

HOUSE BILL NO. HB0070

Surface Owners' Accommodation Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to mines and minerals; creating the Wyoming
 2 Surface Owners' Accommodation Act; providing notice,
 3 compensation and remedies to surface owners for loss due to
 4 oil and gas development as specified; requiring financial
 5 assurance as specified; providing definitions; establishing
 6 a statute of limits as specified; specifying applicability
 7 of the act; and providing for an effective date.

8

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

10

11 **Section 1.** W.S. 30-5-401 through 30-5-411 are created
 12 to read:

13

14

ARTICLE 4

15

SURFACE OWNERS' ACCOMMODATION ACT

16

17 **30-5-401. Short title; application.**

1

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

4

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

6

7 (a) As used in this act:

8

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

13

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

16

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

19

20 (iv) "Oil and gas operations" means the surface
21 disturbing activities associated with drilling, producing
22 and transporting oil and gas, including the full range of
23 development activity from exploration through production
24 and reclamation of the disturbed surface;

1

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

8

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

11

12 (vii) "Surface owner" means any person who holds
13 an interest of record in the surface estate and any person
14 in possession of the surface who holds an unrecorded
15 interest in the surface estate, excluding adverse claimants
16 without adjudicated title and also excluding the state of
17 Wyoming, when the state holds record title to the surface
18 estate and all of the underlying mineral estate;

19

20 (viii) "Tangible improvement" means any
21 structure, enclosure or any other man-made addition to the
22 surface;

23

1 (ix) "This act" means W.S. 30-5-401 through
2 30-5-411.

3

4 **30-5-403. Notice of drilling operations.**

5

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

13

14 (b) The notice shall be sent to the surface owner by
15 certified or registered mail, return receipt requested, or
16 by personal notice, at least sixty (60) days before
17 commencement of the initial oil and gas operations, unless
18 waived, in writing, by the surface owner.

19

20 (c) The notice shall disclose, to the extent known,
21 the proposed plan of work and oil and gas operations to
22 enable the surface owner to evaluate the effects of the
23 plan of work and of oil and gas operations on the surface
24 owner's use of the property. The notice shall include, but

1 not be limited to:

2

3 (i) The proposed dates on which planned
4 operations shall commence;

5

6 (ii) The proposed facility locations and access
7 routes related to the proposed oil and gas operations,
8 including locations of roads, wells, well pads, seismic
9 locations, pits, reservoirs, power lines, pipelines,
10 compressor pads, tank batteries and other facilities;

11

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

15

16 (iv) An offer to discuss with the surface owner
17 the proposed plan of work and oil and gas operations prior
18 to commencement of drilling operations;

19

20 (v) A copy of this act.

21

22 (d) The oil and gas operator shall not engage in
23 work, location of facilities and access routes or
24 operations substantially and materially different from

1 those disclosed to the surface owner in accordance with
2 this section, without first providing additional notice
3 disclosing proposed changes in the plan of work and oil and
4 gas operations and scheduling a meeting with regard to the
5 proposed changes in accordance with subsection (c) of this
6 section.

7

8 (e) Prior to giving the notice specified in
9 subsection (a) of this section, access to the surface for
10 any nonsurface disturbing activities including inspections,
11 surveys, measurements and general evaluation shall be
12 preceded by forty-eight (48) hours verbal or written notice
13 to the surface owner or the surface owner's designated
14 agent.

15

16 (f) After giving the notice specified in subsection
17 (a) of this section, the oil and gas operator shall be
18 permitted reasonable access to the surface to conduct
19 inspections, surveys, measurements and general evaluation
20 of proposed routes and sites for oil and gas development,
21 provided that no material surface disturbance shall occur
22 without approval by the surface owner or compliance with
23 the provisions of this act.

24

1 **30-5-404. Surface damage and reclamation**
2 **negotiations.**

3

4 (a) The oil and gas operator and surface owner shall
5 enter into good faith negotiations to reach an agreement
6 regarding:

7

8 (i) Compensation to the surface owner for
9 damages, if any, that may be caused by the oil and gas
10 operations; and

11

12 (ii) Reclamation requirements.

13

14 (b) Specific matters to be negotiated, damages,
15 compensation, terms and conditions of payment, mitigation,
16 methods of enforcement and any other terms material to the
17 parties shall be left to the parties to identify and
18 negotiate to their mutual satisfaction.

19

20 **30-5-405. Compensation to surface owner for damages.**

21

22 An oil and gas operator shall compensate the surface owner
23 for all reasonable damages resulting from its oil and gas
24 operations on the surface owner's property. Factors that

1 may be considered, as appropriate in a specific case,
2 include, but are not limited to, loss of agricultural
3 production and income, loss of land value, loss of land
4 use, loss of value of improvements, damage to aquifers and
5 water supplies, costs of surface reclamation and loss due
6 to inability to implement uses planned previous to the
7 notice requirements of this act.

