

BILL ANALYSIS

C.S.H.B. 2259
By: Crownover
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In past sessions, numerous bills have been filed to address financial assurance for oil and gas wells and the cleanup of surface equipment for inactive wells. Both issues were topics of interim studies by the house and senate energy resources committees. An industry working group also agreed to look into these issues and to work together on a solution to satisfy all stakeholders. The oil-field cleanup fund has been a success and abandoned or orphaned wells do not pose the problem they once did. However, inactive wells are a broad category with many potential risk factors and possible regulatory loopholes. Under current law, operators are regularly granted extensions to plug their inactive wells with little requirement for further action by the Railroad Commission of Texas. As years go by, and as ownership of inactive wells changes hands, today's inactive wells often become tomorrow's abandoned wells.

C.S.H.B. 2259 requires operators of inactive wells to either plug, prove, or assure their inactive wells within specified time periods. The bill protects the oil-field cleanup fund and provides a structure to help prevent any further increase in the number of abandoned wells. The bill also places more stringent requirements on operators for the cleanup of older and unusable surface equipment.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2259 amends the Natural Resources Code to require an operator of an inactive oil or gas well, on or before the date the operator is required to renew the operator's required organization report, to plug the well in accordance with statutes and Railroad Commission of Texas rules in effect at the time of plugging, except as provided for under extension of deadline. The bill requires a person who assumes responsibility for the physical operation and control of an existing inactive well to satisfy the requirements for including certain items in the application for an extension of the deadline for plugging an inactive well not later than six months after the date the commission approves the initial form described under the definition of "operator" and filed with the commission under which the person assumes responsibility for the well. The bill prohibits the commission from renewing or approving the organization report for an operator that fails to comply with statutory requirements for plugging inactive wells.

C.S.H.B. 2259 authorizes the commission to grant an extension of the deadline for plugging an inactive well if the operator maintains a current organization report with the commission and if, on or before the date of renewal of the operator's organization report, the operator files with the commission an application for an extension that includes a prescribed affirmation regarding surface requirements, a statement that the well and associated facilities are in compliance with all commission rules and orders, and a statement that the operator has, and on request will provide, evidence of a good faith claim to a continuing right to operate the well. The bill

additionally requires the application to include at least one of the following:

- documentation that since the preceding date that the operator's organization report was required to be renewed the operator has plugged, or restored to active operation as defined by commission rule, a number of inactive wells equal to or greater than 10 percent of the number of inactive wells operated by the operator on that date;
- an abeyance of plugging report on a form approved by the commission that is in the form of a certification signed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists; includes an affirmation by the licensed person that the well has a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well and a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged, and includes appropriate documentation demonstrating the basis for the affirmation of the well's future utility; and specifies the field and the covered wells within that field in a format prescribed by the commission;
- a statement that the well is part of an enhanced oil recovery project;
- documentation of the results of a successful fluid level or hydraulic pressure test of the well conducted in accordance with the commission's rules in effect at the time the test is conducted, if the operator of the well is not currently otherwise required by commission rule or order to conduct a fluid level or hydraulic pressure test of the well;
- a supplemental bond, letter of credit, or cash deposit sufficient for each well specified in the application that complies with the requirements set forth in provisions generally applicable for conservation and regulation of oil and gas, and is of an amount at least equal to the cost calculation for plugging an inactive well for each well specified in the application;
- documentation of the deposit with the commission each time the operator files an application of an amount of escrow funds as prescribed by commission rule that equal at least 10 percent of the total cost calculation for plugging an inactive well for each well specified in the application; or
- if the operator is a publicly traded entity, a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original, executed Uniform Commercial Code Form 1 Financing Statement, filed with the secretary of state, that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor," and that specifies the funds covered by the Financial Accounting Standards Board Statement No. 143 in the amount of the cost calculation for plugging an inactive well for each well specified in the application, or a blanket bond in the amount of the lesser of the cost calculation for plugging any inactive wells or \$2 million.

The bill prohibits an operator from obtaining an extension of the deadline for plugging an inactive well if the plugging of a well is otherwise required by commission rules or orders.

