

**Note:** Included here are explanations of sections the committee discussed and changed at the March meeting as well as Sections 5 and 6 on penalties and bonding. The committee directed staff to work with Tom Richmond from the MBOGC on drafting these two sections.

The following summaries explain substantial changes and also point out issues the committee may want to address. Style changes are required by the code commissioner to update language and bring statutes into accordance with current styles. As a rule, they are not substantial changes.

**Section 1:** Current law requires that, upon request of a surface user, an operator conducting seismic activity must furnish information, including name, address, proposed test sites and bond number. The committee voted to require that the seismic notice, the surface damage notice and the brochure be required.

**ISSUES:** The committee debated at the March meeting the use of surface user versus surface owner. Chief Legal Council Greg Petesch pointed out that surface user is not defined. In practice, it seems that the surface owner is contacted because that for whom a legal record is kept. The brochure will point out that surface owners should contact lessees, but if the committee chooses, the statute could mandate that the surface owner provide notice to the any lessees.

Changes to the brochure, or even the elimination of it, are subject to the wishes 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.

**Section2:** 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. The surface owner may waive the notice requirement.

**Section 3:** Changes would require that mineral developer and surface owner attempt to negotiate damages. It clarifies that the parties may enter into mediation. But if the parties cannot reach an agreement on damages, the mineral developer may apply for a surface bond.

**Section 4:** Style change.

**Section 5:** This is a new section that tries to implement the desires of the committee outlined at the March meeting. It allows a mineral developer to present evidence to the MBOGC administrator that an agreement on damages with a surface owner could not be obtained. If the administrator agrees, the administrator may set a bond between \$1,500 and \$10,000 per well, or a blanket bond. However, blanket bonds and bonds of more than \$5,000 would have to be reviewed by the MBOGC.

The proposal would allow drilling to start once the bond is set, posted and noticed to the surface owner. Appeals of bonds of less than \$5,000 may be made to the MBOGC. Appeals of larger bonds could be made in district court, either in the county where the drilling operation would be located or in Yellowstone County district court.

If the parties agree on damages at any point, the bond would be returned.

**ISSUE:** These bonds would be held by the MBOGC, just as the agency holds its reclamation bonds. Another alternative would be to put the bonds in an escrow account, with the MBOGC controlling when the money is released. The issue of interest would need to be addressed.

**Section 6:** Changes would allow the MBOGC to hear evidence regarding violations of the notice of drilling operations statute. This is a new section that deals only with violation of the section on notice of drilling operations. If the MBOGC finds a violation occurs, it may assess a fine of (amount to be determined by the committee). The mineral developer may pay the fine under protest and ask for a judicial review. The board would hold the money until a court renders a decision.

If a mineral developer fails to pay a fine, or fails to pay the fine under protest within 30 days of the board order, the mineral developer would be subject to more discipline by the board.

**Section 8:** This simply directs the code commissioner to place Sections 5 and 6 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.

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

**DRAFT FOR DISCUSSION PURPOSES ONLY**

A Bill for an Act entitled: "An Act revising laws governing oil and gas operations; 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; clarifying that a surface owner and oil and gas developer or operator may use dispute resolution processes; providing for surface bonds and granting rulemaking authority to administer surface bonds; establishing penalties for violating notice requirements; amending sections 82-1-107, 82-10-503, 82-10-504, and 82-10-508; and providing an effective date and 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~~ and provide copies of Title 82, chapter 1, part 1, Title 82, chapter 10, part 5, and, if available, a current publication produced by the Environmental Quality Council titled BROCHURE NAME. Upon request the following information ~~shall~~ must also be furnished:

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(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.

(2) The surface user is responsible for providing the permitholder 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

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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~~ must be given no more than ~~90~~ 180 days and no fewer than ~~10~~ 20 days before commencement of any activity on the land surface. The record surface owner and any purchaser under contract for deed may waive the notice requirement."

{*Internal References to 82-10-503:  
82-11-122x*}

**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 and the surface owner shall attempt to negotiate an agreement on damages. 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

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developer or operator. When determining damages, consideration ~~shall~~ must be given to the period of time during which the loss occurs.

(c) 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.

~~(c)~~(d) 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)~~(e) 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~~r. 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.

(f) If the parties cannot reach an agreement pursuant to subsection (1)(b), the provisions of [section 5] 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."

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

NEW SECTION. **Section 5. Requirements for surface bonds -- rulemaking authority -- appeals.** (1) The board of oil and gas conservation, provided for in 2-15-3303, shall adopt rules to implement a surface bonding process.

(2) An oil and gas developer or operator who presents evidence to the board that negotiations pursuant to 82-10-504 failed to produce an agreement on damages may apply to post a reasonable bond covering land directly affected by drilling operations and production with good and sufficient surety, payable to the state on behalf of the surface owner.

(2) The bond must be at least \$1,500 per well but may not be more than \$10,000 per well. A blanket bond amount covering land directly affected by drilling operations and production may be considered at the request of the oil and gas developer or operator and in attempted consultation with the surface owner.

(3) The administrator, as defined in 82-11-101, shall review evidence presented of failed negotiations and bond applications.

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If the administrator accepts the bond application, the administrator shall determine the bond amount, taking into consideration the surface damage or disruption the proposed surface use may cause. The board shall confirm or alter bonds of more than \$5,000 per well site or blanket bonds.

(4) Drilling operations may commence after the administrator determines a bond amount, the oil and gas developer or operator posts the bond, and the administrator sends notice to the surface owner.

(5) The surface owner or the oil and gas developer or operator may appeal the bond amount set by the administrator to the board. Appeals of bond amounts confirmed or set by the board may be made to the district court in the county where the drilling operation is located or the district court of the county where the board keeps its principal office.

(6) 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.

(7) If an agreement between the surface owner and the oil and gas developer or operator is reached, the bond must be returned to the oil and gas developer or operator.

(8) Any surety bond or guaranty executed under this section must be in addition to the surety bond or guaranty required under 82-11-123 for reclamation and compliance with the rules and orders of the board.

NEW SECTION. **Section 6. Penalty for notice violation.** (1)



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A surface owner may present evidence of violations of 82-10-503 to the board of oil and gas conservation, provided for in 2-15-3303.

(2) If the board finds that a violation of 82-10-503 has occurred, the board may assess a daily fine of at least **\$\$\$** but not more than **\$\$\$** until the notice requirement is fulfilled. The oil and gas developer or operator shall make payment of the fine payable to the state of Montana on behalf of the surface owner within 30 days of the board's order.

(3) If an oil and gas developer or operator assessed a fine under subsection (2) wishes to obtain judicial review of the order, the oil and gas developer or operator shall submit with any assessed penalty a statement that the penalty is being paid under protest. The board shall hold the payment until judicial review is complete.

(4) The board shall provide the surface owner with the proceeds from the fine levied pursuant to subsection (2) when:

- (a) the fine is paid without protest; or
- (b) the penalty is upheld by judicial review.

(5) If a judicial review of an assessed penalty paid under protest overturns the board's decision, the amount held pursuant to subsection (3) shall be returned to the oil and gas developer or operator.

(6) An oil or gas developer who fails to pay a fine levied pursuant to subsection (2) or who fails to pay any assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the

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violation and penalty determinations and may be subjected to the provisions of 82-11-147 and 82-11-149.

NEW SECTION. **Section 7. {standard} Codification**

**instruction.** [Sections 5 and 6] are 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 [sections 5 and 6].

NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective October 1, 2008.

NEW SECTION. **Section 9. Applicability.** [This act] applies to proceedings begun after October, 1, 2008.

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