

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB1615 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: John Trebilcock _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE

4 SUBSTITUTE

5 FOR ENGROSSED

6 SENATE BILL NO. 1615

By: Bingman of the Senate

and

Trebilcock of the House

7
8
9 PROPOSED COMMITTEE SUBSTITUTE

10 An Act relating to oil and gas; creating the Oil and
11 Gas Owners' Lien Act of 2010; providing definitions;
12 providing for the nature, extent and duration of an
13 oil and gas lien; providing for the perfection of an
14 oil and gas security interest; providing for effect
15 of commingling of oil and gas on an oil and gas lien;
16 establishing the rights of oil and gas purchasers;
17 establishing priority of oil and gas relative to
18 other liens or security interests; providing for
19 effect of law on legal title and certain rights;
20 providing for the waiver of an oil and gas lien or
21 other certain rights; providing for expiration of an
22 oil and gas lien; providing for enforcement of an oil
23 and gas lien; providing for payment of costs;
24 providing for personal actions; establishing other
rights and remedies; limiting the impairment of the
rights of an operator; making certain rights
cumulative; repealing 52 O.S. 2001, Sections 548.1,
548.2, 548.3, 548.4, 548.5 and 548.6, which relate to
the Oil and Gas Owners' Lien Act; providing for
codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.1 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 SHORT TITLE

5 This act shall be known and may be cited as the "Oil and Gas
6 Owners' Lien Act of 2010".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 549.2 of Title 52, unless there
9 is created a duplication in numbering, reads as follows:

10 DEFINITIONS

11 As used in the Oil and Gas Owners' Lien Act of 2010:

- 12 1. "Affiliate" means any person:
- 13 a. who is controlled, directly or indirectly, by a first
 - 14 purchaser, or
 - 15 b. who controls, directly or indirectly, a first
 - 16 purchaser.

17 "Control" or "controlled by" means the possession, directly or
18 indirectly, of the power to direct or cause the direction of the
19 management and policies of a person, whether through ownership, by
20 contract, or otherwise;

21 2. "Agreement to sell" means any enforceable agreement, whether
22 express or implied, whether oral or written, by which an interest
23 owner, either directly or through a representative, agrees to sell

1 or is deemed by applicable contract or law to have agreed to sell
2 oil or gas upon or after severance to a first purchaser;

3 3. "Article 9" means Article 9 of the Oklahoma Uniform
4 Commercial Code in effect as of the relevant date or a comparable
5 article under the uniform commercial code of another state to the
6 extent applicable;

7 4. "First purchaser" means the first person that purchases oil
8 or gas from an interest owner, either directly or through a
9 representative, under an agreement to sell;

10 5. "Gas" means natural gas and casinghead gas and all
11 constituent parts thereof both before and after processing but prior
12 to the time at which a first purchaser transfers title, possession
13 or control thereof to a purchaser;

14 6. "Interest owner" means a person owning an interest of any
15 kind or nature in oil and gas rights before the acquisition thereof
16 by a first purchaser. Interest owner includes a representative and
17 a transferee interest owner;

18 7. "Oil" means oil and condensate and all constituent parts
19 thereof whether before or after processing but prior to the time at
20 which a first purchaser transfers title, possession or control
21 thereto to a purchaser;

22 8. "Oil and gas lien" means the lien granted by this act;
23
24

1 9. a. "Oil and gas rights" means, as to any lands within the
2 State of Oklahoma, any right, title or interest,
3 whether legal or equitable, in and to:

- 4 (1) oil,
- 5 (2) gas,
- 6 (3) proceeds,
- 7 (4) an oil and gas lease,
- 8 (5) a pooling order, and
- 9 (6) an agreement to sell.

