

By: Armbrister

S.B. No. 1166

Substitute the following for S.B. No. 1166:

By: Farabee

C.S.S.B. No. 1166

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of the laws governing plugging of abandoned oil and gas wells and preventing, controlling, or cleaning up oil and gas wastes or other substances or materials regulated by the Railroad Commission of Texas and to incentives for continued production from certain oil and gas wells; providing penalties.

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

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

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

SECTION 2. Section 89.043, Natural Resources Code, is amended by amending Subsections (c) and (f) and adding Subsection (g) to read as follows:

(c) Not later than the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

1 (1) the commission may plug the well and foreclose its
2 statutory lien under Section 89.083 or 89.089 unless the operator
3 requests a hearing not later than the 10th day after the date the
4 operator receives the notice;

5 (2) if the commission forecloses its statutory lien
6 under Section 89.083, all well-site equipment will be presumed to
7 have been abandoned and the commission may dispose of the equipment
8 and hydrocarbons from the well as provided by Section 89.085;

9 (3) if the commission forecloses its statutory lien
10 under Section 89.089, the commission may dispose of the interest of
11 the operator in any hydrocarbons produced in this state and the
12 proceeds from the sale of those hydrocarbons;

13 (4) if the commission plugs the well, the commission:

14 (A) by order may require the operator to
15 reimburse the commission for the plugging costs; or

16 (B) may request the attorney general to file suit
17 against the operator to recover those costs;

18 (5) [~~4~~] the commission has a statutory lien on all
19 well-site equipment under Section 89.083 and on the interest of the
20 operator in any hydrocarbons produced in this state and the
21 proceeds from the sale of those hydrocarbons under Section 89.089;

22 and

23 (6) [~~5~~] the lien described by Subdivision
24 (5) [~~4~~] is foreclosed by operation of law if the commission does
25 not receive a valid and timely request for a hearing before the 15th
26 day after the date the notice is mailed.

27 (f) At the request of the commission, the attorney general

1 may file suit to enforce an order issued by the commission under
2 Subsection (c)(4)(A) [~~(c)(3)(A)~~].

3 (g) The provisions of this section and Section 91.115 shall
4 not apply to proceeds from the sale of hydrocarbons that would
5 otherwise be directed to the permanent school fund or the permanent
6 university fund.

7 SECTION 3. Section 89.044, Natural Resources Code, is
8 amended to read as follows:

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

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

18 SECTION 4. Subchapter C, Chapter 89, Natural Resources
19 Code, is amended by adding Sections 89.047 and 89.048 to read as
20 follows:

21 Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this
22 section:

23 (1) "Depth of the well" means the vertical depth of a
24 well as measured in linear feet from the surface to the lowest
25 perforation of the casing of the well that is within the
26 commission-designated correlative interval for the field for which
27 the well is issued a permit.

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

2 (A) has a commission-approved organization
3 report;

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

6 (C) has filed with the commission under Section
7 91.104 a bond, letter of credit, or cash deposit in an amount
8 sufficient to qualify to operate one or more additional wells; and

9 (D) is not the subject of a commission or court
10 order regarding a violation of a commission rule with which the
11 operator has not complied or a complaint that has been docketed by
12 the commission alleging a violation of a commission rule.

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

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

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

18 (C) whose operator's commission-approved
19 organization report has lapsed.

20 (4) "Producing well" means a well classified by the
21 commission as an oil or gas well in accordance with commission
22 rules.

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

26 (b) A person who is considering assumption of operatorship
27 and regulatory responsibility for an orphaned well may nominate the

1 well under consideration by filing a request on a form prescribed by
2 the commission notifying the commission that the person seeks
3 authority to conduct a surface inspection of the well to determine
4 whether the person desires to be designated by the commission as the
5 operator of the well.

