

By: West

H.B. No. 52

A BILL TO BE ENTITLED

AN ACT

relating to the provision of financial assurance for plugging certain oil and gas wells.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.51 to read as follows:

Art. 21.51. TEXAS WELL-PLUGGING SURETY BOND ASSOCIATION

Sec. 1. DEFINITIONS. In this article:

(1) "Association" means the Texas Well-Plugging Surety Bond Association established by this article.

(2) "Authorized insurer" means a surety company authorized to write surety bonds in this state and that writes surety bonds under Sections 91.104 and 91.1042, Natural Resources Code.

(3) "Plan of operation" means the plan for operating the association to assign to an authorized insurer the issuance of a surety bond to a person eligible under this article.

(4) "Surety bond" means a bond written to cover the cost of plugging and abandoning all wells and controlling, abating, and cleaning up pollution associated with the failure of an oil and gas operator to maintain the operator's oil and gas wells in accordance with the laws of this state and the rules and orders of the Railroad Commission of Texas.

Sec. 2. ASSOCIATION ESTABLISHED. (a) The Texas

1 Well-Plugging Surety Bond Association is established. The  
2 association is a nonprofit corporation composed of all authorized  
3 insurers. Each authorized insurer must be a member of the  
4 association as long as the association exists as a condition of the  
5 insurer's authority to write surety bonds under Sections 91.104 and  
6 91.1042, Natural Resources Code.

7 (b) The association is administered by a governing  
8 committee composed of the following members appointed by the  
9 commissioner:

10 (1) one member who represents the interests of  
11 landowners and mineral owners;

12 (2) one member who is a petroleum engineer;

13 (3) one member who represents the interests of the oil  
14 and gas lending community;

15 (4) one member who is an authorized insurer writing  
16 surety bonds under Sections 91.104 and 91.1042, Natural Resources  
17 Code; and

18 (5) one member who represents the interests of the  
19 well-servicing industry.

20 (c) The commissioner or a department employee designated by  
21 the commissioner shall serve as an ex officio member of the  
22 governing committee.

23 (d) Appointed members of the governing committee serve  
24 two-year terms.

25 Sec. 3. OPERATION OF ASSOCIATION. (a) The governing  
26 committee shall administer the association in accordance with the  
27 plan of operation.

1       (b) The association may assess the member insurers to obtain  
2 money to operate the association. An assessment on a member insurer  
3 must be proportionate to the portion of surety bond business in this  
4 state written by the insurer. If an assessment made on a member  
5 insurer is not paid within a reasonable time, the association may  
6 bring an action to collect the assessment. The association may  
7 report the failure to pay to the commissioner, who may impose  
8 sanctions as described by Chapter 82 of this code.

9       (c) The association has the powers granted to nonprofit  
10 corporations under the Texas Non-Profit Corporation Act (Article  
11 1396-1.01 et seq., Vernon's Texas Civil Statutes).

12       (d) The plan of operation must:  
13               (1) be approved by the commissioner; and  
14               (2) provide for the efficient, economical, fair, and  
15 nondiscriminatory administration of the association.

16       (e) The plan of operation may:  
17               (1) contain underwriting standards set by the  
18 association for determining the issuance of surety bonds under this  
19 article; and  
20               (2) include eligibility requirements in addition to  
21 the eligibility requirements provided by Section 5 of this article.

22       (f) The governing committee may amend the plan of operation,  
23 subject to the commissioner's approval. The governing committee  
24 shall amend the plan of operation as required by the commissioner.

25       (g) If the commissioner determines that any part of the plan  
26 of operation does not conform to the purposes of the Natural  
27 Resources Code that relate to the plan, the commissioner shall

1 notify the governing committee of that determination in writing.  
2 On receiving the notice, the governing committee shall take action  
3 to conform the plan of operation to the purposes of the Natural  
4 Resources Code that relate to the plan.

5 (h) The plan of operation must contain incentive programs to  
6 encourage member insurers to write surety bonds on a voluntary  
7 basis and to minimize the use of the association as a means to  
8 obtain surety bonds. The incentive programs are effective on  
9 approval by the commissioner.

10 (i) The plan of operation must include a voluntary,  
11 competitive limited assignment distribution plan that allows each  
12 member insurer to contract directly with a servicing carrier to  
13 accept assignments to that carrier by the association. A servicing  
14 carrier must be an insurer authorized under this code to write  
15 surety bonds. After notice and hearing, the commissioner may  
16 prohibit an insurer from acting as a servicing carrier. The terms  
17 of the contract between a servicing carrier and an insurer,  
18 including the buy-out fee, shall be determined by negotiation  
19 between the parties. The governing committee may adopt reasonable  
20 rules for the conduct of business under the contract and may  
21 establish reasonable standards of eligibility for servicing  
22 carriers.

