

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 SENATE BILL NO. 470

By: Marlatt

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to oil and gas; providing  
9 definitions; establishing right to compensation for  
10 certain taking of interest from a local government  
11 regulatory restriction; setting amount of  
12 compensation; stating intent regarding other private  
13 property compensation laws; requiring certain  
14 notification by an owner; requiring certain hearing;  
15 stating purpose of the hearing; setting time period  
16 for setting the hearing; providing for issuance of a  
17 preliminary value determination within certain time  
18 period; allowing an owner to challenge the  
19 determination; prohibiting a local government to  
20 challenge the determination; allowing a local  
21 government to proceed with the regulatory restriction  
22 upon tendering the amount of the value determination;  
23 including certain fees and costs; precluding  
24 implementation upon failure to tender amount of value  
determination; authorizing a local government to  
appeal under certain conditions; providing for  
application of law; amending 52 O.S. 2011, Section  
570.10, which relates to the Production Revenue  
Standards Act; removing requirement to compound  
interest annually on certain payments; providing  
procedures for payment of proceeds on certain mineral  
interests; providing for codification; providing an  
effective date; and declaring an emergency.

23 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 137.1 of Title 52, unless there  
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Local government" means a county or a municipality  
6 incorporated in accordance with the laws of the state; and

7 2. "Owner" means the person who has the right to drill into and  
8 produce from a pool and to appropriate the oil or gas produced  
9 therefrom either for the owner or others or for the owner and  
10 others, including the owner of a well capable of producing oil or  
11 gas or both.

12 SECTION 2. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 137.2 of Title 52, unless there  
14 is created a duplication in numbering, reads as follows:

15 Whenever a local government adopts or implements an ordinance,  
16 resolution, rule, regulation or other form of official policy  
17 concerning mineral extraction operations that has the effect of  
18 reducing the fair market value of the mineral interest of the owner  
19 by at least sixty percent (60%), the interest of the owner is deemed  
20 to have been taken for a public use. In such circumstances, the  
21 owner has the right to obtain compensation from the local government  
22 for the full diminution in the fair market value of the mineral  
23 interest caused by the regulatory impairment by the local  
24 government.

1           SECTION 3.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 137.3 of Title 52, unless there  
3 is created a duplication in numbering, reads as follows:

4           A. Except as otherwise provided for in this act, this act is  
5 intended to supplement and is not intended to displace or supersede  
6 existing rights, powers, and responsibilities provided by law for  
7 the payment of compensation where private property is taken for a  
8 public use.

9           B. On or after the effective date of this act, not less than  
10 sixty-three (63) days before an owner intends to undertake new  
11 mineral extraction operations within the territorial boundaries of a  
12 local government, the owner shall notify the local government in  
13 writing of the intent of the owner to undertake such operations.

14           C. 1. Upon receiving the notice specified in subsection B of  
15 this section, if the local government intends to adopt or implement  
16 an ordinance, resolution, rule, regulation or other form of official  
17 policy concerning mineral extraction operations that has the likely  
18 effect of reducing the fair market value of the mineral interest of  
19 the owner by at least sixty percent (60%), the matter shall be set  
20 for a hearing before a board of county commissioners, the governing  
21 body of a municipality or a jury in accordance with existing  
22 procedures for resolving claims for compensation where private  
23 property is taken for a public use. Any owner with a potential  
24 claim in the matter may elect to have the matter resolved by a state

1 district court with appropriate jurisdiction if the owner does not  
2 want to have the matter resolved by a board of county commissioners,  
3 the government body of a municipality or a jury. The purpose of the  
4 hearing shall be to make a preliminary value determination of the  
5 interest of the owner.

6 2. The hearing as set forth in paragraph 1 of this subsection  
7 shall be set not less than seven (7) days following service of  
8 notice as set forth in subsection B of this section. The local  
9 government shall notify the owners in writing with a potential claim  
10 in the matter of the hearing. Any owner may be heard at the hearing  
11 on the determination of value.

