

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 01-0351.01 Thomas Morris

HOUSE BILL 01-1062

HOUSE SPONSORSHIP

Larson

SENATE SPONSORSHIP

Dyer (Durango)

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE PAYMENT OF COMPENSATION BY AN OIL AND GAS**
102 **OPERATOR TO A SURFACE OWNER FOR SURFACE DAMAGES**
103 **ARISING FROM DRILLING OPERATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires oil and gas operators and surface owners to negotiate concerning compensation to be paid by the operator to the surface owner for damages to the surface that are reasonably anticipated to result from proposed drilling operations. Establishes a procedure, to be used if the parties fail to reach agreement, whereby the parties select appraisers to evaluate the anticipated surface damages and to issue a report. Allows the parties to appeal the appraisers' report.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
February 7, 2001

HOUSE
2nd Reading Unamended
February 6, 2001

Relocates existing provisions allowing the oil and gas conservation commission to require operators to post security to cover potential surface damage.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 60 of title 34, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 2**

5 **SURFACE DAMAGES**

6 **34-60-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "DRILLING OPERATIONS" MEANS THE DRILLING OF AN OIL AND
9 GAS WELL, UNDERGROUND INJECTION WELL, OR GAS STORAGE WELL AND
10 THE ONGOING OCCUPATION AND USE OF THE SURFACE, IF ANY, FOR
11 MAINTENANCE OF OIL AND GAS PRODUCTION.

12 (2) "SITE" MEANS ALL OR PART OF THE SURFACE OF THE LAND UPON
13 WHICH DRILLING OPERATIONS ARE CONDUCTED, TAKING INTO ACCOUNT
14 SUCH INTERIM SITE RECLAMATION AS MAY BE REQUIRED BY THE RULES OF
15 THE COMMISSION.

16 **34-60-202. Negotiations to determine surface damages.** AFTER
17 THE SURFACE OWNER'S RECEIPT OF A NOTICE RELATING TO THE
18 COMMENCEMENT OF DRILLING OPERATIONS REQUIRED UNDER SECTION
19 34-60-106 (14) AND PRIOR TO ENTERING THE SITE WITH HEAVY EQUIPMENT
20 TO COMMENCE DRILLING OPERATIONS, THE OPERATOR SHALL ENTER INTO
21 GOOD FAITH NEGOTIATIONS WITH THE SURFACE OWNER TO DETERMINE THE
22 SURFACE DAMAGES TO THE SITE THAT ARE EXPECTED TO BE CAUSED BY
23 THE OPERATOR'S PROPOSED DRILLING OPERATIONS.

24 **34-60-203. Entry - arbitration.** (1) IF THE PARTIES REACH A

1 WRITTEN AGREEMENT CONCERNING THE OPERATOR'S PAYMENT OF
2 COMPENSATION TO THE SURFACE OWNER FOR SURFACE DAMAGES TO THE
3 SITE, [REDACTED] THE OPERATOR MAY ENTER THE SITE TO COMMENCE DRILLING
4 OPERATIONS IN SUBSTANTIAL COMPLIANCE WITH THE APPLICATION FOR
5 PERMIT TO DRILL APPROVED PURSUANT TO SECTION 34-60-106 (1) (f).

6 (2) IF THE PARTIES DO NOT REACH A WRITTEN AGREEMENT OR IF
7 THE OPERATOR IS NOT ABLE TO CONTACT ALL AFFECTED SURFACE OWNERS,
8 THE OPERATOR MAY PETITION THE DISTRICT COURT IN THE COUNTY IN
9 WHICH THE SITE IS LOCATED FOR APPOINTMENT OF APPRAISERS TO MAKE
10 RECOMMENDATIONS TO THE PARTIES AND TO THE COURT CONCERNING THE
11 AMOUNT OF SURFACE DAMAGES, IF ANY, THAT ARE [REDACTED] EXPECTED TO BE
12 CAUSED BY THE OPERATOR'S PROPOSED DRILLING OPERATIONS [REDACTED] ON THE
13 SITE. AFTER THE OPERATOR HAS PETITIONED FOR THE APPOINTMENT OF
14 APPRAISERS, THE OPERATOR MAY ENTER THE SITE TO COMMENCE DRILLING
15 OPERATIONS IN SUBSTANTIAL COMPLIANCE WITH THE APPLICATION FOR
16 PERMIT TO DRILL APPROVED PURSUANT TO SECTION 34-60-106 (1) (f).

