



## 95TH GENERAL ASSEMBLY

### State of Illinois

### 2007 and 2008

### SB2079

Introduced 2/14/2008, by Sen. William R. Haine

#### 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 Drilling Operations Act. Provides that the Act applies to oil, gas and coalbed methane (instead of oil and gas). Provides that a drilling operator must give a surface owner written notice of the commencement of drilling and do so by certified mail postmarked at least 30 days prior to drilling (instead of 10 days) or by personal delivery at least 30 days prior to drilling (instead of 8 days). Provides that the operator shall pay money to the surface owner equal to the damages sustained by the owner and his or her tenant (instead of owner) for losses to agricultural production and income, land value, access, and improvements caused by drilling (instead of damages to crops, trees, improvements and livestock). Provides a crop valuation method (instead of an alternative 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 (instead of no attorney's fees can be recovered if the operator relies on a third party appraisal). Provides that electrical lines, flow lines, and other underground structures (instead of flow lines and other underground structures) must be buried below the surface. Makes other changes. Effective immediately.

LRB095 15440 AJO 41432 b

1 AN ACT concerning civil law.

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 a copy of the Act with a written notice to  
24 the surface owner of the operator's intent to commence drilling  
25 operations.

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

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

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

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

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

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

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

1 drilling operations shall be conclusively deemed a waiver of  
2 the right to meet by the surface owner.

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

11 The notice and a copy of the Act as herein required shall  
12 be given to the surface owner by either:

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

17 (B) personal delivery to the surface owner at least 30  
18 ~~8~~ days prior to the commencement of drilling operations.

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

22 (Source: P.A. 95-331, eff. 8-21-07; 95-493, eff. 1-1-08.)

23 (765 ILCS 530/6) (from Ch. 96 1/2, par. 9656)

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

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

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

11           (2) Subsequent damage to ~~to~~ growing crops, trees,  
12 shrubs, fences, roads, structures, improvements, personal  
13 property, and livestock thereon.

14           (3) Loss of agricultural production and income, lost  
15 land value, lost use of and access to the surface owner's  
16 land, and lost value of improvements caused by drilling  
17 operations. For the loss of the value of agricultural  
18 production and income corresponding to lands taken out of  
19 production because of the use thereof by the operator for  
20 roads and production equipment, any recovery shall only be  
21 applicable if the area adjacent to the roads and production  
22 equipment are planted and harvested. The value of the  
23 commercial crop shall be calculated by: (i) determining the  
24 average per acre yield for the crop on adjacent lands; (ii)  
25 determining the price received for the sale of the crop on  
26 adjacent lands less the cost of seed planting, chemicals,

1 fertilizers, and harvesting; (iii) determining the acreage  
2 of the area utilized by roads and production equipment; and  
3 (iv) attributing the determined crop yield to the  
4 determined acreage utilized and applying the determined  
5 price. The initial determination of the value of the crop  
6 shall be determined by the surface owner and submitted to  
7 the operator. The surface owner and operator shall mutually  
8 agree as to the value of the crop utilizing the above  
9 referenced formula for the initial crop year and all  
10 subsequent crop years.

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

18 Except as provided for in subparagraph (3) above for  
19 loss of agricultural production and income, the amount of  
20 damage set forth in this paragraph (A) may be determined by  
21 any formula mutually agreeable between the surface owner  
22 and the operator. When determining damage, consideration  
23 must be given to the length of the period of time during  
24 which the loss occurs. The surface owner may elect to be  
25 paid damages in installments over a period of time.  
26 Provided, however, that the surface owner must be



1       compensated for harm caused only by drilling the well (not  
2       by production) by a single lump sum payment. These payments  
3       will only apply to land directly affected by drilling  
4       operations. Payments under this Section are intended to  
5       compensate the surface owner for damage and disruption. Any  
6       reservation or assignment of the compensation apart from  
7       the surface estate, except to a tenant of the surface  
8       estate, is prohibited. In the absence of an agreement  
9       between the surface owner and a tenant as to the division  
10       of compensation payable under this Section, the tenant is  
11       entitled to recover from the surface owner that portion of  
12       the compensation attributable to the tenant's share of the  
13       damages sustained. The tenant shall not be entitled to file  
14       an additional or separate claim against the operator for  
15       compensation payable under this Section. ~~For the loss of~~  
16       ~~the value of a commercial crop corresponding to lands taken~~  
17       ~~out of production because of the use thereof by the~~  
18       ~~operator for roads and production equipment. Any recovery~~  
19       ~~shall only be applicable if the area adjacent to said roads~~  
20       ~~and production equipment are planted and harvested. The~~  
21       ~~value of the crop shall be calculated by: (i) determining~~  
22       ~~the average per acre yield for the crop on adjacent lands;~~  
23       ~~(ii) determining the price received for the sale of the~~  
24       ~~crop on adjacent lands less the cost of seed planting,~~  
25       ~~chemicals, fertilizers and harvesting; (iii) determining~~  
26       ~~the acreage of the area utilized for roads and production~~

1 ~~equipment; and (iv) attributing the determined crop yield~~  
2 ~~to the determined acreage utilized and applying the~~  
3 ~~determined price. The initial determination of the value of~~  
4 ~~the crop shall be determined by the surface owner and~~  
5 ~~submitted to the operator. The surface owner and operator~~  
6 ~~shall mutually agree as to the value of the crop utilizing~~  
7 ~~the above referenced formula for the initial crop year and~~  
8 ~~all subsequent crop years.~~

9 (4) For all negligent acts of operator that cause  
10 measurable damage to the productive capacity of the soil.

11 (A-5) The operator shall not utilize any more of the  
12 surface estate than is reasonably necessary for the  
13 exploration, production and development of the mineral estate.

14 (B) The compensation required pursuant to paragraph (A)  
15 above shall be paid in any manner mutually agreed upon by the  
16 operator and the surface owner, but the failure to agree upon,  
17 or make the compensation required, shall not prevent the  
18 operator from commencement of drilling operations; provided,  
19 however, that operator shall tender to the surface owner  
20 payment by check or draft in accordance with the provisions  
21 herein no later than 90 days after completion of the well. If  
22 the surface owner rejects the offer of the operator, the  
23 surface owner may bring ~~owner's remedy shall be~~ an action for  
24 compensation in the circuit court in which the lands or the  
25 greater part thereof are located on which drilling operations  
26 were conducted. If the amount of compensation awarded by the

1 court is greater than that which had been offered by the  
2 operator, or the; ~~provided, however, that if operator fails to~~  
3 ~~tender payment within the 90-day period,~~ the court shall award  
4 the ~~or if the tender is not reasonable,~~ surface owner  
5 reasonable shall be entitled to reasonable compensation as  
6 ~~provided herein as well as attorney's fees,~~ any costs assessed  
7 by the court, and interest at the statutory rate on the final  
8 amount of the final compensation awarded by the court from the  
9 day drilling is commenced.

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

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

20 (D) Where practicable and absent a written agreement to the  
21 contrary with the surface owner, all electrical lines, all flow  
22 lines, and other underground structures must be buried to a  
23 depth not less than 36 inches from the surface.

24 (Source: P.A. 95-493, eff. 1-1-08.)

25 Section 99. Effective date. This Act takes effect upon  
26 becoming law.