

By: Swinford

H.B. No. 1803

A BILL TO BE ENTITLED

AN ACT

relating to surface use planning and restoration for oil and gas mineral leases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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SECTION 1. Title 3, Natural Resource Code, Chapter 91, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. SURFACE USE ACT

Section 91.701. Legislative findings and intent. The legislature finds that.

1. It is necessary to exercise the police power of the state to protect the public welfare of Texas, which is greatly dependent on agriculture, ranching, and wildlife, and to protect the economic well being of individuals engaged in agricultural, ranching, and wildlife production.

2. Exploration for and development of oil and gas reserves in this state affect the use of certain land.

3. The mineral estate is dominant over the surface estate; however, owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property caused by oil and gas development.

Section 91.702. PURPOSE AND INTERPRETATION. It is the purpose of this chapter to provide the maximum amount of

1 constitutionally permissible protection to surface owners and  
2 other persons from the undesirable effects of development of  
3 minerals. This chapter is to be interpreted in light of the  
4 legislative intent expressed herein. Sections 91.704 and 91.705  
5 shall be interpreted to benefit surface owners, regardless of  
6 whether the mineral estate was separated from the surface estate  
7 and regardless of who executed the document which gave the mineral  
8 developer the right to conduct drilling operations on the land.  
9 Sections 91.706 through 91.708 must be interpreted to benefit all  
10 persons.

11 Section 91.703. Definitions. In this chapter:

12 1. "Agricultural production" means agricultural use as  
13 defined in Tax Code Section 23.51(2), and wildlife management as  
14 defined in Tax Code Section 23.51(7).

15 2. "Drilling operations" means the entry upon the surface  
16 estate for drilling purposes after September 1, 2003, the drilling  
17 of an oil and gas well, and the production and completion operations  
18 ensuing from the drilling which require entry upon the surface  
19 estate, and oil and gas geophysical and seismograph exploration  
20 activities.

21 3. "Mineral developer" means the person who acquires the  
22 mineral estate or lease for the purpose of extracting or using the  
23 minerals for nonagricultural purposes.

24 4. "Mineral estate" means an estate in or ownership of all  
25 or part of the minerals underlying a specified tract of land.

26 5. "Minerals" mean oil and gas.

27 6. "Surface estate" means an estate in or ownership of the

1 surface of a particular tract of land.

2 7. "Surface owner" means any person who holds record title  
3 to the surface of the land as an owner.

4 Section 91.704. DAMAGE AND DISRUPTION PAYMENTS. The  
5 mineral developer shall pay the surface owner a sum of money equal  
6 to the amount of damages sustained by the surface owner, if any, for  
7 loss of agricultural production and income, lost land value, lost  
8 use of and access to the surface owner's land, and lost value of  
9 improvements caused by drilling operations. The amount of damages  
10 may be determined by any formula mutually agreeable or agreed to  
11 between the surface owner and the mineral developer. When  
12 determining damages, consideration must be given to the amount of  
13 land and the period of time during which the loss occurs and the  
14 surface owner may elect to be paid damages in annual installments  
15 over a period of time; except that the surface owner must be  
16 compensated for harm caused by exploration only by a single sum  
17 payment. Payments under this section are intended to compensate the  
18 surface owner for anticipated and foreseeable damage and  
19 disruption; any reservation or assignment of such compensation  
20 apart from the surface estate except to a tenant of the surface  
21 estate is prohibited. The payments contemplated by this section  
22 shall not in any way be construed to limit the amount of damages a  
23 surface owner would otherwise be entitled to recover from  
24 unforeseen, accidental, or omitted acts.

