

Note: Included in the draft are proposals from Sens. Wheat and McGee as well as style changes. The following summaries explain substantial changes and also point out questions the committee may want to address. As for the style changes, they are required by the code commissioner in order to update the language of laws and bring them into accordance with current styles. As a rule, they are not substantial changes.

Section 1: Current law requires that, upon request of a surface owner, an operator conducting seismic activity must furnish information, including name, address, proposed test sites and bond number. The proposal would add to that list of items available upon request copies of the seismic exploration law, the notice of drilling operations law and a copy of the EQC brochure to be produced.

As for the brochure, changes to the brochure, or even the elimination of it, are subject to the whim of the EQC, as opposed to a statute going before the whole body. There is a risk of the law requiring the dissemination of a brochure that may not look like the one you are currently proposing.

Section 2: Changes would require dissemination of the current surface damage and disruption law and the above-mentioned brochure. The notice would change from no more than 90 days to 180 days and no fewer than 10 days to 20 days.

Section 3: Changes would note that mediation or other dispute resolution measures could be employed if both parties agree during the negotiations for surface damage and disruption payments. Also noted would be that if the parties fail to reach agreement, the "bonding on" procedures of Section 7 would apply.

Section 4: If a dispute over damage payments goes to court and the court finds that the amount of damages due exceeds the offer of the mineral developer, the proposed changes would give the court discretion to award the surface owner attorney fees, other costs and interest, which based on civil procedure law in Montana is 10 percent a year.

Section 5: Changes would allow the Board of Oil and Gas Conservation to hear evidence regarding violations of the notice of drilling operations statute. If evidence of a violation is found, the board could bring an action in court, assess a fine or require compliance. The board could also assess a fine and require compliance.

Section 6: Changes would make a civil penalty for violating the notice punishable by at least \$75 a day and not to exceed \$10,000. This is the power the board has for other violations of oil and gas law.

There is a policy issue here. Under the counsel of Chief Legislative Attorney Greg Petesch, I took out language that made the civil penalty a misdemeanor. In Greg's words: "'Section 45-2-104, MCA provides: Absolute liability. A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely only if the offense is punishable by a fine not exceeding \$500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.' There is no required mental state in 82-11-149, MCA, and no statement that "absolute liability" is imposed. I don't think the misdemeanor criminal provision should be in that section. However, that it is policy choice. If it is retained it should be made enforceable by either adding a mental state or an absolute liability statement."

Section 7: This would be a new section of law. This would give the BOGC power to make rules to implement a “bond on” procedure. The procedure would apply in the event the surface owner and mineral developer cannot reach an agreement on surface damage and disruption payments.

Mr. Petesch pointed out that the state would be essentially enforcing a private contract on behalf of the landowner. This is not unprecedented. This is akin to the “bonding on” that takes place in Wyoming and with the BLM.

The rulemaking authority here is fair broad. The subcommittee may want to think about whether or not this gives enough direction to the BOGC.

Tom Richmond of the BOGC suggested the language, “Rules adopted pursuant to this section must take into account the type of surface used proposed.” He thought that would give the board the power to differentiate between oil, gas, CBM and even between different types of oil wells or the drilling of future products.

Section 8: This simply directs the code commissioner to place Section 7 within the surface owner damage and disruption compensation part.

Sections: 9 and 10. These make the act effective on October 1, 2008 and stipulate that it would only apply to proceedings begun after that date. The dates may be changed.

**** Bill No. ****

Introduced By *****

By Request of the *****

DRAFT FOR DISCUSSION PURPOSES ONLY

A Bill for an Act entitled: "An Act requiring a seismic permitholder to furnish information to a surface user; requiring an oil or gas developer or operator to provide information to a surface owner; increasing the time periods for notice of drilling operations; noting that a surface owner and oil and gas developer or operator may use dispute resolution processes; providing for payment of attorney fees and court costs; establishing penalties for violation of notice of drilling operations; granting rulemaking authority to establish surface bonding rules; amending sections 82-1-107, 82-10-503, 82-10-504, 82-10-508, 82-11-147, and 82-11-149, MCA; providing an effective date; and providing an applicability date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-107 , MCA, is amended to read:

"82-1-107. Permitholder to furnish information to surface user. (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity, and upon request the following information ~~shall~~ must also be furnished:

(a) the name and permanent address of the seismic exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm;

(b) evidence of a valid permit to engage in seismic exploration;

(c) the name and address of the company insuring the seismic firm or, if self-insured, evidence of ~~such~~ the self-insurance;

(d) the number of the bond required in 82-1-104;

(e) a description of the planned seismic activity and where it will take place;

(f) the anticipated need, if any, to obtain water from the surface user during planned seismic activity;

(g) copies of Title 82, chapter 1, part one; Title 82, chapter 10, part 5; and, if available, a current publication produced by the Environmental Quality Council titled BROCHURE NAME.

(2) The surface user is responsible for providing the permit holder with the name and permanent address of a responsible person with whom communication may be maintained."

{ *Internal References to 82-1-107: None.* }

Section 2. Section 82-10-503 , MCA, is amended to read:

"82-10-503. Notice of drilling operations. In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner and any purchaser under contract for deed written notice of the drilling operations that ~~he~~ the oil and gas developer or operator plans to undertake. This notice ~~shall~~ must be given to the record surface owner and any purchaser under contract for deed at their addresses as shown by the records of the county clerk and recorder at the time the notice is given. This notice must include a copy of this part and, if available, a current publication produced by the Environmental Quality Council titled BROCHURE NAME. This notice ~~shall~~ must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. The notice shall be given no more than ~~90~~ 180 days and no fewer than ~~40~~ 20 days before commencement of any activity on the land surface."