8

9 **30-5-406. Evidence of notice; financial assurance.**

10

11 (a) Prior to the Wyoming oil and gas conservation
12 commission approval of an application for permit to drill,
13 the oil and gas operator shall certify to the commission
14 that a notice has been provided in accordance with W.S.
15 30-5-403 and provide certification of one (1) of the
16 following:

17

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

21

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

1

2 (iii) Financial assurance has been provided by
3 the oil and gas operator pursuant to subsection (b) of this
4 section.

5

6 (b) If an agreement authorized under W.S. 30-5-404
7 has not been reached and the surface owner has not provided
8 a waiver, the oil and gas operator shall provide financial
9 assurance to the Wyoming oil and gas conservation
10 commission in an amount determined by the commission to be
11 sufficient to pay damages reasonably expected to occur to
12 acreage to be disturbed and tangible improvements thereto,
13 but not less than five thousand dollars (\$5,000.00) per
14 well, provided that the commission may set a statewide
15 financial assurance amount, not less than five hundred
16 thousand dollars (\$500,000.00) to be deposited by an oil
17 and gas operator for all of its oil and gas operations in
18 the state. The surface owner may petition the court with
19 proper jurisdiction to increase the amount of the financial
20 assurance. The court may require an increase in the amount
21 of financial assurance upon proof that the financial
22 assurance is not likely to be sufficient to cover
23 reasonable damages to the surface owner from the oil and
24 gas operations.

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2 (c) This act shall not be construed to limit the
3 amount of damages payable to a surface owner to the amount
4 of financial assurance provided under subsection (b) of
5 this section.

6

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

9

10 (e) All or part of the financial assurance, at the
11 direction of the Wyoming oil and gas conservation
12 commission or a court with proper jurisdiction, shall be
13 paid to the surface owner for damages or to complete
14 reclamation required by this act if the oil and gas
15 operator fails to:

16

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

19

20 (ii) Pay damages to a surface owner to which he
21 may be entitled under subsection (b) of this section; or

22

23 (iii) Complete reclamation within the time
24 agreed or a reasonable time.

1

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

4

5 (i) The oil and gas operator and surface owner
6 certify that an agreement has been signed pursuant to W.S.
7 30-5-404 and both parties agree to have the financial
8 assurance released;

9

10 (ii) The oil and gas operator certifies that oil
11 and gas operations are concluded and the Wyoming oil and
12 gas conservation commission has confirmed reclamation has
13 occurred, however, prior to releasing any financial
14 assurance under this paragraph, the commission shall notify
15 the surface owner in writing and provide a period of not
16 less than forty-five (45) days for the surface owner to
17 submit evidence of uncompensated damages or to otherwise
18 show cause why the commission should not release the
19 financial assurance; or

20

21 (iii) The oil and gas operator provides a signed
22 statement from the surface owner that reclamation has been
23 satisfactorily completed and all damages have been paid.

24

1 (g) Upon compliance with the requirements of
2 subsection (a) of this section, the oil and gas operator
3 shall be permitted entry upon the surface and shall be
4 entitled to commence oil and gas operations in accordance
5 with the oil and gas operator's right to develop the
6 minerals.

7

8 **30-5-407. Minimizing damages.**

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10 All oil and gas operations shall be conducted in a manner
11 that minimizes damages to the surface, consistent with
12 reasonable methods of development commonly deemed
13 acceptable in oil and gas operations. After completion of
14 the oil and gas operations, the oil and gas operator shall
15 complete reclamation of the surface directly affected by
16 the oil and gas operations, as reasonably practicable, to
17 the condition that existed prior to the oil and gas
18 operations, unless otherwise agreed to by the surface owner
19 and the oil and gas operator under W.S. 30-5-404.

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21 **30-5-408. Remedies cumulative.**

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23 The remedies provided by this act do not preclude any
24 person from seeking other remedies allowed by law, nor does

1 it diminish rights previously granted by law or contract.

2

3 **30-5-409. Waiver.**

4

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

8

9 **30-5-410. Statute of limitations for civil action;
10 notice of damages to oil and gas operator.**

11

12 A surface owner entitled to bring an action for damages
13 under this act, or to seek any other remedy at law for
14 damages caused by oil and gas operations, shall bring such
15 action within two (2) years after the damage has been
16 discovered, or should have been discovered through due
17 diligence, by the surface owner.

18

19 **30-5-411. Attorney's fees and costs.**

20

21 In the event of legal action between the surface owner and
22 the oil and gas operator, the prevailing party may be
23 awarded reasonable attorney's fees and costs.

24

1 **Section 2.** Any written surface use agreement or
2 consent in effect prior to the effective date of this act
3 shall not be subject to the provisions of this act.

4

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

9

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(END)