

By: Goodwin

H.B. No. 3839

A BILL TO BE ENTITLED

AN ACT

relating to financial security requirements for operators of oil and gas wells.

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

SECTION 1. Section 81.067(c), Natural Resources Code, is amended to read as follows:

(c) The fund consists of:

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

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

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

(9) costs recovered under Section 91.113(f);

- 1 (10) hazardous oil and gas waste generation fees
2 collected under Section 91.605;
- 3 (11) oil-field cleanup regulatory fees on oil
4 collected under Section 81.116;
- 5 (12) oil-field cleanup regulatory fees on gas
6 collected under Section 81.117;
- 7 (13) fees for a reissued certificate collected under
8 Section 91.707;
- 9 (14) fees collected under Section 91.1013;
- 10 (15) fees collected under Section 89.088;
- 11 (16) fees collected under Section 91.142;
- 12 (17) fees collected under Section 91.654;
- 13 (18) costs recovered under Sections 91.656 and 91.657;
- 14 (19) fees collected under Section 81.0521;
- 15 (20) fees collected under Sections 89.024 and 89.026;
- 16 (21) legislative appropriations;
- 17 (22) any surcharges collected under Section 81.070;
- 18 (23) fees collected under Section 91.0115;
- 19 (24) fees collected under Subchapter E, Chapter 121,
20 Utilities Code;
- 21 (25) fees collected under Section 27.0321, Water Code;
- 22 (26) fees collected under Section 81.071; ~~and~~
- 23 (27) money collected under Section 81.021; and
- 24 (28) money transferred from a sinking fund under
25 Section 91.1045(b)(2).

26 SECTION 2. Section 89.023(a), Natural Resources Code, is
27 amended to read as follows:

1 (a) The commission may grant an extension of the deadline
2 for plugging an inactive well if the operator maintains a current
3 organization report with the commission as required by Section
4 91.142 and if, on or before the date of renewal of the operator's
5 organization report as required by that section, the operator files
6 with the commission an application for an extension that includes:

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

8 (2) a statement that the operator has, and on request
9 will provide, evidence of a good faith claim to a continuing right
10 to operate the well; ~~and~~

11 (3) at least one of the following:

12 (A) documentation that since the preceding date
13 that the operator's organization report was required to be renewed
14 the operator has plugged, or restored to active operation as
15 defined by commission rule, a number of inactive wells equal to or
16 greater than 10 percent of the number of inactive wells operated by
17 the operator on that date;

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

20 (i) is in the form of a certification signed
21 by a person licensed by the Texas Board of Professional Engineers
22 and Land Surveyors as an engineer or by the Texas Board of
23 Professional Geoscientists;

24 (ii) includes:

25 (a) an affirmation by the licensed
26 person that the well has:

27 (1) a reasonable expectation of

1 economic value in excess of the cost of plugging the well for the
2 duration of the period covered by the report, based on the cost
3 calculation for plugging an inactive well; and

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

8 (b) appropriate documentation
9 demonstrating the basis for the affirmation of the well's future
10 utility; and

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

13 (C) a statement that the well is part of an
14 enhanced oil recovery project;

15 (D) if the operator of the well is not currently
16 otherwise required by commission rule or order to conduct a fluid
17 level or hydraulic pressure test of the well, documentation of the
18 results of a successful fluid level or hydraulic pressure test of
19 the well conducted in accordance with the commission's rules in
20 effect at the time the test is conducted;

21 (E) ~~[a supplemental bond, letter of credit, or~~
22 ~~cash deposit sufficient for each well specified in the application~~
23 ~~that:~~

24 ~~[(i) complies with the requirements of~~
25 ~~Chapter 91, and~~

26 ~~[(ii) is of an amount at least equal to the~~
27 ~~cost calculation for plugging an inactive well for each well~~

1 ~~specified in the application;~~

2 ~~[(F)]~~ documentation of the deposit with the
3 commission each time the operator files an application of an amount
4 of escrow funds as prescribed by commission rule that equal at least
5 10 percent of the total cost calculation for plugging an inactive
6 well for each well specified in the application; or

7 (F) ~~[(G)]~~ if the operator is a publicly traded
8 entity, ~~[-]~~

9 ~~[(i)]~~ the following documents:

10 (i) ~~[(a)]~~ a copy of the operator's federal
11 documents filed to comply with Financial Accounting Standards Board
12 Statement No. 143, Accounting for Asset Retirement Obligations;
13 and