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

11 (d) A person to whom a confirmation is issued under
12 Subsection (c) may conduct a surface inspection of the well. The
13 person must deliver written notice to the owner of record of the
14 surface estate and any occupant of the tract on which the well is
15 located at least three days before the date of the inspection. The
16 notice must:

- 17 (1) identify the orphaned well;
18 (2) state the name, address, and telephone number of
19 the person;
20 (3) state the date the person intends to conduct the
21 surface inspection;
22 (4) state the name of at least one representative of
23 the person who will participate in the surface inspection; and
24 (5) state that the person intends to inspect the
25 orphaned well in accordance with this section for the purpose of
26 assessing the current status and viability of the well.

27 (e) In conducting a surface inspection of the orphaned well,

1 the person may visually inspect the well and all related equipment,
2 tanks, and other facilities and may conduct noninvasive testing
3 such as using a gauge to determine the pressure present at the
4 wellhead but may not produce oil or gas from the well, reenter the
5 well, pull tubing from or perform any other type of downhole work on
6 the well, conduct a salvage operation on the well, or remove any
7 tangible item from the wellsite.

8 (f) The commission shall designate the person as the
9 operator of the well if the person files with the commission:

10 (1) a factually supported claim based on a recognized
11 legal theory to a continuing possessory right in the mineral estate
12 accessed by the well, such as evidence of a current oil and gas
13 lease or a recorded deed conveying a fee interest in the mineral
14 estate;

15 (2) a completed certificate of compliance; and

16 (3) a nonrefundable fee in the amount of \$250.

17 (g) A fee collected under Subsection (f) shall be deposited
18 to the credit of the general revenue fund and may be appropriated
19 only to the commission to be used to enforce the laws and rules
20 concerning oil and gas conservation and waste and pollution
21 prevention.

22 (h) A person who is designated as the operator of an
23 orphaned well on or after January 1, 2006, and not later than
24 December 31, 2007, is entitled to 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;

1 (2) a nontransferable exemption from the fees provided
2 by Sections 81.116 and 81.117 for all future production from the
3 well; and

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

10 (i) A well is considered to be in continuous active
11 operation for purposes of Subsection (h)(3) if:

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

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

22 (j) The commission shall make payments to operators under
23 Subsection (h)(3) annually in the same order the commission
24 determines the operators to be entitled to the payments. The
25 aggregate amount of payments in a state fiscal year under that
26 subsection may not exceed \$500,000. An operator may not receive:

27 (1) more than one payment under that subsection for

1 the same well; or

2 (2) cumulative payments in an amount that exceeds the
3 amount of the bond, letter of credit, or cash deposit the operator
4 has filed with the commission under Section 91.104.

5 Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a)
6 In this section, "orphaned well" has the meaning assigned by
7 Section 89.047.

8 (b) The owner of an interest in the surface estate of a tract
9 of land on which an orphaned well is located may contract with a
10 commission-approved well plugger to plug the well.

11 (c) If the surface estate owner enters into a contract under
12 Subsection (b), the well plugger shall:

13 (1) not later than the 30th day before the date the
14 well is plugged, mail notice of its intent to plug the well to the
15 operator of the well at the operator's address as shown by the
16 records of the commission;

17 (2) assume responsibility for the physical operation
18 and control of the well as shown by a form the person files with the
19 commission and the commission approves;

20 (3) file a bond, letter of credit, or cash deposit
21 covering the well as required by Section 91.107; and

22 (4) plug the well in accordance with commission rules.

23 (d) On successful plugging of the well by the well plugger,
24 the surface estate owner may submit documentation to the commission
25 of the cost of the well-plugging operation. The commission shall
26 reimburse the surface estate owner from money in the oil-field
27 cleanup fund in an amount not to exceed 50 percent of the lesser of:

1 (1) the documented well-plugging costs; or

2 (2) the average cost incurred by the commission in the
3 preceding 24 months in plugging similar wells located in the same
4 general area.

5 (e) The commission shall adopt any rules reasonably
6 necessary to implement this section.