12 D. Not less than ten (10) days following the hearing referenced  
13 in subsection C of this section, the board of county commissioners,  
14 governing board of the municipality, jury or district court, as  
15 applicable, shall issue a preliminary value determination of the  
16 interest of the owner that has been affected as a result of the  
17 regulatory impairment. The owner may challenge the preliminary  
18 value determination on the basis that the award is too low, but the  
19 local government shall not challenge the preliminary value  
20 determination on the basis that the award is too high.

21 E. The local government may proceed with implementing the  
22 ordinance, resolution, rule, regulation or other form of official  
23 policy concerning mineral extraction operations that constitutes the  
24 regulatory impairment if it tenders the full amount of the

1 preliminary value determination to the owner within seven (7)  
2 business days after the hearing. The amount tendered shall also  
3 include the reasonable attorney fees and costs incurred by the  
4 owner. If the local government fails to tender the full amount by  
5 the date specified in this subsection, the local government shall be  
6 precluded from implementing the ordinance, resolution, rule,  
7 regulation or other form of official policy.

8 F. The local government may appeal the preliminary value  
9 determination if it posts a bond for the full amount of the award or  
10 makes a deposit with a financial institution in the full amount of  
11 the award in escrow in an interest-bearing account.

12 SECTION 4. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 137.4 of Title 52, unless there  
14 is created a duplication in numbering, reads as follows:

15 The provisions of this act shall apply to any ordinance,  
16 resolution, rule, regulation or other form of official policy  
17 concerning mineral extraction operations adopted or implemented by a  
18 local government on or after the effective date of this act.

19 SECTION 5. AMENDATORY 52 O.S. 2011, Section 570.10, is  
20 amended to read as follows:

21 Section 570.10. A. All proceeds from the sale of production  
22 shall be regarded as separate and distinct from all other funds of  
23 any person receiving or holding the same until such time as such  
24 proceeds are paid to the owners legally entitled thereto. Any

1 person holding revenue or proceeds from the sale of production shall  
2 hold such revenue or proceeds for the benefit of the owners legally  
3 entitled thereto. Nothing in this subsection shall create an  
4 express trust.

5 B. Except as otherwise provided in this section:

6 1. Proceeds from the sale of oil or gas production from an oil  
7 or gas well shall be paid to persons legally entitled thereto:

8 a. commencing not later than six (6) months after the  
9 date of first sale, and

10 b. thereafter not later than the last day of the second  
11 succeeding month after the end of the month within  
12 which such production is sold.

13 2. Notwithstanding paragraph 1 above, royalty proceeds from the  
14 sale of gas production from an oil or gas well remitted to the  
15 operator pursuant to subsection B of Section 570.4 of this title  
16 shall be paid to persons legally entitled thereto:

17 a. commencing not later than six (6) months after the  
18 date of first sale, and

19 b. thereafter not later than the last day of the third  
20 succeeding month after the end of the month within  
21 which such production is sold; provided, however, when  
22 proceeds are received by the operator in its capacity  
23 as a producing owner, the operator may pay the royalty  
24 share of such proceeds to the royalty interest owners

1                   legally entitled thereto at the same time that it pays  
2                   the royalty proceeds received from other producing  
3                   owners for the same production month, but not later  
4                   than the last day of the third succeeding month after  
5                   the end of the month within which such production was  
6                   sold.

