

By: Guillen

H.B. No. 4046

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the reduction and plugging of orphaned oil and gas
3 wells; providing for the imposition of a fee and an exemption from
4 certain taxes and fees.

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

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

8 (c) The fund consists of:

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

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

16 (3) expenses collected under Section 89.083;

17 (4) fees imposed under Section 85.2021;

18 (5) costs recovered under Section 91.457 or 91.459;

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

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

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

- 1 (9) costs recovered under Section 91.113(f);
- 2 (10) hazardous oil and gas waste generation fees
- 3 collected under Section 91.605;
- 4 (11) oil-field cleanup regulatory fees on oil
- 5 collected under Section 81.116;
- 6 (12) oil-field cleanup regulatory fees on gas
- 7 collected under Section 81.117;
- 8 (13) fees for a reissued certificate collected under
- 9 Section 91.707;
- 10 (14) fees collected under Section 91.1013;
- 11 (15) fees collected under Section 89.088;
- 12 (16) fees collected under Section 91.142;
- 13 (17) fees collected under Section 91.654;
- 14 (18) costs recovered under Sections 91.656 and 91.657;
- 15 (19) fees collected under Section 81.0521;
- 16 (20) fees collected under Sections 89.024 and 89.026;
- 17 (21) legislative appropriations;
- 18 (22) any surcharges collected under Section 81.070;
- 19 (23) fees collected under Section 91.0115;
- 20 (24) fees collected under Subchapter E, Chapter 121,
- 21 Utilities Code;
- 22 (25) fees collected under Section 27.0321, Water Code;
- 23 (26) fees collected under Section 81.071; ~~and~~
- 24 (27) money collected under Section 81.021; and
- 25 (28) fees collected under Section 89.0475.

26 SECTION 2. Section 89.002(a), Natural Resources Code, is
27 amended by adding Subdivision (14) to read as follows:

1 (14) "Operator affected by an orphaned well" means:

2 (A) an operator of an oil or gas well that
3 accesses a productive horizon also accessed by an orphaned well; or

4 (B) an operator of an oil or gas well with a good
5 faith claim to access a productive horizon also accessed by an
6 orphaned well.

7 SECTION 3. Section 89.044(a), Natural Resources Code, is
8 amended to read as follows:

9 (a) The commission [~~or its employees or agents~~], the
10 operator, an operator affected by an orphaned well, [~~or~~] the
11 nonoperator, or an employee or agent of one of those persons, on
12 proper identification, may enter the land of another for the
13 purpose of plugging or replugging a well that has not been properly
14 plugged. An action to prevent the entry of land of another for the
15 purpose of plugging or replugging a well that has not been properly
16 plugged may not be sustained against a person authorized by this
17 subsection to enter the land for that purpose.

18 SECTION 4. The heading to Section 89.047, Natural Resources
19 Code, is amended to read as follows:

20 Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM: OPERATORS
21 DESIGNATED IN 2006 OR 2007.

22 SECTION 5. Subchapter C, Chapter 89, Natural Resources
23 Code, is amended by adding Section 89.0475 to read as follows:

24 Sec. 89.0475. REDUCTION AND PLUGGING OF ORPHANED WELLS:
25 OPERATORS DESIGNATED BEGINNING IN 2024. (a) In this section,
26 "operator in good standing" and "orphaned well" have the meanings
27 assigned by Section 89.047.

1 (b) The commission shall designate a person who is an
2 operator in good standing as the operator of an orphaned well if the
3 person files with the commission:

4 (1) a factually supported claim based on a recognized
5 legal theory to a continuing possessory right in the mineral estate
6 accessed by the well, such as evidence of a current oil and gas
7 lease or a recorded deed conveying a fee interest in the mineral
8 estate;

9 (2) a completed certificate of compliance; and

10 (3) a nonrefundable fee in the amount of \$250.

11 (c) A fee collected under Subsection (b)(3) shall be
12 deposited to the credit of the oil and gas regulation and cleanup
13 fund.

14 (d) A person who is designated as the operator of an
15 orphaned well on or after January 1, 2024, is entitled to receive:

16 (1) a nontransferable exemption from severance taxes
17 for production from the well as provided by Section 202.060, Tax
18 Code, until the fifth anniversary of the date the commission
19 designates the person as the operator of the well;

20 (2) a nontransferable exemption from the fees provided
21 by Sections 81.116 and 81.117 for production from the well until the
22 fifth anniversary of the date the commission designates the person
23 as the operator of the well; and

24 (3) a payment from the commission in the amount
25 described by Subsection (f) using money from the oil and gas
26 regulation and cleanup fund.

