

By: West

H.B. No. 2980

Substitute the following for H.B. No. 2980:

By: Farabee

C.S.H.B. No. 2980

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to incentives for operators to assume regulatory  
3 responsibility for orphaned oil or gas wells; providing penalties.

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

5 SECTION 1. Section 81.116(d), Natural Resources Code, is  
6 amended to read as follows:

7 (d) The comptroller shall suspend collection of the fee in  
8 the manner provided by Section 91.111 [~~of this code~~]. The  
9 exemptions and reductions set out in Sections 202.052, 202.054,  
10 202.056, 202.057, [~~and~~] 202.059, and 202.060, Tax Code, do not  
11 affect the fee imposed by this section.

12 SECTION 2. Section 89.044, Natural Resources Code, is  
13 amended to read as follows:

14 Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or  
15 its employees or agents, the operator, or the nonoperator, on  
16 proper identification, may enter the land of another for the  
17 purpose of plugging or replugging a well that has not been properly  
18 plugged.

19 (b) A prospective operator who has been authorized under  
20 Section 89.047 to conduct a surface inspection of a well, on proper  
21 identification, may enter the land of another for the sole purpose  
22 of conducting the inspection.

23 SECTION 3. Subchapter C, Chapter 89, Natural Resources  
24 Code, is amended by adding Section 89.047 to read as follows:

1       Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this  
2 section:

3           (1) "Depth of the well" means the vertical depth of a  
4 well as measured in linear feet from the surface to the lowest  
5 perforation of the casing of the well that is within the  
6 commission-designated correlative interval for the field for which  
7 the well is issued a permit.

8           (2) "Operator in good standing" means an operator who:

9                   (A) has a commission-approved organization  
10 report;

11                   (B) is the designated operator of at least one  
12 well within the jurisdiction of the commission;

13                   (C) has filed with the commission under Section  
14 91.104 a bond, letter of credit, or cash deposit in an amount  
15 sufficient to qualify to operate one or more additional wells; and

16                   (D) is not the subject of a commission or court  
17 order regarding a violation of a commission rule with which the  
18 operator has not complied or a complaint that has been docketed by  
19 the commission alleging a violation of a commission rule.

20           (3) "Orphaned well" means a well:

21                   (A) for which the commission has issued a permit;

22                   (B) for which production of oil or gas or another  
23 activity under the jurisdiction of the commission has not been  
24 reported to the commission for the preceding 12 months; and

25                   (C) whose operator has not had a  
26 commission-approved organization report for the preceding four  
27 months.

1           (4) "Producing well" means a well classified by the  
2 commission as an oil or gas well in accordance with commission  
3 rules.

4           (5) "Service well" means a well for which the  
5 commission has issued a permit that is not a producing well. The  
6 term includes an injection, disposal, or brine mining well.

7           (b) A person who is considering assumption of operatorship  
8 and regulatory responsibility for an orphaned well may nominate the  
9 well under consideration by filing a request on a form prescribed by  
10 the commission notifying the commission that the person seeks  
11 authority to conduct a surface inspection of the well to determine  
12 whether the person desires to be designated by the commission as the  
13 operator of the well.

14           (c) If the person is an operator in good standing and the  
15 well is not already subject to a nomination, the commission shall  
16 accept the nomination and issue a written confirmation to the  
17 person of the person's authority to conduct a surface inspection of  
18 the nominated well for a stated period not to exceed 30 days.

19           (d) A person to whom a confirmation is issued under  
20 Subsection (c) may conduct a surface inspection of the well. The  
21 person must deliver written notice to the owner of record of the  
22 surface estate and any occupant of the tract on which the well is  
23 located at least three days before the date of the inspection. The  
24 notice must:

- 25           (1) identify the orphaned well;  
26           (2) state the name, address, and telephone number of  
27 the person;

1           (3) state the date the person intends to conduct the  
2 surface inspection;

3           (4) state the name of at least one representative of  
4 the person who will participate in the surface inspection; and

5           (5) state that the person intends to inspect the  
6 orphaned well in accordance with this section for the purpose of  
7 assessing the current status and viability of the well.