14 (ii) ~~[(b)]~~ an original, executed Uniform
15 Commercial Code Form 1 Financing Statement, filed with the
16 secretary of state, that:

17 (a) ~~[(1)]~~ names the operator as the
18 "debtor" and the Railroad Commission of Texas as the "secured
19 creditor"; and

20 (b) ~~[(2)]~~ specifies the funds covered
21 by the documents described by Subparagraph (i) ~~[Sub-subparagraph~~
22 ~~(a)]~~ in the amount at least equal to the applicable decommissioning
23 cost estimate established by the commission under Section
24 91.1041(b) for each well specified in the application; and

25 (4) a supplemental bond, letter of credit, or cash
26 deposit sufficient for each well specified in the application that:

27 (A) complies with the requirements of Chapter 91;

1 and

2 (B) is of an amount at least equal to the
3 applicable decommissioning cost estimate established by the
4 commission under Section 91.1041(b) for each well specified in the
5 application [~~of the cost calculation for plugging an inactive well~~
6 ~~for each well specified in the application; or~~

7 [~~(ii) a blanket bond in the amount of the~~
8 ~~lesser of:~~

9 [(a) the cost calculation for
10 plugging any inactive wells; or

11 [(b) \$2 million].

12 SECTION 3. Section 89.027(a), Natural Resources Code, is
13 amended to read as follows:

14 (a) A supplemental bond, letter of credit, or cash deposit
15 filed under Section 89.023(a)(4) [~~89.023(a)(3)(E)~~] is in addition
16 to any other financial assurance otherwise required of the operator
17 or for the well.

18 SECTION 4. Section 89.028(a), Natural Resources Code, is
19 amended to read as follows:

20 (a) Escrow funds described by Section 89.023(a)(3)(E)
21 [~~89.023(a)(3)(F)~~] must be deposited with the commission each time
22 an operator files an application for an extension of the deadline
23 for plugging an inactive well.

24 SECTION 5. Sections 91.104(b) and (c), Natural Resources
25 Code, are amended to read as follows:

26 (b) A person required to file a bond, letter of credit, or
27 cash deposit under Section 91.103 who is an inactive operator or who

1 operates one or more wells must, at the time of filing or renewing
2 an organization report required by Section 91.142, file:

3 (1) an individual bond as provided under Section
4 91.1041; or

5 (2) [~~a blanket bond as provided under Section 91.1042,~~
6 ~~or~~

7 [~~3~~] a letter of credit or cash deposit in the same
8 amount as required for an individual bond under Section 91.1041 [~~or~~
9 ~~a blanket bond under Section 91.1042~~].

10 (c) A person required to file a bond, letter of credit, or
11 cash deposit under Section 91.103 who operates one or more wells is
12 considered to have met that requirement for a well if the well bore
13 is included in a well-specific plugging insurance policy that:

14 (1) is approved by the Texas Department of Insurance;

15 (2) names this state as the owner and contingent
16 beneficiary of the policy;

17 (3) names a primary beneficiary who agrees to plug the
18 specified well bore;

19 (4) is fully prepaid and cannot be canceled or
20 surrendered;

21 (5) provides that the policy continues in effect until
22 the specified well bore has been plugged;

23 (6) provides that benefits will be paid when, but not
24 before, the specified well bore has been plugged in accordance with
25 commission rules in effect at the time of plugging; and

26 (7) provides benefits that equal the greatest of:

27 (A) the [~~an~~] amount established by the commission

1 based on the decommissioning cost estimate established under
2 Section 91.1041(b) for the applicable region [~~equal to \$2 for each~~
3 ~~foot of well depth, as determined in the manner specified by the~~
4 ~~commission, for the specified well~~];

5 (B) if the specified well is a bay well and
6 regardless of whether the well is producing oil or gas, the amount
7 required under commission rules for a bay well that is not producing
8 oil or gas;

9 (C) if the specified well is an offshore well and
10 regardless of whether the well is producing oil or gas, the amount
11 required under commission rules for an offshore well that is not
12 producing oil or gas; or

13 (D) the payment otherwise due under the policy
14 for plugging the well bore.