17 (3) (a) WITHIN TEN DAYS AFTER FILING A PETITION FOR
18 APPOINTMENT OF APPRAISERS, THE OPERATOR SHALL SERVE THE SURFACE
19 OWNER WITH NOTICE OF SUCH PETITION BY PERSONAL SERVICE AS
20 PROVIDED IN THE COLORADO RULES OF CIVIL PROCEDURE. IN THE CASE OF
21 A SURFACE OWNER WHOSE ADDRESS CANNOT BE ASCERTAINED, THE
22 OPERATOR MAY SERVE SUCH NOTICE BY PUBLICATION IN ONE ISSUE OF A
23 NEWSPAPER QUALIFIED TO PUBLISH LEGAL NOTICES IN THE COUNTY WHERE
24 THE SITE IS LOCATED AS PROVIDED IN ARTICLE 70 OF TITLE 24, C.R.S.

25 (b) IF A SURFACE OWNER WHO CANNOT BE LOCATED DOES NOT
26 RESPOND WITHIN TWENTY DAYS AFTER THE PUBLICATION OF THE NOTICE
27 PROVIDED FOR IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE OPERATOR

1 MAY ELECT TO TERMINATE THE APPRAISAL PROCEEDING AND SHALL HAVE
2 THE CONTINUING RIGHT OF ENTRY SUBJECT TO THE SUBMISSION OF THE
3 SECURITY REQUIRED IN SECTION 34-60-207 WITH THE COMMISSION. IN
4 SUCH CASE, THIS PART 2 SHALL HAVE NO APPLICATION TO THE DRILLING
5 OPERATIONS ON THE SUBJECT PARCEL OF LAND.

6 (4) (a) (I) APPRAISERS APPOINTED BY THE COURT PURSUANT TO
7 SUBSECTION (2) OF THIS SECTION SHALL BE SELECTED AS FOLLOWS:

8 (A) THE OPERATOR SHALL SELECT ONE APPRAISER;

9 (B) THE SURFACE OWNER OR SURFACE OWNERS SHALL SELECT ONE
10 APPRAISER;

11 (C) THE TWO SELECTED APPRAISERS SHALL SELECT A THIRD
12 APPRAISER;

13 (D) ALL APPRAISERS SHALL MEET THE REQUIREMENTS OF A
14 CERTIFIED GENERAL APPRAISER AS ESTABLISHED PURSUANT TO SECTION
15 12-61-706, C.R.S., AND POSSESS THE NECESSARY QUALIFICATIONS,
16 ABILITY, AND EXPERIENCE TO EXECUTE THE APPRAISAL AND VALUATION OF
17 REAL PROPERTY AND THE VALUE OF IMPROVEMENTS ON SUCH REAL
18 PROPERTY; AND

19 (E) NO APPRAISER SHALL BE A CURRENT OR FORMER DIRECTOR,
20 OFFICER, PARTNER, EMPLOYEE, CONSULTANT, ATTORNEY, ACCOUNTANT,
21 OR RELATIVE OF THE OPERATOR OR SURFACE OWNER.

22 (II) UNLESS THE COURT ALLOWS ADDITIONAL TIME FOR GOOD
23 CAUSE SHOWN, INCLUDING SUSPENSION OR ABANDONMENT OF THE
24 APPRAISAL PROCESS AS SET FORTH IN SUBSECTION (7) OF THIS SECTION, THE
25 THREE APPRAISERS SHALL BE SELECTED WITHIN TWENTY DAYS AFTER
26 SERVICE OF THE NOTICE OF THE PETITION TO APPOINT APPRAISERS OR
27 WITHIN TWENTY DAYS AFTER THE FIRST DATE OF PUBLICATION OF THE

1 NOTICE AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION. IF EITHER OF THE
2 PARTIES FAILS TO APPOINT AN APPRAISER OR IF THE TWO APPRAISERS
3 CANNOT AGREE ON THE SELECTION OF THE THIRD APPRAISER WITHIN THE
4 REQUIRED TIME PERIOD, THE COURT SHALL SELECT THE REMAINING
5 REQUIRED APPRAISERS UPON APPLICATION OF EITHER PARTY.

