

1 **SENATE FLOOR VERSION**

2 April 9, 2012

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 2654

By: Jordan and Billy of the  
House

6 and

7 Johnson (Rob) and Shortey  
8 of the Senate

9 An Act relating to oil and gas agreements; creating  
10 the Energy Litigation Reform Act; providing short  
11 title; providing rules of construction for certain  
12 agreements; providing exceptions; clarifying  
13 applicable terms for certain actions; limiting  
14 damages in certain actions for failure to pay  
15 proceeds; setting damages; amending 52 O.S. 2011,  
16 Sections 318.21, 318.22 and 318.23, which relate to  
17 the Seismic Exploration Regulation Act; updating  
18 statutory reference; modifying definitions; modifying  
19 requirements for certain rules promulgated by the  
20 Corporation Commission; modifying requirements for  
21 content of certain notice; authorizing certain  
22 damages; requiring certain notice; establishing  
23 certain procedures for damages for seismic  
24 exploration; construing provisions; clarifying  
certain intent; stating applicability of act;  
providing for codification; providing for  
noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 901 of Title 52, unless there is  
created a duplication in numbering, reads as follows:

1 Sections 1 through 3 of this act shall be known and may be cited  
2 as the "Energy Litigation Reform Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 902 of Title 52, unless there is  
5 created a duplication in numbering, reads as follows:

6 The sanctity of private agreements, statutes, governmental  
7 orders and common law being essential to the oil and gas industry,  
8 the following are declared to be paramount rules of construction to  
9 be applied by the courts of this state in the construction of  
10 private agreements, statutes and governmental orders relating to the  
11 exploration for, operations for, producing of, or marketing oil or  
12 gas, or disbursing proceeds of production of oil or gas:

13 1. A person is bound as a reasonably prudent operator to  
14 perform any duties owed to any person under a private agreement,  
15 statute, governmental order or common law relating to the  
16 exploration for, operations for, producing of, or marketing oil or  
17 gas, or disbursing proceeds of production of oil or gas, and  
18 performance of the duties described herein is that performance which  
19 an operator acting reasonably would have undertaken given the  
20 circumstances at the time, without being required to subordinate its  
21 own business interests but with due regard to the interests of all  
22 affected parties, including the operator; and

23 2. There shall not be implied in the duties in paragraph 1 of  
24 this section or otherwise any fiduciary duty, quasi-fiduciary duty

1 or other similar special relationship in any private agreement,  
2 statute, governmental order or common law relating to the  
3 exploration for, operations for, producing of, or marketing oil or  
4 gas, or disbursing proceeds of production of oil or gas, and any  
5 contrary or inconsistent legal authority shall be deemed to be of no  
6 effect.

7 Nothing in this section shall either prohibit the parties to a  
8 private agreement from expressly agreeing in writing otherwise or  
9 prohibit the Legislature from expressly providing otherwise in any  
10 statute subsequently enacted or prohibit any governmental order from  
11 expressly providing otherwise to the extent within the power or  
12 authority of the issuer of such order. However, the provisions of  
13 paragraph 2 of this section shall not apply to Section 287.1 of  
14 Title 52 of the Oklahoma Statutes.

15 SECTION 3. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 903 of Title 52, unless there is  
17 created a duplication in numbering, reads as follows:

18 The following terms shall apply to any action brought to recover  
19 proceeds and interest or either proceeds or interest under the  
20 Production Revenue Standards Act or otherwise:

21 Except for the right to enforce lien rights under private  
22 agreement or under Sections 548 through 549.12 of Title 52 of the  
23 Oklahoma Statutes, the Production Revenue Standards Act shall  
24 provide the exclusive remedy to a person entitled to proceeds from

1 production for failure of a holder to pay the proceeds within the  
2 time periods required for payment. The interest amounts set forth  
3 in paragraph 1 of subsection D of Section 570.10 of Title 52 of the  
4 Oklahoma Statutes are deemed to be an adequate penalty for failure  
5 to pay proceeds within the time periods required for payment and no  
6 other penalty or damages shall be recoverable in any litigation  
7 involving a claim for unpaid or underpaid proceeds from production  
8 including, without limitation, punitive or exemplary damages or  
9 disgorgement damages, unless there shall be a determination by the  
10 finder of fact upon clear and convincing evidence that the person  
11 failing to pay such proceeds did so with the actual, knowing and  
12 willful intent to deceive the person to whom the proceeds were due.

