

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1166
By: Armbrister
Natural Resources
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently a lien can be created to pay for the costs of an oil or gas spill or for plugging an oil or gas well. However, the present liens do not always reach sufficient assets of the operator or nonoperator to cover the costs incurred by the Railroad Commission of Texas (commission). In some instances, state-funded plugging costs may not be incurred for several months or longer after a well is abandoned and, as a result, it may become very difficult to recover these expenses from the responsible operator.

Current law creates a lien only on the operator's or nonoperator's interest in the oil and gas in the land on which the well is located, the lease equipment and the hydrocarbons stored on the lease on which the well is plugged, or the responsible person's interest in stored hydrocarbons on the land on which the cleanup is performed and the equipment located on site. Current law allows the commission to request the attorney general to file a lawsuit to recover plugging costs only after the commission has expended funds from the Oil Field Clean Up Fund.

C.S.S.B. 1166 expands the liens that secure recovery of plugging or clean up costs paid by the commission to include the interest of the operator in all production within the state. Further, the proposed amendments to Section 91.113, Natural Resources Code, make it clear that the commission has the authority to take measures to prevent unauthorized discharge of oil and gas waste if the responsible person has failed or refused to do so and to recover those costs in an action filed in district court. The proposed amendment to Section 91.115 broadens the scope of the commission's lien for costs of cleaning up oil and gas wastes. The lien is extended without qualification to equipment at the site or facility, the responsible person's interest in the oil and gas in the land where clean up or prevention measures are required, and to the responsible person's interest all produced hydrocarbons within the state.

Section 91.004 authorizes the commission to order an operator to pay the estimated plugging costs of a well in any enforcement action brought to compel the operator to plug that well if the operator has not plugged the well within 60 days of the commission's final order. The proposed amendment also authorize the attorney general, upon the commission's request, to file suit to collect these costs if the operator fails to pay them.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 89.043, Natural Resources Code, by amending Subsections (c) and (f) and adding Subsection (g), as follows:

(c) Requires the notice of a contract to plug a delinquent inactive well sent to the owner of the well to state that the Railroad Commission of Texas (commission) is authorized to plug the well and foreclose its statutory lien under Section 89.089 (Lien on Operator's and Nonoperator's Interests in Hydrocarbon Production and Proceeds). Requires the notice to state that if the commission forecloses its statutory lien under Section 89.089, the commission may dispose of the interest of the operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons. Requires the notice to state that the commission has a statutory lien on the interest of the operator in any

hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons under Section 89.089. Makes a conforming change.

(f) Makes a conforming change.

(g) Prohibits the provisions of this section and Section 91.115 from applying to the proceeds from the sale of hydrocarbons that would otherwise be directed to the permanent school fund or the permanent university fund.

SECTION 2. Amends Section 89.083, Natural Resources Code, by amending Subsection (g) and adding Subsection (g-1), as follows:

(g) Provides that a cause of action against an operator is to be secured by the first lien, superior to all preexisting or subsequent liens and security interests, on the operator's interest in, among other things, any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons. Provides that a cause of action against a nonoperator is to be secured by a first lien, superior to all preexisting and subsequent liens and security interests. Makes nonsubstantive changes.

(g-1) Created from existing text.

SECTION 3. Amends Subchapter D, Chapter 89, Natural Resources Code, by adding Section 89.089, as follows:

Sec. 89.089. LIEN ON OPERATOR'S INTERESTS IN HYDROCARBON PRODUCTION AND PROCEEDS. (a) Provides that to secure the recovery of well-plugging costs paid with state money, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the interests of each operator in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons.

(b) Authorizes the commission to foreclose the lien in a certain manner.

(c) Authorizes the commission to dispose of the property subject to the lien in a certain manner.

(d) Provides that Section 89.086 (Claims Against the Oil-Field Cleanup Fund) applies to a claim of a person with a legal or equitable ownership or security interest in property that is described in this section and is disposed of under Section 89.085 (Possession and Sale of Equipment to Cover Plugging Costs).

(e) Requires the liens provided in this section and Section 91.115 as they relate to hydrocarbons in this state and the proceeds from the sale of those hydrocarbons to be subject to and inferior to any lien in favor of the state to secure royalty payments.

SECTION 4. Amends Subchapter A, Chapter 91, Natural Resources Code, by adding Section 91.004, as follows:

Sec. 91.004. RECOVERY OF ESTIMATED PLUGGING COSTS. (a) Authorizes the commission, in an enforcement action brought by the commission to compel an operator to plug or replug a well, to order the operator to pay the estimated plugging costs for the well if the operator has failed to plug or replug the well, or commenced operations to do so within a certain timeframe.