6 (b) THE APPRAISERS SHALL INSPECT THE SITE TO DETERMINE THE
7 SURFACE DAMAGES THAT ARE EXPECTED TO BE CAUSED BY THE
8 OPERATOR'S PROPOSED DRILLING OPERATIONS. TO THE EXTENT THAT SUCH
9 DAMAGES INCLUDE THE DIMINUTION OF THE SITE'S PROPERTY VALUE, SUCH
10 VALUATION SHALL BE CALCULATED IN ACCORDANCE WITH THE FAIR
11 MARKET VALUE OF THE SITE BASED ON ITS CURRENT USE.

12 (c) THE APPRAISERS SHALL FILE WITH THE CLERK OF THE COURT A
13 SIGNED, WRITTEN REPORT WITHIN THIRTY DAYS AFTER THE DATE OF THEIR
14 APPOINTMENT. THE REPORT SHALL SET FORTH THE SURFACE AREA,
15 BOUNDARIES, AND VALUE OF THE SITE AND THE AMOUNT OF SURFACE
16 DAMAGES THAT ARE EXPECTED TO BE CAUSED BY THE OPERATOR'S
17 PROPOSED DRILLING OPERATIONS. THE APPRAISERS SHALL DETERMINE THE
18 AMOUNT OF MONEY, IF ANY, TO BE PAID BY THE OPERATOR TO THE SURFACE
19 OWNER IN COMPENSATION FOR SUCH DAMAGES AND THE MANNER IN WHICH
20 THE OPERATOR SHALL PAY THE MONEY.

21 (d) THE COURT SHALL DETERMINE THE APPRAISERS'
22 COMPENSATION. THE OPERATOR AND THE SURFACE OWNER SHALL SHARE
23 EQUALLY IN THE PAYMENT OF THE APPRAISERS' COMPENSATION AND COURT
24 COSTS. IF THE SURFACE OWNER CANNOT BE LOCATED, THE OPERATOR
25 SHALL PAY SUCH SURFACE OWNER'S SHARE, WHICH AMOUNT SHALL BE
26 DEDUCTED FROM THE COMPENSATION AWARD RECOMMENDED BY THE
27 APPRAISERS.

1 (5) (a) WITHIN TEN DAYS AFTER THE APPRAISERS FILE THEIR
2 REPORT, THE CLERK OF THE COURT SHALL FORWARD TO EACH PARTY A
3 COPY OF THE REPORT AND A DATED NOTICE STATING THE TIME LIMITS FOR
4 FILING EXCEPTIONS OR A DEMAND FOR JURY TRIAL AS PROVIDED FOR IN
5 SUBSECTION (6) OF THIS SECTION.

6 (b) THE NOTICE REQUIRED BY THIS SUBSECTION (5) SHALL BE ON A
7 FORM APPROVED BY THE COLORADO SUPREME COURT AND SUPPLIED TO
8 ALL DISTRICT COURT CLERKS.

9 (c) IF A PARTY HAS BEEN SERVED BY PUBLICATION, THE CLERK
10 SHALL FORWARD A COPY OF THE APPRAISERS' REPORT AND THE NOTICE OF
11 TIME LIMITS TO THE LAST-KNOWN MAILING ADDRESS OF EACH SUCH PARTY,
12 AND SHALL CAUSE A COPY OF THE NOTICE OF TIME LIMITS TO BE PUBLISHED
13 IN ONE ISSUE OF A NEWSPAPER QUALIFIED TO PUBLISH LEGAL NOTICES AS
14 PROVIDED IN ARTICLE 70 OF TITLE 24, C.R.S.

15 (6) (a) UPON THE FILING OF WRITTEN EXCEPTIONS WITH THE COURT
16 BY EITHER PARTY WITHIN THIRTY DAYS AFTER THE FILING OF THE REPORT,
17 THE COURT SHALL HOLD A HEARING TO REVIEW THE REPORT. APPRAISERS'
18 FEES AND COURT COSTS MAY BE THE SUBJECT OF AN EXCEPTION, MAY BE
19 INCLUDED IN AN ACTION BY THE PETITIONER, AND MAY BE SET AND
20 ALLOWED BY THE COURT. AFTER THE HEARING THE COURT SHALL ENTER
21 AN APPROPRIATE ORDER EITHER CONFIRMING, REJECTING, OR MODIFYING
22 THE REPORT, OR ORDERING A NEW APPRAISAL FOR GOOD CAUSE SHOWN;
23 EXCEPT THAT, IF THE COURT ORDERS A NEW APPRAISAL AT THE REQUEST OF
24 THE OPERATOR, THE OPERATOR SHALL HAVE CONTINUING RIGHT OF ENTRY,
25 SO LONG AS THE OPERATOR HAS SUBMITTED THE SECURITY REQUIRED IN
26 SECTION 34-60-207 TO THE COMMISSION.

