

1-1 By: Crossover, et al. (Senate Sponsor - Duncan) H.B. No. 2259
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 4, 2009, read first time and referred to Committee on Natural
1-4 Resources; May 13, 2009, reported favorably, as amended, by the
1-5 following vote: Yeas 9, Nays 0; May 13, 2009, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Duncan

1-7 Amend H.B. No. 2259 (house engrossed version) by adding the
1-8 following SECTION to the bill, appropriately numbered, and
1-9 renumbering the subsequent SECTIONS of the bill accordingly:
1-10 SECTION _____. Subchapter B, Chapter 91, Natural Resources
1-11 Code, is amended by adding Section 91.019 to read as follows:
1-12 Sec. 91.019. STANDARDS FOR CONSTRUCTION, OPERATION, AND
1-13 MAINTENANCE OF ELECTRICAL POWER LINES. An operator shall
1-14 construct, operate, and maintain an electrical power line serving a
1-15 well site or other surface facility employed in operations incident
1-16 to oil and gas development and production in accordance with the
1-17 National Electrical Code published by the National Fire Protection
1-18 Association and adopted by the Texas Commission of Licensing and
1-19 Regulation under Chapter 1305, Occupations Code.

1-20 COMMITTEE AMENDMENT NO. 2 By: Duncan

1-21 Amend H.B. No. 2259 in SECTION 1 of the bill, in amended
1-22 Section 89.002(a), Natural Resources Code (engrossed version page
1-23 2, lines 8-13), by striking Subdivision (13) of the subsection and
1-24 substituting the following:
1-25 (13) "Physically terminated electric service to the
1-26 well's production site" means that electric service to an inactive
1-27 well site has been disconnected at a point on the electric service
1-28 lines most distant from the production site toward the main supply
1-29 line in a manner that will not interfere with electrical supply to
1-30 adjacent operations, including cathodic protection units.

1-31 A BILL TO BE ENTITLED
1-32 AN ACT

1-33 relating to the plugging of certain inactive oil or gas wells.
1-34 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-35 SECTION 1. Section 89.002(a), Natural Resources Code, is
1-36 amended by amending Subdivision (7) and adding Subdivisions (9),
1-37 (10), (11), (12), and (13) to read as follows:
1-38 (7) "Delinquent inactive well" means an inactive
1-39 ~~[unplugged] well [that has had no reported production, disposal,~~
1-40 ~~injection, or other permitted activity for a period of greater than~~
1-41 ~~12 months and]~~ for which, after notice and opportunity for a
1-42 hearing, the commission has not extended the plugging deadline.
1-43 (9) "Cost calculation for plugging an inactive well"
1-44 means the commission's calculated cost for each foot of well depth
1-45 plugged based on average actual plugging costs for wells reported
1-46 by the commission for the preceding state fiscal year for the
1-47 commission oil and gas division district in which the inactive well
1-48 is located.
1-49 (10) "Enhanced oil recovery project":
1-50 (A) means:
1-51 (i) a commission-approved project that uses
1-52 any process for the displacement of oil or other hydrocarbons from a
1-53 reservoir other than primary recovery and includes the use of an
1-54 immiscible, miscible, chemical, thermal, or biological process;
1-55 (ii) a certified project described by
1-56 Section 202.054, Tax Code; or
1-57 (iii) any other project approved by the
1-58 commission for enhanced oil recovery; and
1-59 (B) does not include a water disposal project.
1-60 (11) "Good faith claim" means a factually supported

2-1 claim based on a recognized legal theory to a continuing possessory
 2-2 right in a mineral estate, such as evidence of a currently valid oil
 2-3 and gas lease or a recorded deed conveying a fee interest in the
 2-4 mineral estate.

2-5 (12) "Inactive well" means an unplugged well that has
 2-6 had no reported production, disposal, injection, or other permitted
 2-7 activity for a period of greater than 12 months.