13 SECTION 4. AMENDATORY 52 O.S. 2011, Section 318.21, is  
14 amended to read as follows:

15 Section 318.21 ~~This act~~ A. Sections 318.21 through 318.23 of  
16 this title shall be known and may be cited as the "Seismic  
17 Exploration Regulation Act". ~~For purposes of this act only,~~  
18 ~~"seismic~~

19 B. As used in the Seismic Exploration Regulation Act:

20 1. "Seismic exploration" means the drilling of seismograph test  
21 holes and use of surface energy sources such as weight drop  
22 equipment, thumpers, hydropulses or vibrators, and any of the  
23 activities associated therewith;

24

1        2. "Operator" or "applicant" means a person or entity who is  
2 either the owner of the right to conduct seismic exploration or  
3 acting on behalf of the owner;

4        3. "Surface estate" means the same as defined in Section 802 of  
5 this title; and

6        4. "Surface owner" means the owner or owners of record of the  
7 surface estate of the property upon which the seismic exploration is  
8 to occur, based upon the records of the county clerk of the county  
9 within which the surface estate is actually located.

10        SECTION 5.        AMENDATORY        52 O.S. 2011, Section 318.22, is  
11 amended to read as follows:

12        Section 318.22 A. The Corporation Commission is hereby  
13 directed and authorized to promulgate rules governing the operations  
14 of seismographic exploration for the purpose of protecting the  
15 interests and property of the citizens of this state.

16        B. Any person, firm, corporation or entity desiring to commence  
17 any seismographic exploration in this state shall, prior to any such  
18 activity, be duly registered with the Corporation Commission and  
19 shall be required to apply for a permit for each separate seismic  
20 exploration.

21        C. Rules promulgated by the Commission governing all seismic  
22 exploration operations shall include, but not be limited to,  
23 requirements for:  
24

1 1. Applicants to post a form of financial surety guarantee, the  
2 form and amount to be determined by the Commission which shall  
3 remain in effect until release is authorized by the Commission;

4 2. Applicants to attempt to notify all ~~surface~~ owners of  
5 ~~property~~ the surface estate where the seismic exploration will occur  
6 at least fifteen (15) days prior to commencement of seismic  
7 exploration. If the applicant has ~~obtained specific written~~  
8 ~~permission~~ the right to conduct seismic exploration and has ~~given~~  
9 attempted to give actual notice of intent to conduct seismic  
10 exploration to the surface owner any time before fifteen (15) days  
11 prior to conducting seismic exploration, such action shall be  
12 considered sufficient notification for the purposes of this section.  
13 ~~Notification by U.S. mail shall be sufficient for~~ For the purposes  
14 of this section, ~~provided~~ an attempt to notify shall be considered  
15 sufficient when the notification is sent by U.S. mail, the notice is  
16 postmarked at least fifteen (15) days prior to commencement of any  
17 seismic exploration, and has been given at the last address shown of  
18 record for the surface owner in the records of the County Clerk in  
19 the County where the surface estate is located, or an address that  
20 is known by applicant to be more accurate than the foregoing address  
21 of record; and

22 3. Applicants to file an affidavit within ninety days (90) days  
23 of the last mailing of the notice described herein with the county  
24 clerk in the county where the property is located, setting out that

1 mailing of the notice has occurred in compliance with Section 318.22  
2 of this title, and specifically listing the surface owners which  
3 were not locatable at the addresses required. Further in the event  
4 that any party is not locatable at said addresses, then such surface  
5 owner will be deemed as having rejected the offer provided in the  
6 notice required under Section 318.22 of this title; and

7 4. Applicants to be permitted for each seismic exploration  
8 operation.