27 (b) EITHER PARTY MAY, WITHIN SIXTY DAYS AFTER THE FILING OF

1 THE APPRAISERS' REPORT, FILE WITH THE CLERK OF THE COURT A WRITTEN
2 DEMAND FOR A TRIAL. THE PARTIES SHALL HAVE THE RIGHT TO A TRIAL BY
3 JURY, IN WHICH CASE THE AMOUNT OF DAMAGES SHALL BE ASSESSED BY A
4 JURY. IF THE PARTY DEMANDING THE TRIAL DOES NOT RECOVER A VERDICT
5 MORE FAVORABLE TO SUCH PARTY THAN THE ASSESSMENT AWARD OF THE
6 APPRAISERS, ALL COURT COSTS, TOGETHER WITH REASONABLE ATTORNEY
7 FEES, SHALL BE ASSESSED AGAINST SUCH PARTY.

8 (c) IF THE OPERATOR DOES NOT FILE AN EXCEPTION OR APPEAL
9 PURSUANT TO THIS SECTION AND THE SURFACE OWNER CANNOT BE
10 LOCATED, THE COURT SHALL CERTIFY THE COMPENSATION AWARD
11 RECOMMENDED BY THE APPRAISERS AS FINAL AND BINDING. THE
12 OPERATOR SHALL HAVE THE CONTINUING RIGHT OF ENTRY SO LONG AS THE
13 OPERATOR HAS SUBMITTED THE SECURITY REQUIRED IN SECTION 34-60-207
14 TO THE COMMISSION.

15 (7) THE APPRAISAL PROCESS MAY BE ABANDONED OR SUSPENDED
16 AT ANY TIME PRIOR TO THE ISSUANCE OF THE APPRAISERS' REPORT
17 THROUGH MUTUAL WRITTEN AGREEMENT OF THE SURFACE OWNER AND THE
18 OPERATOR.

19 **34-60-204. Appeal.** ANY AGGRIEVED PARTY MAY APPEAL THE
20 FINAL JUDGMENT OF THE COURT. SUCH APPEAL SHALL NOT DELAY
21 DRILLING OPERATIONS IF THE OPERATOR HAS SUBMITTED TO THE
22 COMMISSION THE SECURITY REQUIRED UNDER SECTION 34-60-207.

23 **34-60-205. Construction.** (1) NOTHING CONTAINED IN THIS PART
24 2 SHALL BE CONSTRUED TO IMPAIR EXISTING CONTRACTUAL RIGHTS.

25
26 (2) NOTHING IN THIS PART 2 SHALL BE CONSTRUED TO PRECLUDE
27 ANY ACTION, EITHER AT LAW OR IN EQUITY, THAT EITHER OF THE PARTIES

1 MAY OTHERWISE HAVE.

2 (3) NOTHING IN THIS PART 2 SHALL BE CONSTRUED AS REPEALING
3 OR LIMITING THE JURISDICTION, AUTHORITY, OR POWER OF THE
4 COMMISSION.

5 **34-60-206. Treble damages.** (1) THE COURT MAY AWARD TREBLE
6 DAMAGES TO THE SURFACE OWNER UPON PRESENTATION OF CLEAR AND
7 CONVINCING EVIDENCE THAT THE OPERATOR WILLFULLY AND KNOWINGLY
8 COMMENCED DRILLING OPERATIONS ON THE SITE BEFORE:

9 (a) GIVING NOTICE OF SUCH COMMENCEMENT PURSUANT TO
10 SECTION 34-60-106 (14);

11 (b) SECURING THE AGREEMENT OF THE SURFACE OWNER; OR

12 (c) PETITIONING THE COURT FOR APPOINTMENT OF APPRAISERS.

13 (2) THE ISSUE OF TREBLE DAMAGES SHALL BE A FACT QUESTION,
14 DETERMINABLE WITHOUT JURY, AND SHALL BE DETERMINED DE NOVO IN
15 THE EVENT OF AN APPEAL.

