

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1615, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Bingman

Bingman-MJM-FS-Req#3782
3/9/2010 1:56 PM

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1615

By: Bingman of the Senate

and

6 Trebilcock of the House

7
8
9 FLOOR SUBSTITUTE

10 [oil and gas- creating the Oklahoma Oil and Gas
11 Owner's Lien Act - codification - repealer -
emergency]

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

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

18 SHORT TITLE

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

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

24 DEFINITIONS

1 As used in the Oklahoma Oil and Gas Owners' Lien Act:

2 1. "Affiliate" means any person:

- 3 a. who is controlled, directly or indirectly, by a first
4 purchaser, or
5 b. who controls, directly or indirectly, a first
6 purchaser.

7 "Control" or "controlled by" means the possession, directly or
8 indirectly, of the power to direct or cause the direction of the
9 management and policies of a person, whether through ownership, by
10 contract, or otherwise;

11 2. "Agreement to sell" means any agreement, whether express or
12 implied, whether oral or written, by which an interest owner, either
13 directly or through a representative, agrees to sell or is deemed by
14 applicable contract or law to have agreed to sell oil or gas upon or
15 after severance to a first purchaser;

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

20 4. "First purchaser" means the first person that purchases Oil
21 or Gas from an interest owner under an agreement to sell;

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

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

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

11 8. "Oil and gas lien" means the lien granted by this act;

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

- 15 (1) oil,
16 (2) gas,
17 (3) proceeds,
18 (4) an oil and gas lease,
19 (5) a pooling order, and
20 (6) an agreement to sell.

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

- 23 (1) oil or gas in place prior to severance,
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- (2) oil or gas production, or the right to receive a portion of the proceeds, upon severance,
- (3) any interest or estate in, by, through or under an oil and gas lease,
- (4) rights acquired under a pooling order insofar as such rights relate to: ownership of oil and gas, the right to proceeds, or the right to enter into an agreement to sell,
- (5) a legal or equitable right to receive consideration of whatsoever nature under an agreement to sell, or
- (6) a mortgage lien or security interest in any of the foregoing;

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

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

- a. a mortgage lien or security interest granted by a first purchaser in favor of a person not an affiliate of the first purchaser which mortgage lien or security interest secures payment under a written instrument of indebtedness signed by the first purchaser and accepted in writing by the payee thereof prior to the

1 effective date of this act with a principal amount and
2 a fixed maturity stated therein; provided, however, a
3 permitted lien does not include a mortgage lien or
4 security interest which:

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

7 (2) secures payment under a written instrument of
8 indebtedness not signed by a first purchaser and
9 accepted in writing by the payee thereof prior to
10 the effective date of this act,

11 (3) secures payment under a written instrument of
12 indebtedness modified, amended or restated from
13 or after the effective date of this act which
14 modification, amendment or restatement increases
15 the principal amount which was owing at the
16 effective date of this act,

17 (4) secures payment under a written instrument of
18 indebtedness modified, amended or restated from
19 or after the effective date of this act which
20 modification, amendment or restatement extends
21 the stated maturity thereof which was in effect
22 at the effective date of this act, or
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1 (5) is not validly perfected with a first priority
2 against the claims of all persons under
3 applicable law, or

4 b. a validly perfected and enforceable lien for storage
5 or transportation charges, including terminal charges
6 but excluding demurrage, insurance, labor or other
7 charges, owed by a first purchaser in relation to
8 commingled oil or gas originally purchased under an
9 agreement to sell; provided, however, a permitted lien
10 does not include any such lien which is in favor an
11 affiliate of a first purchaser or which is for
12 charges in excess of ninety (90) days from the time
13 the first purchaser delivers such commingled oil or
14 gas for such storage or transportation;

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

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

1 14. "Proceeds" means any of the following when paid or to be
2 paid in consideration of, or as a consequence of, the sale of oil or
3 gas under an agreement to sell: oil or gas on or after severance;
4 inventory of raw, refined or manufactured oil or gas after
5 severance; rights to or products of any of the foregoing; cash
6 proceeds; accounts; chattel paper; instruments; documents; or
7 payment intangibles with respect to any of the foregoing;

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

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

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

20 18. "Security interest" means a security interest governed by
21 Article 9 of the Oklahoma Uniform Commercial Code;

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

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

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

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

8 NATURE, EXTENT AND DURATION OF OIL AND GAS LIEN

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

15 B. An oil and gas lien:

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

18 2. Continues uninterrupted and without lapse in all oil and gas
19 upon and after severance; and

20 3. Continues uninterrupted and without lapse in and to all
21 proceeds.

22 C. An oil and gas lien exists until the interest owner or
23 representative first entitled to receive the sales price has
24 received the sales price. Notwithstanding the immediately preceding

1 sentence, as between an interest owner and a representative of an
2 interest owner or any person claiming adversely to such interest
3 owner or representative, such interest owner's oil and gas lien
4 continues uninterrupted and without lapse in proceeds in the
5 possession or control of a representative until the interest owner
6 on whose behalf such representative acts receives such proceeds in
7 full.

8 D. The validity of an oil and gas lien shall not be dependent
9 on possession of the oil or gas by an interest owner or
10 representative. No oil and gas lien shall become or be deemed to be
11 void or expired by reason of a change or transfer of the actual or
12 constructive possession of or title to the oil or gas from the
13 interest owner or representative to a first purchaser or purchaser.

