

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Surface Owners Accommodation Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to mines and minerals; providing notice,  
 2 compensation and remedies to surface owners for loss due to  
 3 oil and gas development as specified; requiring financial  
 4 assurance as specified; providing definitions; specifying  
 5 applicability of the act; and providing for an effective  
 6 date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 30-5-401 through 30-5-414 are created  
 11 to read:

12

13

ARTICLE 4

14

SURFACE OWNERS ACCOMMODATION ACT

15

1           **30-5-401. Short title; application.**

2

3       This act shall be known and may be cited as the "Surface  
4       Owners Accommodation Act".

5

6           **30-5-402. Definitions.**

7

8           (a) As used in this act:

9

10                   (i) "Financial assurance" means a surety bond,  
11       cash deposit, certificate of deposit, bank letter of credit  
12       or other form of financial security deemed acceptable by  
13       the Wyoming oil and gas conservation commission;

14

15                   (ii) "Oil" and "gas" mean as defined in W.S. 30-  
16       5-101(a)(vii);

17

18                   (iii) "Oil and gas operator" means a person  
19       engaged in drilling or producing wells for oil and gas;

20

21                   (iv) "Oil and gas operations" means the surface  
22       disturbing activities associated with drilling, producing  
23       and transporting oil and gas, including the full range of

1 development activity from exploration through production  
2 and reclamation of the disturbed surface;

3

4 (v) "Reclamation" means the restoring of the  
5 surface directly affected by oil and gas operations, as  
6 closely as reasonably practicable, to the condition that  
7 existed prior to oil and gas operations, or as otherwise  
8 agreed to in writing by the oil and gas operator and the  
9 surface owner;

10

11 (vi) "Surface" means the land on which oil and  
12 gas operations occur, and any adjacent affected lands;

13

14 (vii) "Surface owner" means any person who holds  
15 record title to the surface;

16

17 (viii) "Tangible improvement" means any  
18 structure, enclosure or any other man-made addition to the  
19 surface;

20

21 (ix) "This act" means W.S. 30-5-401 through  
22 30-5-414.

23

24 **30-5-403. Notice of drilling operations.**

1

2 (a) Before entering upon a site for oil or gas  
3 operations, the oil and gas operator shall give to the  
4 surface owner a written notice of its proposed oil and gas  
5 operations on the surface owner's property. This notice  
6 shall be given to the surface owner at the address shown by  
7 the records of the county where the surface is located at  
8 the time notice is given.

9

10 (b) The notice shall be sent to the surface owner by  
11 certified or registered mail, return receipt requested, or  
12 by personal notice, at least forty-five (45) days before  
13 commencement of the initial oil and gas operations, unless  
14 waived by the surface owner.

15

16 (c) The notice shall disclose, to the extent known,  
17 the proposed plan of work and operations to enable the  
18 surface owner to evaluate the effect of oil and gas  
19 operations on the surface owner's use of the property,  
20 including, but not be limited to:

21

22 (i) The proposed date on which operations shall  
23 commence;

24

1           (ii) The proposed facility locations and access  
2 routes related to the proposed oil and gas operations,  
3 including locations of roads, wells, pits, reservoirs,  
4 power lines, pipelines, compressor pads, tank batteries and  
5 other facilities;

6

7           (iii) The name, address, telephone number and,  
8 if available, facsimile number and electronic mail address  
9 of the oil and gas operator or his designee;

10

11           (iv) An offer to discuss with the surface owner  
12 the proposed oil and gas operations prior to commencement  
13 of drilling operations;

14

15           (v) A copy of this act or a notice prepared and  
16 approved by the Wyoming oil and gas conservation commission  
17 advising the surface owner of his rights and options under  
18 this act.

19

20           (d) Unless otherwise arranged between the parties  
21 involved, a meeting between the surface owner and the oil  
22 and gas operator to enter into good faith negotiations as  
23 provided in W.S. 30-5-404 shall be scheduled at a

1 reasonable time and shall be at least twenty (20) days  
2 prior to the commencement of oil and gas operations.

