

By: Oliveira

H.B. No. 3749

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to establishing certain rights of an owner of the surface  
3 estate in land who does not own any interest in the mineral estate  
4 in the land in connection with the exploration for and production of  
5 the minerals.

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

7 SECTION 1.

8 (a) The legislature determines that:

9 (1) tracts in which the surface and minerals have not  
10 been severed are becoming scarce;

11 (2) it has become difficult for an owner of the surface  
12 estate in land to locate all of the owners of the mineral estate in  
13 the land in order to negotiate contracts for surface use  
14 restrictions;

15 (3) the surface of land is often harmed by the  
16 development of the mineral estate in the land, and the surface  
17 estate owner is not required to be compensated for the damage to the  
18 surface;

19 (4) there is no statutory requirement that mineral  
20 development equipment and related improvements be removed and that  
21 the surface of land be restored after mineral development  
22 operations have ceased;

23 (5) the circumstances described by this subsection  
24 impede the development of land in this state to its fullest and most

1 efficient use; and

2 (6) it is necessary for the legislature to exercise  
3 its authority under Section 59, Article XVI, Texas Constitution, to  
4 ensure the proper and orderly development of the surface and  
5 mineral estates in land in this state.

6 (c) For the reasons stated in Subsection (a) of this  
7 section, the legislature intends that:

8 (1) each owner of the surface estate in land who does  
9 not own any interest in the mineral estate in the land receive  
10 compensation for damages to the surface and the use of the surface  
11 in connection with mineral exploration and development; and

12 (2) mineral development equipment and related  
13 improvements be removed and the surface tract be restored after  
14 mineral development operations in, on or under the surface tract  
15 have ceased.

16 SECTION 2. Subtitle B, Title 3, Natural Resources Code, is  
17 amended by adding Chapter 93 to read as follows:

18 CHAPTER 93. SURFACE PROTECTIONS

19 Sec. 93.001. DEFINITIONS. In this chapter:

20 (1) "Commission" means the Railroad Commission of  
21 Texas.

22 (2) "Damage fee" means a one-time fee paid to a surface  
23 tract owner by a mineral interest user as provided under this  
24 chapter for all anticipated damages to the surface tract caused by  
25 the actions of the mineral interest user in developing the minerals  
26 in, on, or under the surface tract other than damages resulting from  
27 actions that are grossly negligent or intentional.

1           (3) "Mineral development improvements" means  
2 equipment and improvements installed or constructed by or on behalf  
3 of a mineral interest user on a surface tract, including drilling  
4 pad sites, pipelines, compressor stations, roads to drilling pad  
5 sites, tanks, and other incidental equipment and improvements that  
6 a mineral interest user may use to explore for and produce minerals  
7 in, on, or under a surface tract.

8           (4) "Mineral development site" means a surface area on  
9 a surface tract where mineral development improvements are located  
10 that a mineral interest user may use to explore for and produce  
11 minerals in, on, or under a surface tract.

12           (5) "Mineral interest user" means a person holding a  
13 possessory mineral interest who engages in exploration for or the  
14 development of minerals in, on, or under a surface tract.

15           (6) "Possessory mineral interest" means a mineral  
16 interest that includes the right to use a surface tract for the  
17 exploration for and production of minerals.

18           (7) "Surface tract" means the surface estate of a  
19 tract of land owned by a surface tract owner on which a mineral  
20 development site has been or may be located.

21           (8) "Surface tract owner" means an owner of a surface  
22 tract who does not own an interest in the minerals in, on, or under  
23 the land from which the surface tract has been severed.

24           (9) "Use fee" means an annual fee paid to a surface  
25 tract owner by a mineral interest user as provided under this  
26 chapter for the use of the surface tract and the placement of  
27 mineral development improvements on the tract until any well

1 drilled on a mineral development site on the surface tract is  
2 plugged and abandoned.

3 Sec. 93.002. APPLICABILITY. (a) This chapter applies only  
4 to a surface tract.

5 (b) This chapter does not apply to land in which the  
6 minerals are owned by this state.

7 Sec. 93.003. RULES. The commission shall adopt rules as  
8 necessary for the implementation of this chapter, including rules  
9 governing:

10 (1) the contents of an application under Section  
11 93.005(b);

12 (2) the procedure for conducting a hearing under  
13 Section 93.005(d);

14 (3) the method for determining the appropriate amount  
15 of a damage fee and a use fee under Section 93.005(e); and

16 (4) the contents of an affidavit under Section  
17 93.007(d).

