

Regular Session, 2012

HOUSE BILL NO. 853

BY REPRESENTATIVE MONTOUCET

MINERALS/MINING: Provides for the Louisiana Land Owners Protection Act

1 AN ACT

2 To enact Chapter 10 of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 30:1001 through 1010, relative to oil and gas well operators; to provide for  
4 duties of oil and gas well operators; to provide for notice of operations and surface  
5 use and compensation agreement; to provide for entry without surface use  
6 compensation agreement; to provide for restriction on issuance of permits for wells;  
7 to provide for attorney fees and costs; to provide for emergency situations; and to  
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 10 of Title 30 of the Louisiana Revised Statutes of 1950,  
11 comprised of R.S. 30:1001 through 1010, is hereby enacted to read as follows:

12 §1001. Short Title

13 This Act shall be known and may be cited as the "Louisiana Land Owners'  
14 Protection Act".

15 §1002. Definitions

16 The following words and phrases when used in this Chapter shall have the  
17 following meanings unless the context clearly indicates otherwise:

18 (1) "Department" means the Department of Natural Resources.

19 (2) "Gas" means fluid, either combustible or noncombustible, which is  
20 produced in a natural state from the earth and which maintains a gaseous or rarified

1 state at a standard temperature of sixty degrees Fahrenheit and a pressure of 14.7

2 PSIA, manufactured gas, byproduct gas or any mixture of gases.

3 (3) "Oil" or "petroleum" means hydrocarbons in liquid form at a standard  
4 temperature of sixty degrees Fahrenheit and a pressure of 14.7 PSIA.

5 (4) "Oil or gas operations" or "operations" means activities affecting land or  
6 water sources, no matter how slight, that are associated with oil or gas exploration  
7 or production, including, but not limited to:

8 (a) Construction, installation, maintenance, or removal of oil or gas wells.

9 (b) Construction, installation, maintenance, or removal of pipelines and  
10 equipment for gas, oil or water.

11 (c) Installation, maintenance, and removal of all access or service roads.

12 (d) Installation, maintenance, or removal of oil or gas production or storage  
13 equipment and facilities.

14 (e) Rework of oil and gas wells.

15 (f) Plugging of oil or gas wells.

16 (g) Actions taken to reclaim well sites.

17 (h) Actions taken regarding road and pipeline rights-of-way.

18 (5) "Person" means any natural person, association, partnership, corporation,  
19 political subdivision, or agency of the federal or state government or other legal  
20 entity.

21 (6) "Reclaim" means to restore any portion of land affected by oil or gas  
22 operations to the same or substantially similar condition that existed prior to oil or  
23 gas operations, or as otherwise agreed to in a memorialized agreement between the  
24 operator and the landowner or tenants.

25 (7) "Surface" means the uppermost portion of the earth's crust, including  
26 land and aquatic features.

27 (8) "Surface owner" means a person who holds legal or equitable title to the  
28 surface of a parcel of real property.

1           (9) "Surface use and compensation agreement" means an agreement written,  
2           signed, and notarized between a surface owner and an operator stipulating the  
3           location of proposed oil or gas wells, access roads and any other uses of the surface  
4           during oil or gas exploration and production. An oil or gas operation lease agreement  
5           entered into by a surface owner and an operator, which pays the surface owner at  
6           least a one-eighth royalty on gas or oil extracted from areas under the surface of the  
7           surface owner's real property, shall be deemed a surface use and compensation  
8           agreement for the purposes of this act.

9           (10) "Tenant" means a person who occupies a parcel of real property  
10          belonging to the surface owner in subordination to the surface owner's title and with  
11          the surface owner's assent, expressed or implied.

12          (11) "Water sources" means rivers, streams, creeks, rivulets, impoundments,  
13          ditches, water courses, storm sewers, lakes, dammed water, ponds, springs, or all  
14          other bodies of surface water, or parts thereof, whether natural or artificial, within  
15          or on the boundaries of the surface owner.