2-8 (13) "Physical termination of electric lines to an
 2-9 inactive well" means the disconnection of electric service to an
 2-10 inactive well site at a point on the electric service lines most
 2-11 distant from the production site toward the main supply line in a
 2-12 manner that will not interfere with electrical supply to adjacent
 2-13 operations, including cathodic protection units.

2-14 SECTION 2. Chapter 89, Natural Resources Code, is amended
 2-15 by adding Subchapter B-1 to read as follows:

2-16 SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

2-17 Sec. 89.021. APPLICABILITY. This subchapter does not apply
 2-18 to a bay or offshore well as defined by commission rules.

2-19 Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED. (a)
 2-20 Except as provided by Section 89.023, on or before the date the
 2-21 operator is required to renew the operator's organization report
 2-22 required by Section 91.142, an operator of an inactive well must
 2-23 plug the well in accordance with statutes and commission rules in
 2-24 effect at the time of plugging.

2-25 (b) Notwithstanding Subsection (a), a person who assumes
 2-26 responsibility for the physical operation and control of an
 2-27 existing inactive well must satisfy the requirements of Sections
 2-28 89.023(a)(1) and (4) not later than six months after the date the
 2-29 commission approves the initial form described by Section
 2-30 89.002(a)(2) and filed with the commission under which the person
 2-31 assumes responsibility for the well.

2-32 (c) The commission may not renew or approve the organization
 2-33 report required by Section 91.142 for an operator that fails to
 2-34 comply with the requirements of this subchapter.

2-35 Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE
 2-36 WELL. (a) The commission may grant an extension of the deadline
 2-37 for plugging an inactive well if the operator maintains a current
 2-38 organization report with the commission as required by Section
 2-39 91.142 and if, on or before the date of renewal of the operator's
 2-40 organization report as required by that section, the operator files
 2-41 with the commission an application for an extension that includes:

2-42 (1) an affirmation that complies with Section 89.029;
 2-43 (2) a statement that the well and associated
 2-44 facilities are in compliance with all commission rules and orders;
 2-45 (3) a statement that the operator has, and on request
 2-46 will provide, evidence of a good faith claim to a continuing right
 2-47 to operate the well; and

2-48 (4) at least one of the following:

2-49 (A) documentation that since the preceding date
 2-50 that the operator's organization report was required to be renewed
 2-51 the operator has plugged, or restored to active operation as
 2-52 defined by commission rule, a number of inactive wells equal to or
 2-53 greater than 10 percent of the number of inactive wells operated by
 2-54 the operator on that date;

2-55 (B) an abeyance of plugging report on a form
 2-56 approved by the commission that:

2-57 (i) is in the form of a certification signed
 2-58 by a person licensed by the Texas Board of Professional Engineers or
 2-59 the Texas Board of Professional Geoscientists;

2-60 (ii) includes:

2-61 (a) an affirmation by the licensed
 2-62 person that the well has:

2-63 (1) a reasonable expectation of
 2-64 economic value in excess of the cost of plugging the well for the
 2-65 duration of the period covered by the report, based on the cost
 2-66 calculation for plugging an inactive well; and

2-67 (2) a reasonable expectation of
 2-68 being restored to a beneficial use that will prevent waste of oil or
 2-69 gas resources that otherwise would not be produced if the well were