8           (e) In conducting a surface inspection of the orphaned well,  
9 the person may visually inspect the well and all related equipment,  
10 tanks, and other facilities and may conduct noninvasive testing  
11 such as using a gauge to determine the pressure present at the  
12 wellhead but may not produce oil or gas from the well, reenter the  
13 well, pull tubing from or perform any other type of downhole work on  
14 the well, conduct a salvage operation on the well, or remove any  
15 tangible item from the wellsite.

16           (f) If the person files with the commission a factually  
17 supported claim based on a recognized legal theory to a continuing  
18 possessory right in the mineral estate accessed by the well, such as  
19 evidence of a current oil and gas lease or a recorded deed conveying  
20 a fee interest in the mineral estate, the commission shall  
21 designate the person as the operator of the well. A person who is  
22 designated as the operator of an orphaned well on or after January  
23 1, 2006, and not later than December 31, 2007, is entitled to  
24 receive:

25           (1) a nontransferable exemption from severance taxes  
26 for all future production from the well as provided by Section  
27 202.060, Tax Code; and

1           (2) a payment from the commission in an amount equal to  
2 the depth of the well multiplied by 50 cents for each foot of well  
3 depth if, not later than the third anniversary of the date the  
4 commission designates the person as the operator of the well, the  
5 person brings the well back into continuous active operation or  
6 plugs the well in accordance with commission rules.

7           (g) A well is considered to be in continuous active  
8 operation for purposes of Subsection (f)(2) if:

9           (1) the well is a producing well and the well has  
10 produced at least 10 barrels of oil or 100 mcf of gas per month for  
11 at least three consecutive months as shown in the records of the  
12 commission and as authorized by a permit issued by the commission;  
13 or

14           (2) the well is a service well and the well has been  
15 used for the disposal or injection of oil and gas wastes or another  
16 purpose related to the production of oil or gas for at least three  
17 consecutive months as shown in the records of the commission and as  
18 authorized by a permit issued by the commission.

19           (h) The commission shall make payments to operators under  
20 Subsection (f)(2) annually in the same order the commission  
21 determines the operators to be entitled to the payments. The  
22 aggregate amount of payments in a state fiscal year under that  
23 subsection may not exceed \$500,000. An operator may not receive:

24           (1) more than one payment under that subsection for  
25 the same well; or

26           (2) payments under that subsection in a state fiscal  
27 year in an amount that exceeds the amount of the bond, letter of

1 credit, or cash deposit the operator has filed with the commission  
2 under Section 91.104.

3 SECTION 4. Section 91.112(a), Natural Resources Code, is  
4 amended to read as follows:

5 (a) Money in the fund may be used by the commission or its  
6 employees or agents for:

7 (1) conducting a site investigation or environmental  
8 assessment to determine:

9 (A) the nature and extent of contamination caused  
10 by oil and gas wastes or other substances or materials regulated by  
11 the commission under Section 91.101; and

12 (B) the measures that should be taken to control  
13 or clean up the wastes, substances, or materials described in  
14 Paragraph (A);

15 (2) controlling or cleaning up oil and gas wastes or  
16 other substances or materials regulated by the commission under  
17 Section 91.101 that are causing or are likely to cause the pollution  
18 of surface or subsurface water, consistent with Section 91.113;

19 (3) plugging abandoned wells and administering or  
20 enforcing permits, orders, and rules relating to the commission's  
21 authority to prevent pollution under this chapter, Chapter 89, or  
22 any other law administered or enforced by the commission under  
23 Title 3;

24 (4) implementing Subchapter N and enforcing rules,  
25 orders, and permits adopted or issued under that subchapter;

26 (5) implementing the voluntary cleanup program under  
27 Subchapter O; ~~and~~

1 (6) preparing the report required under Subsection  
2 (b); and  
3 (7) making payments to eligible operators under  
4 Section 89.047.

