

1-1 By: Armbrister S.B. No. 1166
1-2 (In the Senate - Filed March 8, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Natural Resources;
1-4 May 3, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; May 3, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1166 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the enforcement of the laws governing plugging of
1-11 abandoned oil and gas wells and preventing, controlling, or
1-12 cleaning up oil and gas wastes or other substances or materials
1-13 regulated by the Railroad Commission of Texas.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 89.043, Natural Resources Code, is
1-16 amended by amending Subsections (c) and (f) and adding Subsection
1-17 (g) to read as follows:

1-18 (c) Not later than the 30th day before the date the
1-19 commission enters into a contract to plug a delinquent inactive
1-20 well, the commission shall send a notice by certified mail to the
1-21 operator of the well at the address last reported to the commission
1-22 as required by Section 91.142 and commission rules. The notice
1-23 shall direct the operator to plug the well and shall state that:

1-24 (1) the commission may plug the well and foreclose its
1-25 statutory lien under Section 89.083 or 89.089 unless the operator
1-26 requests a hearing not later than the 10th day after the date the
1-27 operator receives the notice;

1-28 (2) if the commission forecloses its statutory lien
1-29 under Section 89.083, all well-site equipment will be presumed to
1-30 have been abandoned and the commission may dispose of the equipment
1-31 and hydrocarbons from the well as provided by Section 89.085;

1-32 (3) if the commission forecloses its statutory lien
1-33 under Section 89.089, the commission may dispose of the interest of
1-34 the operator in any hydrocarbons produced in this state and the
1-35 proceeds from the sale of those hydrocarbons;

1-36 (4) if the commission plugs the well, the commission:

1-37 (A) by order may require the operator to
1-38 reimburse the commission for the plugging costs; or

1-39 (B) may request the attorney general to file suit
1-40 against the operator to recover those costs;

1-41 (5) ~~[(4)]~~ the commission has a statutory lien on all
1-42 well-site equipment under Section 89.083 and on the interest of the
1-43 operator in any hydrocarbons produced in this state and the
1-44 proceeds from the sale of those hydrocarbons under Section 89.089;
1-45 and

1-46 (6) ~~[(5)]~~ the lien described by Subdivision
1-47 (5) ~~[(4)]~~ is foreclosed by operation of law if the commission does
1-48 not receive a valid and timely request for a hearing before the 15th
1-49 day after the date the notice is mailed.

1-50 (f) At the request of the commission, the attorney general
1-51 may file suit to enforce an order issued by the commission under
1-52 Subsection (c)(4)(A) ~~[(c)(3)(A)]~~.

1-53 (g) The provisions of this section and Section 91.115 shall
1-54 not apply to proceeds from the sale of hydrocarbons that would
1-55 otherwise be directed to the permanent school fund or the permanent
1-56 university fund.

1-57 SECTION 2. Section 89.083, Natural Resources Code, is
1-58 amended by amending Subsection (g) and adding Subsection (g-1) to
1-59 read as follows:

1-60 (g) The cause of action is:

1-61 (1) first, against the operator, to be secured by a
1-62 first lien, superior to all preexisting and subsequent liens and
1-63 security interests, on the operator's interest in:

(A) the oil and gas in the land;
 (B) ~~and~~ the fixtures, machinery, and equipment found or used on the land where the well is located; and
 (C) any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons; and

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

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

SECTION 3. Subchapter D, Chapter 89, Natural Resources Code, is amended by adding Section 89.089 to read as follows:

Sec. 89.089. LIEN ON OPERATOR'S INTERESTS IN HYDROCARBON PRODUCTION AND PROCEEDS. (a) To secure the recovery of well-plugging costs paid with state money, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the interests of each operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons.

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

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

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

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

SECTION 4. Subchapter A, Chapter 91, Natural Resources Code, is amended by adding Section 91.004 to read as follows:

Sec. 91.004. RECOVERY OF ESTIMATED PLUGGING COSTS.

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

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

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

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

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

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

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

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

3-1 Sec. 91.113. INVESTIGATION, ASSESSMENT, PREVENTION,
 3-2 CONTROL, OR CLEANUP OF POLLUTION BY COMMISSION.

3-3 SECTION 6. Subsections (a) through (d) and (f), Section
 3-4 91.113, Natural Resources Code, are amended to read as follows:

3-5 (a) If oil and gas wastes or other substances or materials
 3-6 regulated by the commission under Section 91.101 are causing or are
 3-7 likely to cause the pollution of surface or subsurface water, the
 3-8 commission, through its employees or agents, may use money in the
 3-9 oil-field cleanup fund to conduct a site investigation or
 3-10 environmental assessment or to take measures necessary to prevent
 3-11 the unauthorized discharge of, to control, or to clean up the oil
 3-12 and gas wastes or other substances or materials if:

3-13 (1) the responsible person has failed or refused to
 3-14 take measures necessary to prevent the unauthorized discharge of,
 3-15 to control, or to clean up the oil and gas wastes or other
 3-16 substances or materials [~~after notice and opportunity for hearing~~];

3-17 (2) the responsible person is unknown, cannot be
 3-18 found, or has no assets with which to take measures necessary to
 3-19 prevent the unauthorized discharge of, to control, or to clean up
 3-20 the oil and gas wastes or other substances or materials; or

3-21 (3) the oil and gas wastes or other substances or
 3-22 materials are causing, or are likely to cause, the pollution of
 3-23 surface or subsurface water.