10 b. By way of illustration and not limitation, oil and gas
11 rights include, but are not limited to:

- 12 (1) oil or gas in place prior to severance,
- 13 (2) oil or gas production, or the right to receive a
14 portion of the proceeds, upon severance,
- 15 (3) any interest or estate in, by, through or under an
16 oil and gas lease,
- 17 (4) rights acquired under a pooling order insofar as
18 such rights relate to: ownership of oil and gas,
19 the right to proceeds, or the right to enter into
20 an agreement to sell,
- 21 (5) a legal or equitable right to receive
22 consideration of whatsoever nature under an
23 agreement to sell, or
24

1 (6) a mortgage lien or security interest in any of
2 the foregoing;

3 10. "Operator" means a person engaged in the severance of oil
4 or gas for that person alone, for other persons only, or for that
5 person and others;

6 11. "Permitted lien" means any of the following liens or
7 security interests:

8 a. a mortgage lien or security interest granted by a
9 first purchaser in favor of a person not an affiliate
10 of the first purchaser which mortgage lien or security
11 interest secures payment under a written instrument of
12 indebtedness signed by the first purchaser and
13 accepted in writing by the payee thereof prior to the
14 effective date of this act with a principal amount and
15 a fixed maturity stated therein; provided, however, a
16 permitted lien does not include a mortgage lien or
17 security interest which:

18 (1) secures payment of any indebtedness incurred from
19 and after the effective date of this act,

20 (2) secures payment under a written instrument of
21 indebtedness not signed by a first purchaser and
22 accepted in writing by the payee thereof prior to
23 the effective date of this act,
24

1 (3) secures payment under a written instrument of
2 indebtedness modified, amended or restated from
3 or after the effective date of this act which
4 modification, amendment or restatement increases
5 the principal amount which was owing at the
6 effective date of this act,

7 (4) secures payment under a written instrument of
8 indebtedness modified, amended or restated from
9 or after the effective date of this act which
10 modification, amendment or restatement extends
11 the stated maturity thereof which was in effect
12 at the effective date of this act, or

13 (5) is not validly perfected with a first priority
14 against the claims of all persons under
15 applicable law other than persons holding a
16 statutory or regulatory lien as to which first
17 priority is granted by statute or regulation, or

18 b. a validly perfected and enforceable lien created by
19 statute or by rule or regulation of a governmental
20 agency for storage or transportation charges,
21 including terminal charges, tariffs, demurrage,
22 insurance, labor or other charges, owed by a first
23 purchaser in relation to oil or gas originally
24 purchased under an agreement to sell; provided,

1 however, a permitted lien does not include any such
2 lien:

3 (1) which is in favor of an affiliate of a first
4 purchaser unless such lien is authorized by the
5 statute, rule or regulation creating such lien,
6 or

7 (2) which is for charges in excess of ninety (90)
8 days from the time the first purchaser delivers
9 such oil or gas for such storage or
10 transportation;

11 12. "Person" means any individual, executor, administrator,
12 estate, agent, trust, trustee, institution, receiver, business
13 trust, firm, corporation, partnership, limited liability company,
14 cooperative, joint venture, governmental entity or agency,
15 association or any other group or combination acting as a unit;

16 13. "Pooling order" means an order issued by the Corporation
17 Commission that requires the owners of the right to drill for oil or
18 gas in a drilling and spacing unit to pool their interests for the
19 development of such drilling and spacing unit;

20 14. "Proceeds" means any of the following when paid or to be
21 paid in consideration of, or as a consequence of, the sale of oil or
22 gas under an agreement to sell: oil or gas on or after severance;
23 inventory of raw, refined or manufactured oil or gas after
24 severance; rights to or products of any of the foregoing; cash

1 proceeds; accounts; chattel paper; instruments; documents; or
2 payment intangibles with respect to any of the foregoing;

3 15. "Purchaser" means a person which is not an affiliate of a
4 first purchaser and which takes, receives or purchases oil or gas
5 from a first purchaser;

6 16. "Representative" means any person who is authorized, either
7 expressly or by implication, including, without limitation, an
8 operator or a broker so authorized, to sell oil or gas on behalf of,
9 or for the benefit of, an interest owner under an agreement to sell
10 or to receive on behalf of an interest owner the consideration under
11 an agreement to sell;

12 17. "Sales price" means the proceeds a first purchaser agrees
13 to pay an interest owner or representative under an agreement to
14 sell;

15 18. "Security interest" means a security interest governed by
16 Article 9;