27 (e) A person who is designated as the operator of an

1 orphaned well is entitled to a payment under Subsection (d)(3) only
2 if:

3 (1) not later than the first anniversary of the date
4 the commission designates the person as the operator of the well:

5 (A) the person plugs the well in accordance with
6 commission rules; or

7 (B) the commission approves the application of
8 the owner of the surface estate of the tract of land on which the
9 well is located to condition the well for fresh water production and
10 the person designated as the operator of the well plugs the well in
11 accordance with commission rules up to the base of the usable
12 quality water stratum; and

13 (2) not later than the end of the state fiscal year
14 following the state fiscal year in which the person plugs the well,
15 the person submits to the commission:

16 (A) a request for reimbursement for plugging the
17 well; and

18 (B) documentation of the cost of plugging the
19 well.

20 (f) The amount to which a person is entitled under
21 Subsection (d)(3) is equal to 50 percent of the lesser of:

22 (1) the documented well-plugging costs; or

23 (2) the average cost incurred by the commission in the
24 preceding 24 months in plugging similar wells located in the same
25 county or general area.

26 (g) The commission shall make payments to persons under
27 Subsection (d)(3) annually in the same order the commission

1 determines the persons to be entitled to the payments. The
2 aggregate amount of payments in a state fiscal year under
3 Subsection (d)(3) may not exceed \$500,000. The commission may, in
4 its discretion, make a payment to a person under Subsection (d)(3)
5 in the fiscal year following the fiscal year in which the well was
6 plugged. A person may not receive:

7 (1) more than one payment under Subsection (d)(3) for
8 the same well; or

9 (2) cumulative payments in an amount that exceeds the
10 amount of the bond, letter of credit, or cash deposit the person has
11 filed with the commission under Section 91.104.

12 (h) The commissioner shall include wells plugged under this
13 section in:

14 (1) the commission's well-plugging performance
15 metrics; and

16 (2) any monthly report produced by the commission
17 relating to well-plugging activity.

18 SECTION 6. The heading to Section 89.048, Natural Resources
19 Code, is amended to read as follows:

20 Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER OR
21 AFFECTED OPERATOR.

22 SECTION 7. Section 89.048, Natural Resources Code, is
23 amended by amending Subsections (b), (c), and (d) and adding
24 Subsections (c-1) and (d-1) to read as follows:

25 (b) The owner of an interest in the surface estate of a tract
26 of land on which an orphaned well is located or an operator affected
27 by an orphaned well may contract with a commission-approved well

1 plugger to plug the well.

2 (c) If the surface estate owner or an operator affected by
3 an orphaned well enters into a contract under Subsection (b), the
4 surface estate owner, operator affected by an orphaned well, or
5 well plugger shall:

6 (1) not later than the 15th [~~30th~~] day before the date
7 the well is plugged, mail notice of its intent to plug the well to
8 the operator of the well at the operator's address as shown by the
9 records of the commission;

10 (2) assume responsibility for the physical operation
11 and control of the well as shown by a form the person files with the
12 commission and the commission approves;

13 (3) file a bond, letter of credit, or cash deposit
14 covering the well as required by Section 91.107; and

15 (4) plug the well in accordance with commission rules.

16 (c-1) On satisfaction of commission requirements, the
17 commission shall issue to a surface estate owner, operator affected
18 by an orphaned well, or well plugger, regardless of whether the
19 person has a good faith claim to the mineral estate accessed by an
20 orphaned well, a certificate of compliance and transportation
21 authority or similar authorization showing the person's assumption
22 of control of the well under Subsection (c)(2) for the purpose of
23 plugging or replugging the well.

24 (d) On successful plugging of the well by the well plugger,
25 the surface estate owner or an operator affected by an orphaned well
26 may submit documentation to the commission of the cost of the
27 well-plugging operation. The commission shall reimburse the

1 surface estate owner or an operator affected by an orphaned well
2 from money in the oil and gas regulation and cleanup fund in an
3 amount not to exceed 50 percent of the lesser of:

- 4 (1) the documented well-plugging costs; or
5 (2) the average cost incurred by the commission in the
6 preceding 24 months in plugging similar wells located in the same
7 county or general area.

8 (d-1) The commissioner shall include wells plugged under
9 this section in:

- 10 (1) the commission's well-plugging performance
11 metrics; and
12 (2) any monthly report produced by the commission
13 relating to well-plugging activity.

14 SECTION 8. Sections 202.060(b) and (c), Tax Code, are
15 amended to read as follows:

16 (b) The commission shall issue a certificate to a person who
17 is designated by the commission under Section 89.047 or 89.0475,
18 Natural Resources Code, as the operator of an orphaned well. The
19 certificate must identify the operator to whom and the well for
20 which the certificate is issued.

21 (c) Hydrocarbons produced from the well identified in the
22 certificate qualify for a severance tax exemption for the period
23 described by Section 89.047 or 89.0475, Natural Resources Code, as
24 applicable.

25 SECTION 9. This Act takes effect January 1, 2024.