3-1 plugged; and
 3-2 (b) appropriate documentation
 3-3 demonstrating the basis for the affirmation of the well's future
 3-4 utility; and
 3-5 (iii) specifies the field and the covered
 3-6 wells within that field in a format prescribed by the commission;
 3-7 (C) a statement that the well is part of an
 3-8 enhanced oil recovery project;
 3-9 (D) if the operator of the well is not currently
 3-10 otherwise required by commission rule or order to conduct a fluid
 3-11 level or hydraulic pressure test of the well, documentation of the
 3-12 results of a successful fluid level or hydraulic pressure test of
 3-13 the well conducted in accordance with the commission's rules in
 3-14 effect at the time the test is conducted;
 3-15 (E) a supplemental bond, letter of credit, or
 3-16 cash deposit sufficient for each well specified in the application
 3-17 that:
 3-18 (i) complies with the requirements of
 3-19 Chapter 91; and
 3-20 (ii) is of an amount at least equal to the
 3-21 cost calculation for plugging an inactive well for each well
 3-22 specified in the application;
 3-23 (F) documentation of the deposit with the
 3-24 commission each time the operator files an application of an amount
 3-25 of escrow funds as prescribed by commission rule that equal at least
 3-26 10 percent of the total cost calculation for plugging an inactive
 3-27 well for each well specified in the application; or
 3-28 (G) if the operator is a publicly traded entity:
 3-29 (i) the following documents:
 3-30 (a) a copy of the operator's federal
 3-31 documents filed to comply with Financial Accounting Standards Board
 3-32 Statement No. 143, Accounting for Asset Retirement Obligations; and
 3-33 (b) an original, executed Uniform
 3-34 Commercial Code Form 1 Financing Statement, filed with the
 3-35 secretary of state, that:
 3-36 (1) names the operator as the
 3-37 "debtor" and the Railroad Commission of Texas as the "secured
 3-38 creditor"; and
 3-39 (2) specifies the funds covered
 3-40 by the documents described by Sub-subparagraph (a) in the amount of
 3-41 the cost calculation for plugging an inactive well for each well
 3-42 specified in the application; or
 3-43 (ii) a blanket bond in the amount of the
 3-44 lesser of:
 3-45 (a) the cost calculation for plugging
 3-46 any inactive wells; or
 3-47 (b) \$2 million.
 3-48 (b) Notwithstanding Subsection (a), an operator may not
 3-49 obtain an extension of the deadline for plugging an inactive well by
 3-50 complying with that subsection if the plugging of the well is
 3-51 otherwise required by commission rules or orders.
 3-52 Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance
 3-53 of plugging report filed under Section 89.023(a)(4)(B) is valid for
 3-54 a period of not more than five years.
 3-55 (b) An abeyance of plugging report may cover more than one
 3-56 well in a field but may not cover more than one field.
 3-57 (c) An abeyance of plugging report may not be transferred to
 3-58 a new operator of an existing inactive well. A new operator of an
 3-59 existing inactive well must file a new abeyance of plugging report
 3-60 or otherwise comply with the requirements of this subchapter on or
 3-61 before the deadline provided by Section 89.022(b). This subsection
 3-62 does not prohibit the transfer of an abeyance of plugging report in
 3-63 the event of a change of name of an operator.
 3-64 (d) An operator who files an abeyance of plugging report
 3-65 must pay an annual fee of \$100 for each well covered by the report.
 3-66 A fee collected under this section shall be deposited in the
 3-67 oil-field cleanup fund.
 3-68 Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For
 3-69 purposes of Section 89.023(a)(4)(C), an inactive well is considered

4-1 to be part of an enhanced oil recovery project if the well is
 4-2 located on a unit or lease or in a field associated with such a
 4-3 project.

4-4 (b) A statement that an inactive well is part of an enhanced
 4-5 oil recovery project may not be transferred to a new operator of an
 4-6 existing inactive well. A new operator of an existing inactive well
 4-7 must file a new statement that the well is part of such a project or
 4-8 otherwise comply with the requirements of this subchapter on or
 4-9 before the deadline provided by Section 89.022(b). This subsection
 4-10 does not prohibit the transfer of a statement that a well is part of
 4-11 an enhanced oil recovery project in the event of a change of name of
 4-12 an operator.

4-13 Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST. (a)
 4-14 Documentation filed under Section 89.023(a)(4)(D) of the results of
 4-15 a successful fluid level test is valid for a period of one year from
 4-16 the date of the test. Documentation filed under that section of the
 4-17 results of a successful hydraulic pressure test is valid for a
 4-18 period of not more than five years from the date of the test.