17 19. "Severance" means that point in time at which oil or gas is
18 reduced to possession at the mouth of the wellbore of an oil and gas
19 well;

20 20. "Transferor interest owner" means an interest owner that
21 transfers or conveys oil and gas rights, in whole or in part; and

22 21. "Transferee interest owner" means a person that acquires
23 oil and gas rights from a transferor interest owner.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.3 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

5 A. To secure the obligations of a first purchaser to pay the
6 sales price, each interest owner is hereby granted an oil and gas
7 lien to the extent of the interest owner's interest in oil and gas
8 rights. The oil and gas lien granted by this act is granted and
9 shall exist as part of and incident to the ownership of oil and gas
10 rights.

11 B. An oil and gas lien:

12 1. Exists in and attaches immediately to all oil and gas on the
13 effective date of this act;

14 2. Continues uninterrupted and without lapse in all oil and gas
15 upon and after severance; and

16 3. Continues uninterrupted and without lapse in and to all
17 proceeds.

18 C. An oil and gas lien exists until the interest owner or
19 representative first entitled to receive the sales price has
20 received the sales price. Notwithstanding the immediately preceding
21 sentence, as between an interest owner and a representative of an
22 interest owner or any person claiming adversely to such interest
23 owner or representative, such interest owner's oil and gas lien
24 continues uninterrupted and without lapse in proceeds in the

1 possession or control of a representative until the interest owner
2 on whose behalf such representative acts receives such proceeds in
3 full. When a first purchaser, in good faith, pays the sales price
4 to an interest owner or a representative otherwise apparently
5 entitled to receive the sales price and the first purchaser is
6 without actual knowledge that such interest owner or representative
7 is not entitled to receive the sales price so paid, then such first
8 purchaser takes free of the oil and gas lien otherwise applicable to
9 the oil or gas for which such payment was made. Notwithstanding the
10 immediately preceding sentence, the oil and gas lien will continue
11 uninterrupted in the proceeds paid to or otherwise due the interest
12 owner or representative.

13 D. The validity of an oil and gas lien shall not be dependent
14 on possession of the oil or gas by an interest owner or
15 representative. No oil and gas lien shall become or be deemed to be
16 void or expired by reason of a change or transfer of the actual or
17 constructive possession of or title to the oil or gas from the
18 interest owner or representative to a first purchaser or purchaser.

19 E. On the conveyance or transfer of any oil and gas rights by a
20 transferor interest owner, the oil and gas lien vested in the
21 transferor interest owner immediately before the conveyance or
22 transfer shall remain with the transferor interest owner to the
23 extent of any oil and gas rights retained by the transferor interest
24 owner.

1 F. On the conveyance or transfer of any oil and gas rights by a
2 transferor interest owner, the oil and gas lien vested in the
3 transferor interest owner immediately before the conveyance or
4 transfer shall be transferred to and attach automatically to the oil
5 and gas rights acquired by the transferee interest owner
6 uninterrupted and without lapse and as part of and incident to the
7 oil and gas rights so transferred or conveyed.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 549.4 of Title 52, unless there
10 is created a duplication in numbering, reads as follows:

11 PERFECTIOIN OF OIL AND GAS SECURITY INTEREST

12 An oil and gas lien is granted and exists as part of and
13 incident to the ownership of oil and gas rights and is perfected
14 automatically without the need to file a financing statement or any
15 other type of documentation. An oil and gas lien exists and is
16 perfected from the effective date of this act.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 549.5 of Title 52, unless there
19 is created a duplication in numbering, reads as follows:

20 COMMINGLING

21 If oil or gas in which there exists more than one oil and gas
22 lien is commingled with other oil or gas in such a manner that the
23 identity of the specific oil or gas is lost, then the oil and gas
24 lien continues without interruption into and attaches to any such