7 SECTION 5. Section 89.083, Natural Resources Code, is
8 amended by amending Subsection (g) and adding Subsection (g-1) to
9 read as follows:

10 (g) The cause of action is:

11 (1) first, against the operator, to be secured by a
12 first lien, superior to all preexisting and subsequent liens and
13 security interests, on the operator's interest in:

14 (A) the oil and gas in the land;

15 (B) [~~and~~] the fixtures, machinery, and equipment
16 found or used on the land where the well is located; and

17 (C) any hydrocarbons produced in this state and
18 the proceeds from the sale of those hydrocarbons; and

19 (2) second, against a nonoperator at the time the well
20 should have been plugged, to be secured by a first lien, superior to
21 all preexisting and subsequent liens and security interests, on the
22 nonoperator's interest in the oil and gas in the land.

23 (g-1) A nonoperator may be made a party defendant in the
24 suit against the operator.

25 SECTION 6. Subchapter D, Chapter 89, Natural Resources
26 Code, is amended by adding Section 89.089 to read as follows:

27 Sec. 89.089. LIEN ON OPERATOR'S INTERESTS IN HYDROCARBON

1 PRODUCTION AND PROCEEDS. (a) To secure the recovery of
2 well-plugging costs paid with state money, the state has a first
3 lien, superior to all preexisting and subsequent liens and security
4 interests, on the interests of each operator in any hydrocarbons
5 produced in this state and the proceeds from the sale of those
6 hydrocarbons.

7 (b) The commission may foreclose the lien in the manner
8 provided by Section 89.083.

9 (c) The commission may dispose of the property subject to
10 the lien in the manner provided by Section 89.085.

11 (d) Section 89.086 applies to a claim of a person with a
12 legal or equitable ownership or security interest in property that
13 is described by this section and is disposed of under Section
14 89.085.

15 (e) The liens provided in this section and Section 91.115 as
16 they relate to hydrocarbons in this state and the proceeds from the
17 sale of those hydrocarbons shall be subject to and inferior to any
18 lien in favor of the state to secure royalty payments.

19 SECTION 7. Subchapter A, Chapter 91, Natural Resources
20 Code, is amended by adding Section 91.004 to read as follows:

21 Sec. 91.004. RECOVERY OF ESTIMATED PLUGGING COSTS.

22 (a) The commission, in an enforcement action brought by the
23 commission to compel an operator to plug or replug a well, may order
24 the operator to pay the estimated plugging costs for the well if the
25 operator has not plugged or replugged the well or commenced
26 operations at the well site to plug or replug the well within 60
27 days after the date the commission's order requiring the well to be

1 plugged or replugged becomes final.

2 (b) The estimate of the plugging costs must be based on:

3 (1) the amount of the bond required for the well under
4 Section 91.1041; or

5 (2) proof of average plugging costs incurred by the
6 commission in the district in which the well is located and any
7 special conditions applicable to the well that is the subject of the
8 proceeding.

9 (c) The proceeds recovered as estimated plugging costs for
10 any particular well shall be deposited to the credit of the
11 oil-field cleanup fund.

12 (d) If the actual costs to the commission of plugging the
13 well are more than the proceeds received for the estimated plugging
14 costs, the commission may recover its costs in an action brought
15 under Section 89.083. If the actual costs to the commission of
16 plugging the well are less than the proceeds received for the
17 estimated plugging costs, the commission shall remit to the
18 operator the amount by which the proceeds received exceed the
19 actual costs. The commission is not required to pay interest on a
20 refund under this subsection.

21 (e) If the operator does not pay the estimated plugging
22 costs within 75 days after the date of the order requiring the well
23 to be plugged, the attorney general, on request of the commission,
24 shall file suit to collect the amount of the estimated plugging
25 costs from the operator. Venue for the action lies in the district
26 court for Travis County.

27 SECTION 8. Section 91.112(a), Natural Resources Code, is

amended to read as follows:

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

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

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

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

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

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

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

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

(6) preparing the report required under Subsection (b);

(7) making payments to eligible operators under

1 Section 89.047; and

2 (8) making payments to eligible surface estate owners
3 under Section 89.048.

