

1 ENGROSSED SENATE AMENDMENTS
TO

2 ENGROSSED HOUSE
3 BILL NO. 2654

By: Jordan and Billy of the
House

4 and

5 Johnson (Rob) of the Senate

6
7
8 (oil and gas - rules of construction - allowing
9 exceptions - amending 52 O.S., Sections 318.21,
318.22 and 318.23 - Seismic Exploration Regulation
Act - codification -

10 effective date)

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13 AUTHOR: Add the following Senate Coauthor: Shortey

14 AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause
and entire bill and insert

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16 "An Act relating to oil and gas agreements; creating
17 the Energy Litigation Reform Act; providing short
18 title; providing rules of construction for certain
19 agreements; providing exceptions; clarifying
20 applicable terms for certain actions; limiting
damages in certain actions for failure to pay
proceeds; setting damages; amending 52 O.S. 2011,
Section 87.1, which relates to common source for
supply of oil; establishing results of certain
election; providing for codification; and declaring
an emergency.

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

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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 901 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 Sections 1 through 3 of this act shall be known and may be cited
5 as the "Energy Litigation Reform Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 902 of Title 52, unless there is
8 created a duplication in numbering, reads as follows:

9 The sanctity of private agreements, and the consistent and
10 predictable application and interpretation of statutes, governmental
11 orders and common law, being essential to the oil and gas industry,
12 the following are declared to be paramount rules of construction to
13 be applied by the courts of this state in the construction of
14 private agreements, statutes and governmental orders relating to the
15 exploration for, operations for, producing of, or marketing oil or
16 gas, or disbursing proceeds of production of oil or gas:

17 1. A person is bound as a reasonably prudent operator to
18 operate the well on behalf of all owners in the well and perform any
19 duties owed to any person under a private agreement, statute,
20 governmental order or common law relating to the exploration for,
21 operations for, producing of, or marketing oil or gas, or disbursing
22 proceeds of production of oil or gas, and performance of the duties
23 described herein is that performance which an operator acting
24 reasonably would have undertaken given the circumstances at the

1 time, without being required to subordinate its own business
2 interests, but with due regard to the interests of all affected
3 parties, including the operator; and

4 2. There shall not be implied in the duties in paragraph 1 of
5 this section or otherwise any fiduciary duty, quasi-fiduciary duty
6 or other similar special relationship in any private agreement,
7 statute or governmental order or common law relating to the
8 exploration for, operations for, producing of, or marketing oil or
9 gas, or disbursing proceeds of production of oil or gas.

10 Nothing in this section shall either prohibit the parties to a
11 private agreement from expressly agreeing in writing otherwise or
12 prohibit the Legislature from expressly providing otherwise in any
13 statute subsequently enacted or prohibit any governmental order from
14 expressly providing otherwise to the extent within the power or
15 authority of the issuer of such order. However, the provisions of
16 paragraph 2 of this section shall not apply to Sections 287.1
17 through 287.15 of Title 52 of the Oklahoma Statutes and nothing in
18 this Act shall be interpreted to relieve an operator or owner from
19 any obligation or duty set forth expressly in the Production Revenue
20 Standards Act or the Natural Gas Market Sharing Act; provided the
21 performance of such obligations or duties shall be subject to the
22 same reasonably prudent operator standard set forth in paragraph 1
23 of this section.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 903 of Title 52, unless there is
3 created a duplication in numbering, reads as follows:

4 Except for the right to enforce lien rights under private
5 agreement or under Sections 548 through 549.12 of Title 52 of the
6 Oklahoma Statutes and except where specific remedies are provided by
7 private agreement, and as long as paragraph 1 of subsection D of
8 Section 570.10 of Title 52 of the Oklahoma Statutes provides for an
9 interest rate equal to or greater than 12% compounded annually, the
10 Production Revenue Standards Act shall provide the exclusive remedy
11 to a person entitled to proceeds from production for failure of a
12 holder to pay the proceeds within the time periods required for
13 payment. The interest amounts set forth in subsection D of Section
14 570.10 and the remedies set forth in subsection C of Section 570.14
15 of Title 52 of the Oklahoma Statutes, with the term "actual damages"
16 as used therein being limited to the proceeds due and the interest
17 as provided in subsection D of Section 570.10 of Title 52, are
18 deemed to be adequate remedies for failure to pay proceeds within
19 the time periods required for payment and no other penalty or
20 damages shall be recoverable in any litigation involving a claim for
21 unpaid or underpaid proceeds from production including, without
22 limitation, punitive or exemplary damages or disgorgement damages,
23 unless there shall be a determination by the finder of fact upon
24 clear and convincing evidence that the holder who failed to pay such

1 proceeds did so with the actual, knowing and willful intent: (a) to
2 deceive the person to whom the proceeds were due, or (b) to deprive
3 proceeds from the person the holder knows, or is aware, is legally
4 entitled thereto.

5 SECTION 4. AMENDATORY 52 O.S. 2011, Section 87.1, is
6 amended to read as follows:

7 Section 87.1. Whenever the production from any common source of
8 supply of oil or natural gas in this state can be obtained only
9 under conditions constituting waste or drainage not compensated by
10 counterdrainage, then any person having the right to drill into and
11 produce from such common source of supply may, except as otherwise
12 authorized or in this section provided, take therefrom only such
13 proportion of the oil or natural gas that may be produced therefrom
14 without waste or without such drainage as the productive capacity of
15 the well or wells of any such person considered with the acreage
16 properly assignable to each such well bears to the total productive
17 capacities of the wells in such common source of supply considered
18 with the acreage properly assignable to each well therein.

19 (a) To prevent or to assist in preventing the various types of
20 waste of oil or gas prohibited by statute, or any wastes, or to
21 protect or assist in protecting the correlative rights of interested
22 parties, the Corporation Commission, upon a proper application and
23 notice given as hereinafter provided, and after a hearing as
24 provided in the notice, shall have the power to establish well

1 spacing and drilling units of specified and approximately uniform
2 size and shape covering any common source of supply, or prospective
3 common source of supply, of oil or gas within the State of Oklahoma;
4 provided, that the Commission may authorize the drilling of an
5 additional well or wells on any spacing and drilling unit or units
6 or any portion or portions thereof or may establish, reestablish, or
7 reform well spacing and drilling units of different sizes and shapes
8 when the Commission determines that a common source of supply
9 contains predominantly oil underlying an area or areas and contains
10 predominantly gas underlying a different area or areas; provided
11 further that the units in the predominantly oil area or areas shall
12 be of approximately uniform size and shape, and the units in the
13 predominantly gas area or areas shall be of approximately uniform
14 size and shape, except that the units in the gas area or areas may
15 be of nonuniform size and shape when they adjoin the units in the
16 oil area or areas; provided further that the drilling pattern for
17 such nonuniform units need not be uniform, and provided further that
18 the Commission shall adjust the allowable production within the
19 common source of supply, or any part thereof, and take such other
20 action as may be necessary to protect the rights of interested
21 parties. Any order issued pursuant to the provisions hereof may be
22 entered after a hearing upon the petition of any person owning an
23 interest in the minerals in lands embraced within such common source
24 of supply, or the right to drill a well for oil or gas on the lands

1 embraced within such common source of supply, or on the petition of
2 the Conservation Officer of the State of Oklahoma. When such a
3 petition is filed with the Commission, the Commission shall give at
4 least fifteen (15) days' notice of the hearing to be held upon such
5 petition by one publication, at least fifteen (15) days prior to the
6 hearing, in some newspaper of general circulation published in
7 Oklahoma County, and by one publication, at least fifteen (15) days
8 prior to the date of the hearing, in some newspaper published in the
9 county, or in each county, if there be more than one, in which the
10 lands embraced within the application are situated. Except as to
11 the notice of hearing on such a petition, the procedural
12 requirements of Section 86.1 et seq. of this title shall govern all
13 proceedings and hearings provided for by this section.