(b) Sets forth the factors on which the estimated plugging costs must be based.

(c) Requires the proceeds recovered as estimated plugging costs for any particular well to be deposited to the credit of the oil-field cleanup fund.

(d) Authorizes the commission, if the actual costs of plugging the well exceed the proceeds received for the estimated plugging costs, to recover its costs in an action brought under Section 89.083. Requires the commission, if the actual costs of plugging the well are less than the proceeds received for the estimated plugging costs, to remit to the operator the difference. Provides that the commission is not required to pay interest on the refund.

(e) Requires the attorney general, on request of the commission, if the operator does not pay the estimated plugging costs within a certain timeframe, to file suit to collect the amount of the estimated plugging costs from the operator. Provides that venue for the action lies in the district court for Travis County.

SECTION 5. Amends the heading to Section 91.113, Natural Resources Code, to read as follows:

Sec. 91.113. INVESTIGATION, ASSESSMENT, PREVENTION, CONTROL, OR CLEANUP OF POLLUTION BY COMMISSION.

SECTION 6. Amends Sections 91.113(a)-(d) and (f), Natural Resources Code, as follows:

(a) Authorizes the commission to use money from the oil-field cleanup fund, in addition to using the fund for conducting an investigation or assessment, controlling, or cleaning up the oil and gas wastes or other substances or materials, to take measures necessary to prevent the unauthorized discharge of oil and gas wastes or other substances or materials under certain conditions. Makes conforming and nonsubstantive changes. Deletes the provision relating to notice and opportunity for a hearing.

(b) Redefines "responsible person."

(c) Makes conforming and nonsubstantive changes.

(d) Makes conforming and nonsubstantive changes.

(f) Provides that the commission has a first lien on the responsible person's equipment and hydrocarbons as provided by Section 91.115 to secure the recover of the commission's costs. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 91.114(d), Natural Resources Code, to require the commission to accept the report or application or approve the certificate if, among other things, estimated plugging costs have been paid, in accordance with a commission order.

SECTION 8. Amends the heading to Section 91.115, Natural Resources Code, to read as follows:

Sec. 91.115. FIRST LIEN ON EQUIPMENT, STORED HYDROCARBONS, OIL AND GAS, AND PRODUCED HYDROCARBONS.

SECTION 9. Amends Sections 91.115(a)-(f) and (h), Natural Resources Code, as follows:

(a) Provides that if a responsible person either fails to clean up a site or facility on or before the required cleanup date or fails to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials as required, rather than fails to clean up a site or facility on or before the required cleanup date, the state has a first lien. Provides that the first lien includes a lien on the person's interest in, among other things, any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons. Deletes the requirement that the site due for cleanup must have ceased oil and gas operations. Deletes the provision that the lien is on the responsible interests in any equipment that is used in connection with the polluting activity. Makes nonsubstantive changes.

(b) Provides that the lien is in the amount of the total costs of taking measures necessary to prevent the unauthorized discharge of, to control, or to clean up, rather than just cleaning up, the oil and gas wastes or other substances. Makes conforming changes.

(c) Authorizes the commission to foreclose on the lien by entering into a contract to take measures necessary to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or a contract to clean up the site or facility, rather than just a contract to clean up the site or facility. Makes a conforming change.

(d) Provides that the lien is extinguished if necessary measures are taken to prevent the unauthorized discharge of or to control oil and gas wastes or other substances or materials or the site or facility is cleaned up, rather than if the site or facility is cleaned up, prior to the commission entering into the contract. Makes conforming changes.

(e) Prohibits an item of equipment to be removed from a site or facility, rather than an abandoned site or facility, if the removal will cause the release of a substance that may cause pollution. Makes a conforming change.

(f) Authorizes the commission to dispose of the hydrocarbons, rather than the stored hydrocarbons, in accordance with certain provisions. Makes conforming and nonsubstantive changes.

(h) Provides that the lien provided by this section, as it relates to stored hydrocarbons, the responsible person's interest in oil and gas in the land where the prevention, control, or cleanup measures are required, and the responsible person's interest in any hydrocarbons produced in this state and the proceeds from the sale of those hydrocarbons, rather than as it relates to stored hydrocarbons, shall be subject to and inferior to any lien in favor of the State of Texas to secure royalty payments.

SECTION 10. Makes application of this Act prospective to an administrative proceeding initiated on or after the effective date of this Act or to a cause of action that is filed in connection with an administrative proceeding that is initiated on or after the effective date of this Act.

SECTION 11. Effective date: September 1, 2005.