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SENATE BILL 637

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Raymond L. Kysar

AN ACT

RELATING TO LAND; ESTABLISHING REQUIREMENTS FOR AN OIL OR GAS
OPERATOR TO FOLLOW BEFORE ENTERING A SITE FOR DRILLING;
REQUIRING THE OPERATOR AND THE SURFACE OWNER TO ENTER INTO
GOOD FAITH NEGOTIATIONS TO DETERMINE THE ANTICIPATED AMOUNT OF
SURFACE DAMAGES; PROVIDING FOR A BOND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Surface Rights Act".

Section 2. DEFINITIONS. -- As used in the Surface Rights
Act:

A. "division" means the oil conservation division
of the energy, minerals and natural resources department;

B. "maintenance" means substantial activity to
maintain a well that involves the use of equipment that may

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1 reasonably be expected to cause some damage to the surface of
2 the well site;

3 C. "operator" means a mineral owner or lessee who
4 is engaged in drilling or preparing to drill for oil or gas;
5 and

6 D. "surface owner" means the owner or owners of
7 record of the surface of the property on which the drilling
8 operation is to occur.

9 Section 3. REQUIREMENTS TO BE MET BY OPERATOR BEFORE
10 ENTERING A SITE TO DRILL FOR OIL AND GAS OR PERFORM
11 MAINTENANCE ON AN EXISTING WELL. --

12 A. Before entering upon a site for oil or gas
13 drilling, or the maintenance of an existing oil or gas well,
14 except in instances where there are non-state resident surface
15 owners, non-state resident surface tenants, unknown heirs,
16 imperfect titles, or surface owners or surface tenants whose
17 whereabouts cannot be ascertained with reasonable diligence,
18 the operator shall give to the surface owner a written notice
19 of his intent to drill or commence maintenance containing a
20 designation of the proposed location and the approximate date
21 that the operator proposes to commence drilling or
22 maintenance.

23 B. The notice required to be given pursuant to
24 Subsection A of this section shall be given in writing, mailed
25 by certified mail, return receipt requested, to the surface

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1 owner. If the operator makes an affidavit that he has
2 conducted a search with reasonable diligence and has been
3 unable to ascertain the whereabouts of the surface owner or
4 that notice cannot be delivered, then constructive notice of
5 the intent to drill or perform maintenance may be given in the
6 same manner as provided for the notice to unknown heirs in a
7 quiet title suit.

8 C. Within five days of the date of delivery or
9 personal service of the notice of intent to drill or perform
10 maintenance it shall be the duty of the operator and the
11 surface owner to enter into good faith negotiations to
12 determine the surface damages anticipated from the drilling or
13 maintenance.

14 Section 4. BOND REQUIREMENT--CONDITIONS--INCREASE.--

15 A. Every operator doing business in this state
16 shall file a corporate surety bond, letter of credit from a
17 banking institution, cash or a certificate of deposit with the
18 division in the sum of twenty-five thousand dollars (\$25,000)
19 conditioned upon compliance with the Surface Rights Act for
20 payment of any location damages due that the operator cannot
21 otherwise pay. The division shall hold the corporate surety
22 bond, letter of credit from a banking institution, cash or
23 certificate of deposit for the benefit of the surface owners
24 of this state and shall ensure that the security is in a form
25 readily payable to a surface owner awarded damages in an

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1 action brought pursuant to the Surface Rights Act. Each
2 corporate surety bond, letter of credit, cash, or certificate
3 of deposit filed with the division shall be accompanied by a
4 filing fee of fifty dollars (\$50.00).

5 B. The bonding company or banking institution
6 shall file a certificate that the bond or letter of credit is
7 in effect or has been canceled, or that a claim has been made
8 against it in the office of the court clerk in each county in
9 which the operator is drilling or performing well maintenance
10 or planning to drill or perform maintenance. The bond or
11 letter of credit must remain in full force and effect as long
12 as the operator continues drilling operations in this state.
13 Each filing shall be accompanied by a filing fee of ten
14 dollars (\$10.00).

15 C. Upon deposit of the bond, letter of credit,
16 cash or certificate of deposit, the operator shall be
17 permitted entry upon the property and shall be permitted to
18 commence drilling of a well or performing maintenance in
19 accordance with the terms and conditions of any lease or other
20 existing contractual or lawful right.

21 D. If the damages agreed to by the parties or
22 awarded by the court are greater than the bond, letter of
23 credit, cash or certificate of deposit posted, the operator
24 shall pay the damages immediately or post an additional bond,
25 letter of credit, cash or certificate of deposit sufficient to

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1 cover the damages. The requirement for an increase in bond,
2 letter of credit, cash or certificate of deposit shall comply
3 with the filing requirements of this section.

4 Section 5. DAMAGES--FAILURE TO AGREE--APPRAISAL--COURT
5 DETERMINATION.--

6 A. Prior to entering the site with heavy
7 equipment, the operator shall negotiate with the surface owner
8 for the payment of any damages that may be caused by the
9 drilling or maintenance operations. If the parties agree, and
10 a written contract is signed, the operator may enter the site
11 to drill or perform maintenance. If agreement is not reached,
12 or if the operator is not able to contact all parties, the
13 operator shall petition the district court in the county in
14 which the drilling site is located for appointment of
15 appraisers to make recommendations to the parties and to the
16 court concerning the amount of damages, if any. Once the
17 operator has petitioned for appointment of appraisers, he may
18 enter the site to drill or to perform maintenance.

19 B. Ten days' notice of the petition to appoint
20 appraisers shall be given to the opposite party. The notice
21 shall be served in the same manner as is required for service
22 of a summons in a civil action.