23 Sec. 4. DUTIES AND FUNCTIONS OF ASSOCIATION. The  
24 association shall provide a means by which the issuance of a surety  
25 bond to an eligible person may be assigned to an authorized insurer.

26 Sec. 5. ELIGIBILITY FOR ISSUANCE OF BOND. (a) Any firm,  
27 partnership, joint stock association, corporation, or other

1 organization that is required to file an organization report under  
2 Section 91.142, Natural Resources Code, may apply for the issuance  
3 of a surety bond under this article.

4 (b) An applicant for a surety bond must demonstrate to the  
5 association that the applicant:

6 (1) has an acceptable record of compliance with each  
7 applicable rule, order, license, permit, and certificate of the  
8 Railroad Commission of Texas that relates to safety or the  
9 prevention or control of pollution for the 48 months preceding the  
10 application date;

11 (2) is not currently violating any applicable rule,  
12 order, license, permit, or certificate;

13 (3) has paid any administrative, civil, or criminal  
14 penalty relating to a violation of a rule, order, license, permit,  
15 or certificate; and

16 (4) has reimbursed the railroad commission for any  
17 costs and expenses incurred by the commission in connection with  
18 the applicant's violation of a rule, order, license, permit, or  
19 certificate.

20 Sec. 6. RATES FOR SURETY BONDS; HEARING. (a) The  
21 commissioner shall set appropriate rates for surety bonds written  
22 under this article. The rates must be:

23 (1) just, reasonable, adequate, not excessive, not  
24 confiscatory, and not unfairly discriminatory for the risks to  
25 which they apply; and

26 (2) set in an amount sufficient to carry all claims to  
27 maturity and to meet the expenses incurred in the writing and

1 servicing of the business.

2 (b) In setting rates under this section, the commissioner  
3 shall consider the reports of aggregate premiums earned and losses  
4 and expenses incurred in the writing of surety bonds through the  
5 association.

6 (c) The commissioner may adopt reasonable rules and  
7 statistical plans to be used by each authorized insurer to record  
8 and report:

9 (1) the insurer's premium, loss, and expense  
10 experience, which must be reported separately for business assigned  
11 to the insurer; and

12 (2) other data required by the commissioner for the  
13 purposes of this article.

14 (d) The association shall file annually with the department  
15 for approval by the commissioner rates to be charged for surety  
16 bonds provided through the association. The association may not  
17 make such a filing more than once in any 12-month period.

18 (e) Subchapter B, Chapter 40, of this code does not apply to  
19 the filing or setting of rates under this section or a department  
20 action with respect to the filing or setting of rates under this  
21 section.

22 (f) Before approving, disapproving, or modifying a filing  
23 made under Subsection (d) of this section, the commissioner shall  
24 provide all interested persons a reasonable opportunity to:

25 (1) review the filing;

26 (2) obtain copies of the filing on payment of any  
27 legally required copying cost; and

1           (3) submit to the commissioner written comments,  
2 analyses, or information related to the filing.

3           (g) Not later than the 45th day after the date on which the  
4 department receives the filing required under Subsection (d) of  
5 this section, the commissioner shall schedule a hearing at which  
6 interested persons may present written or oral comments relating to  
7 the filing. A hearing under this subsection is not a contested case  
8 hearing under Chapter 2001, Government Code. The association or  
9 any other interested person or entity that has submitted proposed  
10 changes or actuarial analyses may ask questions of any person  
11 testifying at the hearing.

12           (h) Not later than the seventh day after the date the filing  
13 is received by the department, the department shall file in the  
14 Texas Register notice that a filing has been made under Subsection  
15 (d) of this section. The notice must include information relating  
16 to:

17                 (1) the availability of the filing for public  
18 inspection at the department during regular business hours and the  
19 procedures for obtaining copies of the filing;

20                 (2) procedures for making written comments related to  
21 the filing; and

22                 (3) the time, place, and date of the hearing scheduled  
23 under Subsection (g) of this section.

24           (i) After the conclusion of the hearing, the commissioner  
25 shall approve, disapprove, or modify the filing in writing. If the  
26 commissioner disapproves a filing, the commissioner shall state in  
27 writing the reasons for the disapproval and the criteria to be met

1 by the association to obtain approval. The association may file  
2 with the commissioner, not later than the 10th day after the date  
3 the association receives the commissioner's written disapproval,  
4 an amended filing to comply with the commissioner's comments.