16          (12) "Well" means a borehole drilled or being drilled for the purpose of or  
17          to be used for producing, extracting or injecting any gas, petroleum or other liquid  
18          related to oil or gas production or storage, including brine disposal, CO2  
19          sequestration, but excluding boreholes drilled to produce potable water to be used  
20          as such. The term does not include a borehole drilled or being drilled for the purpose  
21          of or to be used for systems of monitoring, producing, or extracting gas from solid  
22          waste disposal facilities, as long as the wells are subject to the rules and regulations  
23          of the Department of Environmental Quality.

24          §1003. Duties of operators

25           A. Except to the extent otherwise provided in a surface use and  
26           compensation agreement duly executed by a surface owner and an operator, where  
27           oil or gas are not leased for extraction from the surface owner by the operator in a  
28           lease paying at least a one-eighth royalty to the surface owner, an operator shall:

1           (1) Compensate fully the surface owner for damages resulting in any  
2           diminution in value of the real property and any real estate upon the tract, including,  
3           but not limited to:

4           (a) Lost agricultural production and income.

5           (b) Lost timber production.

6           (c) Lost land value.

7           (d) Lost use of and access to the surface owner's land or water sources.

8           (e) Lost value of property improvements caused by operations.

9           (2) Reclaim entirely the surface affected by oil or gas operations within nine  
10          months of the cessation of extracting oil or gas from any well on a surface owner's  
11          tract of land.

12          B. An operator shall not be responsible for negotiating or allocating  
13          compensation between the surface owner and any tenant, except that an operator  
14          shall compensate fully any tenant of the surface owner for any diminution in value  
15          of leasehold improvements, made by said tenant, damaged as a result of the  
16          operator's oil or gas operations.

17          C. The operator shall file with the department proof that the operator has  
18          public liability insurance coverage in an amount not less than two million dollars in  
19          the aggregate and five hundred thousand dollars per occurrence for damages to  
20          persons and property caused by its operations.

21          D. Notwithstanding any provision of this act to the contrary, the operator  
22          shall use only so much of the surface land as is reasonably necessary in order to  
23          construct, maintain, and operate any facility necessary for completion of and  
24          production resulting from the drilling conducted in accordance with the surface use  
25          and compensation agreement and the operator shall utilize the best available  
26          technology, including directional drilling, so as to minimize interference with the  
27          ongoing or planned usage of the surface by the landowner.

1        §1004. Notice of operations and surface use and compensation agreement

2            A. No less than forty-five days prior to initial entry upon a tract of land for  
3        activities that will not disturb the surface, including inspections, staking, surveys,  
4        measurements and general evaluations of proposed routes and sites for oil or gas  
5        operations, an operator shall provide notice by certified mail to the surface owner of  
6        each tract on which the operator proposes activity as well as a statement citing deeds,  
7        leases, rights-of-way, easements and other rights relating to the right of access of the  
8        operator to the tract of land.

9            B. Prior to submission of an application for a permit to the department, and  
10       no less than forty five days before entering the surface of the land to conduct any oil  
11       or gas operations, an operator shall, by certified mail, provide the surface owner with  
12       notice of the planned operations. Copies of the notice shall also be sent to surface  
13       owners within a one-half mile radius of each proposed well site. The notice shall  
14       include:

15            (1) Sufficient disclosure of the planned operations, including topographical  
16       and underground maps of the relevant areas, permits and materials submitted by the  
17       operator to obtain permits to enable the surface owner to evaluate the effects the  
18       operations might have on the lands of the surface owner.

19            (2) A copy of the Louisiana Land Owners' Protection Act and a copy of the  
20       Mineral Code.

21            (3) The name, address, telephone number and, if available, facsimile number  
22       and electronic mail address of the operator and the authorized representative of the  
23       operator.

24            (4) Information regarding required or recommended predrilling surveys and  
25       other provisions relating to:

26            (a) Protection of water sources.

27            (b) Well location restrictions.

