

SUBJECT: Limiting causes of action for withholding certain royalty payments

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Caleb Troxclair, Texas Alliance of Energy Producers, EOG Resources; Mark Hanna, Texas Oil and Gas Association; Tricia Davis, Texas Royalty Council (TRC) and Panhandle Producers & Royalty Association (PPROA); (*Registered, but did not testify*: Jay Brown, Concho Resources; Kari Gibson, ConocoPhillips; Teddy Carter, Devon Energy; Keith Strama, ExxonMobil; Jimmy Carlile, Fasken Oil and Ranch Ltd.; Craig Chick, Murphy Oil Corporation; Michael Lozano, Permian Basin Petroleum Association; Beth Cubriel, PLAINS All American Pipeline; Jason Modglin, Texas Alliance of Energy Producers; Carol Sims, Texas Civil Justice League; Ryan Paylor, Texas Independent Producers & Royalty Owners Association (TIPRO))

Against — Steven Lord, National Association of Royalty Owners-Texas; John Mcfarland; (*Registered, but did not testify*: Jennifer Bremer, Texas Land & Mineral Owners Association)

BACKGROUND: Natural Resources Code sec. 91.402 specifies time limits for the payment of proceeds derived from the sale of oil or gas production. Sec. 91.402(b) allows a payor to withhold such payments without interest beyond the specified time limits if there is:

- a dispute concerning title that would affect distribution of payments;
- a reasonable doubt that the payee has sold or authorized the sale of its share of the oil or gas to the purchaser of such production;

- a reasonable doubt that the payee has clear title to the interest in the proceeds of production; or
- a requirement in a title opinion that places in issue the title, identity, or whereabouts of the payee and that has not been satisfied after reasonable requests for clarifying information from the payee.

DIGEST:

HB 3262 would establish that a payee did not have a common law cause of action against a payor for withholding payment of proceeds from the sale of oil and natural gas production under Natural Resources Code sec. 91.402(b) unless, for a dispute concerning the title, the contract requiring payment specified otherwise.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021. The bill would apply only to an action filed on or after its effective date.

SUPPORTERS
SAY:

HB 3262 would clarify existing law on the withholding of royalty payments without liability for breach of contract by establishing that a payee did not have a cause of action against a payor for withholding royalty payments under the "safe harbor" provision that authorizes royalty suspense under certain circumstances.

Ownership issues are common in the Texas oil and gas industry due to the large number of interest owners and the complexity of the title associated with mineral ownerships. Texas payors frequently face situations where two or more people could claim entitlement to the same royalties, and in order to avoid or mitigate exposure to paying a royalty twice, payors sometimes suspend payments until the title issue is resolved. A recent Texas Supreme Court decision found that applicable state law was ambiguous and did not preclude a common law claim for breach of contract.

HB 3262 would honor the widely practiced safe harbor royalty suspense provision that has been industry practice in Texas for years, encouraging continued investment in and development of Texas resources. If a contract

between a payor and a payee concerning title and royalties already provided for handling suspense in the event of a title dispute, the contract language would control, and an interest owner could still sue a payor for damages and attorney's fees if royalty payments were withheld wrongfully. The bill would only protect payors from claims relating to suspense of payments for the specific reasons listed in the safe harbor provision, which have been in effect for many years and have served payees and payors well.

CRITICS
SAY:

HB 3262 could interfere with the freedom of payors and payees to negotiate and enforce the terms of a lease related to title and royalty payments by attempting to rectify the potential consequences of a recent Texas Supreme Court case. An expected flood of costly interpleader actions as a result of the case has not occurred, making the bill's provisions both unnecessary and overly broad, which could lead to potential unintended consequences on the freedom to contract regarding royalties. Common law causes of action like breach of contract should be able to coexist with the statutory cause of action laid out in the safe harbor royalty provision, ensuring protection of the freedom to contract within the confines of the law.