

WORKING DRAFT

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HOUSE BILL NO.

Split estates-procedures for oil and gas operations.
Sponsored by: Joint Judiciary Interim Committee

A BILL

For

AN ACT relating to oil and gas operations; establishing requirements prior to commencing oil and gas operations on split estates; providing an exception; requiring notice, good faith negotiation and surface use agreements or financial assurances, as specified; authorizing compensation to surface owners for damages due to oil and gas operations; providing definitions; providing a statute of limitations; specifying applicability of the act; and providing for an effective date.

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

Section 1. W.S. 30-5-401 through 30-5-410 are created to read:

1

*****Staff Comment*****

2

The latest version of this bill is enumerated as
05LSO-0120.W11. The bill consists of the bill as
recommended by the Joint Executive-Legislative
Committee on Split Estates, with amendments
approved by the Joint Judiciary Interim Committee
on November 12, 2004, shown in strike and
underline format.

9

10

ARTICLE 4

11

ENTRY TO CONDUCT OIL AND GAS OPERATIONS

12

13

30-5-401. Definitions.

14

15

(a) As used in this act:

16

17

(i) "Commission" means the Wyoming oil and gas
conservation commission and its authorized employees;

19

20

(ii) "Compensate" and "compensation" mean
monetary payment or other consideration that may include,
but is not limited to, the furnishing of materials, labor
or equipment;

24

25

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

27

1 (iv) "Oil and gas operations" means the surface
2 disturbing activities associated with drilling, producing
3 and transporting oil and gas, including the full range of
4 development activity from exploration through production
5 and reclamation of the disturbed surface;

6

7 (v) "Oil and gas operator" means a person
8 engaged in oil and gas operations, his designated agents,
9 contractors and representatives;

10

11 (vi) "Reclamation" means the restoring of the
12 surface directly affected by oil and gas operations, as
13 closely as reasonably practicable, to the condition that
14 existed prior to oil and gas operations, or as otherwise
15 agreed to in writing by the oil and gas operator and the
16 surface owner;

17

18 (vii) "Surety bond or other guaranty" means as
19 defined in W.S. 30-5-101(a)(x);

20

21 (viii) "Surface owner" means any person who owns
22 an interest of record in the surface estate of the land on
23 which oil and gas operations occur, as identified by the
24 records of the county clerk of the county in which the land

1 is located. "Surface owner" does not include any person or
2 governmental entity that owns all of the surface estate and
3 all of the underlying oil and gas estate;

4

5 (ix) "This act" means W.S. 30-5-401 through 30-
6 5-410.

7

8 **30-5-402. Entry upon land for oil and gas operations**
9 **and non-surface disturbing activities; notice; process;**
10 **surety bond or other guaranty; negotiations.**

11

12 (a) Any oil and gas operator having the right to any
13 oil or gas underlying the surface of land may locate and
14 enter the land for all purposes reasonable and necessary to
15 conduct oil and gas operations to remove the oil or gas
16 underlying the surface of that land. The oil and gas
17 operator shall have the right at all times to enter upon
18 the land for non-surface disturbing activities reasonable
19 and necessary to determine the feasibility and location of
20 oil and gas operations to extract the oil and gas
21 thereunder. The oil and gas operator shall first comply
22 with the provisions of this act and shall reasonably
23 accommodate existing surface uses. The oil and gas
24 operator may reenter and occupy so much of the surface of

1 the land thereof as may be required for all purposes
2 reasonable and necessary to conduct oil and gas operations
3 on the land.

4

5 (b) An oil and gas operator may enter to conduct non-
6 surface disturbing activities, including inspections,
7 staking, surveys, measurements and general evaluation of
8 proposed routes and sites for oil and gas operations.
9 Prior to initial entry upon the land for non-surface
10 disturbing activities, the oil and gas operator shall
11 provide at least five (5) days notice to the surface owner.
12 Prior to any subsequent entry upon the land for non-surface
13 disturbing activities not previously discussed, the oil and
14 gas operator shall provide notice to the surface owner.