28            (c) Casing, cementing, and plugging plans for wells and production-related  
29       horizontal boreholes under the rules and regulations of the department.

1           (5) A proposed surface use and compensation agreement addressing, to the  
2           extent known, the following:

3           (a) Placement, specifications, maintenance, and design of well pads,  
4           gathering pipelines, water pipelines, storage facilities for water, oil, or gas,  
5           compressor stations, pump stations, meter pits, and roads to be constructed and other  
6           facilities of every type to be constructed and utilized either temporarily or  
7           permanently for operations.

8           (b) The proposed frequency of ingress and egress across or under the surface  
9           of the land for operations, including pipelines, and the routes for the same.

10          (c) Construction, maintenance, and placement of pits used or planned for  
11          operations.

12          (d) Use and impoundment of water on the surface of the land.

13          (e) Removal and restoration of the species of plant life existing prior to  
14          commencement of any operations on areas to be impacted by those operations.

15          (f) Surface water drainage changes.

16          (g) Plans and actions to limit and effectively control precipitation runoff,  
17          sedimentation, and erosion.

18          (h) Control and management of noise, weeds, dust, traffic, trespass, litter and  
19          other interferences with the use and enjoyment of the surface by the surface owner  
20          or tenant.

21          (i) Interim and final proposals to reclaim the surface.

22          (j) Plans or actions to be undertaken to minimize damages to the surface.

23          (k) Operator indemnification for injury to persons or properties other than  
24          that of the surface owner when caused by the operations.

25          (l) Efforts to restrict access to the land of the surface owner by third-parties  
26          utilizing the access roads and rights-of-way of the operator.

27          (m) An offer of compensation for damages to the surface affected by  
28          operations.

29          (6) A plat that shows:

- 1           (a) The tract of land upon which each well is to be located.
- 2           (b) The name of the surface landowner of record and lessor, if any.
- 3           (c) The name of all surface landowners or water purveyors whose water  
4 supplies are within one-half mile of the proposed well location.
- 5           (d) The location of water sources.
- 6           (e) Placement of well pads, gathering pipelines, water pipelines, storage  
7 facilities for oil, gas, or water, compressor stations, meter pits, and pump stations and  
8 roads to be constructed for oil and gas operations.
- 9           (f) Placement of pits and equipment used or planned, and use and  
10 impoundment of water on the surface of the land.
- 11           (g) The oil and gas formations, both conventional and unconventional,  
12 including shale or coal seams, if any, underlying the tract of land upon which the  
13 well is to be drilled or altered, which are to be cased off in accordance with Rules  
14 and Regulations of the Department of Natural Resources.
- 15           (h) The name of the owner of record or operator of known underlying oil and  
16 gas formations, both conventional and unconventional, including shale or coal  
17 seams, if any.
- 18           (i) The acreage in the tract to be drilled.
- 19           (j) The proposed location of each well determined by survey.
- 20           (k) The courses and distances of the proposed well locations from two or  
21 more permanent identifiable points or landmarks on the tract boundary corners.
- 22           (l) The proposed angle and direction of a well, if the well is to be deviated  
23 substantially from the vertical course.
- 24           (m) The number or other identification to be given to the wells.
- 25           C. The notices required under this section shall be sent to the surface owner  
26 at the address shown by the property tax records at the time the notice is given. If the  
27 property tax records for the Parish or the conveyance records in the clerk of court's  
28 office for the Parish where the property is located disclose that legal and equitable  
29 title of the land are not held by the same person, notice shall be given to both the

1 holder of the legal title and to the holder of the equitable title at the addresses shown  
2 by the property tax records at the time the notice is given.

3 D. Upon receipt of the notice required under Subsection B of this Section,  
4 the surface owner may do either of the following:

5 (1) Agree to the proposed surface use and compensation agreement within  
6 forty-five days of receipt.

7 (2) Reject the proposed surface use and compensation agreement and enter  
8 into a mutually acceptable surface use and compensation agreement that sets forth  
9 the rights and obligations of the parties.

