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H.B. No. 2259

A BILL TO BE ENTITLED

AN ACT

relating to the plugging of certain inactive oil or gas wells.

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

SECTION 1. Section 89.002(a), Natural Resources Code, is amended by amending Subdivision (7) and adding Subdivisions (9), (10), (11), (12), and (13) to read as follows:

(7) "Delinquent inactive well" means an inactive ~~[unplugged]~~ well ~~[that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months and]~~ for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline.

(9) "Cost calculation for plugging an inactive well" means the commission's calculated cost for each foot of well depth plugged based on average actual plugging costs for wells reported by the commission for the preceding state fiscal year for the commission oil and gas division district in which the inactive well is located.

(10) "Enhanced oil recovery project":

(A) means:

(i) a commission-approved project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(ii) a certified project described by

1 Section 202.054, Tax Code; or

2 (iii) any other project approved by the  
3 commission for enhanced oil recovery; and

4 (B) does not include a water disposal project.

5 (11) "Good faith claim" means a factually supported  
6 claim based on a recognized legal theory to a continuing possessory  
7 right in a mineral estate, such as evidence of a currently valid oil  
8 and gas lease or a recorded deed conveying a fee interest in the  
9 mineral estate.

10 (12) "Inactive well" means an unplugged well that has  
11 had no reported production, disposal, injection, or other permitted  
12 activity for a period of greater than 12 months.

13 (13) "Physical termination of electric lines to an  
14 inactive well" means the disconnection of electric service to an  
15 inactive well site at a point on the electric service lines most  
16 distant from the production site toward the main supply line in a  
17 manner that will not interfere with electrical supply to adjacent  
18 operations, including cathodic protection units.

19 SECTION 2. Chapter 89, Natural Resources Code, is amended  
20 by adding Subchapter B-1 to read as follows:

21 SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

22 Sec. 89.021. APPLICABILITY. This subchapter does not apply  
23 to a bay or offshore well as defined by commission rules.

24 Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED. (a)  
25 Except as provided by Section 89.023, on or before the date the  
26 operator is required to renew the operator's organization report  
27 required by Section 91.142, an operator of an inactive well must

1 plug the well in accordance with statutes and commission rules in  
2 effect at the time of plugging.

3 (b) Notwithstanding Subsection (a), a person who assumes  
4 responsibility for the physical operation and control of an  
5 existing inactive well must satisfy the requirements of Sections  
6 89.023(a)(1) and (4) not later than six months after the date the  
7 commission approves the initial form described by Section  
8 89.002(a)(2) and filed with the commission under which the person  
9 assumes responsibility for the well.

10 (c) The commission may not renew or approve the organization  
11 report required by Section 91.142 for an operator that fails to  
12 comply with the requirements of this subchapter.

13 Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE  
14 WELL. (a) The commission may grant an extension of the deadline  
15 for plugging an inactive well if the operator maintains a current  
16 organization report with the commission as required by Section  
17 91.142 and if, on or before the date of renewal of the operator's  
18 organization report as required by that section, the operator files  
19 with the commission an application for an extension that includes:

20 (1) an affirmation that complies with Section 89.029;

21 (2) a statement that the well and associated  
22 facilities are in compliance with all commission rules and orders;

23 (3) a statement that the operator has, and on request  
24 will provide, evidence of a good faith claim to a continuing right  
25 to operate the well; and

26 (4) at least one of the following:

27 (A) documentation that since the preceding date

1 that the operator's organization report was required to be renewed  
2 the operator has plugged, or restored to active operation as  
3 defined by commission rule, a number of inactive wells equal to or  
4 greater than 10 percent of the number of inactive wells operated by  
5 the operator on that date;

6 (B) an abeyance of plugging report on a form  
7 approved by the commission that:

8 (i) is in the form of a certification signed  
9 by a person licensed by the Texas Board of Professional Engineers or  
10 the Texas Board of Professional Geoscientists;

11 (ii) includes:

12 (a) an affirmation by the licensed  
13 person that the well has:

14 (1) a reasonable expectation of  
15 economic value in excess of the cost of plugging the well for the  
16 duration of the period covered by the report, based on the cost  
17 calculation for plugging an inactive well; and

18 (2) a reasonable expectation of  
19 being restored to a beneficial use that will prevent waste of oil or  
20 gas resources that otherwise would not be produced if the well were  
21 plugged; and

22 (b) appropriate documentation  
23 demonstrating the basis for the affirmation of the well's future  
24 utility; and

25 (iii) specifies the field and the covered  
26 wells within that field in a format prescribed by the commission;

27 (C) a statement that the well is part of an

1 enhanced oil recovery project;

2 (D) if the operator of the well is not currently  
3 otherwise required by commission rule or order to conduct a fluid  
4 level or hydraulic pressure test of the well, documentation of the  
5 results of a successful fluid level or hydraulic pressure test of  
6 the well conducted in accordance with the commission's rules in  
7 effect at the time the test is conducted;

8 (E) a supplemental bond, letter of credit, or  
9 cash deposit sufficient for each well specified in the application  
10 that:

11 (i) complies with the requirements of  
12 Chapter 91; and

13 (ii) is of an amount at least equal to the  
14 cost calculation for plugging an inactive well for each well  
15 specified in the application;

16 (F) documentation of the deposit with the  
17 commission each time the operator files an application of an amount  
18 of escrow funds as prescribed by commission rule that equal at least  
19 10 percent of the total cost calculation for plugging an inactive  
20 well for each well specified in the application; or

21 (G) if the operator is a publicly traded entity:

22 (i) the following documents:

23 (a) a copy of the operator's federal  
24 documents filed to comply with Financial Accounting Standards Board  
25 Statement No. 143, Accounting for Asset Retirement Obligations; and

26 (b) an original, executed Uniform  
27 Commercial Code Form 1 Financing Statement, filed with the

1 secretary of state, that:

2 (1) names the operator as the  
3 "debtor" and the Railroad Commission of Texas as the "secured  
4 creditor"; and

5 (2) specifies the funds covered  
6 by the documents described by Sub-subparagraph (a) in the amount of  
7 the cost calculation for plugging an inactive well for each well  
8 specified in the application; or

9 (ii) a blanket bond in the amount of the  
10 lesser of:

11 (a) the cost calculation for plugging  
12 any inactive wells; or

13 (b) \$2 million.

14 (b) Notwithstanding Subsection (a), an operator may not  
15 obtain an extension of the deadline for plugging an inactive well by  
16 complying with that subsection if the plugging of the well is  
17 otherwise required by commission rules or orders.

18 Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance  
19 of plugging report filed under Section 89.023(a)(4)(B) is valid for  
20 a period of not more than five years.

21 (b) An abeyance of plugging report may cover more than one  
22 well in a field but may not cover more than one field.

23 (c) An abeyance of plugging report may not be transferred to  
24 a new operator of an existing inactive well. A new operator of an  
25 existing inactive well must file a new abeyance of plugging report  
26 or otherwise comply with the requirements of this subchapter on or  
27 before the deadline provided by Section 89.022(b). This subsection

1 does not prohibit the transfer of an abeyance of plugging report in  
2 the event of a change of name of an operator.

3 (d) An operator who files an abeyance of plugging report  
4 must pay an annual fee of \$100 for each well covered by the report.  
5 A fee collected under this section shall be deposited in the  
6 oil-field cleanup fund.

7 Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For  
8 purposes of Section 89.023(a)(4)(C), an inactive well is considered  
9 to be part of an enhanced oil recovery project if the well is  
10 located on a unit or lease or in a field associated with such a  
11 project.

12 (b) A statement that an inactive well is part of an enhanced  
13 oil recovery project may not be transferred to a new operator of an  
14 existing inactive well. A new operator of an existing inactive well  
15 must file a new statement that the well is part of such a project or  
16 otherwise comply with the requirements of this subchapter on or  
17 before the deadline provided by Section 89.022(b). This subsection  
18 does not prohibit the transfer of a statement that a well is part of  
19 an enhanced oil recovery project in the event of a change of name of  
20 an operator.

21 Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST. (a)  
22 Documentation filed under Section 89.023(a)(4)(D) of the results of  
23 a successful fluid level test is valid for a period of one year from  
24 the date of the test. Documentation filed under that section of the  
25 results of a successful hydraulic pressure test is valid for a  
26 period of not more than five years from the date of the test.

27 (b) The operator must notify the office of the commission

1 oil and gas division district in which an inactive well is located  
2 at least three days before the date the operator conducts a fluid  
3 level or hydraulic pressure test of the well and may not conduct the  
4 test without the approval of the office. The commission may require  
5 that a test be witnessed by a commission employee.

6 (c) Documentation of the results of a successful fluid level  
7 or hydraulic pressure test may be transferred to a new operator of  
8 an existing inactive well.

9 (d) An operator who files documentation described by  
10 Subsection (a) must pay an annual fee of \$50 for each well covered  
11 by the documentation. A fee collected under this section shall be  
12 deposited in the oil-field cleanup fund.

13 Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A  
14 supplemental bond, letter of credit, or cash deposit filed under  
15 Section 89.023(a)(4)(E) is in addition to any other financial  
16 assurance otherwise required of the operator or for the well.

17 (b) A supplemental bond, letter of credit, or cash deposit  
18 may not be transferred to a new operator of an existing inactive  
19 well. A new operator of an existing inactive well must file a new  
20 supplemental bond, letter of credit, or cash deposit or otherwise  
21 comply with the requirements of this subchapter by the deadline  
22 provided by Section 89.022(b).

23 Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by  
24 Section 89.023(a)(4)(F) must be deposited with the commission each  
25 time an operator files an application for an extension of the  
26 deadline for plugging an inactive well.

27 (b) Escrow funds deposited with the commission may be



1 released only with the approval of the commission as prescribed by  
2 commission rule.

3 Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS.

