

By: Burnam

H.B. No. 3600

A BILL TO BE ENTITLED

AN ACT

relating to the rights of an owner of the surface estate in land in connection with oil and gas exploration and production operations; providing administrative penalties.

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

SECTION 1. Subtitle B, Title 3, Natural Resources Code, is amended by adding Chapter 93 to read as follows:

CHAPTER 93. SURFACE OWNER PROTECTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Agricultural use" has the meaning assigned by Section 23.51, Tax Code.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a tract of land.

(4) "Oil and gas developer" means a person who acquires a mineral estate or a mineral lease for the purpose of extracting or using oil and gas from a tract of land.

(5) "Oil and gas operations" means the following activities to the extent they require entry on the surface of a tract of land:

(A) oil and gas exploration activities; and

(B) oil and gas drilling, production, and

1 completion operations.

2 (6) "Surface estate" means an estate in or ownership
3 of the surface of a tract of land.

4 (7) "Surface owner" means a person who holds record
5 title to the surface of a tract of land.

6 SUBCHAPTER B. NOTICE AND ENTRY REQUIREMENTS

7 Sec. 93.051. NOTICE OF SURVEYING OR INSPECTION. (a) An oil
8 and gas developer shall give each surface owner written notice that
9 the oil and gas developer plans to begin surveying or inspecting the
10 property not later than the fifth business day before the date the
11 surveying or inspecting begins.

12 (b) An oil and gas developer shall give each surface owner
13 written notice that the oil and gas developer plans to begin
14 constructing improvements or conducting oil and gas operations on
15 the property not later than the 30th day before the date the
16 construction or operations begin. The notice must:

17 (1) sufficiently describe the oil and gas operations
18 on the land, the schedule for conducting the operations, and the
19 land to be affected by the operations to enable the surface owner to
20 evaluate the effect of the operations on the surface owner's use of
21 the land;

22 (2) include a statement advising the surface owner of
23 the surface owner's rights under this chapter;

24 (3) include the name, address, telephone number, and,
25 if available, facsimile number and e-mail address of the developer
26 and the developer's authorized representatives; and

27 (4) include a proposed surface use agreement provided

1 under Section 93.104 that contains, to the extent known,
2 information relating to:

3 (A) the placement, specifications, and design of
4 well pads, gathering pipelines, and roads to be constructed for the
5 operations;

6 (B) the terms of ingress and egress on the land
7 for the operations;

8 (C) the placement, construction, and maintenance
9 of all pits and equipment to be used for the operations;

10 (D) the use and impoundment of water on the
11 surface of the land;

12 (E) the removal and restoration of plant life;

13 (F) changes to the drainage of surface water;

14 (G) any proposed measures to control erosion,
15 rainwater runoff, noise, dust, traffic, litter, trespass, and other
16 interference with the use of the surface estate; and

17 (H) measures proposed to restore the surface
18 estate to the condition in which it existed before the operations
19 began.

20 (c) Notice under this section:

21 (1) must be given by certified mail or hand delivery to
22 each surface owner at the surface owner's address as shown by the
23 records of the county clerk or county tax assessor-collector at the
24 time the notice is given; and

25 (2) is considered to have been received five days
26 after mailing and immediately on hand delivery.

27 Sec. 93.052. ENTRY ON LAND; SECURITY REQUIRED. (a) Except

1 as provided by Subsection (b), an oil and gas developer may not
2 enter the land to conduct oil and gas operations until the oil and
3 gas developer enters into a written agreement for the payment of
4 compensation for damages with each surface owner.

5 (b) An oil and gas developer may enter the land to begin
6 construction or oil and gas operations without entering into a
7 surface use agreement with each surface owner if:

8 (1) 30 days have passed since each surface owner
9 received notice as provided by Section 93.051(b); and

10 (2) the developer deposits in a banking institution
11 for the benefit of the surface owner:

12 (A) a surety bond or other equivalent security in
13 an amount of \$10,000 for each well location on the land; or

14 (B) a blanket surety bond or other equivalent
15 security in an amount of \$25,000 provided that:

16 (i) the bond or other security is readily
17 payable to a surface owner awarded damages under this chapter; and

18 (ii) if any portion of the bond or security
19 has been used to pay a surface owner, the developer shall post
20 additional security so that the total security posted is \$25,000.

21 (c) A bond or security posted in accordance with Subsection
22 (b)(2)(A) may be released only when:

23 (1) the surface owner provides notice to the holder of
24 the bond or security that the developer has paid all required
25 compensation for damages;

26 (2) the surface owner and the developer have executed
27 a surface use agreement or otherwise agree that the security should

1 be released;

2 (3) all damages awarded under a nonappealable judgment
3 have been paid; or

4 (4) all wells on the land have been plugged and
5 abandoned for a period of at least six years and the developer has
6 not conducted oil and gas operations on the land during that period.

