

By: Duncan

S.B. No. 1574

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation by the Railroad Commission of Texas of
3 the use of the surface of land in connection with certain activities
4 associated with the exploration, development, or production of oil
5 or gas, including the gathering of oil or gas by pipeline.

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

7 SECTION 1. Chapter 91, Natural Resources Code, is amended
8 by adding Subchapter P to read as follows:

9 SUBCHAPTER P. MISCELLANEOUS PROVISIONS REGARDING USE OF SURFACE OF
10 LAND IN CONNECTION WITH OIL AND GAS-RELATED ACTIVITIES

11 Sec. 91.701. DEFINITIONS. In this subchapter:

12 (1) "Inactive well" means a well for which the
13 operator has not maintained regular and continuing activities
14 related to the production of oil and gas. A well that has been
15 inactive for 12 consecutive months or longer and that is not
16 permitted as a disposal or injection well is considered to remain an
17 inactive well, regardless of any minimal activity, until the
18 reported production for the well has been at least 10 barrels of
19 oil, if the well is an oil well, or 100,000 cubic feet of gas, if the
20 well is a gas well, each month for at least three consecutive
21 months.

22 (2) "Lessor" means an individual or individuals whose
23 aggregate ownership interest in a mineral estate is equal to or
24 greater than 10 percent of the total mineral estate.

1 (3) "Operator" means a person who assumes
2 responsibility for the physical operation and control of a well as
3 shown by a form the person files with the commission and the
4 commission approves.

5 (4) "Primary ranch road" means a road constructed and
6 maintained to travel on a ranch. The term does not include a well
7 service road installed by an operator and used by the operator or an
8 agent or contractor of the operator primarily to service wells or
9 other leasehold equipment.

10 (5) "Well" has the meaning assigned by Section 89.002.

11 (6) "Well-site equipment" means any
12 production-related equipment or materials specific to a well,
13 including motors, pumps, pump jacks, tanks, tank batteries,
14 separators, compressors, the operator's electric lines and poles,
15 pipes that exclusively serve an inactive well, or other equipment
16 located on the surface of an oil and gas leasehold estate, but does
17 not include lease identification signs, wellheads, tubing heads,
18 valves, or any other equipment used for well control or well
19 monitoring.

20 Sec. 91.702. TRANSFER OR REMOVAL OF WELL-SITE EQUIPMENT.

21 (a) This section applies only to an inactive well.

22 (b) Unless the lease or another agreement with the lessor
23 provides otherwise, the operator shall transfer or remove well-site
24 equipment, in the manner provided by Subsection (c), from the site
25 of an inactive well that has been inactive for more than 60 months.

26 (c) Pursuant to Subsection (b), on written notice from the
27 lessor, as provided by Section 91.705, complaining of the failure

1 of the operator to remove well-site equipment from an inactive
2 well, the operator, not later than the 90th day after the date of
3 the written notice, shall:

4 (1) transfer the well-site equipment to another active
5 well site on the leased premises for use in connection with such
6 well; or

7 (2) remove the well-site equipment from the leased
8 premises.

9 (d) If the operator transfers the well-site equipment to
10 another well site on the leased premises for use in connection with
11 such active well as provided by Subsection (c)(1), the operator
12 must employ a substantial portion of the transferred equipment in
13 connection with the active well to which it has been transferred
14 within the next 12 months, or remove all transferred equipment from
15 the leased premises.

16 Sec. 91.703. STANDARDS FOR MAINTENANCE OF CERTAIN
17 PIPELINES. (a) The commission by rule shall establish minimum
18 standards for maintaining pipelines on leased premises that lie on
19 or beneath established primary ranch roads located on the leased
20 premises.

21 (b) Rules that may be adopted under this section are limited
22 to rules establishing a required minimum soil depth above a
23 pipeline or requiring an alternative means of protection reasonably
24 necessary to protect the pipeline from damage from expected
25 vehicular traffic and to allow the maintenance of the surface of the
26 road on or beneath which the pipeline lies.

27 Sec. 91.704. STANDARDS FOR CONSTRUCTION, OPERATION, AND

1 MAINTENANCE OF ELECTRICAL POWER LINES. (a) The operator shall
2 construct, operate, and maintain electrical power lines serving
3 well sites and other surface facilities employed in operations
4 incident to oil and gas development and production in accordance
5 with the National Electrical Code published by the National Fire
6 Protection Association and adopted by the Texas Commission of
7 Licensing and Regulation under Chapter 1305, Occupations Code.

8 (b) The operator shall de-energize lines to inactive wells
9 and other inactive well-site equipment.

10 Sec. 91.705. ACTION FOR INJUNCTION. (a) If an operator
11 violates this subchapter, the lessor may give notice of the
12 violation to the operator and request that the operator remedy the
13 violation. The notice must be mailed by certified mail to the
14 address of the operator as shown by the records of the commission
15 and must specifically describe the violation.