10 E. Notices to the surface owners required under this Section shall be deemed  
11 to have been received fifteen days after mailing by certified mail.

12 §1005. Entry without surface use and compensation agreement

13 A. If, after forty five days from the date on which a surface owner receives  
14 notice under R.S. 30:1004(B), no surface use and compensation agreement has been  
15 executed by the operator and surface owner, the operator may file applications for  
16 permits with the department for the oil or gas wells proposed to be located on the  
17 surface owner's property after depositing a surety bond, letter of credit from a  
18 banking institution, cash, or certificate of deposit with a Louisiana surety company  
19 or financial institution for the benefit of a surface owner in an amount equal to the  
20 greater of the following:

21 (1) One hundred twenty percent of the operator's best compensation offer as  
22 to each oil or gas production facility's location.

23 (2) Two hundred fifty thousand dollars per production facility location.

24 B. The surety bond, letter of credit, cash or certificate of deposit shall only  
25 be released by the surety company or financial institution back to the operator if any  
26 of the follow occur:

27 (1) The surface owner provides an affidavit that compensation for use of and  
28 damages to the surface owner's land have been paid in full to the surface owner.



1           (2) The surface owner and the operator have executed a surface use and  
2           compensation agreement or otherwise agreed the surety should be released.

3           (3) There has been a final resolution of the judicial appeal in any action for  
4           damages brought by the surface owner and any awarded damages have been paid.

5           (4) All wells on the land of the surface owner have been plugged and  
6           abandoned in accordance with law and the operator has not conducted oil or gas  
7           operations on the property of the surface owner for a period of four years.

8           §1006. Restriction on issuance of permits for wells

9           The department shall not issue new permits or renew existing permits for  
10          wells where an operator is not complying with the terms of this act. The department  
11          may resume issuing permits to the operator only when the operator demonstrates to  
12          the department it is in compliance with this act.

13          §1007. Attorney fees and costs

14          A. In an action brought under this act, if a court finds that compensation is  
15          owed under R.S. 30:1003, the court may also award the prevailing party attorney fees  
16          and costs if any of the following occurred:

17                 (1) The operator conducted operations without providing notice as required  
18                 under R.S. 30:1004(B).

19                 (2) The operator conducted operations without a surface use and  
20                 compensation agreement and before either depositing or maintaining a bond or other  
21                 surety as required under R.S. 30:1005.

22                 (3) The operator conducted operations outside the scope of a surface use and  
23                 compensation agreement and, when entering into the agreement, knew or should  
24                 have known that operations would be conducted outside the scope of the agreement.

25                 (4) The surface owner failed to exercise good faith in complying with the  
26                 provisions of this act or the terms of a surface use and compensation agreement.

27          B. In an action brought under this act, if a court finds that compensation is  
28          owed under R.S. 30:1003, the court may also award the prevailing party attorney

1 fees, costs and treble damages if the court finds, by clear and convincing evidence,  
2 that any of the following occurred:

3 (1) The operator willfully and knowingly entered upon the premises for the  
4 purpose of commencing the drilling of a well without giving notice as required under  
5 R.S. 30:1004(B) or without a surface use and compensation agreement with the  
6 surface owner and before depositing a bond or other surety under R.S. 30:1005.

7 (2) Either the surface owner or the operator willfully and knowingly violated  
8 the terms of a surface use and compensation agreement between them.

9 §1008. Protection of water supplies

10 A. A well operator who affects a public or private water supply by pollution  
11 or diminution shall restore or replace the affected supply with an alternate source of  
12 water adequate in quantity and quality for the purposes served by the supply.

13 B. A landowner or water purveyor suffering pollution or diminution of a  
14 water supply as a result of the drilling, alteration, or operation of an oil or gas well  
15 may so notify the department and request that an investigation be conducted. Within  
16 ten days of the notification, the department shall investigate the claim and shall,  
17 within forty five days following notification, make a determination. If the  
18 department finds that the pollution or diminution was caused by the drilling,  
19 alteration, or operation activities, or if the department presumes the well operator  
20 responsible for pollution under Subsection C of this Section then the department  
21 shall issue orders to the well operator necessary to assure compliance with  
22 Subsection A of this Section. The orders may include orders requiring the temporary  
23 replacement of a water supply where it is determined that the pollution or diminution  
24 may be of limited duration.