4 SECTION 9. The heading to Section 91.113, Natural Resources
5 Code, is amended to read as follows:

6 Sec. 91.113. INVESTIGATION, ASSESSMENT, PREVENTION,
7 CONTROL, OR CLEANUP OF POLLUTION BY COMMISSION.

8 SECTION 10. Sections 91.113(a)-(d) and (f), Natural
9 Resources Code, are amended to read as follows:

10 (a) If oil and gas wastes or other substances or materials
11 regulated by the commission under Section 91.101 are causing or are
12 likely to cause the pollution of surface or subsurface water, the
13 commission, through its employees or agents, may use money in the
14 oil-field cleanup fund to conduct a site investigation or
15 environmental assessment or to take measures necessary to prevent
16 the unauthorized discharge of, to control, or to clean up the oil
17 and gas wastes or other substances or materials if:

18 (1) the responsible person has failed or refused to
19 take measures necessary to prevent the unauthorized discharge of,
20 to control, or to clean up the oil and gas wastes or other
21 substances or materials [~~after notice and opportunity for hearing~~];

22 (2) the responsible person is unknown, cannot be
23 found, or has no assets with which to take measures necessary to
24 prevent the unauthorized discharge of, to control, or to clean up
25 the oil and gas wastes or other substances or materials; or

26 (3) the oil and gas wastes or other substances or
27 materials are causing, or are likely to cause, the pollution of

1 surface or subsurface water.

2 (b) For purposes of this section, "responsible person"
3 means any operator or other person required by law, rules adopted by
4 the commission, or a valid order of the commission to take measures
5 necessary to prevent the unauthorized discharge of, to control, or
6 to clean up the oil and gas wastes or other substances or materials.

7 (c) The commission or its employees or agents, on proper
8 identification, may enter the land of another to conduct [~~for the~~
9 ~~purpose of conducting~~] a site investigation or environmental
10 assessment or to take measures necessary to prevent the
11 unauthorized discharge of, to control, [~~controlling~~] or to clean
12 [~~cleaning~~] up oil and gas wastes or other substances or materials
13 under this section.

14 (d) The conducting of a site investigation or environmental
15 assessment or the taking of measures necessary to prevent the
16 unauthorized discharge of, to control, or to clean up [~~cleanup of~~]
17 oil and gas wastes or other substances or materials by the
18 commission under this section does not prevent the commission from
19 seeking penalties or other relief provided by law from any person
20 who is required by law, rules adopted by the commission, or a valid
21 order of the commission to control or clean up the oil and gas
22 wastes or other substances or materials.

23 (f) If the commission conducts a site investigation or
24 environmental assessment or takes measures necessary to prevent the
25 unauthorized discharge of, to control, or to clean [~~controls or~~
26 ~~cleans~~] up oil and gas wastes or other substances or materials under
27 this section, the commission may recover all costs incurred by the

1 commission from any person who was required by law, rules adopted by
2 the commission, or a valid order of the commission to take measures
3 necessary to prevent the unauthorized discharge of, to control, or
4 to clean up the oil and gas wastes or other substances or materials.
5 The commission by order may require the person to reimburse the
6 commission for those costs or may request the attorney general to
7 file suit against the person to recover those costs. The commission
8 has a first lien on the responsible person's equipment and
9 hydrocarbons as provided by Section 91.115 to secure the recovery
10 of the commission's costs. At the request of the commission, the
11 attorney general may file suit to enforce an order issued by the
12 commission under this subsection. A suit under this subsection may
13 be filed in any court of competent jurisdiction in Travis County.
14 Costs recovered under this subsection shall be deposited to the
15 oil-field cleanup fund.

16 SECTION 11. Section 91.114(d), Natural Resources Code, is
17 amended to read as follows:

18 (d) The commission shall accept the report or application or
19 approve the certificate if:

20 (1) the conditions that constituted the violation are
21 corrected or are being corrected in accordance with a schedule to
22 which the commission and the organization have agreed;

23 (2) as applicable:

24 (A) all administrative, civil, and criminal
25 penalties and all cleanup and plugging costs incurred by the state
26 relating to those conditions are paid or are being paid in
27 accordance with a payment schedule to which the commission and the

1 organization have agreed; or

2 (B) the estimated plugging costs have been paid
3 in accordance with a commission order; and

4 (3) the report, application, or certificate is in
5 compliance with all other requirements of law and commission rules.