C.S.H.B. 2259 establishes that an abeyance of plugging report filed under these provisions is valid for a period of not more than five years and may cover more than one well in a field but may not cover more than one field. The bill prohibits an abeyance of plugging report from being transferred to a new operator of an existing inactive well, except in the event of a change of name of an operator. The bill requires an operator, on becoming a new operator of an existing inactive well, to file a new abeyance of plugging report or otherwise comply with the requirements for plugging inactive wells within a certain time frame. The bill requires an operator who files an abeyance of plugging report to pay an annual fee of \$100 for each well covered by the report and requires the fee to be deposited in the oil-field cleanup fund.

C.S.H.B. 2259 establishes that an inactive well is considered to be part of an enhanced oil

recovery project, for purposes of provisions in the bill relating to an application statement that the well is part of an enhanced oil recovery project, if the well is located on a unit or lease or in a field associated with the project. The bill prohibits a statement that an inactive well is part of an enhanced oil recovery project from being transferred to a new operator of an existing inactive well. The bill requires an operator, on becoming a new operator of an existing inactive well, to file a new statement that the well is part of such a project or otherwise comply with the requirements for plugging of inactive wells on or before the deadline provided by the bill under provisions for assumption of responsibility for a well, and clarifies that the bill's prohibition against transfer of such a statement does not prohibit the transfer of a statement that a well is part of an enhanced oil recovery project in the event of a change of name of an operator.

C.S.H.B. 2259 establishes that documentation of the results of a successful fluid level test filed under these provisions is valid for a period of one year from the date of the test, and that documentation of the results of a successful hydraulic pressure test is valid for a period of not more than five years from the date of the test. The bill requires the operator to notify the office of the commission oil and gas division district in which an inactive well is located at least three days before the date the operator conducts a fluid level or hydraulic pressure test of the well and prohibits the operator from conducting the test without the approval of the office. The bill authorizes the commission to require that a test be witnessed by a commission employee. The bill authorizes documentation of the results of a successful fluid level or hydraulic pressure test to be transferred to a new operator of an existing inactive well. The bill requires an operator who files such documentation to pay an annual fee of \$50 for each well covered by the documentation and requires the fee to be deposited in the oil-field cleanup fund.

C.S.H.B. 2259 specifies that a supplemental bond, letter of credit, or cash deposit filed under provisions in the bill for supplemental financial assurance is in addition to any other financial assurance otherwise required of the operator or for the well. The bill prohibits a supplemental bond, letter of credit, or cash deposit from being transferred to a new operator of an existing inactive well. The bill requires an operator, on becoming a new operator of an existing inactive well, to file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the requirements of these provisions by the deadline under provisions in the bill for assumption of responsibility of a new well.

C.S.H.B. 2259 requires escrow funds to be deposited with the commission each time an operator files an application for an extension of the deadline for plugging an inactive well and authorizes the release of deposited escrow funds only with the approval of the commission as prescribed by commission rule.

C.S.H.B. 2259 requires that an application for an extension of the deadline for plugging an inactive well include a written affirmation by the operator that the operator has physically terminated electric service to the well's production site. The bill additionally requires the application to state, as applicable, if the operator does not own the surface of the land on which the well is located, if the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well, or, if the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface process equipment and related piping, tanks, tank batteries, pump jacks, headers, and fences, as well as junk and trash as defined by commission rule associated with and exclusive to the well. The bill requires an operator of an inactive well to leave a clearly visible marker at the wellhead of the well. The bill requires the commission to adopt rules regulating the transfer of material described by provisions for extension of deadline for a well that has been inactive for at least 10 years as of the date of renewal and restricting its accumulation on an active lease. The bill allows an operator to be eligible for a temporary extension of the deadline for plugging an inactive well, or a temporary exemption from the affirmation requirements for an extension application as provided by commission rule, if the operator is unable to comply with the requirements for an

application for extension because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance. The bill provides that an operator may be eligible for an extension of the deadline for plugging a well without complying with provisions for extension of deadline for a well that has been inactive for at least 10 years as of the date of renewal if the well is located on a unit or lease or in a field associated with an enhanced oil recovery project and the operator includes a statement in the written affirmation that the well is part of such a project. The bill makes this exemption applicable only to the equipment required for the project. The bill requires the commission to adopt rules providing for the phase-in of the duty to comply with provisions for extension of deadline for a well that has been inactive for at least 10 years as of the date of renewal over a period of five years beginning September 1, 2010, and requires the rules to require the operators of one-fifth of the wells that are subject to those provisions in each year during the phase-in period to comply.