25 C. Unless rebutted by one of the five defenses established under Subsection  
26 D of this Section, it shall be presumed that a well operator is responsible for the  
27 pollution of a water supply that is within two thousand five hundred feet of the oil  
28 or gas well, where the pollution occurred within six months after the completion of  
29 drilling or alteration of the well.

1           D. In order to rebut the presumption of liability established under Subsection  
2           C of this Section, the well operator must affirmatively prove one of the following  
3           five defenses:

4           (1) The pollution existed prior to the drilling or alteration activity as  
5           determined by a predrilling or prealteration survey.

6           (2) The landowner or water purveyor refused to allow the operator access to  
7           conduct a predrilling or prealteration survey.

8           (3) The water supply is not within two thousand five hundred feet of the  
9           well.

10          (4) The pollution occurred more than six months after completion of drilling  
11          or alteration activities.

12          (5) The pollution occurred as the result of some cause other than the drilling  
13          or alteration activity.

14          E. Any operator electing to preserve its defenses under Paragraphs D(1) or  
15          (2) of this Section shall retain the services of an independent certified laboratory to  
16          conduct the predrilling or prealteration survey of water supplies. A copy of the  
17          results of the survey shall be submitted to the department and the landowner or water  
18          purveyor in a manner prescribed by the department.

19          §1009. Remedies not exclusive

20          The remedies provided for by this Chapter are not exclusive and do not  
21          preclude a person from utilizing any other remedies allowed by statute, common law,  
22          deed, or contract.

23          §1010. Emergency situations

24          Notwithstanding any provision of this Chapter to the contrary, no notice,  
25          surface use and compensation agreement, or bond shall be required in emergency  
26          situations for activities determined by the department to be necessary to protect  
27          public health and safety or the environment.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Montoucet

HB No. 853

**Abstract:** Creates the Louisiana Land Owners Protection Act

Proposed law provides for definitions.

Proposed law provides that in absence of an agreement between the operator and the surface owner and where the surface owner is not paid at least a 1/8 royalty from a mineral lease, the operator shall fully compensate the surface owner for damages and reclaim the affected surface within 9 months of cessation of operations.

Proposed law requires the operator to compensate any tenant of the surface owner for damages as a result of the operations.

Proposed law requires the operator to notify the surface owner by certified mail 45 days prior to initial entry.

Proposed law requires the operator to notify the surface owner and owners within 1.5 mile radius of planned operations by certified mail 45 days prior to initial entry and submission of an application to the department.

Proposed law the requires notice shall include operation plans, a copy of proposed law and the Mineral Code, the operator's contact information, predrilling surveys, a proposed surface use and compensation agreement, and an area plat.

Proposed law upon receipt of the notice, the surface owner may agree or reject the proposed surface use compensation agreement within 45 days.

Proposed law if the surface owner has not agreed after 45 days, the operator may enter after posting a bond or letter of credit for the highest compensation offered or \$250,000, whichever is greater.

Proposed law prohibits the department from renewing a permit without compliance with proposed law.

Proposed law authorizes the award of attorney fees and costs if the operator fails to provide notice, providing the required surety, or exceeds the scope of the surface use and compensation agreement, or if the surface owner fails to exercise good faith in complying with the surface use and compensation agreement.

Proposed law requires operators that affect public or private water supplies to restore or replace the supply in terms of quantity and quality. Proposed law provides for presumptions and defenses for cases involving the contamination of a water supply.

Proposed law provides that no notice, surface use and compensation agreement or bond shall be required in emergency situations for activities determined by the department to be necessary to protect public health and safety or the environment.

(Adds R.S. 30:1001-1010)