5 (j) Before approving or disapproving an amended filing, the  
6 commissioner shall provide all interested persons a reasonable  
7 opportunity to review the amended filing, obtain copies of the  
8 amended filing on payment of any legally required copying cost, and  
9 submit to the commissioner written comments or information related  
10 to the amended filing in the manner provided by Subsection (f) of  
11 this section, and may hold a hearing in the manner provided by  
12 Subsection (g) of this section not later than the 20th day after the  
13 date the department receives the amended filing. Not later than the  
14 10th day after the date a hearing on the amended filing is  
15 concluded, the commissioner shall approve or disapprove the amended  
16 filing. If the commissioner does not approve the amended filing on  
17 or before the 30th day after the date the amended filing is received  
18 by the department, the amended filing is considered approved on the  
19 31st day after the date the amended filing is received by the  
20 department. Subsections (h) and (i) of this section apply to a  
21 hearing conducted under this subsection.

22 (k) On or before the 30th day after the date of the  
23 commissioner's decision under this section, a person aggrieved by  
24 the decision may appeal the decision in accordance with Subchapter  
25 D, Chapter 36, of this code.

26 Sec. 7. IMMUNITY FROM LIABILITY. (a) The association, a  
27 member of the governing committee, or any employee of the



1 association is not personally liable for any act performed in good  
2 faith within the scope of the person's authority as determined  
3 under this article or the plan of operation or for damages arising  
4 from the person's official acts or omissions, other than an act or  
5 omission that is corrupt or malicious. The association shall  
6 provide counsel to defend any action brought against a member of the  
7 governing committee or employee of the association that is based on  
8 the person's official act or omission regardless of whether the  
9 defendant has terminated service with the association before the  
10 action is filed.

11 (b) This section is cumulative with and does not affect or  
12 modify any common law or statutory privilege or immunity.

13 Sec. 8. SUNSET PROVISION. This article is subject to  
14 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
15 in existence as provided by that chapter, this article is abolished  
16 September 1, 2009. Any association funds remaining at the time this  
17 article is abolished shall be transferred to the oil-field cleanup  
18 fund.

19 SECTION 2. Section 91.104, Natural Resources Code, as  
20 effective September 1, 2004, is amended to read as follows:

21 Sec. 91.104. BONDS, LETTERS OF CREDIT, ~~[AND]~~ CASH DEPOSITS,  
22 AND WELL-SPECIFIC PLUGGING INSURANCE POLICIES. (a) The commission  
23 shall require a bond, letter of credit, or cash deposit to be filed  
24 with the commission as provided by Subsection (b) of this section.

25 (b) A person required to file a bond, letter of credit, or  
26 cash deposit under Section 91.103 who is an inactive operator or who  
27 operates one or more wells must, at the time of filing or renewing

an organization report required by Section 91.142, file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042; or

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042.

(c) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells is considered to have met that requirement for a well if the wellbore is included in a well-specific plugging insurance policy that:

(1) is approved by the Texas Department of Insurance;

(2) names this state as the owner and contingent beneficiary of the policy;

(3) is fully prepaid and cannot be canceled or surrendered;

(4) provides that benefits may not be paid until the specified wellbore has been plugged in accordance with commission rules in effect at the time of plugging; and

(5) provides benefits that equal the greater of:

(A) the actual payment under the policy for plugging the wellbore; or

(B) an amount equal to \$2 for each foot of well depth for the specified well.

SECTION 3. Section 91.1042, Natural Resources Code, as effective September 1, 2004, is amended by adding a new Subsection

(b) and relettering existing Subsection (b) as Subsection (c), to read as follows:

(b) When calculating the number of an operator's wells for purposes of Subsection (a), the commission shall exclude a well if the wellbore is included in a well-specific plugging insurance policy described by Section 91.104(c).

(c) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

SECTION 4. Section 91.107, Natural Resources Code, as effective September 1, 2004, is amended to read as follows:

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT.

(a) Notwithstanding Section 91.104, if an active or inactive well is transferred, sold, or assigned by its operator to another operator whose average daily oil and gas production from the total of all active and inactive wells for the six months preceding the transfer, sale, or assignment is not less than one barrel of oil equivalent, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit as provided by Section 91.104(b)(1), (2), or (3).

(b) Notwithstanding Section 91.104, if an active or inactive well is transferred, sold, or assigned by its operator to another operator whose average daily oil and gas production from the total of all active and inactive wells for the six months preceding the transfer, sale, or assignment is less than one barrel of oil equivalent, the commission shall require the party acquiring

1 the well to file and maintain a new bond, letter of credit, or cash  
2 deposit in an amount equal to \$2 for each foot of well depth for that  
3 well. A bond, letter of credit, or cash deposit required under this  
4 subsection is in addition to any other bond, letter of credit, or  
5 cash deposit required of the new operator under Section 91.104  
6 before the operator acquired the well subject to this subsection.