9 D. The notice required in subsection C of this section shall be  
10 sent by U.S. mail, include a copy of the oil or gas lease or seismic  
11 permit authorizing the use of the surface for seismic exploration  
12 and contain the following information:

13 1. Name of the company conducting seismic exploration;

14 2. Anticipated date of seismic exploration; ~~and~~

15 3. A description of the surface estate of the notice recipient  
16 to be entered upon for the seismic exploration to be conducted;

17 4. If there is not a prior written agreement between the  
18 surface owner and the operator as to seismic exploration, the  
19 following provision with regard to the amount of the damages offered  
20 by the operator to the surface owner shall be included in the  
21 notice:

22 "Operator will conduct the proposed seismic exploration in  
23 a prudent manner and agrees to indemnify and hold you  
24 harmless from personal injury or property damage claims

1 that may result from the operator's seismic exploration to  
2 the extent that such damage claims are not the result of  
3 your acts or omissions. Pursuant to the Seismic  
4 Exploration Regulation Act, you, as the surface owner, are  
5 entitled to reasonable damages that will be sustained by  
6 reason of the operator's seismic exploration. The  
7 operator hereby offers you \$ [operator shall fill in  
8 the amount] as compensation for the reasonable damages to  
9 be sustained by reason of the operator's seismic  
10 exploration. If you accept this offer in writing to the  
11 operator within fifteen (15) days of the postmark of this  
12 letter you will be deemed to have accepted and agreed to  
13 the amount as full consideration for all reasonable  
14 damages by reason of the operator's seismic exploration.  
15 Operator shall, upon receipt of your timely acceptance of  
16 the offer contained herein, remit to you the consideration  
17 described in this offer. The acceptance of this amount  
18 shall not prohibit you from attempting to recover damages  
19 which are unreasonable and caused by reason of the  
20 operator's seismic exploration on your surface estate.  
21 In the event that you either (a) reject the offer in this  
22 letter in writing to the operator within fifteen (15) days  
23 of the postmark of this letter, or (b) fail to make a  
24 timely acceptance of the offer contained herein, then you



1 will be deemed to have rejected the offer contained  
2 herein, and pursuant to the Seismic Exploration Regulation  
3 Act, you may initiate an action pursuant to the Oklahoma  
4 Small Claims Procedure or as a civil action pursuant to  
5 the Oklahoma Pleading Code, as appropriate, to recover the  
6 reasonable damages, if any, actually sustained by reason  
7 of the operator's seismic exploration. If an action to  
8 recover reasonable damages is commenced accordingly and a  
9 judgment is entered in the action for you as to the  
10 damages in an amount in excess of the amount set forth in  
11 this notice for reasonable damages by reason of the  
12 operator's seismic exploration, you shall be considered  
13 the prevailing party. If the action is dismissed prior to  
14 the entry of a judgment, or the judgment entered is for an  
15 amount equal to or less than the amount set forth in this  
16 notice for reasonable damages by reason of the operator's  
17 seismic exploration, although you will be entitled to  
18 receive the judgment amount, if any, the operator shall be  
19 considered the prevailing party. The prevailing party in  
20 any court proceeding brought pursuant to the Seismic  
21 Exploration Regulation Act shall be entitled to recover  
22 the costs of the suit, including but not limited to  
23 reasonable attorney and expert witness fees and litigation  
24 expenses."

1        5. Any other pertinent information the Commission deems  
2 appropriate and relevant for the protection of surface owners.

3        E. The Commission is further directed to promulgate rules to  
4 implement a system to register complaints against any person, firm  
5 or corporation conducting seismic exploration. The Commission may  
6 determine if and when a complaint has been adequately resolved.

7        F. Any person, firm, corporation or entity which conducts any  
8 seismic exploration without a permit by the Commission, or in any  
9 other manner violates the rules of the Commission governing such  
10 exploration shall be subject to a penalty of One Thousand Dollars  
11 (\$1,000.00) per violation per day by the Commission, in addition to  
12 any other legal remedy provided by law.

13        SECTION 6.        AMENDATORY        52 O.S. 2011, Section 318.23, is  
14 amended to read as follows:

15        Section 318.23 A. It shall be unlawful for any person, firm,  
16 corporation or entity to conduct any seismic test hole blasting  
17 within two hundred (200) feet of any habitable, dwelling, building  
18 or water well without written permission from the owner of the  
19 property.

20        B. The surface owner shall be entitled to reasonable damages  
21 that have been or will be sustained to the surface estate by reason  
22 of the operator's seismic exploration.

