

## **BILL ANALYSIS**

C.S.H.B. 2020  
By: Farabee  
Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since the 1920s, the Commission has required operators to plug wells before abandonment. That requirement was never seriously enforced until the 1980s. In 1983 the Plugging Fund, currently Oil Field Clean Up Fund, has always been funded exclusively by industry fees. These fees generated around \$3 million per annum to plug abandoned wells without being properly plugged. In 1991, the amount of money collected for the fund was increased and the authority for the fund was expanded to include the remediation of abandoned sites. In 1991, the Legislature authorized the following forms of financial assurance:

- 1.) Individual Performance Bonds in the amount of \$2 per foot times the depth of all wells in an operator's portfolio.
- 2.) Blanket Performance Bonds along the following schedule:

0 to 10 wells	\$25,000
11 to 100 wells	\$50,000
100 or greater wells	\$250,000
- 3.) \$100 fee if operator demonstrates acceptable record of compliance (also known as "Good-guy" provision)
- 4.) Fee-in-lieu-of bond in the amount of 3% times the face value of the bond that would otherwise be required.
- 5.) Personal property as collateral.

In 2001, the Legislature adopted SB 310, the Railroad Commission's sunset bill. SB 310 made no changes to option 1 and 2 above. It raised the fee for option 4 from 3% to 12 ½ %, and eliminated option 5 above. For option 3, SB 310 raised the fee to \$1000, and language inserted in the Senate made it available if the Railroad Commission determined that bonds were not available at a reasonable price. In addition, SB 310 eliminates options 3 and 4 on September 1, 2004.

House Bill 2020 addresses financial assurance requirements for persons engaged in the operation of wells and other activities regulated by the Railroad Commission of Texas.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 2, Section 91.104, Natural Resources Code, SECTION 3, Section 91.104, Natural Resources Code, SECTION 4, Section 91.1042, Natural Resources Code of this bill.

## ANALYSIS

### SECTION 1. Section 85.2021, Natural Resources Code, DRILLING PERMIT FEE

Section 85.2021 establishes an effective date for this section for September 1, 2004.

Section 85.2021 (b) amends the requirement on a fee of \$200 when exceptions to Statewide Rule 37 relating to spacing and Statewide Rule 38 relating to density are requested (rather than required). This technical change does not affect or alter current practice.

### SECTION 2. Section 91.104, Natural Resources Code.

#### Section 91.104. BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY.

This section amends bonds and other forms of financial security that may be required of operators by the Railroad Commission. This section sets out the financial assurance options available to operators.

Section 91.104(b)(4) restores the practice of making the “good-guy” option available to qualified operators administratively rather than through a formal hearing. To qualify, an operator continues to be required to have an acceptable record of compliance with the Railroad Commission of Texas rules for the previous 48 months, have no outstanding violations, have paid all outstanding penalties, and have paid all reimbursements to the Commission.

Section 91.104 (b) (5) maintains a fee-in-lieu-of bond option, but changes the rate from current law. HB 2020 sets the fee for this option at prime interest rate plus 4% of the face amount of the bond that will otherwise be required, capped at 12%.

Section 91.104 (c) establishes that a person may not be required to file a bond, letter of credit, or cash deposit as a condition of receiving an extension under that section.

Section 91.104 (d) directs the Railroad Commission shall determine the method, by rule, prime rate for the purposes of this option.

### SECTION 3. Section 91.104, Natural Resources Code.

#### Section 91.104. BONDS AND ALTERNATE FORMS OF FINANCIAL SECURITY.

Except as discussed below, Section 3, mirrors changes made in Section 2. The changes in this section become effective January 1, 2006.

Additionally, Section 91.104 bifurcates the rates available under the fee-in-lieu-of bond option.

Section 91.104 (b) (4) eliminates the \$1,000 cash deposit option effective January 1, 2006. After January 1, 2006, the rate for this option will become prime rate plus 1% of the face amount of the bond that would otherwise be required, capped at 10%, for operators with an acceptable record of compliance. To qualify, the operator will be required to have an acceptable record of compliance with the Commission for the previous 48 months, have no outstanding violations, have paid all outstanding penalties, and have paid all reimbursements to the Railroad Commission of Texas.

Section 91.104 (b) (5) establishes that operators who do not qualify for the prime plus 1% option, the fee

would be prime plus 4% of the face amount of the bond that otherwise would be required, capped at 12%.

Section 91.104 (c) establishes that a person may not be required to file a bond, letter of credit, or cash deposit as a condition of receiving an extension under that section.

Section 91.104 (d) directs the Railroad Commission shall determine the method, by rule, prime rate for the purposes of this option.

#### SECTION 4. Section 91.1042, Natural Resources Code.

##### Section 91.1042 (a). BLANKET BOND.

(a) This section relates to the level of blanket bond requirements. It also provides authority for the Railroad Commission of Texas to increase the level of bonds that would be required of operators who engage in the aggregation of wells.