14 (b) In case of a spacing unit of one hundred sixty (160) acres
15 or more, no oil and/or gas leasehold interest outside the spacing
16 unit involved may be held by production from the spacing unit more
17 than ninety (90) days beyond expiration of the primary term of the
18 lease.

19 (c) In establishing a well spacing or drilling unit for a
20 common source of supply thereunder, the acreage to be embraced
21 within each unit may include acreage from more than one governmental
22 section, but shall not exceed six hundred forty (640) acres for a
23 gas well plus ten percent (10%) tolerance, unless the unit is a
24 governmental section and the governmental section contains more than

1 six hundred forty (640) acres in which case the unit may comprise
2 the entire section. Provided, however, fractional sections along
3 the state boundary line and within the townships along the boundary
4 where the survey west of the Indian Meridian meets the survey east
5 of the Cimarron Meridian may be spaced with adjoining section unit,
6 and the shape thereof shall be determined by the Commission from the
7 evidence introduced at the hearing, and the following facts, among
8 other things, shall be material: (1) The lands embraced in the
9 actual or prospective common source of supply; (2) the plan of well
10 spacing then being employed or contemplated in the source of supply;
11 (3) the depth at which production from the common source of supply
12 has been or is expected to be found; (4) the nature and character of
13 the producing or prospective producing formation or formations; and
14 (5) any other available geological or scientific data pertaining to
15 the actual or prospective source of supply which may be of probative
16 value to the Commission in determining the proper spacing and well
17 drilling unit therefor, with due and relative allowance for the
18 correlative rights and obligations of the producers and royalty
19 owners interested therein.

20 The order establishing such spacing or drilling units shall set
21 forth: (1) the outside boundaries of the surface area included in
22 such order; (2) the size, form, and shape of the spacing or drilling
23 units so established; (3) the drilling pattern for the area, which
24 shall be uniform except as hereinbefore provided; and (4) the

1 location of the permitted well on each such spacing or drilling
2 unit. To such order shall be attached a plat upon which shall be
3 indicated the foregoing information. Subject to other provisions of
4 Section 86.1 et seq. of this title, the order establishing such
5 spacing or drilling units shall direct that no more than one well
6 shall thereafter be produced from the common source of supply on any
7 unit so established, and that the well permitted on that unit shall
8 be drilled at the location thereon as prescribed by the Commission,
9 with such exception as may be reasonably necessary where it is
10 shown, upon application, notice and hearing in conformity with the
11 procedural requirements of Section 86.1 et seq. of this title, and
12 the Commission finds that any such spacing unit is located on the
13 edge of a pool and adjacent to a producing unit, or for some other
14 reason that to require the drilling of a well at the prescribed
15 location on such spacing unit would be inequitable or unreasonable.
16 Whenever such an exception is granted, the Commission shall adjust
17 the allowable production for the spacing unit and take such other
18 action as may be necessary to protect the rights of interested
19 parties.

20 Any well spacing or drilling unit for a common source of supply
21 thereunder which exceeds six hundred forty (640) acres for a gas
22 well plus ten percent (10%) tolerance or exceeds the total amount of
23 acreage contained in a governmental section, and is not in
24 production or in the process of drilling development on the

1 effective date of this act shall be de-spaced. However, fractional
2 sections along the state boundary line and within the townships
3 along the boundary where the survey west of the Indian Meridian
4 meets the survey east of the Cimarron Meridian may be spaced with
5 adjoining section unit, and the shape thereof shall be determined by
6 the Commission.