15 SECTION 6. Subchapter D, Chapter 91, Natural Resources
16 Code, is amended by amending Section 91.1041 and adding Section
17 91.1045 to read as follows:

18 Sec. 91.1041. INDIVIDUAL BOND. (a) A person required to
19 file a bond, letter of credit, or cash deposit under Section 91.103
20 who operates one or more wells may file a bond in an amount
21 established by the commission. The commission shall establish the
22 bond amount based on the decommissioning cost estimate established
23 under Subsection (b) for the applicable region [~~equal to \$2 for each~~
24 ~~foot of well depth for each well~~].

25 (b) Based on the information provided to the commission
26 under [~~Notwithstanding~~] Subsection (c) [~~(a)~~], the commission [~~by~~
27 ~~rule~~] shall establish decommissioning cost estimates for each oil

1 and gas producing region of the state, as determined by the
2 commission, annually and post the estimates on the commission's
3 publicly accessible Internet website [~~set the amount of the bond~~
4 ~~for an operator of one or more bay or offshore wells at a reasonable~~
5 ~~amount that exceeds the amount provided by Subsection (a)].~~

6 (c) The commission shall require each operator to provide
7 decommissioning cost information to the commission on an annual
8 basis, including, for each well site:

9 (1) the depth of the well;

10 (2) the age of the well bore;

11 (3) a summary explaining factors or complications
12 related to the well or well site that may influence the cost of
13 plugging or cleanup at the well site;

14 (4) an estimated cost of materials and equipment
15 necessary to plug the well bore and clean up the well site;

16 (5) an estimated cost of labor necessary to plug the
17 well bore, clean up the well site, and remove any equipment;

18 (6) overhead expenses; and

19 (7) whether the well bore or site has undergone
20 reworking operations during the preceding year.

21 (d) When calculating under Subsection (a) the amount of the
22 bond a person who operates one or more wells is required to file,
23 the commission shall exclude a well if the well bore is included in
24 a well-specific plugging insurance policy described by Section
25 91.104(c).

26 (e) [~~(d)~~] If the inclusion of a bay or offshore well whose
27 well bore is included in a well-specific plugging insurance policy

1 described by Section 91.104(c) in the calculation under Subsection
2 (b) of the amount of the bond an operator of one or more bay or
3 offshore wells is required to file would result in an increase in
4 the amount of the bond that would otherwise be required, the rules
5 must provide for the exclusion of the well from the calculation.

6 Sec. 91.1045. PAYMENT TO AND USE OF SINKING FUND. (a) A
7 person who files a bond under Section 91.1041 shall pay into a
8 sinking fund established by the commission an amount equal to the
9 full cost of decommissioning the well for which the bond was filed,
10 as determined by the commission under Section 91.1041(b), divided
11 into equal annual payments to be completed by the earlier of:

12 (1) 15 years; or

13 (2) the estimated number of years the well is expected
14 to be productive based on the projected production decline curve of
15 the well.

16 (b) Money in the sinking fund may be used by the operator or
17 the commission to pay the costs of plugging the well bore and
18 remediating the well site. Any amount remaining in the sinking fund
19 after the plugging and remediation is complete shall be transferred
20 to:

21 (1) the operator, if the operator plugs the well and
22 remediates the well site to commission standards; or

23 (2) the oil and gas regulation and cleanup fund
24 established under Section 81.067, if, after the operator is given
25 the opportunity to complete the plugging and remediation, the
26 commission plugs the well and remediates the well site to
27 commission standards.

1 (c) This section does not apply to an operator whose
2 operation results in the completion of a well as a dry hole. An
3 operator described by this subsection must plug the well in
4 accordance with the inactive well plugging requirements
5 established under Chapter 81.

6 SECTION 7. Section 91.1042, Natural Resources Code, is
7 repealed.

8 SECTION 8. (a) The changes in law made by this Act apply
9 only to a person required to file a bond, letter of credit, or cash
10 deposit under Section 89.023 or 91.103, Natural Resources Code, on
11 or after the effective date of this Act. A person required to file a
12 bond, letter of credit, or cash deposit under Section 89.023 or
13 91.103, Natural Resources Code, before the effective date of this
14 Act is governed by the law as it existed immediately before the
15 effective date of this Act, and that law is continued in effect for
16 that purpose.

17 (b) Notwithstanding Subsection (a), an operator of a well in
18 existence on the effective date of this Act is not required to hold
19 an individual bond that meets the requirements of Section 91.1041,
20 Natural Resources Code, as amended by this Act, until September 1,
21 2028, and the law as it existed immediately before the effective
22 date of this Act is continued in effect for that purpose.

23 SECTION 9. This Act takes effect September 1, 2023.