3-24 (b) For purposes of this section, "responsible person"
 3-25 means any operator or other person required by law, rules adopted by
 3-26 the commission, or a valid order of the commission to take measures
 3-27 necessary to prevent the unauthorized discharge of, to control, or
 3-28 to clean up the oil and gas wastes or other substances or materials.

3-29 (c) The commission or its employees or agents, on proper
 3-30 identification, may enter the land of another to conduct [~~for the~~
 3-31 ~~purpose of conducting~~] a site investigation or environmental
 3-32 assessment or to take measures necessary to prevent the
 3-33 unauthorized discharge of, to control, [controlling] or to clean
 3-34 [cleaning] up oil and gas wastes or other substances or materials
 3-35 under this section.

3-36 (d) The conducting of a site investigation or environmental
 3-37 assessment or the taking of measures necessary to prevent the
 3-38 unauthorized discharge of, to control, or to clean up [~~cleanup of~~]
 3-39 oil and gas wastes or other substances or materials by the
 3-40 commission under this section does not prevent the commission from
 3-41 seeking penalties or other relief provided by law from any person
 3-42 who is required by law, rules adopted by the commission, or a valid
 3-43 order of the commission to control or clean up the oil and gas
 3-44 wastes or other substances or materials.

3-45 (f) If the commission conducts a site investigation or
 3-46 environmental assessment or takes measures necessary to prevent the
 3-47 unauthorized discharge of, to control, or to clean [~~controls or~~
 3-48 ~~cleans~~] up oil and gas wastes or other substances or materials under
 3-49 this section, the commission may recover all costs incurred by the
 3-50 commission from any person who was required by law, rules adopted by
 3-51 the commission, or a valid order of the commission to take measures
 3-52 necessary to prevent the unauthorized discharge of, to control, or
 3-53 to clean up the oil and gas wastes or other substances or materials.
 3-54 The commission by order may require the person to reimburse the
 3-55 commission for those costs or may request the attorney general to
 3-56 file suit against the person to recover those costs. The commission
 3-57 has a first lien on the responsible person's equipment and
 3-58 hydrocarbons as provided by Section 91.115 to secure the recovery
 3-59 of the commission's costs. At the request of the commission, the
 3-60 attorney general may file suit to enforce an order issued by the
 3-61 commission under this subsection. A suit under this subsection may
 3-62 be filed in any court of competent jurisdiction in Travis County.
 3-63 Costs recovered under this subsection shall be deposited to the
 3-64 oil-field cleanup fund.

3-65 SECTION 7. Subsection (d), Section 91.114, Natural
 3-66 Resources Code, is amended to read as follows:

3-67 (d) The commission shall accept the report or application or
 3-68 approve the certificate if:

3-69 (1) the conditions that constituted the violation are

corrected or are being corrected in accordance with a schedule to which the commission and the organization have agreed;

(2) as applicable:

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

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

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

SECTION 8. The heading to Section 91.115, Natural Resources Code, is amended to read as follows:

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

SECTION 9. Subsections (a) through (f) and (h), Section 91.115, Natural Resources Code, are amended to read as follows:

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

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

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

~~[(1)]~~ located at the site or facility; and

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

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

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

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

(e) The lien is extinguished as to any stored hydrocarbons or items of equipment that are lawfully removed by any person other than the operator or a nonoperator according to a lien, lease, judgment, written contract, or security agreement before the commission enters into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a cleanup contract. An item of equipment may not be removed from a ~~[an abandoned]~~ site or facility if the removal will cause the release of a substance that may cause pollution unless the substance is lawfully disposed of.

5-1 (f) Equipment or stored hydrocarbons subject to a lien under
5-2 this section are presumed to have been abandoned on the date the
5-3 commission enters into a contract to take measures necessary to
5-4 prevent the unauthorized discharge of or to control oil and gas
5-5 wastes or other substances or materials from the site or facility or
5-6 a contract to clean up the site or facility on which the equipment
5-7 or hydrocarbons are located. The commission may dispose of the
5-8 equipment or ~~[stored]~~ hydrocarbons in accordance with the
5-9 provisions of Sections 89.085, 89.086, and 89.087 ~~[of this code]~~
5-10 for the disposition of well-site equipment and hydrocarbons.

5-11 (h) The lien provided by this section, as it relates to
5-12 stored hydrocarbons, the responsible person's interest in oil and
5-13 gas in the land where the prevention, control, or cleanup measures
5-14 are required, and the responsible person's interest in any
5-15 hydrocarbons produced in this state and the proceeds from the sale
5-16 of those hydrocarbons shall be subject to and inferior to any lien
5-17 in favor of the State of Texas to secure royalty payments.

5-18 SECTION 10. The change in law made by this Act applies only
5-19 to an administrative proceeding that is initiated on or after the
5-20 effective date of this Act or a cause of action that is filed in
5-21 connection with an administrative proceeding that is initiated on
5-22 or after the effective date of this Act. An administrative
5-23 proceeding that was initiated before the effective date of this Act
5-24 or a cause of action that is filed in connection with an
5-25 administrative proceeding that was initiated before the effective
5-26 date of this Act is governed by the law in effect on the date the
5-27 administrative proceeding was initiated, and the former law is
5-28 continued in effect for that purpose.

5-29 SECTION 11. This Act takes effect September 1, 2005.

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