C.S.H.B. 2259 authorizes the commission to revoke an extension of the deadline for plugging an inactive well granted under these provisions if the commission determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the commission's rules or orders.

C.S.H.B. 2259 exempts from its provisions a bay or offshore well as defined by the commission.

C.S.H.B. 2259 redefines "delinquent inactive well" to mean an inactive well rather than an unplugged well that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months, for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline. The bill defines "cost calculation for plugging an inactive well," "enhanced oil recovery project," "good faith claim," "inactive well," and "physical termination of electric lines to an inactive well."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2259 makes clarifying modifications to definitions in the original for "cost calculation for plugging an inactive well" and "physical termination of electric lines to an inactive well," and adds definitions not in the original for "enhanced oil recovery project" and "good faith claim."

C.S.H.B. 2259 differs from the original by exempting from its provisions a bay or offshore well as defined by the commission

C.S.H.B. 2259 differs from the original by specifying a time limit for a person who assumes responsibility for the physical operation and control of an existing well to satisfy certain requirements for an extension of deadline for plugging an inactive well.

C.S.H.B. 2259 differs from the original by authorizing the commission to grant an extension of the deadline for plugging an inactive well if the operator maintains a current organization report with the commission and files an application for an extension on or before the date of renewal of the organization report, rather than requiring the commission to grant the extension if the operator files the application on or before the date of initial approval or renewal of the operator's organization report.

C.S.H.B. 2259 adds provisions not in the original requiring to statements of compliance with commission rules and orders and of a continuing claim to operate the well to be included in the application for extension.

C.S.H.B. 2259 differs from the original by requiring documentation, in an application for an extension, that since the preceding date that the operator's organization report was required to be renewed, the operator has plugged or restored to active operation as defined by commission rule, a number of inactive wells equal to or greater than 10 percent of the number of inactive wells operated by the operator on that date, rather than documentation that the operator has plugged, or otherwise brought into compliance with commission rules a number of inactive wells such that the number of the operator's inactive wells on the annual renewal date of the operator's organization report is equal to or less than 90 percent of the number of inactive wells operated by the operator on the preceding renewal date as in the original.

C.S.H.B. 2259 differs from the original by requiring that an abeyance of plugging report in an extension application be on a form approved by the commission.

C.S.H.B. 2259 adds provisions not in the original requiring the abeyance of plugging report to include an affirmation by the certifying licensed person that the well has a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged and clarifying that specification in the report of the field and the covered wells within that field must be in a format prescribed by the commission.

C.S.H.B. 2259 differs from the original in providing the option of including in the extension application a statement that the well is part of an enhanced oil recovery project, rather than documentation that the well is part of an enhanced oil recovery project described under certain provisions in the Tax Code.

C.S.H.B. 2259 adds a condition not in the original making the inclusion of documentation in an extension application of the results of a successful fluid level or pressure test contingent upon the operator of the well not being currently otherwise required by commission rule or order to conduct a fluid level or hydraulic pressure test of the well.

C.S.H.B. 2259 adds a clarification not in the original that the supplemental bond, letter of credit, or cash deposit for certain wells specified in the application be sufficient for those wells.

C.S.H.B. 2259 adds a clarification not in the original that the required documentation of escrow funds in an application is the deposit with the commission each time the operator files an application of an amount of those funds.

C.S.H.B. 2259 adds an option not in the original allowing an operator that is a publicly traded entity to include in the application a blanket bond as an alternative to certain federal documents.

C.S.H.B. 2259 adds a provision not in the original prohibiting an operator from obtaining an extension of the deadline for plugging an inactive well if the plugging of a well is otherwise required by commission rules or orders whereas the original includes only rules.

C.S.H.B. 2259 adds a deadline not in the original for a new operator of an existing inactive well to file an abeyance of plugging report.

C.S.H.B. 2259 adds a provision not in the original specifying that an inactive well is considered to be part of an enhanced oil recovery project if the well is located on a unit or lease or in a field associated with such a project, rather than if the well is associated with such a project.

C.S.H.B. 2259 differs from the original by specifying that a statement, rather than documentation, that an inactive well is part of an enhanced oil recovery project may not be transferred.

