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Senate BILL NO. *257*
Law

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND GREATER PROTECTION TO THE SURFACE OWNER AND TENANT AND TO REVISE THE GEOPHYSICAL EXPLORATION LAWS BY EXPANDING THE SCOPE TO ENCOMPASS CORE HOLE DRILLING, REQUIRING A PERMIT FROM THE DEPARTMENT OF STATE LANDS, AND PROVIDING FOR FINES AND PERMIT REVOCATIONS; AMENDING SECTIONS 69-3301, 69-3302, 69-3303, 69-3304, 69-3305, AND 69-3306, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3301, R.C.M. 1947, is amended to read as follows:

"69-3301. Persons required to comply with act. (1) A person, ~~firm or corporation~~ operating individually or through agents within the state of Montana for the purpose of geophysical exploration, ~~in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm or corporation either through its own employees or by hiring the services of others operates "seismograph crews," as the term is generally known,~~ shall comply with the following provisions of this act, ~~provided, however, that compliance with the~~

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~~provisions of this act by a seismograph crew or its employer shall constitute compliance herewith by that person, firm or corporation who has engaged the services of such crew or its employer as an independent contractor in so far as the geophysical operations of such crew are concerned.~~

(2) Compliance by an agent, acting as an independent contractor, with the provisions of 69-3301 through 69-3308 constitutes compliance by the person employing the agent."

Section 2. There is a new R.C.M. section numbered 69-3301.1 that reads as follows:

69-3301.1. Definitions. As used in 69-3301 through 69-3308, unless the context indicates otherwise, the following definitions apply:

(1) "Geophysical exploration" means activities to gather geophysical data whenever:

- (a) a seismograph is utilized along with explosives;
- or
- (b) a core drill hole is utilized.

(2) "Person" means any individual, firm, private or public corporation, association, or partnership.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "Surface user" means the person entitled to possession of the surface of a tract of land, either through ownership of the surface or by virtue of a lease from the

1 owner of the surface,

2 Section 3. Section 69-3302, R.C.M. 1947, is amended to
3 read as follows:

4 "69-3302. Deemed doing business within state —
5 resident agent. A person, ~~firm or corporation shall be~~
6 ~~deemed to be~~ is doing business within the state of Montana
7 when engaged in ~~such~~ geophysical exploration, within the
8 boundaries of this state, and shall, if not already
9 qualified to do business within this state with a
10 designation of an agent within the state for service of
11 process, prior to such time, file with the secretary of
12 state of the state of Montana an authorization, which
13 ~~authorization shall designate~~ designates a resident agent
14 for the service of process in any action which may be
15 pending in a court in this state, which cause of action may
16 have arisen out of ~~such~~ geophysical exploration."

17 Section 4. Section 69-3303, R.C.M. 1947, is amended to
18 read as follows:

19 "69-3303. Filing of notice of intention to engage in
20 geophysical exploration. ~~It shall be necessary for any~~ A
21 ~~person, firm or corporation~~ desiring to engage in ~~such~~
22 geophysical exploration within the state of Montana, prior
23 to actually so engaging in such exploration, ~~to~~ shall file a
24 notice of intention to engage in ~~such~~ geophysical
25 exploration with the county clerk and recorder in each

1 county in which exploration is to be carried on, or engaged
2 in. The ~~said~~ notice of intention to engage in ~~such~~
3 geophysical exploration shall be filed prior to the actual
4 commencement of ~~such~~ the geophysical exploration."

5 Section 5. Section 69-3304, R.C.M. 1947, is amended to
6 read as follows:

7 "69-3304. Surety bond required — amount — filing —
8 ~~proper plugging and restoration of surface~~ — certificate of
9 filing. A person, ~~firm or corporation~~ desiring to engage in
10 ~~such~~ geophysical exploration, shall ~~also~~ file with the
11 secretary of state a good and sufficient surety bond in the
12 amount of ~~ten thousand dollars (\$10,000.00)~~ for a single
13 ~~such~~ geophysical or drill crew or a blanket surety bond in
14 the amount of ~~twenty-five thousand dollars (\$25,000.00)~~ for
15 all ~~such~~ geophysical or drill crews operating within the
16 state for ~~such~~ the person, ~~firm or corporation, which.~~ The
17 bond shall indemnify the owners of property within this
18 state against ~~such~~ physical damages to ~~such~~ the property as
19 ~~may arise~~ arising as the result of such geophysical
20 exploration. ~~Unless otherwise agreed as between the owner of~~
21 ~~the surface and such person, firm, or corporation, it shall~~
22 ~~be the obligation of such person, firm, or corporation upon~~
23 ~~completion of exploration to plug all "shot holes" and~~
24 ~~restore the surface around the same as near as practicable~~
25 ~~to its original condition.~~ The said bond shall remain on