3

4 (e) The oil and gas operator shall not engage in work  
5 or operations materially different from those disclosed to  
6 the surface owner in accordance with this section, without  
7 first providing additional notice disclosing proposed  
8 changes in the plan of work and operations and scheduling a  
9 meeting with regard to the proposed changes in accordance  
10 with subsections (c) and (d) of this section.

11

12 (f) Before and after giving notice, the oil and gas  
13 operator shall be permitted reasonable access to the  
14 surface to conduct inspections, surveys, measurements and  
15 general evaluation of proposed routes and sites for oil and  
16 gas development, provided that no material surface  
17 disturbance shall occur without approval by the surface  
18 owner or compliance with the provisions of this act.

19

20 **30-5-404. Surface damage and reclamation**  
21 **negotiations.**

22

1           (a) The oil and gas operator and surface owner shall  
2 enter into good faith negotiations to reach an agreement  
3 regarding:

4

5           (i) Compensation to the surface owner for  
6 damages, if any, that may be caused by the oil and gas  
7 operations; and,

8

9           (ii) Reclamation requirements;

10

11           (b) Specific matters to be negotiated, terms and  
12 conditions of payment, methods of enforcement and any other  
13 terms material to the parties shall be left to the parties  
14 to identify and negotiate to their mutual satisfaction.

15

16           **30-5-405. Compensation to surface owner for damages.**

17

18 The oil and gas operator shall compensate the surface owner  
19 for all reasonable damages resulting from the oil and gas  
20 operations on the surface owner's property. Factors that  
21 may be considered, as appropriate in a specific case,  
22 include, but are not limited to, loss of agricultural  
23 production and income, loss of land value, loss of land  
24 use, loss of value of improvements, damage to aquifers and

1 water supplies, costs of surface reclamation and loss due  
2 to inability to implement planned or reasonably foreseeable  
3 future uses.

4

5 **30-5-406. Evidence of notice; financial assurance.**

6

7 (a) Prior to the Wyoming oil and gas conservation  
8 commission approval of an application for permit to drill,  
9 the oil and gas operator shall certify to the commission  
10 that a notice has been provided in accordance with W.S. 30-  
11 5-403 and certification of one (1) of the following:

12

13 (i) An agreement between the surface owner and  
14 the oil and gas operator pursuant to W.S. 30-5-404 has been  
15 reached;

16

17 (ii) A waiver from the surface owner for access  
18 to the surface while negotiations continue has been  
19 received by the oil and gas operator; or

20

21 (iii) Financial assurance has been provided by  
22 the oil and gas operator pursuant to subsection (b) of this  
23 section.

24



1           (b) If an agreement authorized under W.S. 30-5-  
2 404 has not been reached and the surface owner has not  
3 provided a waiver, the oil and gas operator shall provide  
4 financial assurance to the Wyoming oil and gas conservation  
5 commission in an amount determined by the commission to be  
6 sufficient to pay damages reasonably expected to occur to  
7 acreage to be disturbed and tangible improvements thereto,  
8 but not less than five thousand dollars (\$5,000.00) per  
9 well, provided that the commission may set a statewide  
10 financial assurance amount, not less than five hundred  
11 thousand dollars (\$500,000.00) to be deposited by an oil  
12 and gas operator for all of its oil and gas operation in  
13 the state.

14

15           (c) This act shall not be construed to limit the  
16 amount of damages payable to a surface owner to the amount  
17 of financial assurance provided under subsection (b) of  
18 this section. The surface owner may petition the court  
19 with appropriate jurisdiction to increase the amount of the  
20 financial assurance. The court may require an increase in  
21 the amount of financial assurance upon proof that the  
22 financial assurance is not likely to be sufficient to cover  
23 reasonably foreseeable damages to the surface owner and  
24 costs of reclamation.

1

2 (d) The financial assurance shall be posted separate  
3 from any other form of financial surety required by law.