7 (d) A bond or security posted in accordance with Subsection
8 (b)(2)(B) may not be released until six years after the developer
9 files with the holder of the bond or security a statement certified
10 by the Railroad Commission of Texas that according to the
11 commission's records the developer does not conduct or hold permits
12 for oil and gas operations in this state.

13 Sec. 93.053. EXEMPTION FOR EMERGENCY. Notwithstanding any
14 other provision of this chapter, an oil and gas developer may enter
15 the land of a surface owner to protect human health, safety, or the
16 environment.

17 SUBCHAPTER C. DAMAGES

18 Sec. 93.101. APPLICABILITY. A surface owner is entitled to
19 damages as provided by this subchapter regardless of whether:

20 (1) the surface estate of the land has been severed
21 from the mineral estate; or

22 (2) the surface owner is the person who executed the
23 instrument that gave the oil and gas developer the right to conduct
24 oil and gas operations on the land.

25 Sec. 93.102. REMEDIES CUMULATIVE. The remedies provided by
26 this subchapter are in addition to any other remedies provided by
27 law.

1 Sec. 93.103. RIGHT TO PAYMENT FOR DAMAGES. (a) An oil and
2 gas developer shall pay each surface owner an amount equal to the
3 amount of anticipated and foreseeable damages sustained by the
4 surface owner for the following, to the extent the damages are
5 caused by oil and gas operations on the surface owner's land:

6 (1) loss of income derived from agricultural use of
7 the land;

8 (2) reduction in value of the land;

9 (3) reduction in value of improvements to the land;

10 (4) loss of access to the surface of the land; and

11 (5) loss of the use of the surface of the land.

12 (b) The amount of compensation for damages under Subsection
13 (a) may be determined by any formula agreed to by the oil and gas
14 developer and the surface owner.

15 (c) A surface owner may assign the surface owner's right to
16 compensation for damages described by Subsection (a) to a tenant of
17 the surface owner.

18 Sec. 93.104. SURFACE USE AGREEMENT FOR PAYMENT OF DAMAGES.

19 (a) At the time notice required by Section 93.051 is given to a
20 surface owner, the oil and gas developer shall give to the surface
21 owner a written offer to pay compensation for damages as provided by
22 Section 93.103.

23 (b) The surface owner may accept or reject the offer. An
24 acceptance of the offer must be in writing. A failure to accept a
25 proposed agreement within 20 days of receipt of the agreement is
26 deemed to be a rejection of the agreement by the surface owner.

27 SUBCHAPTER D. RESTORATION OF SURFACE REQUIRED

1 Sec. 93.151. RESTORATION OF SURFACE. After the cessation
2 of oil and gas operations, an oil and gas developer shall restore
3 the surface to a condition that is substantially the same as existed
4 before the developer began operations.

5 SUBCHAPTER E. ENFORCEMENT

6 Sec. 93.201. ADMINISTRATIVE PENALTY. The commission may
7 impose an administrative penalty in an amount and in the manner
8 provided by Sections 81.0531-81.0534 on a person who violates this
9 chapter.

10 Sec. 93.202. CALCULATION OF PENALTIES AND COSTS IN CIVIL
11 SUIT. In a civil action brought by a surface owner or oil and gas
12 developer alleging a violation of this chapter the prevailing party
13 may be awarded:

14 (1) attorney's fees and costs if:

15 (A) the oil and gas developer conducts oil and
16 gas operations that exceed the scope provided for by a surface use
17 agreement entered into with the surface owner or conducts oil and
18 gas operations without providing notice under Section 93.051 or
19 depositing a bond or other security under Section 93.052; or

20 (B) the surface owner does not exercise good
21 faith in complying with the terms of a surface use agreement entered
22 into with an oil and gas developer; or

23 (2) attorney's fees, costs, and treble damages if the
24 court finds that:

25 (A) either party wilfully and knowingly violates
26 a surface use agreement entered into by the parties; or

27 (B) the developer wilfully and knowingly

1 conducts oil and gas operations without providing notice under
2 Section 93.051 or depositing a bond or other security under Section
3 93.052.

4 SECTION 2. (a) Except as provided by Subsection (b) of this
5 section, the change in law made by this Act applies only to
6 liability for damage to the surface of land caused by the use of the
7 surface for oil and gas operations on or after the effective date of
8 this Act. Liability for damage to the surface of land caused by the
9 use of the surface for oil and gas operations before the effective
10 date of this Act is governed by the law in effect on the date the
11 damage was caused, and that law is continued in effect for that
12 purpose.

13 (b) Section 93.151, Natural Resources Code, as added by this
14 Act, applies to any well that is not plugged and abandoned on or
15 before the effective date of this Act.

16 SECTION 3. This Act takes effect September 1, 2013.