5 SECTION 5. Section 201.053, Tax Code, is amended to read as  
6 follows:

7 Sec. 201.053. GAS NOT TAXED. The tax imposed by this  
8 chapter does not apply to gas:

9 (1) injected into the earth in this state, unless sold  
10 for that purpose;

11 (2) produced from oil wells with oil and lawfully  
12 vented or flared;

13 (3) used for lifting oil, unless sold for that  
14 purpose; or

15 (4) produced in this state from a well that qualifies  
16 under Section 202.056 or 202.060.

17 SECTION 6. Section 201.058(a), Tax Code, is amended to read  
18 as follows:

19 (a) The exemptions described by Sections 202.056, 202.057,  
20 [~~and~~] 202.059, and 202.060 apply to the taxes imposed by this  
21 chapter as authorized by and subject to the certifications and  
22 approvals required by those sections.

23 SECTION 7. Section 202.052(c), Tax Code, is amended to read  
24 as follows:

25 (c) The exemptions described by Sections 202.056, [~~and~~]  
26 202.059, and 202.060 apply to oil produced in this state from a well  
27 that qualifies under Section 202.056, [~~or~~] 202.059, or 202.060,

1 subject to the certifications and approvals required by those  
2 sections.

3 SECTION 8. Subchapter B, Chapter 202, Tax Code, is amended  
4 by adding Section 202.060 to read as follows:

5 Sec. 202.060. EXEMPTION FOR OIL AND GAS FROM REACTIVATED  
6 ORPHANED WELLS. (a) In this section:

7 (1) "Commission" means the Railroad Commission of  
8 Texas.

9 (2) "Orphaned well" has the meaning assigned by  
10 Section 89.047, Natural Resources Code.

11 (b) The commission shall issue a certificate to a person who  
12 is designated by the commission under Section 89.047, Natural  
13 Resources Code, as the operator of an orphaned well. The  
14 certificate must identify the operator to whom and the well for  
15 which the certificate is issued.

16 (c) Hydrocarbons produced from the well identified in the  
17 certificate qualify for a severance tax exemption.

18 (d) The commission shall adopt all rules necessary to  
19 administer this section.

20 (e) To qualify for the tax exemption provided by this  
21 section, the person responsible for paying the tax must apply to the  
22 comptroller. The application must include a copy of the  
23 certificate issued by the commission. The comptroller shall  
24 approve the application if the person demonstrates that the  
25 hydrocarbon production is eligible for a tax exemption. The  
26 comptroller may require a person applying for the tax exemption to  
27 provide any relevant information necessary to administer this



1 section. The comptroller may establish procedures to comply with  
2 this section.

3 (f) The exemption takes effect on the first day of the month  
4 following the month in which the comptroller approves the  
5 application.

6 (g) If the person to whom the certificate is issued ceases  
7 to be the operator of the well as shown by the records of the  
8 commission, the commission shall notify the comptroller. The  
9 exemption expires on the date the notice is received.

10 (h) A person who makes or subscribes an application, report,  
11 or other document and submits it to the commission to form the basis  
12 for an application for a tax exemption under this section, knowing  
13 that the application, report, or other document is untrue in a  
14 material fact, is subject to the penalties imposed by Chapters 85  
15 and 91, Natural Resources Code.

16 (i) A person is liable to the state for a civil penalty if  
17 the person applies or attempts to apply the tax exemption  
18 authorized by this section for a well after the person to whom the  
19 certificate for the well was issued ceases to be the operator of the  
20 well as shown by the records of the commission. The amount of the  
21 penalty may not exceed the sum of:

22 (1) \$10,000; and

23 (2) the difference between the amount of taxes paid or  
24 attempted to be paid and the amount of taxes due.

25 (j) The attorney general may recover a penalty under  
26 Subsection (i) in a suit brought on behalf of the state. Venue for  
27 the suit is in Travis County.

1 SECTION 9. This Act takes effect January 1, 2006.