6 SECTION 12. The heading to Section 91.115, Natural
7 Resources Code, is amended to read as follows:

8 Sec. 91.115. FIRST LIEN ON EQUIPMENT, ~~[AND]~~ STORED
9 HYDROCARBONS, OIL AND GAS, AND PRODUCED HYDROCARBONS.

10 SECTION 13. Sections 91.115(a)-(f) and (h), Natural
11 Resources Code, are amended to read as follows:

12 (a) If a responsible person fails to clean up a site or
13 facility ~~[that has ceased oil and gas operations]~~ under the
14 commission's jurisdiction on or before the date the site or
15 facility is required to be cleaned up by law or by a rule adopted or
16 order issued by the commission or fails to take measures necessary
17 to prevent the unauthorized discharge of or to control oil and gas
18 wastes or other substances or materials as required by law or by a
19 rule adopted or order issued by the commission, the state has a
20 first lien, superior to all preexisting and subsequent liens and
21 security interests, on the responsible person's interest in:

22 (1) any hydrocarbons stored at the site or facility;

23 (2) ~~[and in]~~ any equipment that is ~~[+]~~

24 ~~[-1-]~~ located at the site or facility; and

25 (3) any hydrocarbons produced in this state and the
26 proceeds from the sale of those hydrocarbons ~~[-2- used by the~~
27 ~~responsible person in connection with the activity that generated~~

1 ~~the pollution]~~.

2 (b) The lien is in the amount of the total costs of taking
3 measures necessary to prevent the unauthorized discharge of, to
4 control, or to clean ~~[cleaning]~~ up the oil and gas wastes or other
5 substances from the site or facility and arises on the date the
6 measures are ~~[site or facility is]~~ required by law or by a rule or
7 order of the commission ~~[to be cleaned up]~~.

8 (c) The commission may foreclose on the lien by entering
9 into a contract to take measures necessary to prevent the
10 unauthorized discharge of or to control oil and gas wastes or other
11 substances or materials or a contract to clean up the site or
12 facility. The commission is not required to give notice or an
13 opportunity for a hearing to subordinate lienholders before
14 entering into a contract for the taking of measures necessary to
15 prevent the unauthorized discharge of or to control oil and gas
16 wastes or other substances or materials or a contract to clean up
17 the site or facility.

18 (d) The lien is extinguished if necessary measures are taken
19 to prevent the unauthorized discharge of or to control oil and gas
20 wastes or other substances or materials or the site or facility is
21 cleaned up in accordance with commission rules by any person before
22 the commission enters into a contract to take measures necessary to
23 prevent the unauthorized discharge of or to control oil and gas
24 wastes or other substances or materials or a contract to clean up
25 the site or facility.

26 (e) The lien is extinguished as to any stored hydrocarbons
27 or items of equipment that are lawfully removed by any person other

1 than the operator or a nonoperator according to a lien, lease,
2 judgment, written contract, or security agreement before the
3 commission enters into a contract to take measures necessary to
4 prevent the unauthorized discharge of or to control oil and gas
5 wastes or other substances or materials or a cleanup contract. An
6 item of equipment may not be removed from a ~~[an abandoned]~~ site or
7 facility if the removal will cause the release of a substance that
8 may cause pollution unless the substance is lawfully disposed of.

9 (f) Equipment or stored hydrocarbons subject to a lien under
10 this section are presumed to have been abandoned on the date the
11 commission enters into a contract to take measures necessary to
12 prevent the unauthorized discharge of or to control oil and gas
13 wastes or other substances or materials from the site or facility or
14 a contract to clean up the site or facility on which the equipment
15 or hydrocarbons are located. The commission may dispose of the
16 equipment or ~~[stored]~~ hydrocarbons in accordance with the
17 provisions of Sections 89.085, 89.086, and 89.087 ~~[of this code]~~
18 for the disposition of well-site equipment and hydrocarbons.