7 (c) Notwithstanding Section 91.104, if an operator whose  
8 average daily oil and gas production from the total of all active  
9 and inactive wells for the six months preceding a proposed  
10 transfer, sale, or assignment of active producing wells is at least  
11 one barrel of oil equivalent and the transfer, sale, or assignment  
12 of active producing wells would cause the six-month average daily  
13 oil and gas production for the total of the operator's remaining  
14 active and inactive wells to drop below one barrel of oil  
15 equivalent, the commission shall require the operator to provide  
16 additional financial assurance in an amount equal to \$2 for each  
17 foot of well depth for a sufficient number of the operator's  
18 remaining wells so that the six-month average daily oil and gas  
19 production for the total of the remaining active and inactive wells  
20 to be covered by a blanket bond, letter of credit, or cash deposit  
21 under Section 91.1042 plus the additional financial assurance under  
22 this subsection will be not less than one barrel of oil equivalent.

23 (d) A well for which financial assurance is provided under  
24 Subsection (b) or (c) is not included in the operator's well count  
25 for determination of the amount of a bond, letter of credit, or cash  
26 deposit under Section 91.1041 or 91.1042.

27 (e) A financial assurance requirement for a well for which

1 additional financial assurance is required by Subsection (b) or (c)  
2 may not be satisfied by the operator's blanket bond, letter of  
3 credit, or cash deposit determined under Section 91.1042 until the  
4 operator's average daily oil and gas production from the total of  
5 all active and inactive wells for six consecutive months is at least  
6 three barrels of oil equivalent.

7 (f) The [~~, and the~~] financial security of the prior operator  
8 shall continue to be required and to remain in effect, and the  
9 commission may not approve the transfer of operatorship, until the  
10 new bond, letter of credit, or cash deposit is provided or the  
11 commission determines that the bond, letter of credit, or cash  
12 deposit previously submitted to the commission by the person  
13 acquiring the well complies with this subchapter. A transfer of a  
14 well from one entity to another entity under common ownership is a  
15 transfer for purposes of this section.

16 SECTION 5. Section 91.111(c), Natural Resources Code, is  
17 amended to read as follows:

18 (c) The fund consists of:

19 (1) penalties imposed under Section 85.381 for  
20 violation of a law, order, or rule relating to well plugging  
21 requirements;

22 (2) proceeds from bonds, insurance, and other  
23 financial assurances required by this chapter, subject to the  
24 refund provisions of Section 91.1091;

25 (3) private contributions, including contributions  
26 made under Section 89.084;

27 (4) expenses collected under Section 89.083;

- 1           (5) fees imposed under Section 85.2021;
- 2           (6) civil penalties collected for violations of
- 3 Chapter 89 or of rules or orders relating to plugging that are
- 4 adopted under this code;
- 5           (7) proceeds collected under Sections 89.085 and
- 6 91.115;
- 7           (8) interest earned on the funds deposited in the
- 8 fund;
- 9           (9) fees collected under Section 91.104;
- 10          (10) civil penalties or costs recovered under Section
- 11 91.457 or 91.459;
- 12          (11) oil and gas waste hauler permit application fees
- 13 collected under Section 29.015, Water Code;
- 14          (12) costs recovered under Section 91.113(f);
- 15          (13) hazardous oil and gas waste generation fees
- 16 collected under Section 91.605;
- 17          (14) oil-field cleanup regulatory fees on oil
- 18 collected under Section 81.116;
- 19          (15) oil-field cleanup regulatory fees on gas
- 20 collected under Section 81.117;
- 21          (16) fees for a reissued certificate collected under
- 22 Section 85.167;
- 23          (17) fees collected under Section 91.1013;
- 24          (18) fees collected under Section 89.088;
- 25          (19) penalties collected under Section 81.0531;
- 26          (20) fees collected under Section 91.142;
- 27          (21) fees collected under Section 91.654;

1           (22) costs recovered under Sections 91.656 and 91.657;

2           (23) two-thirds of the fees collected under Section  
3 81.0521; and

4           (24) legislative appropriations.

5           SECTION 6. The Texas Department of Insurance shall  
6 implement the changes in law required by Article 21.51, Insurance  
7 Code, as added by Section 1 of this Act, not later than December 1,  
8 2004.

9           SECTION 7. The changes in law made by Sections 2 through 5  
10 of this Act apply only to a person required to file a bond or  
11 alternate form of financial security under Section 91.103, Natural  
12 Resources Code, on or after the effective date of this Act. A  
13 person required to file a bond or alternate form of financial  
14 security under Section 91.103, Natural Resources Code, before the  
15 effective date of this Act is governed by the law as it existed  
16 immediately before the effective date of this Act, and that law is  
17 continued in effect for that purpose.

18           SECTION 8. This Act takes effect September 1, 2004.