4-19 (b) The operator must notify the office of the commission
 4-20 oil and gas division district in which an inactive well is located
 4-21 at least three days before the date the operator conducts a fluid
 4-22 level or hydraulic pressure test of the well and may not conduct the
 4-23 test without the approval of the office. The commission may require
 4-24 that a test be witnessed by a commission employee.

4-25 (c) Documentation of the results of a successful fluid level
 4-26 or hydraulic pressure test may be transferred to a new operator of
 4-27 an existing inactive well.

4-28 (d) An operator who files documentation described by
 4-29 Subsection (a) must pay an annual fee of \$50 for each well covered
 4-30 by the documentation. A fee collected under this section shall be
 4-31 deposited in the oil-field cleanup fund.

4-32 Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A
 4-33 supplemental bond, letter of credit, or cash deposit filed under
 4-34 Section 89.023(a)(4)(E) is in addition to any other financial
 4-35 assurance otherwise required of the operator or for the well.

4-36 (b) A supplemental bond, letter of credit, or cash deposit
 4-37 may not be transferred to a new operator of an existing inactive
 4-38 well. A new operator of an existing inactive well must file a new
 4-39 supplemental bond, letter of credit, or cash deposit or otherwise
 4-40 comply with the requirements of this subchapter by the deadline
 4-41 provided by Section 89.022(b).

4-42 Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by
 4-43 Section 89.023(a)(4)(F) must be deposited with the commission each
 4-44 time an operator files an application for an extension of the
 4-45 deadline for plugging an inactive well.

4-46 (b) Escrow funds deposited with the commission may be
 4-47 released only with the approval of the commission as prescribed by
 4-48 commission rule.

4-49 Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS.
 4-50 (a) An application for an extension of the deadline for plugging an
 4-51 inactive well must include a written affirmation by the operator:

4-52 (1) that the operator has physically terminated
 4-53 electric service to the well's production site; and

4-54 (2) stating the following, as applicable, if the
 4-55 operator does not own the surface of the land on which the well is
 4-56 located:

4-57 (A) if the well has been inactive for at least
 4-58 five years but for less than 10 years as of the date of renewal of
 4-59 the operator's organization report, that the operator has emptied
 4-60 or purged of production fluids all piping, tanks, vessels, and
 4-61 equipment associated with and exclusive to the well; or

4-62 (B) if the well has been inactive for at least 10
 4-63 years as of the date of renewal of the operator's organization
 4-64 report, that the operator has removed all surface process equipment
 4-65 and related piping, tanks, tank batteries, pump jacks, headers, and
 4-66 fences, as well as junk and trash as defined by commission rule,
 4-67 associated with and exclusive to the well.

4-68 (b) An operator of an inactive well shall leave a clearly
 4-69 visible marker at the wellhead of the well.

5-1 (c) The commission shall adopt rules regulating the
 5-2 transfer of material described by Subsection (a)(2)(B) and
 5-3 restricting its accumulation on an active lease.

5-4 (d) Notwithstanding Subsection (a), an operator may be
 5-5 eligible for a temporary extension of the deadline for plugging an
 5-6 inactive well or a temporary exemption from the requirements of
 5-7 Subsection (a) as provided by commission rule if the operator is
 5-8 unable to comply with the requirements of that subsection because
 5-9 of safety concerns or required maintenance of the well site and the
 5-10 operator includes with the application a written affirmation of the
 5-11 facts regarding the safety concerns or maintenance.

5-12 (e) An operator may be eligible for an extension of the
 5-13 deadline for plugging a well without complying with Subsection
 5-14 (a)(2)(B) if the well is located on a unit or lease or in a field
 5-15 associated with an enhanced oil recovery project and the operator
 5-16 includes a statement in the written affirmation that the well is
 5-17 part of such a project. The exemption provided by this subsection
 5-18 applies only to the equipment required for the project.