- 7           3.    a.    Proceeds from production may be remitted to the  
8                   persons entitled to such proceeds annually for the  
9                   twelve (12) months accumulation of proceeds totaling  
10                   at least Ten Dollars (\$10.00) but less than One  
11                   Hundred Dollars (\$100.00). Amounts less than Ten  
12                   Dollars (\$10.00) may be held but shall be remitted  
13                   when production ceases or by the payor upon  
14                   relinquishment of payment responsibility.
- 15                   b.    Proceeds totaling less than One Hundred Dollars  
16                   (\$100.00) but more than Twenty-five Dollars (\$25.00)  
17                   shall be remitted monthly if requested by the person  
18                   entitled to the proceeds. Amounts less than Ten  
19                   Dollars (\$10.00) shall be remitted annually if  
20                   requested by the person entitled to the proceeds.
- 21                   c.    Before proceeds greater than Twenty-five Dollars  
22                   (\$25.00) may be accumulated, payor shall provide  
23                   notice to the person owning interest as defined in  
24                   Section 570.2 of this title, entitled to such proceeds

1 that there is an option to be paid monthly for  
2 proceeds greater than Twenty-five Dollars (\$25.00).  
3 Such notice to the person shall also provide  
4 directions for requesting monthly payment, and  
5 constitutes notice to all heirs, successors,  
6 representatives, and assigns of the person.

7 4. Any delay in determining the persons legally entitled to  
8 proceeds from production caused by unmarketable title shall not  
9 affect payments to persons whose title is marketable.

10 C. 1. A first purchaser that pays or causes to be paid  
11 proceeds from production to the producing owner of such production  
12 or, at the direction of the producing owner, pays or causes to be  
13 paid royalty proceeds from production to:

14 a. the royalty interest owners legally entitled thereto,

15 or

16 b. the operator of the well,

17 shall not thereafter be liable for such proceeds so paid and shall  
18 have thereby discharged its duty to pay those proceeds on such  
19 production.

20 2. A working interest owner that pays or causes to be paid  
21 royalty proceeds from production to:

22 a. the royalty interest owners legally entitled thereto,

23 or

24 b. the operator of the well,

1 shall not thereafter be liable for such proceeds so paid and shall  
2 have thereby discharged its duty to pay those proceeds on such  
3 production.

4 3. An operator that pays or causes to be paid royalty proceeds  
5 from production, received by it as operator, to the royalty interest  
6 owners legally entitled thereto shall not thereafter be liable for  
7 such proceeds so paid and shall have thereby discharged its duty to  
8 pay those proceeds on such production.

9 4. Where royalty proceeds are paid or withheld incorrectly as a  
10 result of an error or omission, the party whose error or omission  
11 caused the incorrect royalty payments shall be liable for the  
12 additional royalty proceeds on such production and all resulting  
13 costs or damages incurred by the party making or withholding the  
14 incorrect payment.

15 D. 1. Except as otherwise provided in paragraph 2 of this  
16 subsection, where proceeds from the sale of oil or gas production or  
17 some portion of such proceeds are not paid prior to the end of the  
18 applicable time periods provided in this section, that portion not  
19 timely paid shall earn interest at the rate of twelve percent (12%)  
20 per annum ~~to be compounded annually~~, calculated from the end of the  
21 month in which such production is sold until the day paid.

22 2. a. Where such proceeds are not paid because the title  
23 thereto is not marketable, such proceeds shall earn  
24 interest at the rate of six percent (6%) per annum ~~to~~

1 ~~be compounded annually~~, calculated from the end of the  
2 month in which such production was sold until such  
3 time as the title to such interest becomes marketable.  
4 Marketability of title shall be determined in  
5 accordance with the then current title examination  
6 standards of the Oklahoma Bar Association.

7 b. Where marketability has remained uncured for a period  
8 of one hundred twenty (120) days from the date payment  
9 is due under this section, the holder of such proceeds  
10 may, and any person claiming to own the right to  
11 receive proceeds which have not been paid because of  
12 unmarketable title may require the holder of such  
13 proceeds to interplead the proceeds and all accrued  
14 interest into court for a determination of the persons  
15 legally entitled thereto. Upon payment into court the  
16 holder of such proceeds shall be relieved of any  
17 further liability for the proper payment of such  
18 proceeds and interest thereon.