1 file with the secretary of state so long as the exploration
 2 is carried on or engaged in, plus an additional ~~two~~ (2)
 3 years thereafter; ~~provided, however, that the~~. The aggregate
 4 liability of the surety shall, ~~in no event,~~ may not exceed
 5 the amount of ~~said the~~ bond. Upon the filing of ~~such the~~
 6 bond, ~~said the~~ secretary of state shall issue to the person,
 7 ~~firm or corporation~~ a certificate showing that ~~such the~~ bond
 8 has been filed and showing the name of the designated
 9 resident agent within the state for service of process for
 10 ~~such the~~ person, ~~firm or corporation.~~"

11 Section 6. Section 69-3305, R.C.M. 1947, is amended to
 12 read as follows:

13 "69-3305. ~~Issuance of geophysical~~ Geophysical
 14 exploration permit ~~requirements contents period valid~~
 15 ~~for costs carrying of permit. The county clerk and~~
 16 ~~recorder of each county in the state of Montana, upon~~
 17 ~~compliance with the provisions herein contained, namely the~~
 18 ~~filing of a notice of intention to engage in such~~
 19 ~~geophysical exploration, in addition to a certificate or~~
 20 ~~photostatic copy thereof from the secretary of the state of~~
 21 ~~Montana certifying the name and address of the resident~~
 22 ~~agent for service of process for said person, firm or~~
 23 ~~corporation desiring to engage in such geophysical~~
 24 ~~exploration, and certifying that the required surety bond~~
 25 ~~has been filed with the said secretary of state, shall issue~~

1 ~~to such person, firm or corporation a "geophysical~~
 2 ~~exploration permit," which (1) No person may engage in~~
 3 ~~geophysical exploration without possessing a valid~~
 4 ~~geophysical exploration permit issued by the department or~~
 5 ~~being employed by a person possessing a valid permit.~~
 6 ~~Application for a permit or a renewal shall be on forms~~
 7 ~~prescribed by the department. Geophysical exploration~~
 8 ~~permits may be issued by the department.~~

9 (2) The permit ~~will~~ shall show;
 10 (a) the ~~names~~ name of the person, ~~firm or corporation;~~
 11 (b) his or its principal place of business;
 12 (c) if a firm or corporation, the names and addresses
 13 of its officers;
 14 (d) the name and address of the resident agent for
 15 service of process for ~~said the~~ person, ~~firm or corporation;~~
 16 (e) that a notice of intention to engage in ~~such~~
 17 geophysical exploration has been ~~duly~~ filed;
 18 (f) that a good and sufficient surety bond has been
 19 filed by the ~~said~~ person, ~~firm or corporation~~, naming the
 20 surety company and giving its address; ~~such permit to be~~
 21 ~~signed by the county clerk and recorder and/or his deputy,~~
 22 ~~and bearing the official county seal.~~

23 (3) ~~Such~~ The permit shall be valid and effective for
 24 all ~~such~~ geophysical crews of the permittee during the
 25 calendar year in which it is issued.

~~[4] The cost of the said permit shall be is five dollars (\$5.00) per for a calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county co-issuing. Such funds as are realized shall be applied toward payment of the cost of printing said permits, which shall be printed at the county seat, and such excesses shall, from year to year, go into the county's general fund; provided, however, that if printed forms are not available at the time any person, firm or corporation desires such permit and qualifies for its issuance, typewritten or other form of reproduction of such permit may be used and the fee of five dollars (\$5.00) shall nevertheless be paid for its issuance and such fee shall be disposed of in the same manner.~~

[5] The said permit or a photostatic copy thereof shall be carried by the person, or the agent of the firm or corporation, at all times during the period of such geophysical exploration and shall be exhibited upon demand by any county or state official."

[6] The permit required by this section is in addition to any other permit required by law.

Section 7. There is a new R.C.M. section numbered 69-3305.1 that reads as follows:

69-3305.1. Permit requirements. (1) No person may obtain a geophysical exploration permit without:

- 1 (a) complying with the department rules; and
- 2 (b) submitting to the department a certificate from
- 3 the secretary of state certifying the name and address of
- 4 the resident agent for service of process and certifying
- 5 that the required surety bond has been filed.

(2) In considering whether to issue a permit or grant a renewal, the department shall take into consideration any failure by the applicant to pay damages resulting from prior geophysical exploration.