23 C. The operator shall select one appraiser, the
24 surface owner shall select one appraiser and the two selected
25 appraisers shall select a third appraiser for appointment by

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1 the court. Unless additional time is allowed by the district
2 court for good cause shown, the three appraisers shall be
3 selected within twenty days of service of the notice of the
4 petition to appoint appraisers or within twenty days of the
5 first date of publication of the notice if service is made by
6 publication. If either of the parties fails to appoint an
7 appraiser or if the two appraisers cannot agree on the
8 selection of the third appraiser within the required time
9 period, the remaining required appraisers shall be selected by
10 the district court upon application of either party. Before
11 entering upon their duties, the appraisers shall take and
12 subscribe an oath, before a notary public or some other person
13 authorized to administer oaths, that they will perform their
14 duties faithfully and impartially to the best of their
15 ability. They shall inspect the real property and consider
16 the surface damages that the owner has sustained or will
17 sustain by reason of entry upon the land and by reason of
18 drilling or maintenance of oil or gas production on the tract
19 of land. The appraisers shall then file a written report
20 within thirty days of the date of their appointment with the
21 clerk of the court. The report shall set forth the quantity,
22 boundaries and value of the property entered on or to be
23 utilized in the oil or gas drilling or maintenance and the
24 amount of surface damages done or to be done to the property.
25 The appraisers shall make a valuation and determine the amount

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1 of compensation to be paid by the operator to the surface
2 owner and the manner in which the amount shall be paid. The
3 appraisers shall make a report of their proceedings
4 to the court. The compensation of the appraisers shall be
5 fixed and determined by the court. The operator and the
6 surface owner shall share equally in the payment of the
7 appraisers' fees and court costs.

8 D. Within ten days after the report of the
9 appraisers is filed, the clerk of the court shall forward to
10 each attorney of record and each party a copy of the report of
11 the appraisers and a notice stating the time limits for filing
12 an objection or a demand for jury trial as provided for in
13 this section.

14 E. If a party has been served by publication, the
15 clerk shall forward a copy of the report of the appraisers and
16 the notice of time limits for filing either an objection or a
17 demand for jury trial to the last-known mailing address of
18 each party, if any, and shall have a copy of the notice of
19 time limits published in one issue of a newspaper qualified to
20 publish legal notices.

21 F. The time for filing an objection to the report
22 or a demand for jury trial shall be calculated as commencing
23 from the date the report of the appraisers is filed with the
24 court. Upon failure of the clerk to give notice within the
25 time prescribed, the court, upon application by any interested

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1 party, may extend the time for filing an exception to the
2 report or filing a demand for trial by jury for a reasonable
3 period of time not less than twenty days from the date the
4 application is heard by the court. Appraisers' fees and court
5 costs may be the subject of an exception, may be included in
6 an action by the petitioner and may be set and allowed by the
7 court.

8 G. The report of the appraisers may be reviewed by
9 the court upon written objections filed with the court by
10 either party within thirty days after the filing of the
11 report. After the hearing the court shall enter the
12 appropriate order either by confirmation, rejection,
13 modification or order of a new appraisal for good cause shown.
14 If a new appraisal is ordered, the operator shall have
15 continuing right of entry subject to the continuance of the
16 required bond. Either party may file a written demand for a
17 trial by jury within sixty days after the filing of the
18 report, in which case the amount of damages shall be assessed
19 by a jury. The trial shall be conducted and judgment entered
20 in the same manner as in a highway condemnation action tried
21 in the court. If the party demanding the jury trial does not
22 recover a verdict more favorable to him than the assessment
23 award of the appraisers, all court costs, including reasonable
24 attorney fees, shall be assessed against him.

25 Section 6. DAMAGES AWARDED AGAINST OPERATORS FOR ENTRY

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1 WITHOUT FOLLOWING PROCEDURES OF ACT. --If an operator willfully
2 and knowingly enters land for the purpose of commencing and
3 drilling or maintaining a well before giving notice or
4 reaching agreement pursuant to the provisions of the Surface
5 Rights Act, the surface owner may bring an action in the
6 district court and upon finding of liability based on clear
7 and convincing evidence the court shall award the surface
8 owner treble damages, court costs and reasonable attorney
9 fees. Recovery of treble damages pursuant to this section is
10 not a bar to any other action for damages due to an operator's
11 subsequent act.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3 SB 637/a

4
5
6 February 25, 1999

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8 Mr. President:

9
10 Your CONSERVATION COMMITTEE, to whom has been referred

11
12 SENATE BILL 637

13
14 has had it under consideration and reports same WITHOUT

15
16 RECOMMENDATION, amended as follows:

17
18 1. On pages 3 through 5, strike Section 4 in its entirety.

19
20 2. Renumber the succeeding sections accordingly.,

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22 and thence referred to the JUDICIARY COMMITTEE.

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24 Respectfully submitted,

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Fernando R. Maci as, Chai rman

Adopted _____

Not Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Leavell, Payne, Sanchez, Vernon

Absent: None

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2 FIRST SESSI ON, 1999

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6 FORTY- FOURTH LEGI SLATURE
7 FIRST SESSI ON, 1999
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11 March 10, 1999
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13 Mr. Presi dent:

14
15 Your JUDI CIARY COMMI TTEE, to whom has been referred
16

17 SENATE BILL 637, as amended
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19 has had it under consideration and reports same with recommendation
20 that it DO PASS.
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22
23 Respectfully submi tted,
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Michael S. Sanchez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Payne, Stockard

Excused: Aragon

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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