16 (b) If the operator fails to remedy the violation before the
17 90th day after the date the notice is mailed under Subsection (a),
18 the lessor may bring an action against the operator for injunctive
19 relief to require the operator to remedy the violation described in
20 the notice. The district court in the county in which the land
21 subject to the lease is located has jurisdiction to hear a suit
22 brought under this section. The trier of fact shall determine
23 whether the violation alleged by the lessor has occurred. After a
24 trial, if it is determined that the operator has violated this
25 subchapter in the manner described in the notice from the lessor,
26 the court may issue an injunction requiring the operator to comply,
27 within a reasonable time of the entry of the injunction, with the

1 particular provision or provisions of this subchapter that have
2 been found to have been violated. The general requirements for the
3 issuance of an injunction need not be satisfied for the lessor to be
4 entitled to injunctive relief. A bond may not be required of the
5 lessor as a condition to the issuance of an injunction. The trial
6 court may suspend the operation of the injunction pending appeal by
7 the operator conditioned on the operator posting bond in an amount
8 necessary to pay the costs of complying with this subchapter with
9 regard to the particular violation found.

10 (c) The trial court, absent a timely appeal by the operator,
11 on a complaint by the affected lessor, may remedy the failure by the
12 operator to comply with the terms of the injunction by requiring
13 that the operator post a bond payable to the lessor in an amount
14 sufficient to remedy the violation. The bond is payable
15 conditioned on the lessor having remedied the violation at the
16 lessor's expense. The amount of any judgment rendered against the
17 bond must be only for those costs determined by the trial court to
18 have been reasonably necessary to remedy the violation. If
19 remedying the violation requires the removal of well-site
20 equipment, the court shall order the equipment forfeited and
21 authorize the lessor to sell the forfeited equipment and recover
22 the proceeds. The amount of any judgment rendered against the bond
23 must be reduced by the amount of proceeds received from the sale of
24 the equipment. Any proceeds received from the sale of the equipment
25 in excess of the reasonable and necessary cost of remedying the
26 violation are subject to further order of the court.

27 Sec. 91.706. ACTION FOR COSTS. If the operator fails to

1 comply with an injunction under Section 91.705 and also fails to
2 post a bond as ordered by the trial court under that section, the
3 lessor may bring an action in the district court for the county in
4 which the land subject to the lease is located to recover from the
5 operator the reasonable and necessary costs incurred by the lessor
6 in remedying the violation. If remedying the violation requires
7 removal of well-site equipment, the court may order the equipment
8 forfeited and may authorize the lessor to sell the forfeited
9 equipment and recover the proceeds. The amount of any judgment
10 rendered against the operator must be reduced by the amount of
11 proceeds received from the sale of the equipment. Any proceeds
12 received from the sale of the equipment in excess of the reasonable
13 and necessary cost of remedying the violation are subject to
14 further order by the court.

15 Sec. 91.707. FEES AND COSTS. The party who prevails in an
16 action under Section 91.705 or 91.706 shall be awarded its
17 reasonable attorneys' fees and court costs.

18 Sec. 91.708. MANDATORY MEDIATION. (a) For a suit that
19 arises from a violation of this subchapter, the court shall refer
20 the matter to mediation among all parties and by order shall set the
21 time and place of the mediation.

22 (b) The court shall appoint a mediator if the parties do not
23 agree on a mediator.

24 (c) Each party shall:

- 25 (1) participate in the mediation in good faith; and
26 (2) share the mediation fee equally.

27 (d) Except as provided by this section, the following apply

1 to the appointment of a mediator and the mediation process provided
2 by this section:

3 (1) Sections 154.023(a) and (b), Civil Practice and
4 Remedies Code; and

5 (2) Subchapters C and D, Chapter 154, Civil Practice
6 and Remedies Code.

7 Sec. 91.709. TRIAL. The court may proceed with the trial on
8 the matter if the parties are unable to agree after participating in
9 the ordered mediation.

10 SECTION 2. The Railroad Commission of Texas shall adopt
11 rules to implement Subchapter P, Chapter 91, Natural Resources
12 Code, as added by this Act, not later than January 1, 2008.

13 SECTION 3. (a) This Act may not be construed to revive any
14 cause of action barred under the law as it existed immediately
15 before the effective date of this Act brought by a lessor to require
16 removal of equipment from the leased premises based on a claim of
17 breach of contract arising out of the relationship between lessor
18 and lessee or a tort claim arising out of operations on the leased
19 premises by the operator or a predecessor of the operator.

20 (b) This Act does not impede a lessor from contracting with
21 a surface owner for enforcement of rights granted by this Act.

22 (c) This Act may not be construed to impose:

23 (1) a duty on a lessor or surface owner to enforce a
24 violation of this Act; or

25 (2) liability on a lessor or surface owner for failure
26 to enforce a violation or for agreeing not to enforce a violation.

27 SECTION 4. This Act takes effect immediately if it receives

1 a vote of two-thirds of all the members elected to each house, as
2 provided by Section 39, Article III, Texas Constitution. If this
3 Act does not receive the vote necessary for immediate effect, this
4 Act takes effect September 1, 2007.