

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

**INTRODUCED**

LLS NO. 05-0500.01 Thomas Morris

**HOUSE BILL 05-1219**

---

**HOUSE SPONSORSHIP**

**Curry, and Larson**

**SENATE SPONSORSHIP**

**(None),**

---

**House Committees**

**Senate Committees**

Agriculture, Livestock, & Natural Resources

---

**A BILL FOR AN ACT**

101 **CONCERNING THE PROTECTION OF THE RIGHTS OF A SURFACE OWNER**

102 **RELATING TO OIL AND GAS 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 loss of value associated with 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 an appraisal is performed to identify the lost value. Establishes a procedure for arbitration.

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.*



1 PURCHASE ALL OR PART OF THE SURFACE ESTATE.

2 **34-60-202. Negotiation of surface use agreements.** (1) AFTER  
3 A SURFACE OWNER'S RECEIPT OF A NOTICE RELATING TO THE  
4 COMMENCEMENT OF OIL AND GAS OPERATIONS REQUIRED UNDER SECTION  
5 34-60-106 (14) AND PRIOR TO ISSUANCE OF A PERMIT UNDER SECTION  
6 34-60-106 (1) (f), AN OPERATOR SHALL ENTER INTO GOOD FAITH  
7 NEGOTIATIONS WITH THE OWNER TO REACH A WRITTEN SURFACE USE  
8 AGREEMENT REGARDING, WITHOUT LIMITATION:

9 (a) THE LOCATION OF FACILITIES RELATED TO THE PROPOSED  
10 OPERATIONS;

11 (b) INTERIM AND FINAL RECLAMATION REQUIREMENTS; AND

12 (c) THE MINIMIZATION OF DAMAGES TO THE SURFACE EXPECTED TO  
13 BE CAUSED BY THE OPERATOR'S PROPOSED OPERATIONS.

14 (2) AN OPERATOR SHALL REASONABLY COMPENSATE THE SURFACE  
15 OWNER FOR THE LOSS OF VALUE ASSOCIATED WITH DAMAGES TO THE  
16 SURFACE RESULTING FROM ITS OPERATIONS ON THE SITE. FACTORS THAT  
17 MAY BE CONSIDERED INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF  
18 AGRICULTURAL PRODUCTION AND INCOME, LOSS OF LAND VALUE, LOSS OF  
19 LAND USE, LOSS OF VALUE OF IMPROVEMENTS, AND LOCATION OF  
20 FACILITIES.

21 **34-60-203. Appraisal - arbitration.** (1) PRIOR TO COMMISSION  
22 APPROVAL OF AN APPLICATION FOR A PERMIT TO DRILL, THE OPERATOR  
23 SHALL CERTIFY TO THE COMMISSION THAT A NOTICE HAS BEEN PROVIDED  
24 IN ACCORDANCE WITH SECTION 34-60-106 (14) AND THAT EITHER:

25 (a) A WRITTEN SURFACE USE AGREEMENT BETWEEN THE OWNER  
26 AND OPERATOR PURSUANT TO SECTION 34-60-202 HAS BEEN REACHED; OR

27 (b) THE OPERATOR HAS RECEIVED A WRITTEN WAIVER FROM THE

1 OWNER FOR ACCESS TO THE SURFACE WHILE NEGOTIATIONS CONTINUE.

2 (2) (a) IF THE PARTIES HAVE NOT EXECUTED A SURFACE USE  
3 AGREEMENT WITHIN NINETY DAYS AFTER RECEIPT OF NOTICE PURSUANT TO  
4 SECTION 34-60-106 (14) OR WHENEVER NEGOTIATIONS BECOME  
5 DEADLOCKED, WHICHEVER IS EARLIER, THE OPERATOR MAY SELECT A  
6 CERTIFIED GENERAL APPRAISER FROM AN APPROVED LIST MAINTAINED BY  
7 THE BOARD OF REAL ESTATE APPRAISERS PURSUANT TO PART 7 OF ARTICLE  
8 61 OF TITLE 12, C.R.S., TO ESTIMATE THE AMOUNT OF SURFACE VALUE  
9 LOST ASSOCIATED WITH DAMAGES, IF ANY, THAT ARE EXPECTED TO BE  
10 CAUSED BY THE OPERATOR'S PROPOSED OPERATIONS.

11 (b) THE APPRAISER SHALL MEET THE REQUIREMENTS OF A  
12 CERTIFIED GENERAL APPRAISER AS ESTABLISHED PURSUANT TO SECTION  
13 12-61-706, C.R.S., AND POSSESS THE NECESSARY QUALIFICATIONS,  
14 ABILITY, AND EXPERIENCE TO EXECUTE THE APPRAISAL AND VALUATION OF  
15 REAL PROPERTY AND THE VALUE OF IMPROVEMENTS ON SUCH REAL  
16 PROPERTY. NO SUCH APPRAISER SHALL BE A CURRENT DIRECTOR, OFFICER,  
17 PARTNER, EMPLOYEE, CONSULTANT, ATTORNEY, ACCOUNTANT, OR  
18 RELATIVE OF THE OPERATOR OR OWNER.