{ *Internal References to 82-10-503:*

Section 3. Section 82-10-504 , MCA, is amended to read:

"82-10-504. Surface damage and disruption payments -- dispute resolution -- penalty for late payment. (1) (a) The oil and gas developer or operator shall pay the surface owner a sum of money or other compensation equal to the amount of damages sustained by the surface owner for loss of agricultural production and income, lost land value, and lost value of improvements caused by drilling operations.

(b) The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer or operator. When determining damages, consideration ~~shall~~ must be given to the period of time during which the loss occurs.

(c) The surface owner may elect to receive annual damage payments over a period of time, except that the surface owner ~~shall~~ must be compensated by a single sum payment for harm caused by exploration only.

(d) The payments contemplated by this subsection (1) may only cover land directly affected by drilling operations and production. Payments under this subsection (1) are intended to compensate the surface owner for damage and disruption; ~~no~~ A person may not reserve or assign ~~that~~ damage and disruption compensation apart from the surface estate except to a tenant of the surface estate.

(e) At any time during the negotiation, at the request of either party and upon mutual agreement, the surface owner and the oil and gas developer or operator may enter into a dispute resolution process, including mediation.

(f) If the parties cannot reach an agreement pursuant to (1)(b), the provisions of [section 7] apply.

(2) An oil and gas developer or operator who fails to timely pay an installment under any annual damage agreement negotiated with a surface owner is liable for

payment to the surface owner of twice the amount of the unpaid installment if the installment payment is not paid within 60 days of receipt of notice of failure to pay from the surface owner."

{ *Internal References to 82-10-504: None.* }

Section 4. Section 82-10-508 , MCA, is amended to read:

"82-10-508. Rejection -- legal action. If the person seeking compensation receives a written rejection, rejects the offer of the oil and gas developer or operator, or ~~receives no~~ does not receive a reply, that person may bring an action for compensation in the district court of the county in which the damage was sustained. If the amount of compensation awarded by the court is greater than that which was offered by the oil and gas developer or operator, the court may award the person seeking compensation reasonable attorney fees, any costs assessed by the court, and interest, as provided in 25-9-205, on the amount of final compensation awarded by the court from the day drilling is commenced."

{ *Internal References to 82-10-508: None.* }

Section 5. Section 82-11-147 , MCA, is amended to read:

"82-11-147. Violations. (1) ~~Notwithstanding any other provisions of this chapter, if~~ If the board finds upon receipt of evidence:

(a) that a person is violating or threatening to violate 82-10-503, this chapter, or a rule or order of the board, the board may bring suit against that person in the district court of any county where the violation occurs or is threatened to restrain the person from continuing the violation or from carrying out the threat of violation; or

(b) that a person is violating 82-10-503, this chapter, or a rule or order of the board in a manner for which the board is authorized to institute proceedings pursuant to 82-11-149, the board may issue an order;

(i) ~~either~~ assessing a civil penalty in the amount prescribed in 82-11-149, up to a maximum administrative penalty of \$125,000; ~~or~~

(ii) requiring compliance with this chapter or a rule or order, or

(iii) both (1)(b)(i) and (1)(b)(ii).

(2) In a suit under subsection (1)(a), the court may grant to the board, without bond or other undertaking, ~~such~~ prohibitory and mandatory injunctions, including temporary restraining orders, as the facts may warrant, ~~including temporary restraining orders.~~"

{ Internal References to 82-11-147: None. }

Section 6. Section 82-11-149 , MCA, is amended to read:

"82-11-149. Civil penalties. (1) A person is ~~guilty of a misdemeanor and is~~ subject to a civil penalty of at least \$75 and not more than \$10,000 a day for each violation if that person violates 82-10-503, ~~any rule or order of the board or a provision of this chapter, or a rule or order of the board~~. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of 82-10-503, this chapter, or of rules or orders issued under ~~#~~ this chapter by injunction or other appropriate remedy.

(3) The board, or the attorney general upon request of the board, shall institute and maintain any enforcement proceedings in the name of the state.

(4) Civil penalties collected pursuant to this section must be deposited in the state general fund."

{ Internal References to 82-11-149:

82-11-147x 82-11-147x }

NEW SECTION. **Section 7. Surface bonding -- rulemaking authority.** (1) The board shall adopt rules for the oil and gas developer or operator to post a reasonable bond with good and sufficient surety, payable to the state, conditioned upon the failure of the oil and gas developer or operator and the surface owner to reach an agreement pursuant to 82-10-504; MCA.

(2) The board shall adopt rules for the forfeiture of the bond and payment to the surface owner, and the release of the bond to the oil and gas developer or operator.

(3) Rules adopted pursuant to this section must take into account the type of surface used proposed.

NEW SECTION. **Section 8. {standard} Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 82, chapter 10, part 5, and the provisions of Title 82, chapter 10, part 5, apply to [section 7].

NEW SECTION. **Section 9. {standard} Effective date.** [This act] is effective October 1, 2008.

NEW SECTION. **Section 10. Applicability.** [This act] applies to proceedings begun after October, 1, 2008.

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