14 E. On the conveyance or transfer of any oil and gas rights by a
15 transferor interest owner, the oil and gas lien vested in the
16 transferor interest owner immediately before the conveyance or
17 transfer shall remain with the transferor interest owner to the
18 extent of any oil and gas rights retained by the transferor interest
19 owner.

20 F. On the conveyance or transfer of any oil and gas rights by a
21 transferor interest owner, the oil and gas lien vested in the
22 transferor interest owner immediately before the conveyance or
23 transfer shall be transferred to and attach automatically to the oil
24 and gas rights acquired by the transferee interest owner

1 uninterrupted and without lapse and as part of and incident to the
2 oil and gas rights so transferred or conveyed.

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

6 PERFECTION OF OIL AND GAS SECURITY INTEREST

7 An oil and gas lien is granted and exists as part of and
8 incident to the ownership of oil and gas rights and is perfected
9 automatically without the need to file a financing statement or any
10 other type of documentation. An oil and gas lien exists and is
11 perfected from the effective date of this act.

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

15 COMMINGLING

16 If oil or gas in which there exists more than one oil and gas
17 lien is commingled with other oil or gas in such a manner that the
18 identity of the specific oil or gas is lost, then the oil and gas
19 lien continues without interruption into and attaches to any such
20 resulting commingled product and is perfected automatically as of
21 the date of its original perfection but only as to the volumes to
22 which the oil and gas lien originally attached. In such event, the
23 oil and gas lien in the commingled product has priority over any
24 other lien that is not an oil and gas lien or security interest,

1 whether or not the other lien or security interest has been properly
2 perfected. If more than one oil and gas lien attaches to the
3 commingled product, then the oil and gas liens rank equally in the
4 proportion that the respective sales prices secured by each oil and
5 gas lien bears as a percentage of the total of the sales prices
6 secured by all oil and gas liens applicable to the production at the
7 time the production was commingled.

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

11 RIGHTS OF PURCHASERS

12 A purchaser takes free of any oil and gas lien otherwise
13 applicable to the oil or gas so purchased, and shall be relieved of
14 any obligations created by Section 570.10(A) of Title 52 of the
15 Oklahoma Statutes, only in the event that both of the following
16 occur:

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

19 2. The purchaser has paid the first purchaser in accordance
20 with all applicable written contracts in existence at the time of
21 the payment.

22 Notwithstanding the foregoing, the oil and gas lien will
23 continue uninterrupted in the proceeds paid to or otherwise due the
24 first purchaser.

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

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

6 PRIORITY RELATIVE TO OTHER LIENS OR SECURITY INTERESTS

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

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

13 TITLE

14 The provisions of this act shall not affect:

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

17 2. The right of a first purchaser to take or receive oil and
18 gas under the terms of a division order, provided that such division
19 order shall not modify, waive or abrogate in any respect the rights
20 of an Interest Owner under this Act; or

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

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

4 WAIVER

5 No interest owner shall be required, as a condition or term of
6 an agreement to sell or otherwise, to waive, relinquish or release
7 any oil and gas lien or any rights under this act other than upon
8 payment in full of the sales price or agree to any provision that
9 would apply the law of any state other than the State of Oklahoma
10 insofar as the same relates to rights under this act, and any such
11 purported waiver, relinquishment, release, or provision shall be
12 void as a matter of the public policy of this state.

13 Notwithstanding the preceding sentence, any interest owner may
14 waive, relinquish or release any oil and gas lien or any rights
15 under this act or agree to a provision that would apply the law of
16 any state other than the State of Oklahoma insofar as the same
17 relates to rights under this act only as to such interest owner's
18 oil and gas rights provided the first purchaser either posts a
19 letter of credit in form and amount satisfactory to the interest
20 owner or agrees to a binding contractual arrangement satisfactory in
21 form and content to prepay or escrow the sales price under an
22 agreement to sell in form and substance satisfactory to the interest
23 owner and performs all of the first purchaser's obligations
24 thereunder.

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

4 EXPIRATION OF LIEN - ENFORCEMENT - JOINDER AND CONSOLIDATION -
5 COSTS - PERSONAL ACTIONS - OTHER RIGHTS AND REMEDIES

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

1 appointment of a receiver, trustee or other similar official for
2 such person or for any substantial part of such person's property
3 shall toll the foregoing one (1) year period in which to commence an
4 action to enforce the Oil and Gas Lien for an additional period of
5 ninety (90) days from the earlier of:

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

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

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

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

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

4 RIGHTS OF OPERATOR NOT IMPAIRED

5 This act does not impair an operator's right to be paid, set-off
6 or withhold funds from another interest owner as security for or in
7 satisfaction of any debt or security interest. In case of a dispute
8 between an operator and another interest owner, a good faith tender
9 of funds by anyone operates as a tender of the funds to both in any
10 of the following circumstances:

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

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

15 3. To a court of competent jurisdiction in the event litigation
16 or bankruptcy.

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

20 RIGHTS CUMULATIVE

21 A. The provisions of this act and the rights granted under this
22 act are intended to be cumulative with all other rights an interest
23 owner may otherwise have at law or in equity. To the extent that
24 there is a conflict between the provisions of this act and any other

1 rights an interest owner has at law or in equity, then the rights of
2 the interest owner are to be liberally construed to the end that
3 those rights which afford the interest owner the most comprehensive
4 protection to secure the receipt by the interest owner of the sales
5 price shall be given preference.

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

10 SECTION 13. REPEALER 52 O.S. 2001, Sections 548.1,
11 548.2, 548.3, 548.4, 548.5 and 548.6, are hereby repealed.

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

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