18 Sec. 93.004. NOTICE OF INTENT TO ENTER SURFACE TRACT. Not  
19 later than the 20th day before the date a mineral interest user  
20 begins using a surface tract, the mineral interest user must mail  
21 notice to each surface tract owner at the surface tract owner's last  
22 known mailing address of the mineral interest user's intention to  
23 enter the surface tract in order to explore for and produce minerals  
24 in, on, or under the surface tract. The notice must include the  
25 proposed location of any mineral development site.

26 Sec. 93.005. DETERMINATION OF AMOUNT OF DAMAGE FEE AND USE  
27 FEE. (a) After the mineral interest user provides the notice

1 required by Section 93.004 to a surface tract owner, the mineral  
2 interest user and the surface tract owner shall make a good faith  
3 attempt to agree to the amount of a damage fee and a use fee to be  
4 paid to the surface tract owner by the mineral interest user.

5 (b) If the mineral interest user and the surface tract owner  
6 are unable to reach an agreement under Subsection (a), the mineral  
7 interest user or the surface tract owner may file an application  
8 with the commission requesting that the commission determine the  
9 amount of the damage fee and the use fee.

10 (c) An application under Subsection (b) must be accompanied  
11 by:

12 (1) an application fee set by the commission in an  
13 amount sufficient to cover the cost of administering this chapter;

14 (2) a survey showing the boundaries of the surface  
15 tract and the proposed location of any mineral development site;  
16 and

17 (3) if the application is filed by the mineral  
18 interest user, a description of all anticipated mineral development  
19 improvements to be installed or constructed on the surface tract.

20 (d) The commission shall, on notice to the surface tract  
21 owner and the mineral interest user, conduct a hearing on the  
22 application. The surface tract owner and the mineral interest user  
23 may present evidence at the hearing.

24 (e) Following the hearing on the application, the  
25 commission shall issue an order determining:

26 (1) the amount of the damage fee and the use fee to be  
27 paid to the surface tract owner by the mineral interest user; and

1           (2) any other matter the commission considers  
2 necessary or appropriate in connection with the determination of  
3 the amount of the fees.

4           (f) In determining the amount of the damage fee, the  
5 commission shall consider the actual and anticipated damages to the  
6 surface tract from the date of the filing of the application under  
7 Subsection (b). In determining the amount of the use fee, the  
8 commission shall consider the past and current use of the surface  
9 tract and the surface tract owner's interest in the surface tract.

10           (g) The surface tract owner or the mineral interest user may  
11 appeal the determination of the commission as provided by law.

12           (h) Either the surface tract owner or the mineral interest  
13 user may file a certified copy of the commission's order issued  
14 under Subsection (e) with the clerk of the county in which the  
15 surface tract is located.

16           (i) The mineral interest user must pay each surface tract  
17 owner a separate damage fee and use fee in connection with each oil  
18 or gas well drilled or other mineral development operation  
19 conducted on the surface tract.

20           Sec. 93.006. USE OF SURFACE TRACT. (a) The mineral  
21 interest user may enter the surface tract and use it for the  
22 exploration for and production of minerals in accordance with the  
23 mineral interest user's contractual rights and applicable law  
24 following:

25           (1) the payment by the mineral interest user to each  
26 surface tract owner of the amount of the damage fee and the use fee  
27 agreed to by the mineral interest user and the surface tract owner

1 under Section 93.005(a), if applicable; or

2 (2) the filing of an application under Section  
3 93.005(b), if applicable.

4 (b) Notwithstanding Subsection (a)(2), on the issuance of  
5 an order by the commission under Section 93.005(e) determining the  
6 amount of the damage fee and the use fee, the mineral interest user  
7 must suspend operations on the surface tract until the mineral  
8 interest user pays each surface tract owner the amount of the damage  
9 fee and the use fee as determined by the commission.

10 (c) If the mineral interest user fails to pay a surface  
11 tract owner the amount of the damage fee or the use fee on or before  
12 the 10th day after the date the mineral interest user and the  
13 surface tract owner enter into an agreement under Section 93.005(a)  
14 or the commission issues an order with respect to the surface tract  
15 owner under Section 93.005(e), the surface tract owner may:

16 (1) prohibit the mineral interest user from using the  
17 surface tract; and

18 (2) charge the mineral interest user interest on the  
19 unpaid amount of the damage fee or use fee at an annual rate of 10  
20 percent per annum.

21 (d) Not later than the 30th day after the date the mineral  
22 interest user ceases mineral development operations on a mineral  
23 development site, the mineral interest user shall:

24 (1) remove all mineral development improvements in  
25 connection with the mineral development site; and

26 (2) restore the mineral development site to  
27 substantially the condition it was in before the mineral interest

1 user began using the site.

