

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1250 Session of  
2011

INTRODUCED BY KASUNIC, BREWSTER, COSTA, FONTANA, RAFFERTY,  
SOLOBAY, STACK, WASHINGTON AND WILLIAMS, SEPTEMBER 20, 2011

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, SEPTEMBER 20,  
2011

AN ACT

1 Providing for surface owner protection.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Surface  
6 Owners Protection Act.

7 Section 2. Applicability.

8 This act applies in the following situations when oil and gas  
9 exploration or oil and gas operations are conducted:

10 (1) Land owned by a surface owner, who does not own  
11 mineral rights for oil and gas production, and who sustains  
12 damages as provided in section 4(a) resulting from oil and  
13 gas exploration or oil and gas operations.

14 (2) Land subject to leasehold interests where the tenant  
15 sustains damages to leasehold improvements resulting from oil  
16 and gas operations.

17 Section 3. Definitions.

1       The following words and phrases when used in this act shall  
2 have the meanings given to them in this section unless the  
3 context clearly indicates otherwise:

4       "Department." The Department of Environmental Protection of  
5 the Commonwealth.

6       "Gas." The term as defined in the act of December 19, 1984  
7 (P.L.1140, No.223), known as the Oil and Gas Act.

8       "Oil." The term as defined in the act of December 19, 1984  
9 (P.L.1140, No.223), known as the Oil and Gas Act.

10      "Oil and Gas Act." The act of December 19, 1984 (P.L.1140,  
11 No.223), known as the Oil and Gas Act.

12      "Oil and gas exploration." All activities affecting the land  
13 owned by the surface owner that are associated with the  
14 exploration for oil or gas.

15      "Oil and gas operations." All activities affecting the land  
16 owned by the surface owner that are associated with drilling or  
17 extraction of oil or gas, including final reclamation of the  
18 surface land affected by oil and gas operations.

19      "Operator." A person with the legal right to conduct oil and  
20 gas operations, including the agents, employees and contractors  
21 of that person.

22      "Reclaim." To substantially restore the surface affected by  
23 oil and gas operations to the condition that existed prior to  
24 oil and gas operations, or as otherwise agreed to in writing by  
25 the operator and the surface owner.

26      "Surface owner." A person who holds legal or equitable  
27 title, as shown in the records of the county recorder of deeds,  
28 to the surface of the real property on which the operator has  
29 the legal right to conduct oil and gas operations.

30      "Surface use and compensation agreement." An agreement

1 between an operator and a surface owner specifying the rights  
2 and obligations of the surface owner and operator concerning  
3 activities and measures to mitigate damages to the surface owner  
4 resulting from oil and gas operations by the operator.

5 "Tenant." A person who occupies land or premises belonging  
6 to another in subordination to the owner's title and with the  
7 owner's assent, express or implied.

#### 8 Section 4. Compensation for oil and gas operations.

9 (a) Surface owner.--An operator shall compensate the surface  
10 owner for damages sustained by the surface owner, as applicable,  
11 for loss of agricultural production and income, lost land value,  
12 lost use of and lost access to the surface owner's land and lost  
13 value of improvements caused by oil and gas exploration and oil  
14 and gas operations. The payments required by this section only  
15 apply to land affected by oil and gas exploration and oil and  
16 gas operations.

17 (b) Tenant.--An operator shall not be responsible for  
18 allocating compensation between the surface owner and any  
19 tenant, except that an operator shall compensate a tenant of the  
20 surface owner for any leasehold improvements damaged as a result  
21 of the operator's oil and gas exploration or oil and gas  
22 operations if the improvements are approved and authorized by  
23 the surface owner. The compensation shall equal the cost of  
24 repairing or replacing the improvements.

#### 25 Section 5. Notices; surface use and compensation agreement.

26 (a) General notice.--Prior to initial entry upon the land  
27 for activities that do not disturb the surface, including  
28 inspections, staking, surveys, measurements and general  
29 evaluation of proposed routes and sites for oil and gas  
30 operations, the operator shall provide at least five business

1 days' notice by certified mail or hand delivery to the surface  
2 owner.

3 (b) Exploration notice.--The following provisions shall  
4 apply:

5 (1) No less than 15 days before entering the property of  
6 the surface owner to conduct oil and gas exploration, an  
7 operator shall, by certified mail or hand delivery, give the  
8 surface owner notice of planned oil and gas exploration. The  
9 notice shall include:

10 (i) Sufficient disclosure of the planned oil and gas  
11 exploration to enable the surface owner to evaluate the  
12 effect of the operations on the surface owner's property,  
13 including applicable information listed in subsection (c)  
14 (1) that has the potential to damage the value or use of  
15 the property by the surface owner.

16 (ii) A copy of this act.

17 (iii) The name, address, telephone number and, if  
18 available, facsimile number and electronic mail address  
19 of the operator and the operator's authorized  
20 representative.