7 (d) The Commission shall have jurisdiction upon the filing of a
8 proper application therefor, and upon notice given as provided in
9 subsection (a) of this section, to decrease the size of the well
10 spacing units or to permit additional wells to be drilled within the
11 established units, or to increase the size or modify the shape of
12 the well spacing units, upon proper proof at such hearing that such
13 modification or extension of the order establishing drilling or
14 spacing units will prevent or assist in preventing the various types
15 of wastes prohibited by statute, or any of the wastes, or will
16 protect or assist in protecting the correlative rights of persons
17 interested in the common source of supply, or upon the filing of a
18 proper application therefor to enlarge the area covered by the
19 spacing order, if such proof discloses that the development or the
20 trend of development indicates that such common source of supply
21 underlies an area not covered by the spacing order and such proof
22 discloses that the applicant is an owner within the area or within a
23 drilling and spacing unit contiguous to the area covered by the
24 application. Except in the instance of reservoir dewatering as

1 described herein, the Commission shall not establish well spacing
2 units of more than forty (40) acres in size covering common sources
3 of supply of oil, the top of which lies less than four thousand
4 (4,000) feet below the surface as determined by the original or
5 discovery well in the common source of supply, and the Commission
6 shall not establish well spacing units of more than eighty (80)
7 acres in size covering common sources of supply of oil, the top of
8 which lies less than nine thousand nine hundred ninety (9,990) feet
9 and more than four thousand (4,000) feet below the surface as
10 determined by the original or discovery well in the common source of
11 supply. In the instance of reservoir dewatering to extract oil from
12 reservoirs having initial water saturations at or above fifty
13 percent (50%), the Commission may establish drilling and spacing
14 units not to exceed six hundred forty (640) acres in size.

15 (e) The drilling of any well or wells into any common source of
16 supply for the purpose of producing oil or gas therefrom, after a
17 spacing order has been entered by the Commission covering such
18 common source of supply, at a location other than that fixed by the
19 order is hereby prohibited. The drilling of any well or wells into
20 a common source of supply, covered by a pending spacing application,
21 at a location other than that approved by a special order of the
22 Commission authorizing the drilling of such well is hereby
23 prohibited. The operation of any well drilled in violation of any
24 spacing so entered is also hereby prohibited. When two or more

1 separately owned tracts of land are embraced within an established
2 spacing unit, or where there are undivided interests separately
3 owned, or both such separately owned tracts and undivided interests
4 embraced within such established spacing unit, the owners thereof
5 may validly pool their interests and develop their lands as a unit.
6 Where, however, such owners have not agreed to pool their interests
7 and where one such separate owner has drilled or proposes to drill a
8 well on the unit to the common source of supply, the Commission, to
9 avoid the drilling of unnecessary wells, or to protect correlative
10 rights, shall, upon a proper application therefor and a hearing
11 thereon, require such owners to pool and develop their lands in the
12 spacing unit as a unit. The applicant shall give all the owners
13 whose addresses are known or could be known through the exercise of
14 due diligence at least fifteen (15) days' notice by mail, return
15 receipt requested. The applicant shall also give notice by one
16 publication, at least fifteen (15) days prior to the hearing, in
17 some newspaper of general circulation published in Oklahoma County,
18 and by one publication, at least fifteen (15) days prior to the date
19 of the hearing, in some newspaper published in the county, or in
20 each county, if there be more than one, in which the lands embraced
21 within the spacing unit are situated. The applicant shall file
22 proof of publication and an affidavit of mailing with the Commission
23 prior to the hearing. All orders requiring such pooling shall be
24 made after notice and hearing, and shall be upon such terms and

1 conditions as are just and reasonable and will afford to the owner
2 of such tract in the unit the opportunity to recover or receive
3 without unnecessary expense the owner's just and fair share of the
4 oil and gas. The portion of the production allocated to the owner
5 of each tract or interests included in a well spacing unit formed by
6 a pooling order shall, when produced, be considered as if produced
7 by such owner from the separately owned tract or interest by a well
8 drilled thereon. Such pooling order of the Commission shall make
9 definite provisions for the payment of cost of the development and
10 operation, which shall be limited to the actual expenditures
11 required for such purpose not in excess of what are reasonable,
12 including a reasonable charge for supervision. In the event of any
13 dispute relative to such costs, the Commission shall determine the
14 proper costs after due notice to interested parties and a hearing
15 thereon. The operator of such unit, in addition to any other right
16 provided by the pooling order or orders of the Commission, shall
17 have a lien on the mineral leasehold estate or rights owned by the
18 other owners therein and upon their shares of the production from
19 such unit to the extent that costs incurred in the development and
20 operation upon the unit are a charge against such interest by order
21 of the Commission or by operation of law. Such liens shall be
22 separable as to each separate owner within such unit, and shall
23 remain liens until the owner or owners drilling or operating the
24 well have been paid the amount due under the terms of the pooling

