BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1823
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Permanent School Fund (PSF) is a constitutional fund, which was established to support public education. Oil and gas leases on PSF land are administered by the Texas General Land Office (GLO). When the lessee under an oil and gas lease becomes delinquent in his or her royalty payments, GLO has three options: to terminate a lease for non-payment; file suit against a lessee for non-payment and upon receiving a judgment attempt to levy against any property that the lessee may have; or invoke its statutory and contractual lien rights.

Once GLO exercises its lien rights, the first purchase of oil and gas from the lessee is required to remit 100 percent of the funds due the lessee to GLO, until such time as the delinquent royalties, penalty, and interest are paid. However, this payment hold is only applicable to the specific lease with the delinquent royalty payments. This means that if an operator with a number of PSF leases gets behind in payments on one or more leases, GLO cannot depend on the proceeds of the operator's remaining leases to satisfy the operator's debt to the state.

C.S.S.B. 1823 amends current law relating to the state's statutory and contractual liens to secure the payment of unpaid royalty and other amounts due under oil and gas leases of state land.

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 Section 52.136, Natural Resources Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), (b-3), and (d), as follows:

(b) Provides that, by acceptance of a lease, the lessee grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by the lease, all proceeds which may accrue to the lessee from the sale of the oil and gas extracted from the area covered by the lease or from the area covered by any other lease of state land or minerals held by the lessee, whether the proceeds are held by the lessee or another person, and all fixtures on and improvements to the area covered by the lease used in connection with the production or processing of the oil and gas, to secure the payment of royalties and other amounts due or to become due under the lease or this subchapter and to secure payment of damages or loss that the estate may suffer by reason of the lessee's breach of a covenant or condition of the lease or of another lease of state land or minerals held by the lessee, whether express or implied.

(b-1) Requires the commissioner of the General Land Office (commissioner) to determine whether to foreclosure a lien established by Subsection (b) securing the payment of royalties and other amounts due or to become due under a lease or this subchapter and securing payment of damages or loss that the state may suffer by reason of the lessee's breach of a covenant or condition of the lease, whether express or implied, including the lien on all proceeds which may accrue to the lessee from the sale of the oil and gas extracted from the area covered by any other lease of state land or minerals held by the lessee.

(b-2) Requires the commissioner to determine the amount of a lien established by Subsection (b). Requires that the amount be based on the final audit billing notice or similar order or notice sent to the lessee and any penalty and interest that may have accrued after the date the final billing notice, or similar order or notice, was sent.

(b-3) Authorizes the commissioner to adjust the amount of a lien established by Subsection (b) to account for the lessee's proportionate ownership interest in the lease.

(d) Authorizes the commissioner to temporarily suspend enforcement of a lien established by Subsection (b) if the commissioner determines that, because of extenuating circumstances beyond the control of the lessee, the lessee did not receive payment from the first purchaser of the oil or gas produced from the lease area.

SECTION 2. Effective date: September 1, 2009.