C.S.H.B. 2259 adds a deadline not in the original clarifying that a new operator of an existing

inactive well must file a new statement that the well is part of an enhanced oil recovery project or otherwise comply with the requirements for plugging of inactive wells on or before the deadline provided by the substitute under provisions for assumption of responsibility for a well. The substitute differs from the original by establishing that its provisions do not prohibit the transfer of a statement that a well is part of an enhanced oil recovery project in the event of a change of name of an operator.

C.S.H.B. 2259 changes a section heading in the original from Mechanical Integrity Test to Fluid Level or Hydraulic Pressure Test. The substitute differs from the original by establishing different periods of validity for the results of a successful fluid level test and a hydraulic pressure test, whereas the original provides one time frame.

C.S.H.B. 2259 adds a provision not in the original requiring the operator to notify the office of the commission oil and gas division district in which an inactive well is located at least three days before the date the operator conducts a fluid level or hydraulic pressure test of the well and prohibiting the operator from conducting the test without the approval of the office. The substitute adds a provision not in the original authorizing the commission to require that a test be witnessed by a commission employee.

C.S.H.B. 2259 adds a provision not in the original requiring an operator who files documentation of the results of a successful fluid level or hydraulic pressure test to pay an annual fee of \$50 for each well covered by the documentation, and requiring the fee to be deposited in the oil-field cleanup fund.

C.S.H.B. 2259 adds a deadline not in the original for a new operator of an existing inactive well, to file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the requirements of the substitute.

C.S.H.B. 2259 adds a provision not in the original establishing that the requirement that the affirmation regarding surface requirements include a statement relating to certain clean-up procedures applies only if the operator does not own the surface of the land on which the well is located.

C.S.H.B. 2259 differs from the original by specifying that if the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, the affirmation must state that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well, rather than that if the well has been inactive for at least five years but for less than 10 years as of the date of renewal, the affirmation must state that the operator has emptied and purged all related piping, tanks, vessels, and equipment as defined by commission rule as in the original.

C.S.H.B. 2259 differs from the original by specifying that if the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, the affirmation must state that the operator has removed all surface process equipment and related piping, tanks, tank batteries, pump jacks, headers, and fences, as well as junk and trash as defined by commission rule, associated with and exclusive to the well, rather than that if the well has been inactive for at least 10 years as of the date of renewal, the affirmation must state that the operator has removed all surface equipment, tank batteries, pump jacks and related lines, junk, and trash as defined by commission rule as in the original.

C.S.H.B. 2259 adds a provision not in the original requiring an operator of an inactive well to leave a clearly visible marker at the wellhead of the well.

C.S.H.B. 2259 differs from the original by requiring the commission to adopt rules regulating the transfer of material described under provisions in the substitute for removal of certain surface material and trash and restricting its accumulation on an active lease, whereas the original makes

the affirmation of not having transferred the material to or allowed it to accumulate on an active lease a requirement of the statement relating to a well that has been inactive for at least 10 years as of the date of renewal.

C.S.H.B. 2259 differs from the original by providing that an operator may be, rather than is, eligible for a temporary extension of the deadline for plugging an inactive well or an extension of the deadline for plugging a well under certain circumstances. The substitute differs from the original by adding the option of being eligible for a temporary exemption from the requirements of provisions for the affirmation regarding surface requirements as provided by commission rule, as well as for a temporary extension of deadline for plugging as in the original. The substitute differs from the original by adding a provision to eligibility for an extension without complying with provisions for extension of deadline for a well that has been inactive for at least 10 years as of the date of renewal, specifying that the well must be located on a unit or lease or in a field associated with an enhanced oil recovery project, rather than being part of an enhanced oil recovery project as described in certain provisions of the Tax Code as in the original.

C.S.H.B. 2259 adds provisions not in the original requiring the commission to adopt rules providing for the phase-in of the duty to comply with provisions for extension of deadline for a well that has been inactive for at least 10 years as of the date of renewal over a period of five years beginning September 1, 2010, and requiring the rules to require the operators of one-fifth of the wells that are subject to those provisions in each year during the phase-in period to comply.

C.S.H.B. 2259 adds a clarification not in the original that an applicant may have an extension revoked if the applicant is found to be ineligible under the commission's rules or orders.