5-19 (f) Notwithstanding the other provisions of this
 5-20 subchapter, the commission shall adopt rules providing for the
 5-21 phase-in of the duty to comply with Subsection (a)(2)(B) over a
 5-22 period of five years beginning September 1, 2010. The rules must
 5-23 require the operators of one-fifth of the wells that are subject to
 5-24 that subsection in each year during the phase-in period to comply
 5-25 with that subsection.

5-26 Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR
 5-27 PLUGGING INACTIVE WELL. The commission may revoke an extension of
 5-28 the deadline for plugging an inactive well granted under this
 5-29 subchapter if the commission determines, after notice and an
 5-30 opportunity for a hearing, that the applicant is ineligible for the
 5-31 extension under the commission's rules or orders.

5-32 SECTION 3. Section 91.111(c), Natural Resources Code, is
 5-33 amended to read as follows:

5-34 (c) The fund consists of:

5-35 (1) penalties imposed under Section 85.381 for
 5-36 violation of a law, order, or rule relating to well plugging
 5-37 requirements;

5-38 (2) proceeds from bonds and other financial security
 5-39 required by this chapter and benefits under well-specific plugging
 5-40 insurance policies described by Section 91.104(c) that are paid to
 5-41 the state as contingent beneficiary of the policies, subject to the
 5-42 refund provisions of Section 91.1091, if applicable;

5-43 (3) private contributions, including contributions
 5-44 made under Section 89.084;

5-45 (4) expenses collected under Section 89.083;

5-46 (5) fees imposed under Section 85.2021;

5-47 (6) civil penalties collected for violations of
 5-48 Chapter 89 or of rules or orders relating to plugging that are
 5-49 adopted under this code;

5-50 (7) proceeds collected under Sections 89.085 and
 5-51 91.115;

5-52 (8) interest earned on the funds deposited in the
 5-53 fund;

5-54 (9) civil penalties or costs recovered under Section
 5-55 91.457 or 91.459;

5-56 (10) oil and gas waste hauler permit application fees
 5-57 collected under Section 29.015, Water Code;

5-58 (11) costs recovered under Section 91.113(f);

5-59 (12) hazardous oil and gas waste generation fees
 5-60 collected under Section 91.605;

5-61 (13) oil-field cleanup regulatory fees on oil
 5-62 collected under Section 81.116;

5-63 (14) oil-field cleanup regulatory fees on gas
 5-64 collected under Section 81.117;

5-65 (15) fees for a reissued certificate collected under
 5-66 Section 91.707;

5-67 (16) fees collected under Section 91.1013;

5-68 (17) fees collected under Section 89.088;

5-69 (18) penalties collected under Section 81.0531;

- 6-1 (19) fees collected under Section 91.142;
- 6-2 (20) fees collected under Section 91.654;
- 6-3 (21) costs recovered under Sections 91.656 and 91.657;
- 6-4 (22) two-thirds of the fees collected under Section
- 6-5 81.0521; [~~and~~]
- 6-6 (23) fees collected under Sections 89.024 and 89.026;
- 6-7 and
- 6-8 (24) legislative appropriations.

6-9 SECTION 4. (a) Not later than September 1, 2010, the
6-10 Railroad Commission of Texas shall be prepared to grant extensions
6-11 of the deadline for plugging an inactive well under Subchapter B-1,
6-12 Chapter 89, Natural Resources Code, as added by this Act.

6-13 (b) The change in law made by this Act applies only to the
6-14 renewal or approval of an organization report on or after September
6-15 1, 2010. The renewal or approval of an organization report before
6-16 September 1, 2010, is governed by the law as it existed immediately
6-17 before the effective date of this Act, and that law is continued in
6-18 effect for that purpose.

6-19 SECTION 5. This Act takes effect September 1, 2009.

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