2 (e) If the mineral interest user fails to comply with  
3 Subsection (d), a surface tract owner may:

4 (1) remove the mineral development improvements from  
5 the mineral development site and restore the site as provided by  
6 Subsection (d); and

7 (2) charge the mineral interest user for all costs  
8 incurred in connection with the actions described by Subdivision  
9 (1).

10 (f) The mineral interest user shall pay the amount charged  
11 under Subsection (e)(2) not later than the 10th day after the date  
12 the mineral interest user receives the surface tract owner's  
13 invoice. If the mineral interest user fails to pay the amount  
14 charged by the deadline prescribed by this subsection, the unpaid  
15 amount incurs interest at an annual rate of 10 percent per annum  
16 until paid.

17 (g) The mineral interest user may not use any groundwater  
18 under or surface water on the surface tract in connection with a  
19 mineral development site or mineral development improvements  
20 without the express prior written consent of the surface tract  
21 owner.

22 (h) The mineral interest user's use of the surface tract in  
23 connection with the exploration for and production of minerals must  
24 be reasonable, taking into consideration the use of the surface  
25 tract by each surface tract owner. The mineral interest user must  
26 reasonably accommodate any use of the surface tract by a surface  
27 tract owner.



1       Sec. 93.007. LIEN. (a) A surface tract owner has the right  
2 to claim a lien to secure the payment of the damage fee, the use fee,  
3 and all costs incurred by the surface tract owner in taking the  
4 actions described by Section 93.006(e)(1). The inception of the  
5 lien occurs on the 10th day after (i) the date the damage fee and/or  
6 use fee are due under Section 93.006(c), or (ii) the date of the  
7 surface tract owner's invoice to the mineral interest user under  
8 Section 93.006(f) regarding the costs incurred by the surface tract  
9 owner in taking the actions described by Section 93.006(e)(1).

10       (b) The following property is subject to the lien:

11           (1) any lease of the minerals in, on, or under the  
12 surface tract in which the mineral interest user has an interest;

13           (2) the mineral development improvements placed on the  
14 surface tract by the mineral interest user; and

15           (3) any other material, machinery, or supplies used  
16 for mineral activities on the surface tract and owned by the mineral  
17 interest user.

18       (c) The lien does not:

19           (1) attach to the fee title to the surface tract or the  
20 minerals in, on, or under the surface tract; or

21           (2) affect any encumbrance or voluntary or involuntary  
22 lien that attached to any lease of the minerals in, on, or under the  
23 surface tract before the lien's inception.

24       (d) To claim the lien, a surface tract owner must file an  
25 affidavit with the county clerk of the county in which the surface  
26 tract is located not later than the 180th day after the date the  
27 mineral interest user fails to timely pay the surface tract owner

1 the damage fee or use fee or take the actions described by Section  
2 93.006(d).

3 (e) A mineral interest user may not sell property, including  
4 mineral development improvements, to which the lien has attached or  
5 remove the property from the surface tract unless the surface tract  
6 owner consents in writing.

7 (f) The surface tract owner must enforce the lien by a suit  
8 to foreclose the lien, which must be filed on or before two (2)  
9 years after the date the affidavit described in Section 93.007(d)  
10 is filed for record with the county clerk in the county where the  
11 surface tract is located.

12 (g) A holder of a prior encumbrance or lien on a lease of the  
13 minerals in, on, or under the surface tract is not a necessary party  
14 to a suit to foreclose the lien.

15 (h) On the foreclosure of the lien, the surface tract owner:

16 (1) is entitled to possession of the property subject  
17 to the lien regardless of where it is found; and

18 (2) may sell the property subject to the lien to  
19 satisfy the debt secured by the lien.

20 (i) Termination of a lease owned by the mineral interest  
21 user of the minerals in, on, or under the surface tract does not  
22 affect a lien created hereunder that attached to mineral  
23 development improvements located on the surface tract before the  
24 lease terminated.

25 (j) If a surface tract owner brings a suit to foreclose a  
26 lien under this section, the court may include in any final judgment  
27 in favor of the surface tract owner an award of costs and reasonable

1 and necessary attorney's fees.

2           SECTION 3. The Railroad Commission of Texas shall adopt  
3 rules under Chapter 93, Natural Resources Code, as added by this  
4 Act, not later than December 1, 2011.

5           SECTION 4. This Act takes effect September 1, 2011.