4

5 (e) All or part of the financial assurance, at the  
6 direction of the Wyoming oil and gas conservation  
7 commission or a court with appropriate jurisdiction, shall  
8 be paid to the surface owner for damages or complete  
9 reclamation required by this act if the oil and gas  
10 operator fails to:

11

12 (i) Compensate the surface owner as provided in  
13 an agreement entered into pursuant to W.S. 30-5-404;

14

15 (ii) Pay damages to a surface owner as required  
16 by this act; or

17

18 (iii) Complete reclamation within the time  
19 agreed or a reasonable time.

20

21 (f) The financial assurance shall be released at the  
22 oil and gas operator's request after:

23

24 (i) The oil and gas operator and surface owner

1 certify that an agreement has been signed pursuant to W.S.  
2 30-5-404 and both parties agree to have the financial  
3 assurance released;

4

5 (ii) The oil and gas operator certifies that oil  
6 and gas operations are concluded and the Wyoming oil and  
7 gas conservation commission has confirmed reclamation has  
8 occurred; or

9

10 (iii) The oil and gas operator provides a signed  
11 statement from the surface owner that reclamation has been  
12 satisfactorily completed.

13

14 (g) Upon compliance with the requirements of  
15 subsection (a) of this section, the oil and gas operator  
16 shall be permitted entry upon the surface and entitled to  
17 commence oil and gas operations in accordance with the oil  
18 and gas operator's right to develop the minerals.

19

20 **30-5-407. Minimizing damages.**

21

22 All oil and gas operations shall be conducted in a  
23 manner that minimizes damages to the surface, consistent  
24 with reasonable methods of development commonly deemed

1 acceptable in oil and gas operations. After completion of  
2 the oil and gas operations, the oil and gas operator shall  
3 complete reclamation of the surface directly affected by  
4 the oil and gas operations, as reasonably practicable, to  
5 the condition that existed prior to the oil and gas  
6 operations, unless otherwise agreed to by the surface owner  
7 and the oil and gas operator under W.S. 30-5-404.

8

9 **30-5-408. Mediation.**

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11 If an agreement cannot be reached among the parties,  
12 they may engage in mediation.

13

14 **30-5-409. Remedies cumulative.**

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16 The remedies provided by this act do not preclude any  
17 person from seeking other remedies allowed by law, nor does  
18 it diminish rights previously granted by law or contract.

19

20 **30-5-410. Waiver.**

21

22 A surface owner may waive any rights afforded under this  
23 act by providing written notice to the oil and gas operator  
24 of the waiver.

1

2           **30-5-411. Statute of limitations for civil action;**  
3 **notice of damages to oil and gas operator.**

4

5 The surface owner shall notify the oil and gas operator in  
6 writing of the damages sustained by the surface owner  
7 within two (2) years after the damage becomes apparent or  
8 should have become apparent to a reasonable person.

9

10           **30-5-412. Nonadmissibility of settlement discussions.**

11

12 Settlement negotiations, offers and counter-offers between  
13 the surface owner and the oil and gas developer shall not  
14 be admissible as evidence in any judicial proceeding  
15 authorized under this act, or in any proceeding resulting  
16 from the assertion of common law remedies.

17

18           **30-5-413. Attorney's fees.**

19

20 In the event of legal action between the surface owner and  
21 the oil and gas operator, the prevailing party may be  
22 awarded reasonable attorney's fees for the maintenance of  
23 the action in addition to any other sums determined to be  
24 due.

1

2           **30-5-414. Legal action.**

3

4   Upon motion of a party in a dispute regarding the issue of  
5   damages to the surface estate, the court with appropriate  
6   jurisdiction shall advance the case on its docket, to the  
7   extent reasonably feasible, to allow trial on the merits of  
8   a suit over surface damages, but in no case shall the trial  
9   be held later than one hundred eighty (180) days after the  
10  filing of a complaint.

11

12           **Section 2.**   The provisions of this act apply to oil  
13  and gas operations commenced after the effective date of  
14  this act for lands on which there is no prior surface  
15  agreement or consent.

16

17           **Section 3.**   This act is effective immediately upon  
18  completion of all acts necessary for a bill to become law  
19  as provided by Article 4, Section 8 of the Wyoming  
20  Constitution.

21

22

(END)

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