19 (h) The lien provided by this section, as it relates to
20 stored hydrocarbons, the responsible person's interest in oil and
21 gas in the land where the prevention, control, or cleanup measures
22 are required, and the responsible person's interest in any
23 hydrocarbons produced in this state and the proceeds from the sale
24 of those hydrocarbons shall be subject to and inferior to any lien
25 in favor of the State of Texas to secure royalty payments.

26 SECTION 14. Section 201.053, Tax Code, is amended to read as
27 follows:

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

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

5 (2) produced from oil wells with oil and lawfully
6 vented or flared;

7 (3) used for lifting oil, unless sold for that
8 purpose; or

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

11 SECTION 15. Section 201.058(a), Tax Code, is amended to
12 read as follows:

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

17 SECTION 16. Subchapter B, Chapter 201, Tax Code, is amended
18 by adding Section 201.059 to read as follows:

19 Sec. 201.059. CREDITS FOR QUALIFYING LOW-PRODUCING WELLS.

20 (a) In this section:

21 (1) "Commission" means the Railroad Commission of
22 Texas.

23 (2) "Mcf" means 1,000 cubic feet of gas as measured in
24 accordance with Section 91.052, Natural Resources Code.

25 (3) "Qualifying low-producing well" means a gas well
26 whose production during a three-month period is no more than 90 mcf
27 per day, excluding gas flared pursuant to the rules of the

1 commission. For purposes of qualifying a gas well, production per
2 well per day is determined by computing the average daily
3 production from the well using the monthly well production report
4 made to the commission.

5 (b) Each month, the comptroller shall certify the average
6 taxable price of gas, adjusted to 2005 dollars, during the previous
7 three months based on various price indices available to producers,
8 including prices reported by Henry Hub, Houston Ship Channel,
9 Mississippi Barge Transport, New York Mercantile Exchange, or other
10 spot prices, as applicable. The comptroller shall publish
11 certifications under this subsection in the Texas Register.

12 (c) An operator of a qualifying low-producing well is
13 entitled to a 25 percent credit on the tax otherwise due on gas
14 produced and saved from that well during a month if the average
15 taxable price of gas certified by the comptroller under Subsection
16 (b) for the previous three-month period is more than \$3 per mcf but
17 not more than \$3.50 per mcf.

18 (d) An operator of a qualifying low-producing well is
19 entitled to a 50 percent credit on the tax otherwise due on gas
20 produced and saved from that well during a month if the average
21 taxable price of gas certified by the comptroller under Subsection
22 (b) for the previous three-month period is more than \$2.50 per mcf
23 but not more than \$3 per mcf.

24 (e) An operator of a qualifying low-producing well is
25 entitled to a 100 percent credit on the tax otherwise due on gas
26 produced and saved from that well during a month if the average
27 taxable price of gas certified by the comptroller under Subsection

1 (b) for the previous three-month period is not more than \$2.50 per
2 mcf.

3 (f) If the tax is paid on gas at the full rate provided by
4 Section 201.052, the person paying the tax is entitled to a credit
5 against taxes imposed by this chapter or Chapter 202 on the amount
6 overpaid. To receive the credit, the person must apply to the
7 comptroller for the credit not later than the expiration of the
8 applicable period for filing a tax refund under Section 111.104.

9 SECTION 17. Section 202.052(c), Tax Code, is amended to
10 read as follows:

11 (c) The exemptions described by Sections 202.056, ~~[and]~~
12 202.059, and 202.060 apply to oil produced in this state from a well
13 that qualifies under Section 202.056, ~~[or]~~ 202.059, or 202.060,
14 subject to the certifications and approvals required by those
15 sections.