16 (3) DAMAGES COLLECTED PURSUANT TO THIS PART 2 SHALL NOT
17 PRECLUDE THE SURFACE OWNER FROM COLLECTING ANY ADDITIONAL
18 DAMAGES CAUSED BY THE OPERATOR AT A SUBSEQUENT DATE; EXCEPT
19 THAT, IF THE OPERATOR PAID THE FULL MARKET VALUE OF THE SITE
20 PURSUANT TO THIS PART 2, NO ADDITIONAL COMPENSATION SHALL BE
21 AWARDED FOR SUBSEQUENT DAMAGE TO THE SITE.

22 **34-60-207. Security required.** IF THE SURFACE OWNER OF A SITE
23 IS NOT A PARTY TO A LEASE OR SURFACE USE AGREEMENT TO PROTECT SUCH
24 OWNER FROM DAMAGES TO THE SITE BY SAID OPERATOR AS SET FORTH IN
25 THIS PART 2, THE COMMISSION SHALL REQUIRE THE OPERATOR TO FURNISH
26 REASONABLE SECURITY WITH THE COMMISSION. SUCH SECURITY SHALL BE
27 IN AN AMOUNT SUFFICIENT TO RESTORE THE CONDITION OF THE SITE AS

1 NEARLY AS POSSIBLE TO ITS CONDITION PRIOR TO DRILLING OPERATIONS.
2 THIS REQUIREMENT MAY BE SATISFIED BY THE SUBMISSION OF A BLANKET
3 BOND, IN AN AMOUNT DETERMINED BY THE COMMISSION, TO COVER ALL
4 DRILLING OPERATIONS BY AN OPERATOR WITHIN THE STATE.

5 **SECTION 2.** 34-60-106 (3.5) and (14), Colorado Revised
6 Statutes, are amended to read:

7 **34-60-106. Additional powers of the commission.** (3.5) The
8 ~~commission shall require the furnishing of reasonable security with the~~
9 ~~commission by lessees of land for the drilling of oil and gas wells, in~~
10 ~~instances in which the owner of the surface of lands so leased was not a~~
11 ~~party to such lease, to protect such owner from unreasonable crop losses~~
12 ~~or land damage from the use of the premises by said lessee. The~~
13 ~~commission shall require the furnishing of reasonable security with the~~
14 ~~commission, to restore the condition of the land as nearly as is possible to~~
15 ~~its condition at the beginning of the lease and in accordance with the~~
16 ~~owner of the surface of lands so leased.~~

17 (14) The commission shall provide a means for giving reasonable
18 advance notice of the commencement of oil and gas operations to the
19 appropriate local government and surface owners whose lands will be
20 affected thereby. SUCH NOTICE SHALL SPECIFY THE OPERATOR'S PROPOSED
21 OIL AND GAS OPERATIONS, INCLUDING A MAP SPECIFYING THE NUMBER,
22 APPROXIMATE SIZE, AND LOCATION OF EACH PROPOSED WELL, ROAD,
23 PRODUCTION FACILITY, AND OTHER OIL AND GAS OPERATIONS
24 IMPROVEMENT.

25 **SECTION 3.** 34-60-124 (3), Colorado Revised Statutes, is
26 amended to read:

27 **34-60-124. Oil and gas environmental response fund.** (3) The

1 moneys in the oil and gas environmental response fund shall be subject to
2 annual appropriation by the general assembly; except that moneys
3 deposited in the fund constituting forfeited security or other financial
4 assurance provided by operators in accordance with section 34-60-106
5 ~~(3.5)~~ and (13) OR 34-60-207 shall be continuously appropriated to the
6 commission for the purpose of fulfilling obligations under this article
7 upon which an operator has defaulted.

8 **SECTION 4. Effective date.** This act shall take effect at 12:01
9 a.m. on the day following the expiration of the ninety-day period after
10 final adjournment of the general assembly that is allowed for submitting
11 a referendum petition pursuant to article V, section 1 (3) of the state
12 constitution; except that, if a referendum petition is filed against this act
13 or an item, section, or part of this act within such period, then the act,
14 item, section, or part, if approved by the people, shall take effect on the
15 date of the official declaration of the vote thereon by proclamation of the
16 governor.