

1-1 By: Duncan, Averitt S.B. No. 1378
1-2 (In the Senate - Filed March 4, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Natural Resources;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1378 By: Duncan

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

1-10 relating to the plugging of certain inactive oil or gas wells.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (a), Section 89.002, Natural
1-13 Resources Code, is amended by amending Subdivision (7) and adding
1-14 Subdivisions (9), (10), (11), (12), and (13) to read as follows:

1-15 (7) "Delinquent inactive well" means an inactive
1-16 [unplugged] well [that has had no reported production, disposal,
1-17 injection, or other permitted activity for a period of greater than
1-18 12 months and] for which, after notice and opportunity for a
1-19 hearing, the commission has not extended the plugging deadline.

1-20 (9) "Cost calculation for plugging an inactive well"
1-21 means the commission's calculated cost for each foot of well depth
1-22 plugged based on average actual plugging costs for wells reported
1-23 by the commission for the preceding state fiscal year for the
1-24 commission oil and gas division district in which the inactive well
1-25 is located.

1-26 (10) "Enhanced oil recovery project":

1-27 (A) means:

1-28 (i) a commission-approved project that uses
1-29 any process for the displacement of oil or other hydrocarbons from a
1-30 reservoir other than primary recovery and includes the use of an
1-31 immiscible, miscible, chemical, thermal, or biological process;

1-32 (ii) a certified project described by
1-33 Section 202.054, Tax Code; or

1-34 (iii) any other project approved by the
1-35 commission for enhanced oil recovery; and

1-36 (B) does not include a water disposal project.

1-37 (11) "Good faith claim" means a factually supported
1-38 claim based on a recognized legal theory to a continuing possessory
1-39 right in a mineral estate, such as evidence of a currently valid oil
1-40 and gas lease or a recorded deed conveying a fee interest in the
1-41 mineral estate.

1-42 (12) "Inactive well" means an unplugged well that has
1-43 had no reported production, disposal, injection, or other permitted
1-44 activity for a period of greater than 12 months.

1-45 (13) "Physical termination of electric lines to an
1-46 inactive well" means the disconnection of electric service to an
1-47 inactive well site at a point on the electric service lines most
1-48 distant from the production site toward the main supply line in a
1-49 manner that will not interfere with electrical supply to adjacent
1-50 operations, including cathodic protection units.

1-51 SECTION 2. Chapter 89, Natural Resources Code, is amended
1-52 by adding Subchapter B-1 to read as follows:

1-53 SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

1-54 Sec. 89.021. APPLICABILITY. This subchapter does not apply
1-55 to a bay or offshore well as defined by commission rules.

1-56 Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED.

1-57 (a) Except as provided by Section 89.023, on or before the date the
1-58 operator is required to renew the operator's organization report
1-59 required by Section 91.142, an operator of an inactive well must
1-60 plug the well in accordance with statutes and commission rules in
1-61 effect at the time of plugging.

1-62 (b) Notwithstanding Subsection (a), a person who assumes
1-63 responsibility for the physical operation and control of an

2-1 existing inactive well must satisfy the requirements of Sections
 2-2 89.023(a)(1) and (4) not later than six months after the date the
 2-3 commission approves the initial form described by Section
 2-4 89.002(a)(2) and filed with the commission under which the person
 2-5 assumes responsibility for the well.

2-6 (c) The commission may not renew or approve the organization
 2-7 report required by Section 91.142 for an operator that fails to
 2-8 comply with the requirements of this subchapter.

2-9 Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE
 2-10 WELL. (a) The commission may grant an extension of the deadline
 2-11 for plugging an inactive well if the operator maintains a current
 2-12 organization report with the commission as required by Section
 2-13 91.142 and if, on or before the date of renewal of the operator's
 2-14 organization report as required by that section, the operator files
 2-15 with the commission an application for an extension that includes:

2-16 (1) an affirmation that complies with Section 89.029;

2-17 (2) a statement that the well and associated
 2-18 facilities are in compliance with all commission rules and orders;

2-19 (3) a statement that the operator has, and on request
 2-20 will provide, evidence of a good faith claim to a continuing right
 2-21 to operate the well; and

2-22 (4) at least one of the following:

2-23 (A) documentation that since the preceding date
 2-24 that the operator's organization report was required to be renewed
 2-25 the operator has plugged, or restored to active operation as
 2-26 defined by commission rule, a number of inactive wells equal to or
 2-27 greater than 10 percent of the number of inactive wells operated by
 2-28 the operator on that date;

2-29 (B) an abeyance of plugging report on a form
 2-30 approved by the commission that:

2-31 (i) is in the form of a certification signed
 2-32 by a person licensed by the Texas Board of Professional Engineers or
 2-33 the Texas Board of Professional Geoscientists;

2-34 (ii) includes:

2-35 (a) an affirmation by the licensed
 2-36 person that the well has:

2-37 (1) a reasonable expectation of
 2-38 economic value in excess of the cost of plugging the well for the
 2-39 duration of the period covered by the report, based on the cost
 2-40 calculation for plugging an inactive well; and

2-41 (2) a reasonable expectation of
 2-42 being restored to a beneficial use that will prevent waste of oil or
 2-43 gas resources that otherwise would not be produced if the well were
 2-44 plugged; and

2-45 (b) appropriate documentation
 2-46 demonstrating the basis for the affirmation of the well's future
 2-47 utility; and

2-48 (iii) specifies the field and the covered
 2-49 wells within that field in a format prescribed by the commission;

2-50 (C) a statement that the well is part of an
 2-51 enhanced oil recovery project;

2-52 (D) if the operator of the well is not currently
 2-53 otherwise required by commission rule or order to conduct a fluid
 2-54 level or hydraulic pressure test of the well, documentation of the
 2-55 results of a successful fluid level or hydraulic pressure test of
 2-56 the well conducted in accordance with the commission's rules in
 2-57 effect at the time the test is conducted;

2-58 (E) a supplemental bond, letter of credit, or
 2-59 cash deposit sufficient for each well specified in the application
 2-60 that:

2-61 (i) complies with the requirements of
 2-62 Chapter 91; and

2-63 (ii) is of an amount at least equal to the
 2-64 cost calculation for plugging an inactive well for each well
 2-65 specified in the application;

2-66 (F) documentation of the deposit with the
 2-67 commission each time the operator files an application of an amount
 2-68 of escrow funds as prescribed by commission rule that equal at least
 2-69 10 percent of the total cost calculation for plugging an inactive

3-1 well for each well specified in the application; or
3-2 (G) if the operator is a publicly traded entity:
3-3 (i) the following documents:
3-4 (a) a copy of the operator's federal
3-5 documents filed to comply with Financial Accounting Standards Board
3-6 Statement No. 143, Accounting for Asset Retirement Obligations; and
3-7 (b) an original, executed Uniform
3-8 Commercial Code Form 1 Financing Statement, filed with the
3-9 secretary of state, that:
3-10 (1) names the operator as the
3-11 "debtor" and the Railroad Commission of Texas as the "secured
3-12 creditor"; and
3-13 (2) specifies the funds covered
3-14 by the documents described by Sub-subparagraph (a) in the amount of
3-15 the cost calculation for plugging an inactive well for each well
3-16 specified in the application; or
3-17 (ii) a blanket bond in the amount of the
3-18 lesser of:
3-19 (a) the cost calculation for plugging
3-20 any inactive wells; or
3-21 (b) \$2 million.
3-22 (b) Notwithstanding Subsection (a), an operator may not
3-23 obtain an extension of the deadline for plugging an inactive well by
3-24 complying with that subsection if the plugging of the well is
3-25 otherwise required by commission rules or orders.
3-26 Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance
3-27 of plugging report filed under Section 89.023(a)(4)(B) is valid for
3-28 a period of not more than five years.
3-29 (b) An abeyance of plugging report may cover more than one
3-30 well in a field but may not cover more than one field.
3-31 (c) An abeyance of plugging report may not be transferred to
3-32 a new operator of an existing inactive well. A new operator of an
3-33 existing inactive well must file a new abeyance of plugging report
3-34 or otherwise comply with the requirements of this subchapter on or
3-35 before the deadline provided by Section 89.022(b). This subsection
3-36 does not prohibit the transfer of an abeyance of plugging report in
3-37 the event of a change of name of an operator.
3-38 (d) An operator who files an abeyance of plugging report
3-39 must pay an annual fee of \$100 for each well covered by the report.
3-40 A fee collected under this section shall be deposited in the
3-41 oil-field cleanup fund.
3-42 Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For
3-43 purposes of Section 89.023(a)(4)(C), an inactive well is considered
3-44 to be part of an enhanced oil recovery project if the well is
3-45 located on a unit or lease or in a field associated with such a
3-46 project.
3-47 (b) A statement that an inactive well is part of an enhanced
3-48 oil recovery project may not be transferred to a new operator of an
3-49 existing inactive well. A new operator of an existing inactive well
3-50 must file a new statement that the well is part of such a project or
3-51 otherwise comply with the requirements of this subchapter on or
3-52 before the deadline provided by Section 89.022(b). This subsection
3-53 does not prohibit the transfer of a statement that a well is part of
3-54 an enhanced oil recovery project in the event of a change of name of
3-55 an operator.
3-56 Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST.
3-57 (a) Documentation filed under Section 89.023(a)(4)(D) of the
3-58 results of a successful fluid level test is valid for a period of
3-59 one year from the date of the test. Documentation filed under that
3-60 section of the results of a successful hydraulic pressure test is
3-61 valid for a period of not more than five years from the date of the
3-62 test.
3-63 (b) The operator must notify the office of the commission
3-64 oil and gas division district in which an inactive well is located
3-65 at least three days before the date the operator conducts a fluid
3-66 level or hydraulic pressure test of the well and may not conduct the
3-67 test without the approval of the office. The commission may require
3-68 that a test be witnessed by a commission employee.
3-69 (c) Documentation of the results of a successful fluid level