16 SECTION 18. Subchapter B, Chapter 202, Tax Code, is amended
17 by adding Sections 202.058, 202.060, and 202.061 to read as
18 follows:

19 Sec. 202.058. CREDITS FOR QUALIFYING LOW-PRODUCING OIL
20 LEASES. (a) In this section:

21 (1) "Commission" means the Railroad Commission of
22 Texas.

23 (2) "Qualifying low-producing oil lease" means a well
24 classified as an oil well that is part of a lease whose production
25 during a 90-day period is less than:

26 (A) 15 barrels of oil per day of production; or

27 (B) five percent recoverable oil per barrel of

produced water.

(b) For purposes of qualifying a lease, production per well per day is determined by computing the average daily per well production from the lease using the monthly lease production report made to the commission. For purposes of qualifying a lease, production per well per day is measured by dividing the sum of lease production during the three-month period by the sum of the number of well-days, where a well-day is one well producing for one day. The operator of a lease that is eligible for a credit under this section only on the basis of Subsection (a)(2)(B) must pay to the comptroller a filing fee of \$100 before the comptroller may authorize the credit.

(c) Each month, the comptroller shall certify the average taxable price of oil, adjusted to 2005 dollars, during the previous three months based on various price indices available to producers, including the reported Texas Panhandle Spot Price, West Texas Intermediate Crude Spot Price, New York Mercantile Exchange, or other spot prices, as applicable. The comptroller shall publish certifications under this subsection in the Texas Register.

(d) An operator of a qualifying low-producing lease is entitled to a 25 percent credit on the tax otherwise due on oil produced from that lease during a month if the average taxable price of oil certified by the comptroller under Subsection (c) for the previous three-month period is more than \$25 per barrel but not more than \$30 per barrel.

(e) An operator of a qualifying low-producing lease is entitled to a 50 percent credit on the tax otherwise due on oil

1 produced from that lease during a month if the average taxable price
2 of oil certified by the comptroller under Subsection (c) for the
3 previous three-month period is more than \$22 per barrel but not more
4 than \$25 per barrel.

5 (f) An operator of a qualifying low-producing lease is
6 entitled to a 100 percent credit on the tax otherwise due on oil
7 produced from that lease during a month if the average taxable price
8 of oil certified by the comptroller under Subsection (c) for the
9 previous three-month period is not more than \$22 per barrel.

10 (g) If the tax is paid on oil at the full rate provided by
11 Section 202.052, the person paying the tax is entitled to a credit
12 against taxes imposed by this chapter or Chapter 201 on the amount
13 overpaid. To receive the credit, the person must apply to the
14 comptroller for the credit not later than the expiration of the
15 applicable period for filing a tax refund under Section 111.104.

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

18 (1) "Commission" means the Railroad Commission of
19 Texas.

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

22 (b) The commission shall issue a certificate to a person who
23 is designated by the commission under Section 89.047, Natural
24 Resources Code, as the operator of an orphaned well. The
25 certificate must identify the operator to whom and the well for
26 which the certificate is issued.

27 (c) Hydrocarbons produced from the well identified in the

1 certificate qualify for a severance tax exemption.

2 (d) The commission shall adopt all rules necessary to
3 administer this section.

4 (e) To qualify for the tax exemption provided by this
5 section, the person responsible for paying the tax must apply to the
6 comptroller. The application must include a copy of the
7 certificate issued by the commission. The comptroller shall
8 approve the application if the person demonstrates that the
9 hydrocarbon production is eligible for a tax exemption. The
10 comptroller may require a person applying for the tax exemption to
11 provide any relevant information necessary to administer this
12 section. The comptroller may establish procedures to comply with
13 this section.

14 (f) The exemption takes effect on the first day of the month
15 following the month in which the comptroller approves the
16 application.