Section 91.1042 (a) (1)-(6) changes the blanket bond schedule to the following:

10 or fewer wells	\$15,000
Greater than 10 – but fewer than 25 wells	\$35,000
25 or more – but fewer than 100 wells	\$50,000
100 or more – but fewer than 150 wells	\$100,000
150 or more –but fewer than 200 wells	\$175,000
200 or more wells	\$250,000

Section 91.1042 (b) amends this section by adding Subsections (a) (4), (5) or (6) to the categories 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 amounts provided in subsection (a).

Section 91.1042 (c) gives the Railroad Commission of Texas authority to require supplemental bonds described by subsection (a) (6) to file a supplemental bond in addition to the bond required under Subsection (a) (6) or (b) if the commission determines that such a requirement is appropriate in that case and the number of inactive wells in operator's portfolio exceeds 75% of their total wells.

Section 91.1042 (d) provides that a supplemental bond under Subsection (c) is equal to the amount of the bond required under Subsection (a) (6) or (b) is multiplied by the inactive well ratio factor is:

One if the amount computed by dividing the number of wells operated by the person that are inactive by the number of wells operated by the person that active is not more than 0.9 or two if the amount computed by dividing the number of wells operated by the person that are inactive by the number of wells operated by the person that are active is more than 0.9.

Section 91.1042 (e) provides that if the Commission requires a supplemental bond under Subsection (c), the Commission may require a bond in an equal to the sum of the amount determined under Subsection (d) and the amount computed by multiplying the amount of the bond required under Subsection (a) (6) or (b) times the sum of the low production factor, the compliance factor and, and the inactive well number factor.

Section 91.1042 (f) - (h) provides if an operator qualifies for the supplemental bond, the Commission may require that bond to be increase by multiples of \$250,000 based on the following criteria:

- Low production - The supplemental bond shall be increased if the average total production from the qualifying operator's wells is more than one-quarter of barrel per day but less than one-half a barrel per day.
- Compliance factor - The supplemental bond shall be increased if the operator does not have an acceptable record of compliance with Commission rules over the previous 48 months.

- Inactive well number factor - The supplemental bond shall be increased if the operator has more than 100 inactive wells, but fewer than 200 wells, operates more than 200 wells but fewer than 300 inactive wells or if operates 300 or more inactive wells.

SECTION 5. Section 91.1042 (a), Natural Resources Code.

Section 91.1042 (a) establishes a person required to file a bond or alternate form of financial security under Section 91.103 may file a blanket bond to cover all wells, except operations, for which a bond or alternate form of financial security is required which will be effective September 1, 2004:

10 or fewer wells	\$15,000
Greater than 10 – but fewer than 25 wells	\$35,000
25 or more – but fewer than 100 wells	\$50,000
100 or more – but fewer than 150 wells	\$100,000
150 or more –but fewer than 200 wells	\$175,000
200 or more wells	\$250,000

SECTION 6. Section 91.107, Natural Resources Code.

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

This section requires the Railroad Commission to ascertain from operators who acquire a well or wells to file a new bond, letter of credit or cash deposit in the appropriate amount as provided by Section 91.104 (b)(1), (2), or (3) and if applicable, Section 91.1042(c).

SECTION 7. Repeals sections 10, 18, 20, 22, 24, and 27, Chapter 1233, Acts of the Legislature, Regular Session, 2001.

SECTION 8.

The final section governs the effective date of the act.

(a) This Act becomes effective September 1, 2003, except as stated otherwise in the bill.

(b) The changes in law made by this Act apply only to a person required to file a bond or alternate form of financial security under Section 91.103, Natural Resources Code, on or after the effective date of the Act. A person required to file a bond or alternate form of financial assurance under Section 91.103, Natural Resources Code, before the effective date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued for that purpose.

**EFFECTIVE DATE**

Except as stated otherwise, this Act takes effect September 1, 2003. Section 1 becomes effective September 1, 2004. Section 3 becomes effective January 1, 2006. Section 5 becomes effective September 1, 2004. Section 8 (a) states that this law takes effect September 1, 2003. (b) states that the changes in law made by this Act apply only to a person required to file a bond or alternate form of financial security under Section 91.103, Natural Resources Code, on or after the effective date of this Act. A person required to file a bond or alternate form of financial security under Section 91.103, Natural Resources Code, Before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that the law is continued in effect for that purpose.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

Section 2. Section 91.104(b)(4), Natural Resources Code changes the word “indicates” to “states.”

Section 3. Section 91.104(b)(4), Natural Resources Code changes the word “indicates” to “states.”

Section 4. Section 91.1042 (a)(2), Natural Resources Code changes the amount of “\$30,000” to “\$35,000.”

Section 91.1042(f)(1), Natural Resources Code deletes “and inactive” and “that have not been plugged.”

Section 91.1042(f)(2), Natural Resources Code, deletes “and inactive” and “that have not been plugged.”

Section 5. Section 91.1042 (a) (2) changes the amount “\$30,000” to “\$35,000.”

SECTION 7 deletes the effective date September 1, 2004. In addition, this section deletes the entire section 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN ACTIVITIES OTHER THAN OPERATION OF WELLS of the original version of House Bill 2020.

SECTION 7 of the substitute of House Bill 2020 repeals sections 10, 18, 20, 22, 24, 27, Chapter 1233, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 8 establishes the effective date for the Act.