



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1302

Introduced 2/9/2007, by Sen. Frank C. Watson - J. Bradley Burzynski

SYNOPSIS AS INTRODUCED:

765 ILCS 530/2	from Ch. 96 1/2, par. 9652
765 ILCS 530/3	from Ch. 96 1/2, par. 9653
765 ILCS 530/4	from Ch. 96 1/2, par. 9654
765 ILCS 530/6	from Ch. 96 1/2, par. 9656

Amends the Illinois Drilling Operations Act. Provides that the Act also applies to coalbed methane (at present, oil and gas). Adds production of coalbed methane to the definition of "production operation". Provides that a drilling operator must give a surface owner 30 days written notice of the commencement of drilling and do so by certified mail (at present, 10 days) or by personal delivery (at present, 8 days). Provides for adequate compensation for damage to the surface owner and his or her tenant (at present, surface owner) for damage caused by the drilling operations and adds personal property to the list of compensable items. Provides that the operator shall pay the owner and his or her tenant for losses to agricultural income, land value, access, and improvements caused by drilling. Provides a crop valuation method. Provides that if the owner and operator do not agree on compensation, the owner may bring a legal action and if in the action the court awards a greater amount of compensation than the operator offered, the court shall award costs, interest on the compensation from the day drilling began, and attorney's fees; however, no attorney's fees can be recovered if the operator relies on a third party appraisal. Provides that electrical flow lines (at present, flow lines and other underground structures) must be buried below the surface. Effective immediately.

LRB095 04227 AJO 24268 b

1 AN ACT concerning property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Drilling Operations Act is amended by
5 changing Sections 2, 3, 4, and 6 as follows:

6 (765 ILCS 530/2) (from Ch. 96 1/2, par. 9652)

7 Sec. 2. As used in this Act:

8 (a) "Person" means any natural person, corporation, firm,
9 partnership, venture, receiver, trustee, executor,
10 administrator, guardian, fiduciary or other representative of
11 any kind and includes any government or any political
12 subdivision or agency thereof;

13 (b) "Drilling operations" means the drilling, deepening or
14 conversion of a well for oil or gas production, core hole or
15 drill hole for a stratigraphic test;

16 (c) "Entry" means the moving upon the surface of land with
17 equipment to commence drilling operations, but shall not
18 include entry for the survey for or ascertaining or
19 identification of a well location;

20 (d) "Operator" means the person, whether the owner or not,
21 who applies for or holds a permit for drilling operations or
22 who is named as the principal on a bond for a permit for a well
23 that was issued by the Department of Natural Resources;

1 (e) "Surface owner" means the person in whose name the
2 surface of the land on which drilling operations are
3 contemplated, and who is assessed for purposes of taxes imposed
4 pursuant to the Property Tax Code according to the records of
5 the assessor of the county where the land is located as
6 certified by said assessor;

7 (f) "Assessor" means the supervisor of assessments, board
8 of assessors, or county assessor, as the case may be, for the
9 county in which the land is located;

10 (g) "Production operation" means the operation of a well
11 for the production of oil, ~~or~~ gas, and coalbed methane,
12 including all acts, structures, equipment, and roadways
13 necessary for such operation;

14 (h) "New well" means a well that is spudded after the
15 effective date of this Act and does not utilize any part of a
16 well bore or drilling location that existed prior to the
17 effective date of this Act;

18 (i) "Completion of the well" means completion of those
19 processes necessary before production occurs, including the
20 laying of flow lines and the construction of the tank battery.
21 If the well is not productive, the date of completion of the
22 well is the day it is plugged and abandoned.

23 (Source: P.A. 88-670, eff. 12-2-94; 89-445, eff. 2-7-96.)

24 (765 ILCS 530/3) (from Ch. 96 1/2, par. 9653)

25 Sec. 3. This Act shall be applicable only for the drilling

1 operations of new wells except as explicitly provided in
2 paragraph (c) of Section 6. It shall not apply for reworking
3 operations on a well.