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

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

27 (i) A person is liable to the state for a civil penalty if

1 the person applies or attempts to apply the tax exemption
2 authorized by this section for a well after the person to whom the
3 certificate for the well was issued ceases to be the operator of the
4 well as shown by the records of the commission. The amount of the
5 penalty may not exceed the sum of:

6 (1) \$10,000; and

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

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

12 Sec. 202.061. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT.

13 (a) In this section, "enhanced efficiency equipment" means
14 equipment used in the production of oil that reduces the energy used
15 to produce a barrel of fluid by 10 percent or more when compared to
16 commonly available alternative equipment. The term does not
17 include a motor or downhole pump. Equipment does not qualify as
18 enhanced efficiency equipment unless an institution of higher
19 education approved by the comptroller that is located in this state
20 and that has an accredited petroleum engineering program evaluated
21 the equipment and determined that the equipment does produce the
22 required energy reduction.

23 (b) The taxpayer responsible for the payment of severance
24 taxes on the production from a well in this state on which enhanced
25 efficiency equipment is installed and used is entitled to a credit
26 in an amount equal to 20 percent of the cost of the equipment,
27 provided that:

1 (1) the cumulative total of all severance tax credits
2 authorized by this section may not exceed \$2,000 for any well;

3 (2) the enhanced efficiency equipment installed in a
4 qualifying well must have been purchased and installed not earlier
5 than September 1, 2005, or later than September 1, 2009;

6 (3) the taxpayer must file an application with the
7 comptroller for the credit and must demonstrate to the comptroller
8 that the enhanced efficiency equipment has been purchased and
9 installed in the well within the period prescribed by Subdivision
10 (2);

11 (4) the number of applications the comptroller may
12 approve each state fiscal year may not exceed a number equal to two
13 percent of the producing wells in this state on September 1 of that
14 state fiscal year, as determined by the comptroller; and

15 (5) the manufacturer of the enhanced efficiency
16 equipment must obtain an evaluation of the product under Subsection
17 (a).

18 (c) The taxpayer may carry any unused credit forward until
19 the credit is used.

20 SECTION 19. Sections 89.043, 89.083, 91.113, 91.114, and
21 91.115, Natural Resources Code, as amended by this Act, and
22 Sections 89.089 and 91.004, Natural Resources Code, as added by
23 this Act, apply only to an administrative proceeding that is
24 initiated on or after the effective date of this Act or a cause of
25 action that is filed in connection with an administrative
26 proceeding that is initiated on or after the effective date of this
27 Act. An administrative proceeding that was initiated before the

1 effective date of this Act or a cause of action that is filed in
2 connection with an administrative proceeding that was initiated
3 before the effective date of this Act is governed by the law in
4 effect on the date the administrative proceeding was initiated, and
5 the former law is continued in effect for that purpose.

6 SECTION 20. (a) Sections 201.059 and 202.058, Tax Code, as
7 added by this Act, apply to gas and oil produced on or after the
8 effective date of this Act. Gas and oil produced before the
9 effective date of this Act are governed by the law in effect on the
10 date the gas and oil were produced, and that law is continued in
11 effect for that purpose.

12 (b) As soon as practicable after the effective date of this
13 Act, the comptroller shall perform the initial certification
14 determination required by Sections 201.059 and 202.058, Tax Code,
15 as added by this Act. The initial certification determination must
16 cover the three-month period beginning on June 1, 2005.

17 (c) Sections 201.059 and 202.058, Tax Code, as added by this
18 Act, do not affect tax liability accruing before the effective date
19 of this Act. That liability continues in effect as if this Act had
20 not been enacted, and the former law is continued in effect for the
21 collection of tax due and for civil and criminal enforcement of the
22 liability for those taxes.

23 SECTION 21. (a) Except as provided by Subsection (b) of this
24 section, this Act takes effect September 1, 2005.

25 (b) The following provisions take effect January 1, 2006:

26 (1) Sections 81.116(d), 89.044, and 91.112(a),
27 Natural Resources Code, as amended by this Act;

1 (2) Sections 89.047 and 89.048, Natural Resources
2 Code, as added by this Act;

3 (3) Sections 201.053, 201.058(a), and 202.052(c), Tax
4 Code, as amended by this Act; and

5 (4) Section 202.060, Tax Code, as added by this Act.