21 (2) The surface owner may, within 30 days of receipt of  
22 the notice of proposed oil and gas exploration, submit to the  
23 operator a claim that outlines the anticipated damages to the  
24 value and use of the property resulting from the planned oil  
25 and gas exploration.

26 (c) Operation notice.--No less than 30 days before first  
27 entering the property of the surface owner to conduct oil and  
28 gas operations, an operator shall, by certified mail or hand  
29 delivery, give the surface owner notice of the planned oil and  
30 gas operations. The notice shall include:

1           (1) Sufficient disclosure of the planned oil and gas  
2 operations to enable the surface owner to evaluate the effect  
3 of the operations on the surface owner's property, including  
4 the following information and State law requirements under  
5 the Oil and Gas Act that has the potential to damage the  
6 value or the use of the property by the surface owner:

7           (i) Placement, specifications, maintenance and  
8 design of well pads, gathering pipelines and roads to be  
9 constructed for oil and gas operations.

10          (ii) Planned routes of ingress and egress upon the  
11 surface of the land and the anticipated traffic load on  
12 each route resulting from the oil and gas operations.

13          (iii) Construction, maintenance and placement of all  
14 pits and equipment used or planned for oil and gas  
15 operations.

16          (iv) Use and impoundment of water on property of the  
17 surface owner.

18          (v) Plans to remove and restore plant life on the  
19 property.

20          (vi) The likelihood for any change in the surface  
21 water drainage on the property of the surface owner as a  
22 result of the oil and gas operations and plans to restore  
23 such drainage.

24          (vii) Actions to limit and effectively control  
25 precipitation runoff and erosion.

26          (viii) Control and management of noise, weeds, dust,  
27 traffic, trespass, litter and interference with the use  
28 of the property by the surface owner.

29          (ix) Interim and final reclamation.

30       (2) A copy of this act.

1           (3) The name, address, telephone number and, if  
2           available, facsimile number and electronic mail address of  
3           the operator and the operator's authorized representative.

4           (4) A proposed surface use and compensation agreement  
5           that shall contain, at a minimum and to the extent known, the  
6           following:

7                 (i) A summary of the elements of the proposed oil  
8                 and gas operations listed in paragraph (1).

9                 (ii) Actions to minimize the likelihood of damages  
10                to the use or value of the surface owner's property  
11                arising from oil and gas operations from the requirements  
12                contained in paragraph (1).

13               (iii) Operator indemnification for injury to persons  
14               caused by the operator.

15               (iv) An offer of compensation for actual damages  
16               incurred by the surface owner resulting from oil and gas  
17               exploration.

18               (v) An offer of compensation to include an amount  
19               for actual damages incurred by the surface owner  
20               resulting from oil and gas exploration and an amount for  
21               damages to the surface owner resulting from the proposed  
22               oil and gas operations.

23       (d) Owner of record.--The notices required by this section  
24       shall be given to the surface owner at the address shown by the  
25       records of the county recorder of deeds at the time the notice  
26       is given. If legal title and equitable title are not held by the  
27       same person, notice shall be given to both the holder of the  
28       legal title and to the holder of equitable title at the  
29       addresses shown by the records of the county recorder of deeds  
30       at the time the notice is given.

(e) Agreement.--Upon receipt of the notice required by subsection (c), the surface owner may:

(1) accept the proposed surface use and compensation agreement within 20 days; or

(2) reject the proposed surface use and compensation agreement; provided that, failure to accept the proposed agreement within 20 days shall be deemed to be a rejection of the proposed agreement by the surface owner. If the proposed agreement is rejected, the surface owner may enter into negotiations with the operator, including, if the parties agree, binding arbitration or mediation.

(f) Receipt.--Notices required by this act shall be deemed to have been received five days after mailing by certified mail or immediately upon hand delivery.

(g) Mitigation of damage.--The operator and the surface owner may enter into a mutually acceptable agreement specifying the rights and obligations of the surface owner and operator concerning activities and measures to mitigate damages to the surface owner resulting from oil and gas operations by the operator.

Section 6. Entry without agreement; bond.

If, after 30 days from a surface owner's receiving notice of planned oil and gas operations pursuant to section 5(c), no surface use and compensation agreement has been entered into, the operator may enter the property of the surface owner and conduct oil and gas operations, after compliance with either of the following:

(1) After depositing a surety bond, a letter of credit from a financial institution chartered or authorized to do business in this Commonwealth and regulated and examined by

1 the Commonwealth or a Federal agency, or cash or a  
2 certificate of deposit with a corporate surety licensed to do  
3 business in this Commonwealth and approved by the department,  
4 or for the benefit of the surface owner in the amount of  
5 \$10,000 per well location. The surety bond, letter of credit,  
6 cash or certificate of deposit shall only be released if:

7 (i) The surface owner provides notice that  
8 compensation for damages has been paid.

9 (ii) The surface owner and the operator have  
10 executed a surface use and compensation agreement or  
11 otherwise agreed that the security should be released.

12 (iii) There has been a final resolution of any  
13 judicial appeal in any action for damages and any awarded  
14 damages have been paid.