1 resulting commingled product and is perfected automatically as of
2 the date of its original perfection but only as to volumes out of
3 the commingled product equal to the volume of product to which the
4 oil and gas lien originally attached. In such event, the oil and
5 gas lien in the commingled product has priority over any security
6 interest or other lien that is not an oil and gas lien or permitted
7 lien, whether or not the security interest or other lien has been
8 properly perfected. If more than one oil and gas lien attaches to
9 the commingled product, then the oil and gas liens rank equally in
10 the proportion that the respective sales prices secured by each oil
11 and gas lien bears as a percentage of the total of the sales prices
12 secured by all oil and gas liens applicable to the production at the
13 time the production was commingled. This section is intended to
14 recognize the continuation of oil and gas lien rights of an interest
15 owner in the commingled product stream only as to a volume of oil or
16 gas proportionate to the volume of oil or gas that originated from
17 such interest owner, with that volume of the commingled product
18 being considered to have maintained a distinct identity as being
19 available for sale or transportation under the specific contractual
20 arrangements applicable to the production at the time it entered the
21 commingled product stream.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 549.6 of Title 52, unless there
24 is created a duplication in numbering, reads as follows:

1 RIGHTS OF PURCHASERS

2 A purchaser takes free of any oil and gas lien otherwise
3 applicable to the oil or gas so purchased, and shall be relieved of
4 any obligations created by subsection A of Section 570.10 of Title
5 52 of the Oklahoma Statutes, only in the event that either of the
6 following occur:

7 1. The purchaser is deemed to be a buyer in the ordinary course
8 of the first purchaser's business as defined in Article 9; or

9 2. The purchaser has paid all of the consideration due the
10 first purchaser, including by exchange of oil or gas, net-out or
11 set-off, under all applicable enforceable contracts in existence at
12 the time of the payment.

13 Notwithstanding the foregoing, the oil and gas lien will
14 continue uninterrupted in the proceeds paid to or otherwise due the
15 first purchaser.

16 Except as specifically set forth in this section, an oil and gas
17 lien has priority over the rights of any purchaser.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 549.7 of Title 52, unless there
20 is created a duplication in numbering, reads as follows:

21 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

22 Except for a permitted lien, an oil and gas lien is a lien that
23 takes priority over any other lien, whether arising by contract,
24 law, equity or otherwise, or any security interest.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 549.8 of Title 52, unless there
3 is created a duplication in numbering, reads as follows:

4 TITLE

5 The provisions of this act shall not affect:

6 1. The time at which legal title to oil and gas may pass by
7 agreement or operation of law subject to an oil and gas lien;

8 2. The right of a first purchaser to take or receive oil and
9 gas under the terms of a division order, provided that such division
10 order shall not modify, waive or abrogate in any respect the rights
11 of an interest owner under this act; or

12 3. Subject to the provisions of Section 9 of this act, the
13 right of a first purchaser to take or receive oil and gas under an
14 agreement to sell.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 549.9 of Title 52, unless there
17 is created a duplication in numbering, reads as follows:

18 WAIVER

19 No interest owner shall be required, as a condition or term of
20 an agreement to sell or otherwise, to waive, relinquish or release
21 any oil and gas lien or any rights under this act other than upon
22 payment in full of the sales price or agree to any provision that
23 would apply the law of any state other than the State of Oklahoma
24 insofar as the same relates to rights under this act, and any such

1 purported waiver, relinquishment, release, or provision shall be
2 void as a matter of the public policy of this state.

3 Notwithstanding the preceding sentence, any interest owner or a
4 representative acting on behalf of an interest owner, may waive,
5 relinquish or release any oil and gas lien or any rights under this
6 act or agree to a provision that would apply the law of any state
7 other than the State of Oklahoma insofar as the same relates to
8 rights under this act only as to such interest owner's oil and gas
9 rights provided the first purchaser either:

10 1. Posts a letter of credit in form and amount satisfactory to
11 the interest owner, or a representative acting on behalf of an
12 interest owner; or

13 2. Agrees to a binding contractual arrangement satisfactory in
14 form and substance to the interest owner, or a representative acting
15 on behalf of an interest owner to prepay or escrow the sales price
16 under an agreement to sell in form and substance satisfactory to the
17 interest owner and performs all of the first purchaser's obligations
18 thereunder.