Section 8. There is a new R.C.M. section numbered 69-3305.2 that reads as follows:

69-3305.2. Revocation of permits. If a person fails to comply with any provisions of 69-3301 through 69-3308, all geophysical exploration permits of the person are revoked. Before revocation, the department shall inform the person of the alleged violation and provide an opportunity for a hearing.

Section 9. There is a new R.C.M. section numbered 69-3305.3 that reads as follows:

69-3305.3. Information to be supplied to surface user.

- 1 (1) An individual or crew planning to engage in geophysical
- 2 exploration, prior to entry upon the land to carry out the
- 3 geophysical exploration, shall give the surface user a
- 4 signed statement with the following information as
- 5 applicable:

1 (a) the name and address of the individual or the crew
2 chief;

3 (b) the name of the geophysical exploration firm;

4 (c) the permanent address of the firm;

5 (d) the name and address of the registered agent in
6 the firm's home state or the name and address of such other
7 person as is authorized to accept the service of process in
8 Montana and in the state of permanent residence;

9 (e) the name and address of the client or employer
10 holding the operating mineral interest if the individual or
11 firm engaging in the geophysical exploration does not hold
12 the operating mineral interest;

13 (f) the name and address of the principal owner of the
14 mineral interest from whom the holder of the operating
15 interest obtained a lease or other instrument granting the
16 operation interest;

17 (g) the date and a description of the original lease
18 or other instrument granting the operating interest from the
19 principal owner listed under subsection (6);

20 (h) the name of any other person affiliated in the
21 exploration activity affecting the geophysical exploration
22 in question;

23 (i) the type of exploration contemplated, including
24 the depth and diameter of holes and the type of explosive to
25 be used;

1 (j) the date and a description of all state and local
2 permits obtained in connection with the geophysical
3 exploration in question;

4 (k) the name and address of all companies insuring the
5 person engaged in the geophysical exploration for liability
6 due to negligence or failure to act in connection with the
7 geophysical exploration;

8 (l) the name and address of the surety issuing the
9 bond required by 69-3304 and a copy of the bond if
10 requested;

11 (m) a description or name of the seismograph line or
12 other line being followed in the geophysical exploration;

13 (n) the limitation on the authority to deviate from
14 the line in order to avoid damage to crops, buildings, water
15 development, and other improvements;

16 (o) the needs for water and other items which the
17 person engaging in the geophysical exploration plans to
18 obtain from the surface owner or tenant, specifying the
19 amounts contemplated;

20 (p) the days when the geophysical exploration will be
21 physically taking place on the surface;

22 (q) the dates for payment of any and all damages;

23 (r) a sketch of the surface indicating the sites of
24 all holes, storage areas, and other activities, indicating
25 the distances from all buildings, wells, springs, and other

1 improvements to all drill sites and storage areas for
2 explosives.

3 (2) If the surface user can not be located for
4 personal service, the statement shall be mailed, posted, or
5 published in a manner reasonably calculated to inform the
6 surface user.

7 (3) Upon receipt or notice of the statement, the
8 surface user shall notify the owner of the surface.

9 Section 10. There is a new R.C.M. section numbered
10 69-3305.4 that reads as follows:

11 69-3305.4. Logs to be furnished upon request. A person
12 engaging in geophysical exploration shall furnish accurate
13 logs of all holes drilled, including indications of water
14 formations and coal veins discovered during the exploratory
15 process, to the surface owner or user upon request.

16 Section 11. There is a new R.C.M. section numbered
17 69-3305.5 that reads as follows:

18 69-3305.5. Holes and other substantial surface
19 disturbances to be shown to surface owner or user. The
20 surface owner or user shall, upon request, be shown each
21 hole or other substantial disturbance of the surface caused
22 by the exploration activity by the person (or his designated
23 agent) engaged in the geophysical exploration.

24 Section 12. There is a new R.C.M. section numbered
25 69-3305.6 that reads as follows:

1 69-3305.6. Plugging of holes and restoration of
2 surface. (1) Unless otherwise agreed to by the owner of the
3 surface, a person engaging in geophysical exploration shall
4 plug all "shot holes" and "drill holes" upon completion of
5 the exploration and shall restore the surface around a hole
6 to its original condition as near as is practical.

7 (2) All holes which are plugged must be plugged from
8 the bottom up and in such a manner as not to interfere with
9 or disrupt any aquifer. The plugging must be done to the
10 specifications of the department and is subject to
11 disapproval by the department.

12 (3) The department shall promulgate rules to provide
13 specific plugging requirements.