15

16 (c) Entry upon the land for oil and gas operations
17 shall be conditioned on the oil and gas operator providing
18 the required notice, attempting good faith negotiations
19 and:

20

21 (i) Securing the written consent or waiver of
22 the surface owner for entry onto the land for oil and gas
23 operations;

24

1 (ii) Obtaining an executed surface use agreement
2 providing for compensation to the surface owner for damages
3 to the land and improvements as provided in W.S. 30-5-
4 405(a);

5

6 (iii) Securing a waiver as provided in W.S. 30-
7 5-408; or

8

9 (iv) In lieu of complying with paragraph (i) or
10 (ii) of this subsection, executing a good and sufficient
11 surety bond or other guaranty to the commission for the use
12 and benefit of the surface owner to secure payment of
13 damages. The amount of the initial bond or other guaranty
14 shall be determined pursuant to W.S. 30-5-404 (b).

15

16 (d) Before entering upon the land for oil or gas
17 operations, the oil and gas operator shall give to all the
18 surface owners a written notice of its proposed oil and gas
19 operations on the land. This notice shall be given to the
20 surface owners at the address shown by the records of the
21 county where the land is located at the time notice is
22 given.

23

24 (e) The notice of proposed oil and gas operations

1 shall sufficiently disclose the plan of work and operations
2 to enable the surface owner to evaluate the effect of oil
3 and gas operations on the surface owner's use of the land.
4 The notice shall be given no more than one hundred twenty
5 (120) days nor less than ~~thirty (30)~~ sixty (60) days before
6 commencement of any oil and gas operations on the land.
7 The notice shall include, but is not limited to:

8

9 (i) The proposed dates on which planned
10 operations shall commence;

11

12 (ii) To the extent reasonably known at the time,
13 the proposed facility locations and access routes related
14 to the proposed oil and gas operations, including locations
15 of roads, wells, well pads, seismic locations, pits,
16 reservoirs, power lines, pipelines, compressor pads, tank
17 batteries and other facilities;

18

19 (iii) The name, address, telephone number and,
20 if available, facsimile number and electronic mail address
21 of the oil and gas operator and his designee, if any;

22

23 (iv) An offer to discuss and negotiate in good
24 faith any proposed changes to the proposed plan of work and

1 oil and gas operations prior to commencement of oil and gas
2 operations;

3

4 (v) A copy of this act.

5

6 (f) After providing the notice of proposed oil and
7 gas operations to the surface owner, the oil and gas
8 operator and the surface owner shall attempt good faith
9 negotiations to reach a surface use agreement for the
10 protection of the surface resources, reclamation
11 activities, timely completion of reclamation of the
12 disturbed areas and payment for damages caused by the oil
13 and gas operations. At any time in the negotiation, at the
14 request of either party and upon mutual agreement, dispute
15 resolution processes including mediation, ~~or~~ arbitration ~~or~~
16 ~~the informal procedures for resolving disputes established~~
17 ~~under article 6 of the Wyoming Eminent Domain Act~~ may be
18 employed.

19

20 (g) The oil and gas operator shall not engage in
21 work, location of facilities and access routes or oil and
22 gas operations substantially and materially different from
23 those disclosed to the surface owner in accordance with
24 this section, without first providing additional written

1 notice disclosing proposed changes and offering to schedule
2 a meeting to comply with the requirements of subsection (f)
3 of this section.

4

5 **30-5-403. Application for permit drill; additional**
6 **notice.**

7

8 (a) When submitting an application to the commission
9 for a permit to drill, the oil and gas operator shall file
10 a statement with the commission, including the surface
11 owner's name, contact address, telephone number and any
12 other relevant and necessary contact information known to
13 the oil and gas operator, certifying that:

14

15 (i) Notice of proposed oil and gas operations
16 was provided to the surface owner;

17

18 (ii) The parties attempted good faith
19 negotiations as required under W.S. 30-5-402(f) to reach a
20 surface use agreement;

21

22 (iii) The oil and gas operator has met the
23 conditions of W.S. 30-5-402(c), specifying how the
24 conditions have been met.

1

2 (b) The surface use agreement between the oil and gas
3 operator and the surface owner shall not be filed with the
4 oil and gas conservation commission and the terms of the
5 agreement shall not be required as a condition of approval
6 of an application for a permit to conduct oil and gas
7 operations.

