

## Summary of April changes to HB790 draft legislation

**Section 1:** The committee voted to change surface "user" to surface "owner." For clarity, I added that the definition of surface owner is the same as provided for in 82-10-502, the Surface Damage law.

The committee also voted to make it the responsibility of the surface owner to notify others of the seismic exploration. The language was imprecise, but mentioned were "surface user," "manager," "lessee," and "whoever is in charge of the surface."

This is draft language for your approval or revision:

**(3) The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or others responsible for surface operations on the property.**

**Section2:** Again, the committee voted to require the surface owner to provide notice. This is draft language for your approval or revision:

**(2) The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or others responsible for surface operations on the property.**

**Section 3:** No change from April version.

**Section 4:** No change from April version.

**Old Section 5:** Bonding provision was deleted.

**Section 5:** Changes included deleting provision that fine goes to surface owner. As with other oil and gas fines, these would now go to the general fund.

**Issues that need to be addressed:** Under 82-11-122, MCA, it is **already** illegal to drill without first providing the surface owner the notice required under the Surface Damage Act, 82-10-503. If notice is not provided, the oil and gas operator or developer could be subject to a violation and penalties under 82-11-147 and 82-11-149. These include a daily fine of between \$75 and \$10,000, not to exceed \$125,000.

**Also:** What 82-11-122 requires is that notice be provided **AFTER** the drilling permit is issued. In practice, this seems to be impossible because the permit cannot be issued until the land is surveyed and industry has been providing the notice **BEFORE** staking.

The notice requirement says notice must be provided "before commencement of any activity on the land surface." This has been taken to mean staking.

Surveyors are covered under their own section of law, 70-16-111, MCA. It says a surveyor shall provide notice by certified mail 15 days before desired date of entry to land (subject to a waiver by the landowner). That notice must include:

- (i) the identity of the person for whom the survey is being performed;
  - (ii) the purpose for which the survey is being performed;
  - (iii) the name of the employer of the professional land surveyor;
  - (iv) the identity of the professional land surveyor;
  - (v) the dates, times, and location of entry to the land, including the estimated number of entries;
  - (vi) a timetable for completion of the survey, including an estimated completion date;
- and
- (vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

**Section 6:** This simply directs the code commissioner to place Section 5 within the surface owner damage and disruption compensation part.

**Sections: 7 and 8.** These make the act effective on **October 1, 2008** and stipulate that it would only apply to proceedings begun after that date. The committee may want to change this date.

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As of: May 2, 2006 (3:06pm)

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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 owner; requiring an oil or gas developer or operator to provide information to a surface owner; requiring the surface owner to provide notice; 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; 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~~ owner.** (1) Before commencing seismic activity, the person, firm, or corporation shall notify the surface ~~user~~ owner, as defined under 82-10-502, 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

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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~~ owner during planned seismic activity.

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

(3) The surface owner is responsible for providing the name and address of the permitholder to any lessees, tenants, or others responsible for surface operations on the property."

{*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.** (1) In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas

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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~~ 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.

(2) The surface owner is responsible for providing the name and address of the oil and gas developer or operator to any lessees, tenants, or others responsible for surface operations on the property."

{ 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**

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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 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~~7.~~ 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.

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(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. Penalty for notice violation.** (1)

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 is provided. The oil and gas developer or operator shall make payment of the fine payable to the state of Montana.

(3) Civil penalties collected pursuant to this section must

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be deposited in the state general fund.

NEW SECTION. **Section 6. {standard} Codification instruction.** [Section 5] 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 5].

NEW SECTION. **Section 7. {standard} Effective date.** [This act] is effective October 1, 2008.

NEW SECTION. **Section 8. Applicability.** [This act] applies to proceedings begun after October, 1, 2008.

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