4-1 or hydraulic pressure test may be transferred to a new operator of
 4-2 an existing inactive well.

4-3 (d) An operator who files documentation described by
 4-4 Subsection (a) must pay an annual fee of \$50 for each well covered
 4-5 by the documentation. A fee collected under this section shall be
 4-6 deposited in the oil-field cleanup fund.

4-7 Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A
 4-8 supplemental bond, letter of credit, or cash deposit filed under
 4-9 Section 89.023(a)(4)(E) is in addition to any other financial
 4-10 assurance otherwise required of the operator or for the well.

4-11 (b) A supplemental bond, letter of credit, or cash deposit
 4-12 may not be transferred to a new operator of an existing inactive
 4-13 well. A new operator of an existing inactive well must file a new
 4-14 supplemental bond, letter of credit, or cash deposit or otherwise
 4-15 comply with the requirements of this subchapter by the deadline
 4-16 provided by Section 89.022(b).

4-17 Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by
 4-18 Section 89.023(a)(4)(F) must be deposited with the commission each
 4-19 time an operator files an application for an extension of the
 4-20 deadline for plugging an inactive well.

4-21 (b) Escrow funds deposited with the commission may be
 4-22 released only with the approval of the commission as prescribed by
 4-23 commission rule.

4-24 Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS.

4-25 (a) An application for an extension of the deadline for plugging
 4-26 an inactive well must include a written affirmation by the
 4-27 operator:

4-28 (1) that the operator has physically terminated
 4-29 electric service to the well's production site; and

4-30 (2) stating the following, as applicable, if the
 4-31 operator does not own the surface of the land on which the well is
 4-32 located:

4-33 (A) if the well has been inactive for at least
 4-34 five years but for less than 10 years as of the date of renewal of
 4-35 the operator's organization report, that the operator has emptied
 4-36 or purged of production fluids all piping, tanks, vessels, and
 4-37 equipment associated with and exclusive to the well; or

4-38 (B) if the well has been inactive for at least 10
 4-39 years as of the date of renewal of the operator's organization
 4-40 report, that the operator has removed all surface process equipment
 4-41 and related piping, tanks, tank batteries, pump jacks, headers, and
 4-42 fences, as well as junk and trash as defined by commission rule,
 4-43 associated with and exclusive to the well.

4-44 (b) An operator of an inactive well shall leave a clearly
 4-45 visible marker at the wellhead of the well.

4-46 (c) The commission shall adopt rules regulating the
 4-47 transfer of material described by Subsection (a)(2)(B) and
 4-48 restricting its accumulation on an active lease.

4-49 (d) Notwithstanding Subsection (a), an operator may be
 4-50 eligible for a temporary extension of the deadline for plugging an
 4-51 inactive well or a temporary exemption from the requirements of
 4-52 Subsection (a) as provided by commission rule if the operator is
 4-53 unable to comply with the requirements of that subsection because
 4-54 of safety concerns or required maintenance of the well site and the
 4-55 operator includes with the application a written affirmation of the
 4-56 facts regarding the safety concerns or maintenance.