19 SECTION 10. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 549.10 of Title 52, unless there
21 is created a duplication in numbering, reads as follows:

22 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
23 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

24

1 A. An oil and gas lien shall expire, as to an interest owner,
2 one (1) year after the last day of the month following the date
3 proceeds from the sale of oil or gas subject to such lien are
4 required by law or contract to be paid to such interest owner but
5 only as to the oil or gas sold during such month, unless an action
6 to enforce the oil and gas lien is commenced within such time in a
7 court of competent jurisdiction. In addition to any other court of
8 competent jurisdiction, an action to enforce the oil and gas lien
9 may be commenced in the district court of the county in which there
10 is located the oil and gas well from which the oil or gas is
11 produced, or wherever the oil or gas unpaid for or the proceeds may
12 be found. Notwithstanding the foregoing, the commencement of any
13 proceeding by or against any person claiming an interest in any
14 property subject to the oil and gas lien seeking to adjudicate such
15 person as bankrupt or insolvent, or seeking liquidation, winding up,
16 reorganization, arrangement, adjustment, protection, relief, or
17 composition of such person or such person's debts under any law
18 relating to bankruptcy, insolvency or reorganization or relief of
19 debtors, or seeking the entry of an order for relief or the
20 appointment of a receiver, trustee or other similar official for
21 such person or for any substantial part of such person's property
22 shall toll the foregoing one (1) year period in which to commence an
23 action to enforce the oil and gas lien for an additional period of
24 ninety (90) days from the earlier of:

1 1. The final conclusion or dismissal of such proceedings; or

2 2. The date final relief is obtained from the applicable
3 tribunal authorizing the commencement of such action.

4 Proceedings to enforce oil and gas liens involving more than one (1)
5 oil and gas well in one (1) county can be joined by an interest
6 owner in the same action. Any number of persons claiming oil and
7 gas liens with respect to the oil or gas from the same oil and gas
8 well or wells may join in the same action and where separate actions
9 are commenced, the district court may consolidate them. The
10 District Court shall allow as part of the costs of the action all
11 costs of collection including, without limitation, reasonable
12 attorneys fees for the prevailing party in the trial and appellate
13 tribunals.

14 B. Nothing in this act shall be construed to impair or affect
15 the right of any interest owner to maintain a personal action to
16 recover the debt against any person liable for payment of the sales
17 price or to exercise any other rights and remedies available at law
18 or in equity.

19 SECTION 11. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 549.11 of Title 52, unless there
21 is created a duplication in numbering, reads as follows:

22 RIGHTS OF OPERATOR NOT IMPAIRED

23 This act does not impair an operator's right to be paid, set-off
24 or withhold funds from another interest owner as security for or in

1 satisfaction of any debt or security interest. In case of a dispute
2 between an operator and another interest owner, a good faith tender
3 of funds by anyone operates as a tender of the funds to both in any
4 of the following circumstances:

5 1. To the person who the operator and other interest owner
6 jointly direct the first purchaser in writing to pay;

7 2. To a person who otherwise shows himself or herself to be the
8 one entitled to the funds; or

9 3. To a court of competent jurisdiction in the event litigation
10 or bankruptcy.

11 SECTION 12. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 549.12 of Title 52, unless there
13 is created a duplication in numbering, reads as follows:

14 RIGHTS CUMULATIVE

15 A. The provisions of this act and the rights granted under this
16 act are intended to be cumulative with all other rights an interest
17 owner may otherwise have at law or in equity. To the extent that
18 there is a conflict between the provisions of this act and any other
19 rights an interest owner has at law or in equity, then the rights of
20 the interest owner are to be liberally construed to the end that
21 those rights which afford the interest owner the most comprehensive
22 protection to secure the receipt by the interest owner of the sales
23 price shall be given preference.

24

1 B. The rights of any interest owner accrued under the
2 provisions of Section 548.1 et seq. of Title 52 of the Oklahoma
3 Statutes prior to the effective date of this act shall be preserved
4 to the extent not in conflict with the provisions of this act.

5 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1,
6 548.2, 548.3, 548.4, 548.5 and 548.6, are hereby repealed.

7 SECTION 14. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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12 52-2-10463 KB 03/30/10

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