

BILL ANALYSIS

C.S.H.B. 2590
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Knowledgeable parties are concerned about situations surrounding foreclosures that occur in a well bore tract on a horizontally drilled well. The parties note that there is a potential that the well will never be able to be developed and produced because the entity that takes ownership, typically a bank or federal agency, rarely shows any interest in leasing to operators. Therefore, the parties claim, a possible trespass situation arises that cannot be remedied. The uncertainties increase, the parties note, because a bank or the federal agency can own a foreclosed property for weeks or for many years. The parties point out that given the unpredictability of when the minerals are likely to be leased, mineral owners in the same pooled unit face these uncertainties regarding whether the minerals will ever be developed. To address this issue, C.S.H.B. 2590 seeks to ensure that mineral owners are protected if a foreclosure occurs in a well bore tract.

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. 2590 amends the Property Code to establish that 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 was executed and recorded in the real property records of the county before the date the security interest was recorded or 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. The bill requires any royalty payment due to the owner of the real property under an oil or gas lease to be paid to the purchaser of the foreclosed real property. The bill requires the lessee of the oil or gas lease to indemnify the purchaser and any mortgagee of the foreclosed real property from actual damages resulting from the lessee's operations conducted pursuant to the oil or gas lease. The bill establishes that, 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 pursuant to the oil or gas lease. The bill establishes that a subordination agreement between a lessee of an oil or gas lease and a mortgagee of real property controls over any conflicting provision of the bill.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2590 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial

differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 51, Property Code, is amended by adding Section 51.010 to read as follows:

Sec. 51.010. SALE OF PROPERTY SUBJECT TO CERTAIN AGREEMENTS RELATED TO PRODUCTION OR SALE OF OIL OR GAS. (a) Notwithstanding any other law, an oil or gas lease or other agreement related to the production or sale of oil or gas from real property subject to a security interest that is being foreclosed remains in effect after the foreclosure sale and has priority over the foreclosed lien regardless of whether the agreement was recorded in the real property records of the county before the date the security interest was recorded if the agreement:

(1) was recorded in the real property records of the county before the foreclosure sale; and

(2) has not terminated or expired on its own terms.

(b) Any royalty payment due to the owner of the real property under an agreement described by Subsection (a) shall be paid to the purchaser of the foreclosed real property.

SECTION 2. Section 51.010, Property Code, as added by this Act, applies only to a

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) 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 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 pursuant to 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 pursuant to 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.

No equivalent provision.

security interest recorded in the real property records of a county on or after the effective date of this Act. A security interest recorded before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

No equivalent provision.

SECTION 3. This Act takes effect **September 1, 2013.**

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

SECTION 3. This Act takes effect **January 1, 2014.**