4-57 (e) An operator may be eligible for an extension of the
 4-58 deadline for plugging a well without complying with Subsection
 4-59 (a)(2)(B) if the well is located on a unit or lease or in a field
 4-60 associated with an enhanced oil recovery project and the operator
 4-61 includes a statement in the written affirmation that the well is
 4-62 part of such a project. The exemption provided by this subsection
 4-63 applies only to the equipment required for the project.

4-64 (f) Notwithstanding the other provisions of this
 4-65 subchapter, the commission shall adopt rules providing for the
 4-66 phase-in of the duty to comply with Subsection (a)(2)(B) over a
 4-67 period of five years beginning September 1, 2010. The rules must
 4-68 require the operators of one-fifth of the wells that are subject to
 4-69 that subsection in each year during the phase-in period to comply

5-1 with that subsection.

5-2 Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR
5-3 PLUGGING INACTIVE WELL. The commission may revoke an extension of
5-4 the deadline for plugging an inactive well granted under this
5-5 subchapter if the commission determines, after notice and an
5-6 opportunity for a hearing, that the applicant is ineligible for the
5-7 extension under the commission's rules or orders.

5-8 SECTION 3. Subsection (c), Section 91.111, Natural
5-9 Resources Code, is amended to read as follows:

5-10 (c) The fund consists of:

5-11 (1) penalties imposed under Section 85.381 for
5-12 violation of a law, order, or rule relating to well plugging
5-13 requirements;

5-14 (2) proceeds from bonds and other financial security
5-15 required by this chapter and benefits under well-specific plugging
5-16 insurance policies described by Section 91.104(c) that are paid to
5-17 the state as contingent beneficiary of the policies, subject to the
5-18 refund provisions of Section 91.1091, if applicable;

5-19 (3) private contributions, including contributions
5-20 made under Section 89.084;

5-21 (4) expenses collected under Section 89.083;

5-22 (5) fees imposed under Section 85.2021;

5-23 (6) civil penalties collected for violations of
5-24 Chapter 89 or of rules or orders relating to plugging that are
5-25 adopted under this code;

5-26 (7) proceeds collected under Sections 89.085 and
5-27 91.115;

5-28 (8) interest earned on the funds deposited in the
5-29 fund;

5-30 (9) civil penalties or costs recovered under Section
5-31 91.457 or 91.459;

5-32 (10) oil and gas waste hauler permit application fees
5-33 collected under Section 29.015, Water Code;

5-34 (11) costs recovered under Section 91.113(f);

5-35 (12) hazardous oil and gas waste generation fees
5-36 collected under Section 91.605;

5-37 (13) oil-field cleanup regulatory fees on oil
5-38 collected under Section 81.116;

5-39 (14) oil-field cleanup regulatory fees on gas
5-40 collected under Section 81.117;

5-41 (15) fees for a reissued certificate collected under
5-42 Section 91.707;

5-43 (16) fees collected under Section 91.1013;

5-44 (17) fees collected under Section 89.088;

5-45 (18) penalties collected under Section 81.0531;

5-46 (19) fees collected under Section 91.142;

5-47 (20) fees collected under Section 91.654;

5-48 (21) costs recovered under Sections 91.656 and 91.657;

5-49 (22) two-thirds of the fees collected under Section
5-50 81.0521; ~~and~~

5-51 (23) fees collected under Sections 89.024 and 89.026;
5-52 and

5-53 (24) legislative appropriations.

5-54 SECTION 4. (a) Not later than September 1, 2010, the
5-55 Railroad Commission of Texas shall be prepared to grant extensions
5-56 of the deadline for plugging an inactive well under Subchapter B-1,
5-57 Chapter 89, Natural Resources Code, as added by this Act.

5-58 (b) The change in law made by this Act applies only to the
5-59 renewal or approval of an organization report on or after September
5-60 1, 2010. The renewal or approval of an organization report before
5-61 September 1, 2010, is governed by the law as it existed immediately
5-62 before the effective date of this Act, and that law is continued in
5-63 effect for that purpose.

5-64 SECTION 5. This Act takes effect September 1, 2009.

5-65 * * * * *