4 This Act shall be applicable only when the surface owner
5 has not consented in writing to the drilling operations and:

6 (A) there has been a complete severance of the ownership of
7 the oil, ~~and gas,~~ and coalbed methane from the ownership of the
8 surface, or

9 (B) where the surface owner owns an interest in the oil, ~~10 and gas,~~ and coalbed methane, which interest is the subject of
11 either:

12 (1) An integration proceeding brought pursuant to "An Act
13 in relation to oil, gas, coal, and other surface and
14 underground resources and to repeal an Act herein named",
15 approved July 24, 1945, as amended, or

16 (2) A proceeding brought pursuant to "An Act in relation to
17 oil and gas interest in land", approved July 1, 1939, as
18 amended.

19 (Source: P.A. 85-1312.)

20 (765 ILCS 530/4) (from Ch. 96 1/2, par. 9654)

21 Sec. 4. Notice.

22 (a) Prior to commencement of the drilling of a well, the
23 operator shall give written notice to the surface owner of the
24 operator's intent to commence drilling operations.

25 (b) The operator shall, for the purpose of giving notice as

1 herein required, secure from the assessor's office within 90
2 days prior to the giving of the notice, a certification which
3 shall identify the person in whose name the lands on which
4 drilling operations are to be commenced and who is assessed at
5 the time the certification is made. The written certification
6 made by the assessor of the surface owner shall be conclusive
7 evidence of the surface ownership and of the operator's
8 compliance with the provisions of this Act.

9 (c) The notice required to be given by the operator to the
10 surface owner shall identify the following:

11 (1) The location of the proposed entry on the surface
12 for drilling operations, and the date on or after which
13 drilling operations shall be commenced.

14 (2) A photocopy of the drilling application to the
15 Department of Natural Resources for the well to be drilled.

16 (3) The name, address and telephone number of the
17 operator.

18 (4) An offer to discuss with the surface owner those
19 matters set forth in Section 5 hereof prior to commencement
20 of drilling operations.

21 (5) If the surface owner elects to meet the operator,
22 the surface owner shall request the operator to schedule a
23 meeting at a mutually agreed time and place within the
24 limitations set forth herein. Failure of the surface owner
25 to contact the operator at least 5 days prior to the
26 proposed commencement of drilling operations shall be

1 conclusively deemed a waiver of the right to meet by the
2 surface owner.

3 (6) The meeting shall be scheduled between the hours
4 of 9:00 in the morning and the setting of the sun of the
5 same day and shall be at least 3 days prior to commencement
6 of drilling operations. Unless agreed to otherwise, the
7 place shall be located within the county in which drilling
8 operations are to be commenced where the operator or his
9 agent shall be available to discuss with the surface owner
10 or his agent those matters set forth in Section 5 hereof.

11 (7) The notice herein required shall be given to the
12 surface owner by either:

13 (A) certified mail addressed to the surface owner
14 at the address shown in the certification obtained from
15 the assessor, which shall be postmarked at least 30 ~~10~~
16 days prior to the commencement of drilling operations;
17 or

18 (B) personal delivery to the surface owner at
19 least 30 ~~5~~ days prior to the commencement of drilling
20 operations.

21 (C) Notice to the surface owner as defined in this Act
22 shall be deemed conclusive notice to the record owners of
23 all interest in the surface.

24 (Source: P.A. 89-445, eff. 2-7-96; revised 10-19-05.)

25 (765 ILCS 530/6) (from Ch. 96 1/2, par. 9656)

1 Sec. 6. Compensation of surface owners for drilling and
2 producing operations and duties after cessation of production.

3 (A) The operator shall pay the surface owner a sum of money
4 equal to the amount of damages sustained by the surface owner
5 and the surface owner's tenant, if any, for any ~~shall be~~
6 ~~entitled to reasonable compensation from the operator for~~
7 ~~damages.~~

8 (1) Damage to growing crops, trees, shrubs, fences,
9 roads, structures, improvements, personal property, and
10 livestock thereon caused by the drilling of a new well. ~~The~~
11 ~~surface owner shall also be entitled to reasonable~~
12 ~~compensation from the operator for~~

13 (2) Subsequent damage ~~subsequent damages~~ to growing
14 crops, trees, shrubs, fences, roads, structures,
15 improvements, personal property, and livestock thereon
16 caused by subsequent production operations of the operator
17 thereon.