14 Section 13. Section 69-3306, R.C.M. 1947, is amended
15 to read as follows:

16 "69-3306. Duty to file record showing where work
17 performed — time for — request to file location of
18 shotpoint and date fired — complaint of property owners.
19 Within ~~three~~ {3} months from the day any firing of
20 shotpoints in ~~such~~ geophysical exploration is done by any
21 person, ~~firm or corporation~~ within this state, ~~such that~~
22 person, ~~firm or corporation~~ shall file with the county clerk
23 and recorder of the county in which ~~such~~ the work was done a
24 record showing each township and range within ~~said~~ the
25 county in which such work was performed and the approximate

1 date at which such work was performed. ~~Such~~ The person, ~~firm~~
 2 ~~or corporation~~ shall file with ~~said~~ the county clerk and
 3 recorder a record showing the location of each ~~such~~
 4 shotpoint and date fired within a maximum area of any
 5 square, four-section area of land, upon written request
 6 therefor by ~~said~~ the county clerk and recorder, which
 7 request must be based upon the complaint of a property owner
 8 that physical damages to such property have arisen by reason
 9 of the use of ~~the~~ a seismograph and explosives in such
 10 geophysical operations at some location within ~~said~~ the
 11 maximum ~~four-mile-square~~ 4-square-mile area, and such
 12 written notice shall designate the name and address of the
 13 complaining person and shall describe the approximate date
 14 of the alleged damages and the nature of the alleged
 15 damages. The required record of operations in response to
 16 such written demand therefor by the county clerk and
 17 recorder shall be supplied within ~~ten~~ (10) days from the
 18 date on which ~~such~~ the written demand is received from the
 19 county clerk and recorder."

20 Section 14. There is a new R.C.M. section numbered
 21 69-3306.1 that reads as follows:

22 69-3306.1. Liability of person engaged in geophysical
 23 exploration — burden of proof. (1) A person engaged in
 24 geophysical exploration is liable for all damage done to the
 25 surface and subsurface as a result of such geophysical

1 exploration. Either the surface user or the surface owner
 2 may be a plaintiff in a suit to recover damages under this
 3 section. If either the surface owner or the surface user is
 4 not a party to such a suit, he shall be given notice of the
 5 action and afforded an opportunity to join as a party
 6 plaintiff. If the surface owner and the surface user are
 7 both plaintiffs, the court shall apportion any award of
 8 damages among them as their interests appear.

9 (2) In a suit for damages under this section or a suit
 10 to recover the deposit provided for in [section 15 of this
 11 act], the existence of a hole penetrating an aquifer or a
 12 hole of a depth greater than 5 feet creates a rebuttable
 13 presumption that injury has been done to the subsurface. In
 14 the absence of other evidence damages shall be assessed on
 15 the following basis:

16 (a) for each hole penetrating an aquifer—\$100;
 17 (b) for each hole not penetrating an aquifer and
 18 having a depth greater than 5 feet—\$20.

19 (3) The surface owner or the surface user may show
 20 evidence of damages in excess of those provided in
 21 subsection (2), and in so doing he shall still have the
 22 advantage of the rebuttable presumption of injury provided
 23 by subsection (2). The person engaged in geophysical
 24 exploration may show the absence of injury or damages less
 25 in amount than those provided by subsection (2), and in such

1 a case he is entitled to a return of all or part of the
2 deposit provided for in [section 15 of this act].

3 (4) A surface owner or tenant who has not received
4 full payment for all damages incurred as a result of
5 geophysical exploration on his land within 60 days of
6 termination of the exploration activity may submit to the
7 department a formal notice of this failure to receive
8 payment.

9 Section 15. There is a new R.C.M. section numbered
10 69-3306.2 that reads as follows:

11 69-3306.2. Payment of drilling deposit. A person,
12 prior to engaging in geophysical exploration on a tract of
13 land, shall deposit with the surface user of the tract \$20
14 for each hole to be drilled to a depth in excess of 5 feet.
15 This deposit shall be credited towards any damages which the
16 surface owner or surface user may recover under [section 14
17 of this act].

18 Section 16. There is a new R.C.M. section numbered
19 69-3306.3 that reads as follows:

20 69-3306.3. Department rules -- system of spot checks.

21 (1) The department shall promulgate rules and develop forms
22 for the administration of 69-3301 through 69-3308.

23 (2) The department shall provide for a program of spot
24 checks to be made by department personnel to investigate
25 compliance with 69-3301 through 69-3308. Any violations

1 shall be reported to the county attorney of the county where
2 the violation occurred.

3 Section 17. There is a new R.C.M. section numbered
4 69-3306.4 that reads as follows:

5 69-3306.4. Penalty. The department may levy a fine in
6 an amount not to exceed \$10,000 for each violation of the
7 geophysical exploration laws.

-End-