

BILL ANALYSIS

Senate Research Center
84R21670 JAM-F

H.B. 2207
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Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

H.B. 2207 amends current law relating to the foreclosure sale of property subject to an oil or gas lease.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 5, Property Code, by adding Chapter 66, 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) Defines "mortgagee," "mortgagor," "security instrument," "oil or gas lease," and "real property."

(b) Provides that, 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. Provides 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) Provides that, 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) Provides 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 provision of this section. Prohibits an agreement between a mortgagor and mortgagee from modifying the application of this section unless the affected lessee agrees to the modification.

(e) Provides that 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. Provides that 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 (Sale of Real Property Under Contract Lien), 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. Effective date: January 1, 2016.