

## **BILL ANALYSIS**

H.B. 3794  
By: Geren  
Energy Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

A recent court case, *In re First River Energy, LLC*, resulted in a decision unfavorable to Texas oil and gas interest owners because the court found that the jurisdiction where the first purchaser, as debtor, is located, rather than where the oil and gas, as collateral, is produced, governs the applicable Uniform Commercial Code. Because Texas law commonly known as the first purchaser statute establishes these owners' security interests under the state's Uniform Commercial Code, Texas interest owners cannot take advantage of nonstandard Texas provisions when the debtor is organized outside of Texas. There are concerns that, unless the first purchaser statute is amended, the security interests of Texas oil and gas interest owners are likely to continue to be interpreted as unsecured and subordinate to other perfected security interests in cases where the first purchaser is organized or incorporated out of state. H.B. 3794 seeks to address this issue by repealing the present first purchaser statute and replacing it with Property Code provisions establishing oil and gas liens based on real property for applicable interest owners.

### **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**

H.B. 3794 repeals Business & Commerce Code provisions, sometimes known as the first purchaser statute, which establish security interests for owners of oil and gas interests in a first purchaser's rights to production or its proceeds and provide for certain statutory liens under the Uniform Commercial Code. The bill replaces the repealed provisions with Property Code provisions establishing oil and gas liens for applicable interest owners.

H.B. 3794 amends the Property Code to set out provisions relating to oil and gas liens, including applicable definitions. The bill establishes that, for purposes of securing the obligations of a first purchaser to pay the sales price, each interest owner has an oil and gas lien to the extent of that owner's interest in any legal or equitable right, title, or interest in or to oil or gas from land in Texas. The lien has the following characteristics:

- exists as part of and incident to the ownership of oil and gas rights;
- exists in and attaches to all oil and gas before severance;
- continues uninterrupted and without lapse in all oil and gas on and after severance;
- continues uninterrupted and without lapse in and to all proceeds from the sale of the oil or gas; and
- exists until the first entitled interest owner or representative has received the sales price for the oil or gas, subject to a certain exception involving an adverse claim.

H.B. 3794 establishes the following with regard to the priority and enforceability of an oil and gas lien:

- an oil and gas lien of an interest owner is perfected automatically without the need to file a financing statement or any other type of documentation; and
- except for a permitted lien, an oil and gas lien takes priority over any other lien, whether arising by contract, law, equity, or otherwise, or over any security interest.

The bill defines "permitted lien" as a perfected and enforceable lien created by statute or rule of a governmental agency for storage or transportation charges owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell, subject to certain exclusions.

H.B. 3794 establishes that a first purchaser takes free of an oil and gas lien under the following conditions:

- the first purchaser, in good faith, paid the sales price for the oil or gas to an interest owner or representative otherwise apparently entitled to receive that price; and
- the first purchaser is without actual knowledge that the interest owner or representative is not entitled to receive the sales price paid.

An oil and gas lien continues uninterrupted in the proceeds paid to or otherwise due the interest owner or representative after such a good faith purchase.

H.B. 3794, among other provisions, sets out provisions relating to the following:

- the effect of a transfer of oil and gas rights on an oil and gas lien;
- an oil and gas lien in a commingled product;
- rights of purchasers subsequent to the first purchaser;
- clarifications that the bill's provisions do not affect title in specified ways;
- the limitations period for filing an action to enforce a lien;
- venue for an action to enforce an interest owner's oil and gas lien; and
- payment disputes between an operator and another interest owner.

H.B. 3794 prohibits a first purchaser from requiring an interest owner, as a condition or term of an agreement or otherwise, to waive or release any oil and gas lien or another right established by the bill other than on full payment of the sales price or to agree to a provision that would apply another state's law to an applicable right. The bill voids such a waiver or release unless the first purchaser secures the payment by a letter of credit or by prepayment or escrow of the sales price.

H.B. 3794 amends the Business & Commerce Code to make conforming changes.

H.B. 3794 does not affect the rights of any interest owner that accrued before the bill's effective date to the extent those rights are not in conflict with the bill's provisions. The bill specifies that, for purposes of priority of liens and liens in commingled products, a permitted lien includes certain mortgage liens or security interests in oil or gas predating the bill's effective date.

H.B. 3794 repeals Section 9.343, Business & Commerce Code.

### **EFFECTIVE DATE**

September 1, 2021.