1 order. The Commission is specifically authorized to provide that
2 the owner or owners drilling, or paying for the drilling, or for the
3 operation of a well for the benefit of all shall be entitled to
4 production from such well which would be received by the owner or
5 owners for whose benefit the well was drilled or operated, after
6 payment of royalty, until the owner or owners drilling or operating
7 the well have been paid the amount due under the terms of the
8 pooling order or order settling such dispute. No part of the
9 production or proceeds accruing to any owner of a separate interest
10 in such unit shall be applied toward payment of any cost properly
11 chargeable to any other interest in the unit.

12 For the purpose of this section, the owner or owners of oil and
13 gas rights in and under an unleased tract of land shall be regarded
14 as a lessee to the extent of a seven-eighths (7/8) interest in and
15 to the rights and a lessor to the extent of the remaining one-eighth
16 (1/8) interest therein, unless and until the owner or owners make an
17 election or are deemed to make an election not to participate under
18 a pooling order issued by the Commission, at which time each such
19 owner shall be considered a lessor, subject to the judicially
20 recognized implied covenant to market found to exist by the courts
21 of this state in oil and gas leases covering lands located in this
22 state, to the extent of the full royalty percentage elected under
23 the pooling order. Should the owners of separate tracts or
24 interests embraced within a spacing unit fail to agree upon a

1 pooling of their interests and the drilling of a well on the unit,
2 and should it be established by final, unappealable judgment of a
3 court of competent jurisdiction that the Commission is without
4 authority to require pooling as provided for herein, then, subject
5 to all other applicable provisions of this act, the owner of each
6 tract or interest embraced within a spacing unit may drill on his or
7 her separately owned tract, and the allowable production therefrom
8 shall be that portion of the allowable for the full spacing unit as
9 the area of such separately owned tract bears to the full spacing
10 unit.

11 In the event a producing well or wells are completed upon a unit
12 where there are, or may thereafter be, two or more separately owned
13 tracts, each royalty interest owner shall share in all production
14 from the well or wells drilled within the unit, or in the gas well
15 rental provided for in the lease covering such separately owned
16 tract or interest in lieu of the customary fixed royalty, to the
17 extent of such royalty interest owner's interest in the unit. Each
18 royalty interest owner's interest in the unit shall be defined as
19 the percentage of royalty owned in each separate tract by the
20 royalty owner, multiplied by the proportion that the acreage in each
21 separately owned tract or interest bears to the entire acreage of
22 the unit.

23 (f) Notwithstanding any provision of this section to the
24 contrary, the Corporation Commission shall have jurisdiction upon

1 the filing of a proper application therefor, and upon notice given
2 as provided in subsection (a) of this section, to establish spacing
3 rules for horizontally drilled oil wells whereby horizontally
4 drilled oil wells may have well spacing units established of up to
5 six hundred forty (640) acres plus tolerances and variances as
6 allowed for gas wells pursuant to subsection (c) of this section.
7 For purposes of this subsection a "horizontally drilled oil well"
8 shall mean an oil well drilled, completed or recompleted in a manner
9 in which the horizontal component of the completion interval in the
10 geological formation exceeds the vertical component thereof and
11 which horizontal component extends a minimum of one hundred fifty
12 (150) feet in the formation. The Corporation Commission shall
13 promulgate rules necessary for the proper administration of this
14 subsection.

15 SECTION 5. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval."
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1 Passed the Senate the 16th day of April, 2012.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

7
8 _____
9 Presiding Officer of the House
10 of Representatives