19 (c) THE APPRAISER SHALL INSPECT THE SITE AND SHALL FILE WITH  
20 THE PARTIES A SIGNED, WRITTEN REPORT WITHIN SIXTY DAYS AFTER THE  
21 SELECTION OF THE APPRAISER. THE REPORT SHALL SET FORTH THE  
22 SURFACE AREA, BOUNDARIES, AND VALUE OF THE SITE AND THE AMOUNT  
23 OF LOST VALUE ASSOCIATED WITH DAMAGES IN ACCORDANCE WITH  
24 SECTION 34-60-202 (2) THAT IS EXPECTED TO BE CAUSED BY THE  
25 OPERATOR'S PROPOSED OPERATIONS. TO THE EXTENT THAT SUCH LOST  
26 VALUE INCLUDES THE DIMINUTION OF THE SITE'S PROPERTY VALUE, SUCH  
27 VALUATION SHALL BE CALCULATED IN ACCORDANCE WITH THE CURRENT

1 FAIR MARKET VALUE OF THE SITE. THE REPORT SHALL RECOMMEND THE  
2 AMOUNT OF MONEY, IF ANY, TO BE PAID BY THE OPERATOR TO THE OWNER  
3 IN COMPENSATION FOR THE LOST PROPERTY VALUE ASSOCIATED WITH  
4 SUCH DAMAGES.

5 (3) (a) AFTER RECEIPT OF THE REPORT, THE PARTIES SHALL AGAIN  
6 ENTER INTO GOOD FAITH NEGOTIATIONS FOR A SURFACE USE AGREEMENT.

7 (b) IF THE PARTIES REACH A WRITTEN SURFACE USE AGREEMENT  
8 WITHIN THIRTY DAYS AFTER RECEIPT OF THE APPRAISER'S REPORT, THE  
9 COMMISSION MAY PROCEED WITH FINAL APPROVAL OF THE APPLICATION  
10 FOR A PERMIT TO DRILL PURSUANT TO SECTION 34-60-106 (1) (f).

11 (c) IF THE PARTIES FAIL TO REACH A WRITTEN AGREEMENT WITHIN  
12 THIRTY DAYS AFTER RECEIPT OF THE REPORT:

13 (I) EITHER PARTY MAY PROVIDE THE OTHER PARTY WITH WRITTEN  
14 NOTICE OF SUCH FAILURE;

15 (II) WITHIN TEN DAYS AFTER RECEIPT OF A WRITTEN NOTICE OF  
16 FAILURE TO REACH AN AGREEMENT, EITHER PARTY MAY PROVIDE NOTICE  
17 TO THE OTHER PARTY PURSUANT TO SECTION 13-22-209, C.R.S., OF THE  
18 INITIATION OF BINDING ARBITRATION TO BE CONDUCTED PURSUANT TO THE  
19 "UNIFORM ARBITRATION ACT OF 1975", PART 2 OF ARTICLE 22 OF TITLE  
20 13, C.R.S. IF NOTICE IS GIVEN PURSUANT TO THIS SUBPARAGRAPH (II), THE  
21 PARTIES SHALL BE DEEMED TO HAVE AGREED TO SUBMIT TO ARBITRATION  
22 PURSUANT TO SUCH ACT REGARDING THE COMPENSATION AND THE OTHER  
23 DISPUTED TERMS OF THE SURFACE USE AGREEMENT. AFTER INITIATION OF  
24 ARBITRATION, THE OPERATOR CAN APPLY FOR FINAL APPROVAL OF THE  
25 PERMIT TO DRILL UPON SUBMISSION OF PROOF TO THE COMMISSION OF  
26 SUCH INITIATION. IF THE SURFACE OWNERS PROVES THAT THE OPERATOR  
27 DID NOT SEEK TO MINIMIZE DAMAGES TO THE SITE AFTER ACCESSING THE

1 SITE DURING THE ARBITRATION PROCESS, THE ARBITRATOR SHALL AWARD  
2 DOUBLE THE AMOUNT OF SUCH DAMAGES TO THE SURFACE OWNER.

3 (d) THE PARTIES SHALL PAY THEIR PRO RATA SHARE OF THE COSTS  
4 OF APPRAISAL AND ARBITRATION, WITH THE OPERATOR PAYING HALF AND  
5 THE SURFACE OWNER OR OWNERS HALF.

6 **34-60-204. Construction.** NOTHING CONTAINED IN THIS PART 2  
7 SHALL BE CONSTRUED TO IMPAIR EXISTING CONTRACTUAL RIGHTS OR TO  
8 EXPAND, LIMIT, OR AFFECT LOCAL GOVERNMENT AUTHORITY. NOTHING IN  
9 THIS PART 2 SHALL BE CONSTRUED TO PRECLUDE ANY ACTION, EITHER AT  
10 LAW OR IN EQUITY, THAT THE PARTIES MAY OTHERWISE HAVE.

11 **SECTION 2.** 34-60-106 (3.5), Colorado Revised Statutes, is  
12 amended to read:

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

23 **SECTION 3. Effective date - applicability.** This act shall take  
24 effect July 1, 2006, and shall apply to oil and gas operations commencing  
25 on or after said date.

26 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.