8

9 **30-5-404. Surety bond or guaranty; approval;
10 objections; release of surety bond or guaranty.**

11

12 (a) The surety bond or other guaranty required under
13 W.S. 30-5-402(c)(iv) shall be executed by the oil and gas
14 operator, or a bonding company acceptable to the
15 commission. Other forms of guaranty acceptable by the
16 commission under article 1 of this chapter may be submitted
17 by the oil and gas operator in lieu of a surety bond.

18

19 (b) The surety bond or other guaranty shall be in an
20 amount of not less than two thousand dollars (\$2,000.00)
21 per well site on the land. At the request of the oil and
22 gas operator, after attempted consultation with the surface
23 owner the commission may establish a blanket bond or other
24 guaranty in an amount covering oil and gas operations as

1 identified by an oil and gas operator in the written notice
2 required under W.S. 30-5-402~~(d)~~ (e). The minimum amount of
3 the bond or other guaranty specified in this subsection is
4 not intended to establish any amount for reasonable and
5 foreseeable damages.

6
7 (c) Within seven (7) days following receipt of the
8 surety bond or other guaranty, the commission shall notify
9 the surface owner of receipt of the surety bond or other
10 acceptable guaranty, including a description of the amount
11 and the type of the bond or guaranty and provide to the
12 surface owner a copy of the statement required under W.S.
13 30-5-403(a). If at the expiration of thirty (30) days after
14 receipt of the notice by the surface owner, he makes no
15 objection to the amount or the type of the surety bond or
16 guaranty, the commission shall approve the surety bond or
17 guaranty. If the surface owner objects in writing to the
18 amount or the type of the surety bond or guaranty, the
19 commission shall give immediate consideration to the surety
20 bond or guaranty and accompanying papers filed by the oil
21 and gas operator in support of the surety bond or guaranty
22 amount and the type of surety bond or guaranty submitted,
23 and the surface owner's objections, and the commission
24 shall render a final decision as to the acceptability of

1 the amount and type of the surety bond or guaranty and
2 shall notify the parties of the decision. Proof of any
3 additional surety bond or guaranty required by the
4 commission shall be filed with the commission within thirty
5 (30) days of the commission's final decision. Any
6 aggrieved party may appeal the final decision of the
7 commission to the district court in accordance with the
8 Wyoming Administrative Procedure Act.

9 *****Staff Comment*****

10 **Representative Simpson made 2 motions to**
11 **subsection (c) with respect to a "proposed surety**
12 **bond...or establishing a surety bond...". The second**
13 **motion was withdraw, but the first was not,**
14 **creating inconsistent language; therefore,**
15 **Representative Simpson has directed the first**
16 **amendment should be deleted and other language**
17 **will be proposed if a motion to reconsider the**
18 **bill on December 10 is successful. The**
19 **highlighted text was added by staff in an attempt**
20 **to lessen the confusion that may have been**
21 **created as a result of the amendment preceding**
22 **the highlighted text. The sentence could be**
23 **revised to be more readable.**
24

25 (d) Upon receipt of an acceptable surety bond or
26 other guaranty by the commission as specified in subsection
27 (b) of this section, and receipt of all required regulatory
28 approvals to secure a drilling permit, the oil and gas
29 operator shall be permitted entry upon the land to conduct
30 oil and gas operations in accordance with terms of any
31 existing contractual or legal right.

1

2 (e) Any surety bond, other guaranty or blanket bond,
3 as applicable, for surface damages to particular lands will
4 be released by the commission after:

5

6 (i) Compensation for damages has occurred;

7

8 (ii) Agreement for release by all parties;

9

10 (iii) Final resolution of the judicial appeal
11 process for any action for damages and all damages have
12 been paid; or

13

14 (iv) The oil and gas operator certifies in a
15 sworn statement that the surface owner has failed to give
16 the written notice required under W.S. 30-5-406(a) or has
17 failed to bring an action for damages within the required
18 time period.

19

20 (f) Prior to the release of any applicable bond or
21 other guaranty, the commission shall make a reasonable
22 effort to contact the surface owner and confirm that
23 compensation has been received, an agreement entered into
24 or that the surface owner has failed to give written notice

1 required or failed to bring a timely action for damages.
2 The commission may, in its sole discretion, release any
3 surety bond, other guaranty or blanket bond related to
4 particular lands if the oil and gas operator shows just
5 cause for the release.