23        C. At least fifteen (15) days prior to commencement of seismic  
24 exploration, the operator shall provide the notice to the surface

1 owner required by Section 318.22 of this title, and, in the absence  
2 of an agreement between the surface owner and the operator as to  
3 seismic exploration, operator and surface owner shall make a good  
4 faith effort to resolve any reasonable damage issues raised by the  
5 surface owner by reason of operator's seismic exploration.

6 D. The surface owner may accept the offer in the notice  
7 required by Section 318.22 of this title by accepting the offer in  
8 writing to the operator within fifteen (15) days of the postmark of  
9 the notice. By the timely acceptance of such offer, the surface  
10 owner will be deemed to have accepted and agreed to such offer as  
11 full consideration for all reasonable damages by reason of the  
12 operator's seismic exploration and the operator may commence seismic  
13 operations. The operator shall, upon receipt of the surface owner's  
14 timely acceptance of the offer in the notice, remit the appropriate  
15 consideration to the surface owner. The surface owner's acceptance  
16 of such offer and consideration shall not prohibit the surface owner  
17 from attempting to recover damages which are unreasonable and caused  
18 by reason of the operator's seismic exploration on the surface  
19 estate of the surface owner.

20 E. If prior to the expiration of the fifteen (15) day notice  
21 period notice set forth in Section 318.22 of this title, the surface  
22 owner rejects the amount tendered with the notice required by  
23 Section 318.22 of this title in writing to the operator, or the  
24 surface owner fails to make a timely acceptance of the offer

1 contained in the notice, then the surface owner will be deemed to  
2 have rejected the offer tendered with the notice, and the operator  
3 may enter the property and commence seismic operations.

4 F. Within ninety days (90) days of the last mailing of the  
5 notice described herein, the applicant shall file an affidavit  
6 setting out that mailing of the notice has occurred in compliance  
7 with Section 318.22 of this title, and specifically listing the  
8 surface owners which were not locatable at the addresses required.  
9 Further in the event that any surface owner is not locatable at the  
10 addresses, then such surface owner will be deemed as having rejected  
11 the offer provided in the notice required under Section 318.22 of  
12 this title.

13 G. If the surface owner has properly rejected or has been  
14 deemed to have rejected the amount tendered with the notice required  
15 by Section 318.22 of this title, the surface owner may initiate an  
16 action pursuant to the Oklahoma Small Claims Procedure or as a civil  
17 action pursuant to the Oklahoma Pleading code, as appropriate, to  
18 recover the reasonable damages, if any, actually sustained by reason  
19 of the operator's seismic exploration. Venue for such action shall  
20 properly be in the county where the surface estate is located.

21 H. If an action to recover the reasonable damages is commenced  
22 pursuant to subsection G of this section and a judgment is entered  
23 in the action for the surface owner for reasonable damages by reason  
24 of the operator's seismic exploration in an amount in excess of the

1 amount set forth in the notice required by Section 318.22 of this  
2 title, the surface owner shall be considered the prevailing party;  
3 if the action is dismissed prior to the entry of a judgment, or if  
4 the judgment entered for reasonable damages by reason of the  
5 operator's seismic exploration is for an amount equal to or less  
6 than the amount set forth in the notice required by Section 318.22  
7 of this title, the operator shall be considered the prevailing  
8 party. The prevailing party in any court proceeding brought  
9 pursuant to this section shall be entitled to recover the costs of  
10 the suit, including but not limited to reasonable attorney and  
11 expert witness fees and litigation expenses.

12 I. Nothing in the Seismic Exploration Regulation Act shall  
13 modify or restrict an operator's right to enter a surface estate and  
14 conduct seismic exploration thereon pursuant to the operator's right  
15 to conduct seismic exploration. Additionally, nothing in the  
16 response or deemed response of a surface owner to any notice  
17 required by Section 318.22 of this title shall restrict or otherwise  
18 affect an operator's right to enter a surface estate and conduct  
19 seismic operations thereon.

20 SECTION 7. NEW LAW A new section of law not to be  
21 codified in the Oklahoma Statutes reads as follows:

22 Sections 1 through 3 of this act are a clarification of the  
23 original intent of the Legislature as to existing law and shall be  
24

1 applied in all pending cases, unless a trial on the merits has  
2 commenced in the case prior to November 1, 2012.

3 SECTION 8. This act shall become effective November 1, 2012.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-3-12 - DO PASS,  
5 As Amended and Coauthored.

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