages action; or (ii) within one
31 hundred twenty days after the notification mail date, elect
32 instead, by written notice delivered by personal service or by

1 certified mail, return receipt requested, to the designated agent
2 named by the oil and gas developer under the provisions of section
3 six, article six of this chapter, to have his or her compensation
4 finally determined by binding arbitration pursuant to article ten,
5 chapter fifty-five of this code. A surface owner may not proceed
6 in circuit court after receiving an arbitration award pursuant to
7 this article.

8 Settlement negotiations, offers and counter-offers between the
9 surface owner and the oil and gas developer shall not be admissible
10 as evidence in any arbitration or judicial proceeding authorized
11 under this article, or in any proceeding resulting from the
12 assertion of common law remedies.

13 (b) The compensation to be awarded to the surface owner shall
14 be determined by a panel of three disinterested arbitrators. The
15 first arbitrator shall be chosen by the surface owner in such
16 party's notice of election under this section to the oil and gas
17 developer; the second arbitrator shall be chosen by the oil and
18 gas developer within ten days after receipt of the notice of
19 election; and the third arbitrator shall be chosen jointly by the
20 first two arbitrators within twenty days thereafter. If they are
21 unable to agree upon the third arbitrator within twenty days, then
22 the two arbitrators are hereby empowered to and shall forthwith
23 submit the matter to the court under the provisions of section one,
24 article ten, chapter fifty-five of this code, so that, among other
25 things, the third arbitrator can be chosen by the judge of the
26 circuit court of the county wherein the surface estate lies.

27 (c) The following persons shall be deemed interested and not
28 be appointed as arbitrators: Any person who is personally
29 interested in the land on which rotary drilling is being performed
30 or has been performed, or in any interest or right therein, or in
31 the compensation and any damages to be awarded therefor, or who is
32 related by blood or marriage to any person having such personal

1 interest, or who stands in the relation of guardian and ward,
2 master and servant, principal and agent, or partner, real estate
3 broker, or surety to any person having such personal interest, or
4 who has enmity against or bias in favor of any person who has such
5 personal interest or who is the owner of, or interested in, such
6 land or the oil and gas development thereof. No person shall be
7 deemed interested or incompetent to act as arbitrator by reason of
8 being an inhabitant of the county, district or municipal
9 corporation wherein the land is located, or holding an interest in
10 any other land therein.

11 (d) The panel of arbitrators shall hold hearings and take such
12 testimony and receive such exhibits as shall be necessary to
13 determine the amount of compensation to be paid to the surface
14 owner. However, no award of compensation shall be made to the
15 surface owner unless the panel of arbitrators has first viewed the
16 surface estate in question. A transcript of the evidence may be
17 made but shall not be required.

18 (e) Each party shall pay the compensation of such party's
19 arbitrator and one half of the compensation of the third
20 arbitrator, or such party's own court costs as the case may be.

21 **§22-7-9. Effective date of amendments.**

22 The amendments to this article made by the regular session of
23 the 2009 Legislature take effect for all well work for which a
24 notice that the operator is commencing reclamation pursuant to
25 section five of this article has not been sent.

NOTE: The purpose of this bill is to enhance the exercise of the state's police powers regarding the rights of surface owners and drillers when oil and gas wells are drilled on the surface owner's land by:

•Enacting procedures to encourage the recognition of the existing common law and statutory rights of surface owners as oil

and gas well operators begin drilling new wells or performing other well work on the surface owners' land. The existing, statutory, waivable right of the surface owners to comment on how, but not where, the well sites, access roads etc. are built during the state permit application process remains waivable. If the surface owner and the operator enter into a "surface use and compensation agreement" determining where the well site and access road are built and other aspects of the driller's activity, the bill only adds a new 15 day non-waivable notice to the surface owners, and the surface owner's existing 15 day right to comment on the well work permit can still be waived as part of the agreement. If the operator and surface owner cannot agree, the operator can limit the delay caused by the new procedures to 60 days.

- Enacting an option for the surface owners to purchase gas to heat their homes from the wells being drilled on the surface owners' property.

- Amending the Oil and Gas Production Compensation Act to require that surface owners be compensated for the loss of use of the surface owner's land for the well site and access road at its market value, and to require that surface owners be compensated for the decrease in market value of the surface owners' other land caused by the placement of a well site and access road on the surface owners' lands.

- Making other changes to current statutes.

§§22-5A and §22-7-7a and 9 are new; therefore, strike-throughs and underscoring have been omitted. [Actually they are underlined in this draft to make it easier to see the changes.]

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

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