25 Section 91.705. NOTICE OF DRILLING OPERATIONS. Except in  
26 instances where there are unknown heirs, imperfect titles, or  
27 surface owners whose whereabouts cannot be ascertained with

1 reasonable diligence, the mineral developer shall give the surface  
2 owner written notice of the drilling operations contemplated at  
3 least thirty days (30) prior to the commencement of the operations,  
4 unless waived by mutual agreement of both parties. If the mineral  
5 developer plans to begin drilling operations within thirty days  
6 (30) of the termination date of the mineral lease, the required  
7 notice under this section may be given at any time prior to the  
8 commencement of drilling operations. This notice must be given to  
9 the record surface owner at that person's address as shown by the  
10 records of the county clerk or county tax assessor at the time the  
11 notice is given. This notice must sufficiently disclose the plan of  
12 work, the amount of land to be affected, and operations to enable  
13 the surface owner to evaluate the effect of drilling operations on  
14 the surface owner's use of the property. Included with this notice  
15 must be a statement from the mineral developer advising the surface  
16 owner of the surface owner's rights and options under this chapter.  
17 If a mineral developer fails to give notice as provided under this  
18 section, the surface owner may seek any appropriate relief in the  
19 court of proper jurisdiction and may receive actual damages. The  
20 prevailing party is entitled to recover reasonable court costs and  
21 attorneys fees.

22 Section 91.706. AGREEMENT - OFFER OF SETTLEMENT. Unless  
23 both parties provide otherwise by written agreement, at the time  
24 the notice required by section 91.705 is given, the mineral  
25 developer shall make a written offer of settlement to the person  
26 seeking compensation for damages at the time notice required by  
27 section 91.705 is given. The person seeking compensation may

1 accept or reject any offer so made. Notwithstanding Section  
2 91.707(a), the mineral developer shall not enter the site with  
3 heavy equipment until the parties agree and a written contract is  
4 signed.

5 Section 91.707. REJECTION - LEGAL ACTION - FEES AND COSTS.

6 A. If agreement is not reached, or if the mineral developer is not  
7 able to contact all parties, the mineral developer shall petition  
8 the district court in the county in which the drilling site is  
9 located for appointment of appraisers to make recommendations to  
10 the parties and to the court concerning the amount of damages, if  
11 any. Once the mineral developer has petitioned for appointment of  
12 appraisers, the operator may enter the surface estate.

13 B. If the mineral developer and the surface owner do not mutually  
14 agree on a third party appraiser, the mineral developer shall  
15 select one appraiser, the surface owner shall select one appraiser,  
16 and the two selected appraisers shall select a third appraiser for  
17 appointment by court. Unless for good cause shown, additional time  
18 is allowed by the district court, the three appraisers shall be  
19 selected within twenty (20) days of the service of notice as  
20 provided by Section 91.705. If either of the parties fails to  
21 appoint an appraiser or if the two appraisers cannot agree on the  
22 selection of the third appraiser within the required time period,  
23 the remaining required appraisers shall be selected by the district  
24 court upon application of either party. The appraisers shall  
25 inspect the real property and consider the surface damages, which  
26 the surface owner has sustained or will sustain by reason of the  
27 drilling operations. They shall then file a written report within

1 thirty (30) days of the date of their appointment with the clerk of  
2 the court. The appraisers shall make a valuation and determine the  
3 amount of compensation to be paid by the operator to the surface  
4 owner and the manner in which the amount shall be paid. Said  
5 appraisers shall then make a report of their proceedings to the  
6 court. The court shall make a ruling on the valuation based on the  
7 submitted report. The compensation of the appraisers shall be  
8 fixed and determined by the court. The operator and the surface  
9 owner shall share equally in the payment of the appraisers' fees and  
10 court costs.

11 C. Within ten (10) days after the report of the appraisers is  
12 filed, the clerk of the court shall forward to each party, a copy of  
13 the report and a notice stating that each party is bound by the  
14 report.

15 Section 91.708. APPLICATION OF CHAPTER. The remedies  
16 provided by this chapter do not preclude any person from seeking  
17 other remedies allowed by law.

18 SECTION 2. This Act takes effect September 1, 2003.

19 SECTION 3. The importance of this legislation and the  
20 crowded condition of the calendar in both houses creates an  
21 emergency and an imperative public necessity that the  
22 constitutional rule requiring bills to be read on three several  
23 days in each house be suspended, and this rule is hereby suspended.