

BILL ANALYSIS

C.S.H.B. 2207
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that while the mineral estate is generally dominant in state law, in certain instances where the surface estate is severed from the mineral estate a foreclosure on a surface property can cause surface estate interests to subjugate the mineral estate. The parties further note that in these instances the lien holder of the surface estate can act to terminate a legal oil and natural gas lease for the mineral estate. C.S.H.B. 2207 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2207 amends the Property Code to establish that an oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records of the county before the foreclosure sale. The bill establishes that an interest of the mortgagor or the mortgagor's assigns in the oil or gas lease, including a right to receive royalties or other payments that become due and payable after the date of the foreclosure, passes to the purchaser of the foreclosed property to the extent that the security instrument under which the real property was foreclosed had priority over the interest in the oil or gas lease of the mortgagor or the mortgagor's assigns.

C.S.H.B. 2207 establishes that, if real property that includes the mineral interest in hydrocarbons together with the surface overlying such mineral interest is subject to both an oil or gas lease and a security instrument and the security interest is foreclosed, the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property to the extent that the security instrument under which the real property was foreclosed had priority over the rights of the lessee under the oil or gas lease.

C.S.H.B. 2207 establishes that an agreement, including a subordination agreement, between a lessee of an oil or gas lease and a mortgagee of real property or the lessee of an oil or gas lease and the purchaser of foreclosed real property controls over any conflicting bill provision. The bill prohibits an agreement between a mortgagor and mortgagee from modifying the application of the bill's provisions unless the affected lessee agrees to the modification. The bill exempts from the bill's provisions a security instrument that does not attach to a mineral interest in hydrocarbons in the mortgaged real property.

EFFECTIVE DATE

January 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2207 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle B, Title 5, Property Code, is amended by adding Chapter 66 to read as follows:

CHAPTER 66. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE

Sec. 66.001. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE.

(a) Notwithstanding any other law, an oil or gas lease covering real property subject to a security interest that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and:

(1) was executed and recorded in the real property records of the county before the date the security interest was recorded; or

(2) was executed and recorded in the real property records of the county after the date the security interest was recorded but before the foreclosure sale.

(b) Any royalty payment due to the owner of the real property under an oil or gas lease shall be paid to the purchaser of the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 5, Property Code, is amended by adding Chapter 66 to read as follows:

CHAPTER 66. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE

Sec. 66.001. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE.

(a) In this section:

(1) "Mortgagee," "mortgagor," and "security instrument" have the meanings assigned by Section 51.0001.

(2) "Oil or gas lease" means an instrument conveying a fee simple determinable interest in a mineral estate covering oil, gas, or other hydrocarbons or a recorded memorandum of such an instrument.

(3) "Real property" means an estate covering the mineral interest in hydrocarbons or the mineral interest in hydrocarbons together with the surface overlying such mineral interest. The term does not include a surface interest or other interest that excludes a mineral interest in hydrocarbons.

(b) Notwithstanding any other law, an oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and

was executed and recorded in the real property records of the county before the foreclosure sale.

An interest of the mortgagor or the mortgagor's assigns in the oil or gas lease, including a right to receive royalties or other

foreclosed real property.

(c) The lessee of the oil or gas lease shall indemnify the purchaser and any mortgagee of the foreclosed real property from actual damages resulting from the lessee's operations conducted under the oil or gas lease.

(d) If an oil or gas lease is executed and recorded in the real property records of the county after the date a security interest in the affected real property is recorded and the affected real property is subsequently sold in a foreclosure sale, the foreclosure sale terminates and extinguishes the lessee's right to use the surface of the real property under the oil or gas lease.

(e) A subordination agreement between a lessee of an oil or gas lease and a mortgagee of real property controls over any conflicting provision of this section.

SECTION 2. Chapter 66, Property Code, as added by this Act, applies only with respect to a foreclosure sale for which the notice of sale is given under Section 51.002, Property Code, on or after the effective date of this Act or a judicial foreclosure for which the

payments that become due and payable after the date of the foreclosure, passes to the purchaser of the foreclosed property to the extent that the security instrument under which the real property was foreclosed had priority over the interest in the oil or gas lease of the mortgagor or the mortgagor's assigns.

(c) Notwithstanding Subsection (b), if real property that includes the mineral interest in hydrocarbons together with the surface overlying such mineral interest is subject to both an oil or gas lease and a security instrument and the security interest is foreclosed, the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property to the extent that the security instrument under which the real property was foreclosed had priority over the rights of the lessee under the oil or gas lease.

(d) An agreement, including a subordination agreement, between a lessee of an oil or gas lease and a mortgagee of real property or the lessee of an oil or gas lease and the purchaser of foreclosed real property controls over any conflicting provision of this section. An agreement between a mortgagor and mortgagee may not modify the application of this section unless the affected lessee agrees to the modification.

(e) This section does not apply to a security instrument that does not attach to a mineral interest in hydrocarbons in the mortgaged real property.

SECTION 2. Same as introduced version.

judicial foreclosure action commenced on or after the effective date of this Act.

SECTION 3. This Act takes effect January 1, 2016.

SECTION 3. Same as introduced version.