15 (iv) All wells have been plugged and abandoned and  
16 the operator has not conducted oil and gas operations on  
17 the surface owner's property for a period of six years.

18 (2) After posting a blanket security bond, letter of  
19 credit from a financial institution chartered or authorized  
20 to do business in this Commonwealth and regulated and  
21 examined by the Commonwealth or a Federal agency, cash or a  
22 certificate of deposit with a corporate surety licensed to do  
23 business in this Commonwealth and approved by the department  
24 in the sum of \$25,000 subject to the following criteria:

25 (i) The corporate surety shall hold the blanket  
26 security bond, letter of credit, cash or certificate of  
27 deposit for the benefit of the surface owners of this  
28 Commonwealth and shall ensure that such security is in a  
29 form readily payable to a surface owner awarded damages  
30 in an action brought pursuant to this act.



1           (ii) The blanket security bond, letter of credit,  
2 cash or certificate of deposit shall remain in full force  
3 and effect as long as the operator continues oil and gas  
4 operations in this Commonwealth.

5           (iii) The blanket security bond, letter of credit,  
6 cash or certificate of deposit shall not be released  
7 until six years after the operator has deposited with the  
8 corporate surety a certified statement from the  
9 department that, according to the records of the  
10 department, the operator is not the operator of record of  
11 any oil or gas well in this Commonwealth, and does not  
12 hold any outstanding permits for the drilling issued  
13 under the Oil and Gas Act and its regulations.

14           (iv) In the event that, pursuant to a judgment, all  
15 or a portion of the bond, letter of credit, cash or  
16 certificate of deposit has been used to pay a surface  
17 owner, the operator shall immediately post additional  
18 security so that the total amount equals \$25,000 and, if  
19 the operator does not post the additional security, the  
20 corporate surety shall publish notice to that effect in a  
21 paper of general circulation in each county of the  
22 Commonwealth in which the operator conducts oil and gas  
23 operations.

24 Section 7. Court-awarded damages.

25 In an action brought pursuant to this act, if a court finds  
26 that compensation is owed under section 4, the court may also  
27 award the prevailing party either of the following if one of the  
28 criteria are met:

29           (1) Attorney fees and costs, if any of the following  
30 apply:

1           (i) the operator conducted oil and gas operations  
2 without providing notice as required under section 5(b)  
3 and (c);

4           (ii) the operator conducted oil and gas operations  
5 without a surface use and compensation agreement entered  
6 into between the operator and the surface owner and  
7 before depositing a bond or other surety as required  
8 under section 6;

9           (iii) the operator conducted oil and gas operations  
10 and did not comply with the terms of the surface use and  
11 compensation agreement, and when entering into the  
12 agreement, knew or should have known that compliance with  
13 the terms of the agreement would not be met; or

14           (iv) the surface owner failed to exercise good faith  
15 in complying with the provisions of this act or the terms  
16 of the surface use and compensation agreement.

17           (2) Attorney fees, costs and treble damages if the court  
18 finds, by clear and convincing evidence, either of the  
19 following:

20           (i) The operator willfully and knowingly entered  
21 upon the premises for the purpose of drilling an oil or  
22 gas well:

23                   (A) Without giving notice to the surface owner  
24 as required under section 5(b).

25                   (B) Without a surface and compensation agreement  
26 entered into between the operator and the surface  
27 owner and before depositing a bond or other surety  
28 pursuant to section 6.

29           (ii) Either the surface owner or the operator  
30 willfully and knowingly violated the terms of the surface

1 use and compensation agreement.

2 Section 8. Remedies not exclusive.

3 The remedies provided by this act are not exclusive and do  
4 not preclude a person from seeking other remedies allowed by  
5 law.

6 Section 9. Emergency situations.

7 Notwithstanding any provisions of this act to the contrary,  
8 no notice, surface use compensation agreement or bond shall be  
9 required in emergency situations for activities to protect  
10 health, safety or the environment.

11 Section 10. Temporary provision; applicability.

12 The provisions of this act shall apply to all oil and gas  
13 operations commenced on or after July 1, 2011, except the  
14 following:

15 (1) Maintenance and outgoing production activities  
16 related to an oil and gas well producing or capable of  
17 producing oil or gas on June 30, 2011, for which the operator  
18 has a valid permit issued under the Oil and Gas Act, provided  
19 that:

20 (i) reentries, workovers and other oil or gas  
21 operations are subject to this act if the activities  
22 disturb additional surface of the land; and

23 (ii) the duty to reclaim, as stated in section 4(c),  
24 is applicable to such an oil or gas well that is not  
25 plugged and abandoned on July 1, 2011.

26 (2) Oil and gas operations conducted within the scope of  
27 an agreement, entered into prior to July 1, 2011, between a  
28 surface owner and an operator that sets forth rights and  
29 duties of the parties with respect to activities conducted by  
30 the parties to mitigate the impact of oil and gas operations

- 1       on the surface owner.
- 2   Section 11.   Effective date.
- 3       This act shall take effect immediately.