4 (a) An application for an extension of the deadline for plugging an  
5 inactive well must include a written affirmation by the operator:

6 (1) that the operator has physically terminated  
7 electric service to the well's production site; and

8 (2) stating the following, as applicable, if the  
9 operator does not own the surface of the land on which the well is  
10 located:

11 (A) if the well has been inactive for at least  
12 five years but for less than 10 years as of the date of renewal of  
13 the operator's organization report, that the operator has emptied  
14 or purged of production fluids all piping, tanks, vessels, and  
15 equipment associated with and exclusive to the well; or

16 (B) if the well has been inactive for at least 10  
17 years as of the date of renewal of the operator's organization  
18 report, that the operator has removed all surface process equipment  
19 and related piping, tanks, tank batteries, pump jacks, headers, and  
20 fences, as well as junk and trash as defined by commission rule,  
21 associated with and exclusive to the well.

22 (b) An operator of an inactive well shall leave a clearly  
23 visible marker at the wellhead of the well.

24 (c) The commission shall adopt rules regulating the  
25 transfer of material described by Subsection (a)(2)(B) and  
26 restricting its accumulation on an active lease.

27 (d) Notwithstanding Subsection (a), an operator may be

1 eligible for a temporary extension of the deadline for plugging an  
2 inactive well or a temporary exemption from the requirements of  
3 Subsection (a) as provided by commission rule if the operator is  
4 unable to comply with the requirements of that subsection because  
5 of safety concerns or required maintenance of the well site and the  
6 operator includes with the application a written affirmation of the  
7 facts regarding the safety concerns or maintenance.

8 (e) An operator may be eligible for an extension of the  
9 deadline for plugging a well without complying with Subsection  
10 (a)(2)(B) if the well is located on a unit or lease or in a field  
11 associated with an enhanced oil recovery project and the operator  
12 includes a statement in the written affirmation that the well is  
13 part of such a project. The exemption provided by this subsection  
14 applies only to the equipment required for the project.

15 (f) Notwithstanding the other provisions of this  
16 subchapter, the commission shall adopt rules providing for the  
17 phase-in of the duty to comply with Subsection (a)(2)(B) over a  
18 period of five years beginning September 1, 2010. The rules must  
19 require the operators of one-fifth of the wells that are subject to  
20 that subsection in each year during the phase-in period to comply  
21 with that subsection.

22 Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR  
23 PLUGGING INACTIVE WELL. The commission may revoke an extension of  
24 the deadline for plugging an inactive well granted under this  
25 subchapter if the commission determines, after notice and an  
26 opportunity for a hearing, that the applicant is ineligible for the  
27 extension under the commission's rules or orders.

1 SECTION 3. Section 91.111(c), Natural Resources Code, is  
2 amended to read as follows:

3 (c) The fund consists of:

4 (1) penalties imposed under Section 85.381 for  
5 violation of a law, order, or rule relating to well plugging  
6 requirements;

7 (2) proceeds from bonds and other financial security  
8 required by this chapter and benefits under well-specific plugging  
9 insurance policies described by Section 91.104(c) that are paid to  
10 the state as contingent beneficiary of the policies, subject to the  
11 refund provisions of Section 91.1091, if applicable;

12 (3) private contributions, including contributions  
13 made under Section 89.084;

14 (4) expenses collected under Section 89.083;

15 (5) fees imposed under Section 85.2021;

16 (6) civil penalties collected for violations of  
17 Chapter 89 or of rules or orders relating to plugging that are  
18 adopted under this code;

19 (7) proceeds collected under Sections 89.085 and  
20 91.115;

21 (8) interest earned on the funds deposited in the  
22 fund;

23 (9) civil penalties or costs recovered under Section  
24 91.457 or 91.459;

25 (10) oil and gas waste hauler permit application fees  
26 collected under Section 29.015, Water Code;

27 (11) costs recovered under Section 91.113(f);

1           (12) hazardous oil and gas waste generation fees  
2 collected under Section 91.605;

3           (13) oil-field cleanup regulatory fees on oil  
4 collected under Section 81.116;

5           (14) oil-field cleanup regulatory fees on gas  
6 collected under Section 81.117;

7           (15) fees for a reissued certificate collected under  
8 Section 91.707;

9           (16) fees collected under Section 91.1013;

10          (17) fees collected under Section 89.088;

11          (18) penalties collected under Section 81.0531;

12          (19) fees collected under Section 91.142;

13          (20) fees collected under Section 91.654;

14          (21) costs recovered under Sections 91.656 and 91.657;

15          (22) two-thirds of the fees collected under Section  
16 81.0521; ~~and~~

17          (23) fees collected under Sections 89.024 and 89.026;  
18 and

19          (24) legislative appropriations.

20          SECTION 4. (a) Not later than September 1, 2010, the  
21 Railroad Commission of Texas shall be prepared to grant extensions  
22 of the deadline for plugging an inactive well under Subchapter B-1,  
23 Chapter 89, Natural Resources Code, as added by this Act.

24          (b) The change in law made by this Act applies only to the  
25 renewal or approval of an organization report on or after September  
26 1, 2010. The renewal or approval of an organization report before  
27 September 1, 2010, is governed by the law as it existed immediately

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1 before the effective date of this Act, and that law is continued in  
2 effect for that purpose.

3 SECTION 5. This Act takes effect September 1, 2009.