6

7 (g) Any surety bond or guaranty executed under this
8 section shall be in addition to the surety bond or guaranty
9 required under W.S. 30-5-104(d)(i)(D) for reclamation and
10 compliance with rules and orders of the commission.

11

12 **30-5-405. Surface damage and disruption payments; penalty**
13 **for late payment.**

14

15 (a) The oil and gas operator shall pay the surface
16 owner as follows:

17

18 (i) A sum of money or other compensation equal
19 to the amount of damages sustained by the surface owner for
20 the loss of use of the land, loss of production and income,
21 ~~lost~~ loss of land value and ~~lost~~ loss of value of
22 improvements caused by oil and gas operations;

23

1 (ii) The amount of damages and method of
2 compensation may be determined in any manner mutually
3 agreeable to the surface owner and the oil and gas
4 operator. When determining damages, consideration shall be
5 given to the period of time during which the loss occurs;

6
7 (iii) The payments contemplated by this
8 subsection shall only cover land directly affected by oil
9 and gas operations. Payments under this subsection are
10 intended to compensate the surface owner for damage and
11 disruption. No person shall reserve or assign that
12 compensation apart from the surface estate except to a
13 tenant of the surface estate.

14
15 (b) An oil and gas operator who fails to timely pay
16 an installment under any annual damage agreement negotiated
17 with a surface owner is liable for payment to the surface
18 owner of twice the amount of the unpaid installment if the
19 installment payment is not paid within sixty (60) days of
20 receipt of notice of failure to pay from the surface owner.

21
22 **30-5-406. Surface damage negotiations; notice of**
23 **damages to oil and gas operator; right to bring action.**

24

1 (a) If the oil and gas operator has commenced oil and
2 gas operations in the absence of any agreement for
3 compensation for all damages, a surface owner shall give
4 written notice to the oil and gas operator and the
5 commission of the damages sustained by the surface owner
6 within two (2) years after the damage has been discovered,
7 or should have been discovered through due diligence, by
8 the surface owner.

9

10 (b) Unless both parties provide otherwise by written
11 agreement, within sixty (60) days after the oil and gas
12 operator receives notice of damages pursuant to subsection
13 (a) of this section, the oil and gas operator shall make a
14 written offer of settlement to the surface owner as
15 compensation for damages. The surface owner seeking
16 compensation for damages under this section may accept or
17 reject any offer made by the oil and gas operator.

18

19 (c) If the surface owner who submits a notice as
20 required under subsection (a) of this section receives no
21 reply to his notice, receives a written rejection or
22 counter offer or rejects an offer or counter offer from the
23 oil and gas operator, the surface owner may bring an action

1 for compensation for damages in the district court in the
2 county where the damage was sustained.

3

4 **30-5-407. Remedies cumulative.**

5

6 The remedies provided by this act do not preclude any
7 person from seeking other remedies allowed by law, nor does
8 this act diminish rights previously granted by law or
9 contract.

10

11 **30-5-408. Waiver.**

12 A surface owner may waive any rights afforded under this
13 act by providing a written waiver of rights to the oil and
14 gas operator, identifying which rights have been waived.

15

16 **30-5-409. Statute of limitations for civil action.**

17

18 A surface owner entitled to bring an action for damages
19 under this act, or to seek any other remedy at law for
20 damages caused by oil and gas operations, shall bring such
21 action within two (2) years after the damage has been
22 discovered, or should have been discovered through due
23 diligence, by the surface owner. The limitation on

1 bringing an action under this section shall be tolled for a
2 period of four (4) months, if a written demand for
3 compensation for damages is timely submitted by the surface
4 owner under W.S. 30-5-406.

5

6 **30-5-410. Applicability.**

7

8 This act shall not apply to a public utility regulated
9 by the Wyoming public service commission or to a natural
10 gas pipeline regulated by the federal energy regulatory
11 commission.

12

13 **Section 2.** Any written surface use agreement,
14 consent, prior regulatory approval or judicial order or
15 decree in effect prior to the effective date of this act
16 shall not be subject to the provisions of this act.

17

18 **Section 3.** This act is effective July 1, 2005.

19

20

(END)