18 (3) Loss of agricultural production and income, lost
19 land value, lost use of and access to the surface owner's
20 land, and lost value of improvements caused by drilling
21 operations. For the loss of the value of agricultural
22 production and income corresponding to lands taken out of
23 production because of the use thereof by the operator for
24 roads and production equipment, any recovery shall only be
25 applicable if the area adjacent to the roads and production
26 equipment are planted and harvested. The value of the

1 commercial crop shall be calculated by: (1) determining the
2 average per acre yield for the crop on adjacent lands; (ii)
3 determining the price received for the sale of the crop on
4 adjacent lands less the cost of seed planting, chemicals,
5 fertilizers, and harvesting; (iii) determining the acreage
6 of the area utilized by roads and production equipment; and
7 (iv) attributing the determined crop yield to the
8 determined acreage utilized and applying the determined
9 price. The initial determination of the value of the crop
10 shall be determined by the surface owner and submitted to
11 the operator. The surface owner and operator shall mutually
12 agree as to the value of the crop utilizing the above
13 referenced formula for the initial crop year and all
14 subsequent crop years.

15 The surface owner and surface owner's tenant, if any,
16 shall also be entitled to reasonable compensation for all
17 negligent acts of operator that cause measurable damage to
18 the productive capacity of the soil. In addition, the
19 operator shall not utilize any more of the surface estate
20 than is reasonably necessary for the exploration,
21 production and development of the mineral estate.

22 Except as provided for in subparagraph (3) above for
23 loss of agricultural production and income, the amount of
24 damage set forth in this paragraph (A) may be determined by
25 any formula mutually agreeable between the surface owner
26 and the operator. When determining damage, consideration

1 must be given to the length of the period of time during
2 which the loss occurs. The surface owner may elect to be
3 paid damages in installments over a period of time.
4 Provided, however, that the surface owner must be
5 compensated for harm caused only by drilling the well (not
6 by production) by a single lump sum payment. These payments
7 will only apply to land directly affected by drilling
8 operations. Payments under this Section are intended to
9 compensate the surface owner for damage and disruption. Any
10 reservation or assignment of the compensation apart from
11 the surface estate, except to a tenant of the surface
12 estate, is prohibited. In the absence of an agreement
13 between the surface owner and a tenant as to the division
14 of compensation payable under this Section, the tenant is
15 entitled to recover from the surface owner that portion of
16 the compensation attributable to the tenant's share of the
17 damages sustained. The tenant shall not be entitled to file
18 an additional or separate claim against the operator for
19 compensation payable under this Section.

20 (B) The compensation required pursuant to paragraph (A)
21 above shall be paid in any manner mutually agreed upon by the
22 operator and the surface owner, but the failure to agree upon,
23 or make the compensation required, shall not prevent the
24 operator from commencement of drilling operations; provided,
25 however, that operator shall tender to the surface owner
26 payment by check or draft in accordance with the provisions

1 herein no later than 90 days after completion of the well. If
2 the ~~The~~ surface owner rejects the offer of the operator, the
3 surface owner may bring ~~owner's remedy shall be~~ an action for
4 compensation in the circuit court in which the lands or the
5 greater part thereof are located on which drilling operations
6 were conducted. If the amount of compensation awarded by the
7 court is greater than that which had been offered by the
8 operator, or the; ~~provided, however, that if~~ operator fails to
9 tender payment within the 90-day period the court shall award
10 the ~~or if the tender is not reasonable,~~ surface owner
11 reasonable ~~shall be entitled to reasonable compensation as~~
12 ~~provided herein as well as~~ attorney's fees, any costs assessed
13 by the court, and interest at the statutory rate on the final
14 amount of the final compensation awarded by the court from the
15 day drilling is commenced.

16 ~~If operator relies on a third party appraiser or fair~~
17 ~~market value, such amount shall be conclusively deemed to be~~
18 ~~reasonable, and there shall be no award of attorney's fees.~~

19 (C) In conjunction with the plugging and abandonment of any
20 well, the operator shall restore the surface to a condition as
21 near as practicable to the condition of the surface prior to
22 commencement of drilling operations; provided, however, that
23 the surface owner and operator may waive this requirement in
24 writing, subject to the approval of the Department of Natural
25 Resources that the waiver is in accordance with its rules.

26 (D) Where practicable and absent a written agreement to the

1 contrary with the surface owner, all electrical lines, all flow
2 lines, and other underground structures must be buried to a
3 depth not less than 36 inches from the surface.

4 (Source: P.A. 89-445, eff. 2-7-96.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.