

BILL ANALYSIS

C.S.H.B. 380
By: West, George "Buddy"
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Oil and gas operator financial assurance requirements and options were mandated by Senate Bill 310 of the 77th Legislature and put into effect March 2002. Those options included:

1. A bond, letter of credit, or cash deposit based on cumulative footage of the wells operated,
2. A bond, letter of credit, or cash deposit based on the number of wells operated,
3. A \$1000 annual fee if an operator had 48 months of consecutive compliant operation,
4. A fee equal to 12.5 % of the otherwise applicable bond, letter of credit, or cash deposit.

Effective September 1, 2004, Options 3 and 4 were no longer available, and operators who currently practice these options are required to practice options 1 or 2 as their P-5 renewals become due. At the end of August, there were 503 active oil and gas operators who had not transitioned to one of the "bonded" options. Of these operators, 77 were exercising Option 3 and 426 were using Option 4. The renewals for these operators is spread evenly over the next 12 months. There is no data to suggest these operators will be able to transition to the alternative options. Common sense would suggest that if they could have exercised Option 1 or 2 that they would have, unless they could not readily supply a bond or letter of credit.

The current bonding program, even in its implemented universal capacity does not completely protect the state from the possibility of financial liability for abandoned wells. Surety bonds have proven difficult to obtain by operators. The bond market has not lent itself to well plugging financial assurance; most primary bond writers are only writing bonds for large amounts or as an incidental. They are not seeking new business.

House Bill 380 will allow the Railroad Commission to accept well-plugging insurance in lieu of bonds and alternative forms of financial assurance.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1, 91.104(c)(6) and (c)(7)(C), Natural Resources Code, SECTION 2, 91.1041(d), Natural Resources Code, and in SECTION 3, 91.1042(d), Natural Resources Code, of this bill.

ANALYSIS

SECTION 1. Section 91.104, Natural Resources Code, BONDS, LETTERS OF CREDIT, CASH DEPOSITS, AND WELL-SPECIFIC PLUGGING INSURANCE POLICIES.

Section 91.104 (c) amends the requirement that a person who must file a bond, letter of credit, or cash deposit under Section 91.103 and operates one or more wells has met that requirement for a well if the well bore 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) names a primary beneficiary who agrees to plug the specified well bore; (4) is fully prepaid and cannot be cancelled or surrendered; (5) provides that the policy continues in effect until the specified well bore has been plugged; (6) provides that benefits will be paid when, but not before, the specified well bore has been plugged in accordance with commission rules in affect at the time of plugging, and (7) provides benefits that are equal the greatest of:

- (A) an amount equal to \$2 for each foot of well depth, as determined in the manner specified by the commission, for the specified well,
- (B) if the specified well is a bay well and regardless of whether the well is producing oil or gas, the amount required under commission rules for a bay well that is not producing or gas.
- (C) if the specified well is an offshore well and regardless of whether the well is producing oil and gas, the amount required under commission rules for an offshore well that is not producing oil or gas, or
- (D) the payment otherwise due under this policy for plugging the well bore.

SECTION 2. 91.1042, Natural Resources Code

Amends Section 91.1042, Natural Resources Code by adding Subsection (c) and (d):

Subsection (c) requires the commission to exclude a well if the well bore is included in a well-specific plugging insurance policy described by Section 91.104(c) when calculating under Subsection (a) the amount of the bond a person who operates one or more wells is required to file.

Subsection (d) establishes that the rules must provide for the exclusion of the well from the calculation if inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy in the calculation under Subsection (b) of the amount of the bond an operator of one or more offshore wells is required to file would result in an increase in the amount of the bond that would otherwise be required.

SECTION 3: Section 91.1042, Natural Resources

Section 91.1042 is amended by adding Subsections (c) and (d):

Subsection (c) is amended to require the commission, when calculating the number of an operator's wells for purposes of Subsection (a), to exclude a well if the well bore is included in a well-specific plugging insurance policy described by Subsection 91.104(c).

Subsection (d) is amended to state the rules must provide for the exclusion of the well from the calculation if inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy described by Section 91.104 (c) in the calculation under Subsection (b) of the amount of the bond an operator of bay or offshore wells is required to file would result in an increase in the amount of the bond that would otherwise be required.

SECTION 4: Section 91.105, Natural Resources Code

Amends Section 91.105, BOND CONDITIONS, to exclude a well-specific plugging insurance policy from this section.

SECTION 5: 91.107, 91.108, 91.1091, Natural Resources Code.

Amends Section 91.107, NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT, to exclude a well bore that is included in a well-specific plugging insurance from this section.

Amends Section 91.108., DEPOSIT AND USE OF FUNDS, requiring benefits under well-specific plugging insurance policies described by Section 91.104 (c) that are paid into the state as contingent beneficiary of the policies to be deposited in the oilfield cleanup fund and, notwithstanding Sections 91.112 and 91.113, may be used only for actual well plugging and surface remediation.

Amends Section 91.1091, REFUND, requiring the commission to refund the proceeds from a letter of credit, or cash deposit under this subchapter under the conditions outlined in Sec. 91.1091.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 380 modifies SECTION 1 of the original bill by amending the policy benefits requirement for Section 91.104(c)(7)(B) for bay wells and 91.104(c)(7)(C) for offshore wells, and regardless of whether the well is producing oil and gas, the amount required under commission rules for a bay well or offshore well that is not producing oil and gas.

The substitute amends the original bill by adding Section (c) and (d) to both SECTION 2, 91.1041, Natural Resources Code, and SECTION 3, 91.1042, Natural Resources Code to exclude a well, bay well, and/or off shore well, if the well bore is covered by a well-specific plugging insurance policy, from the calculation of an operator's bond and the number of wells they have for posting a bond.

The substitute amends SECTION 4 of the original bill to exclude a well-specific plugging insurance policy from Section, 91.105, Natural resources Code, BOND CONDITIONS.

The Substitute amends SECTIONS 3, 4, 5, and 6 of the original bill by renumbering them, respectively, SECTIONS 5, 6, 7, and 8.