19 c. In the event title remains unmarketable for two (2)  
20 years after an operator provides written notice of the  
21 unmarketable title, the operator may presume the  
22 accrued proceeds to be abandoned and remit payment  
23 pursuant to the Unclaimed Property Act, Section 651 et  
24 seq. of Title 60 of the Oklahoma Statutes.

1           d. Interest on proceeds that has not been paid prior to  
2           the applicable time periods provided in this section  
3           shall not apply in the following circumstances:

4           (1) when mineral owners or their assignees elect to  
5           take their proportionate share of production in  
6           kind, or

7           (2) when a mineral owner or assignee cannot be  
8           located after reasonable inquiry by the operator  
9           and the proceeds have been remitted to the state  
10           pursuant to the Unclaimed Property Act.

11           E. 1. Except as provided in paragraph 2 of this subsection, a  
12 first purchaser or holder of proceeds who fails to remit proceeds  
13 from the sale of oil or gas production to owners legally entitled  
14 thereto within the time limitations set forth in paragraph 1 of  
15 subsection B of this section shall be liable to such owners for  
16 interest as provided in subsection D of this section on that portion  
17 of the proceeds not timely paid. When two or more persons fail to  
18 remit within such time limitations, liability for such interest  
19 shall be shared by those persons holding said proceeds in proportion  
20 to the time each person held such proceeds.

21           2. When royalty proceeds on gas production are remitted  
22 pursuant to subsection B of Section 570.4 of this title:

23           a. A first purchaser that causes such proceeds to be  
24           received by the operator or by a producing owner in

1 the well for distribution to the royalty interest  
2 owner legally entitled thereto within the first month  
3 following the month in which such production was sold  
4 shall not be liable for interest on such proceeds.

5 b. A producing owner receiving royalty proceeds that  
6 causes such proceeds to be received by the royalty  
7 interest owner legally entitled thereto or by the  
8 operator for distribution to the royalty interest  
9 owner legally entitled thereto not later than the end  
10 of the first month following the month in which  
11 proceeds for such production was received by the  
12 producing owner from the purchaser shall not be liable  
13 for interest on such proceeds.

14 c. An operator receiving royalty proceeds that causes  
15 such proceeds to be received by the royalty interest  
16 owner legally entitled thereto, not later than the end  
17 of the first month following the month in which  
18 proceeds for such production was received by the  
19 operator from the purchaser or producing owner shall  
20 not be liable for interest on such proceeds.

21 d. Liability for interest provided in subsection D of  
22 this section shall be borne solely by the person, or  
23 persons, failing to remit royalty proceeds within the  
24 time limitations set forth in subsection B of this

1 section. When two or more persons fail to remit  
2 within such time limitations, liability for such  
3 interest shall be shared by such persons in proportion  
4 to the time each person held such proceeds.

5 F. Nothing in this section shall be construed to impair or  
6 amend existing or future contractual rights provided for in gas  
7 balancing agreements or other written agreements which expressly  
8 provide for the taking, sharing, marketing or balancing of gas or  
9 the proceeds therefrom. Any proceeds to be paid pursuant to any  
10 such agreement shall not commence to earn interest until the sooner  
11 of the time provided in such agreement for the payment of such  
12 proceeds or ninety (90) days from the date of the depletion of the  
13 well. Nothing herein shall be deemed to alter or limit the payment  
14 of royalty proceeds as provided in the Production Revenue Standards  
15 Act.

16 G. All payments under the Production Revenue Standards Act to  
17 owners or any other person or governmental entity legally entitled  
18 to the payment may be made by electronic means including but not  
19 limited to electronic funds transfer, Automated Clearing House  
20 (ACH), direct deposit, wire transfer, or any other similar form of  
21 transfer, upon the mutual written consent of the payor and payee.

22 SECTION 6. Section 5 of this act shall become effective  
23 November 1, 2015.  
24

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

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