

ENROLLED SENATE
BILL NO. 894

BY: GILES of the SENATE

and

RICE, WILLIAMS and PILGRIM
of the HOUSE

AN ACT RELATING TO LIENS AND SURETIES; AMENDING
52 O.S. 1991, SECTION 318.1, WHICH RELATES TO OIL
AND GAS SURETIES; STATING THE STATE OF OKLAHOMA
SHALL HAVE A LIEN UPON ABANDONED WELL-SITE
EQUIPMENT, STRUCTURES AND CONTENTS EQUAL TO
CERTAIN COSTS OF PLUGGING; STATING PROPERTIES ON
WHICH LIEN MAY BE ATTACHED; STATING EXCEPTION;
STATING WHEN LIEN SHALL BE PERFECTED; STATING
PRIORITY OF SAID LIEN; DEFINING TERM; PROVIDING
FOR CODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 53.3 of Title 17, unless there
is created a duplication in numbering, reads as follows:

A. The State of Oklahoma shall have a lien upon any abandoned
oil and gas well-site equipment situated upon a lease site,
including but not limited to production and storage structures,
along with their contents, in an amount equal to the cost of
plugging all wells associated with said lease and restoring the
site. The lien created by this act shall attach only to abandoned
oil and gas well-site equipment located on or affixed to an oil or
gas well which has been plugged, replugged or repaired by the
Commission.

B. Well-site equipment is presumed abandoned if:

1. For longer than one (1) year, the well has shown no activity
in terms of production, injection, disposal or testing, and has not
otherwise been maintained in compliance with plugging rules; and
2. a. the last operator of record is without valid surety as
required by Section 318.1 of Title 52 of the Oklahoma
Statutes and cannot be located by the Corporation
Commission after diligent search, or
- b. the last operator of record has plugging liability in
excess of the amount of such operator's surety as
filed with the Corporation Commission.

The presumption of abandonment shall apply only for purposes of the
lien created herein and shall have no effect upon the term,
duration, or continued existence of any property or contract right
in the premises.

C. The lien created by this section shall be perfected against
the equipment when notice of the lien is filed in the office of the
county clerk of the county or counties where the equipment is
situated. Upon receipt, the county clerk shall record the notice in
the tract index and in the mechanic's lien journal. The notice
shall contain a description of each item upon which a lien is

claimed, and a legal description of the site upon which the equipment is situated.

D. The lien provided for in this section shall be subject to all prior perfected liens.

E. The lien created by this section shall be assignable by the Corporation Commission.

For purposes of this act the term "abandoned well" shall mean those wells that are described and listed in a report published by the Corporation Commission identifying oil or gas wells which have been determined to be abandoned or orphaned by the Corporation Commission as a result of bankruptcy, inability to find the owner, or for other reasons.

SECTION 2. AMENDATORY 52 O.S. 1991, Section 318.1, is amended to read as follows:

Section 318.1 A. Any person who drills or operates any well for the exploration, development or production of oil or gas, or as an injection or disposal well, within this state, shall furnish in writing, on forms approved by the Corporation Commission, his agreement to drill, operate and plug wells in compliance with the rules and regulations of the Commission and the laws of this state, together with evidence of financial ability to comply with the requirements for plugging, closure of surface impoundments, removal of trash and equipment as established by the rules and regulations of the Commission and by law. To establish evidence of financial ability, the Commission shall require:

1. Category A surety which shall include a financial statement listing assets and liabilities and including a general release that the information may be verified with banks and other financial institutions. The statement shall prove a net worth of not less than Fifty Thousand Dollars (\$50,000.00); or

2. Category B surety which shall include an irrevocable commercial letter of credit, cash, a cashier's check, a Certificate of Deposit, Bank Joint Custody Receipt, other negotiable instrument or, a blanket surety bond. Except as provided in paragraph 3 of subsection A of this section, amount of such letter of credit, cash, check, certificate, bond, receipt or other negotiable instrument shall be in the amount of Twenty-five Thousand Dollars (\$25,000.00) but may be set higher at the discretion of the Director of the Oil and Gas Division. The Commission is authorized to determine the amount of Category B surety based upon the past performance of the operator and its insiders and affiliates regarding compliance with the laws of this state, and any rules and regulations promulgated thereto including but not limited to the drilling, operation and plugging of wells, closure of surface impoundments or removal of trash and equipment. Any instrument shall constitute an unconditional promise to pay and be in a form negotiable by the Commission.

3. The Commission upon certification by any operator subject to Category B surety that its plugging liability statewide is less than the twenty-five-thousand-dollar standard specified in this section may allow said operator to provide Category B type surety in an amount less than the required Twenty-five Thousand Dollars (\$25,000.00), but at least sufficient to cover the estimated cost of all plugging, closure, and removal operations currently the responsibility of that operator. The liability certification referred to in this paragraph shall take the form of an affidavit from a licensed well plugger estimating the costs of all plugging, closure, and removal operations of the operator requesting such relief. This alternative amount shall be modified upward upon the assumption of additional operations by said operator, the maximum

amount of Category B surety to be posted not to exceed the twenty-five-thousand-dollar total unless as provided previously.

B. Operators of record as of the effective date of this act who do not have any outstanding contempt citations or fines and whose insiders or affiliates have no outstanding contempt citations or fines may post Category A surety.

New operators, operators who have outstanding fines or contempt citations and operators whose insiders or affiliates have outstanding contempt citations or fines as of the effective date of this act shall be required to post Category B surety. Operators who have posted Category B surety and have operated under this type surety and have no outstanding fines at the end of three (3) years may post Category A surety.

Operators using Category A surety who are assessed a fine of Two Thousand Dollars (\$2,000.00) or more and who do not pay the fine within the specified time shall be required to post a Category B surety within thirty (30) days of notification by the Commission.

C. For good cause shown concerning pollution or improper plugging of wells by the operator posting either Category A or B surety or by an insider or affiliate of such operator, the Commission, upon application of the Director of the Oil and Gas Division, after notice and hearing, may require the filing of additional Category B surety in an amount greater than Twenty-five Thousand Dollars (\$25,000.00) but not to exceed One Hundred Thousand Dollars (\$100,000.00).

D. If the Commission determines that a blanket surety bond is required, the bond shall be conditioned on the fact that the operator shall cause the wells to be plugged and abandoned surface impoundments to be closed, and trash and equipment to be removed in accordance with the laws of this state and the rules and regulations of the Commission. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and continued in effect until the conditions have been met or release of the bond is authorized by the Commission.

E. The agreement provided for in subsection A of this section shall provide that if the Commission determines that the person furnishing the agreement has neglected, failed, or refused to plug and abandon, or cause to be plugged and abandoned, or replug any well or has neglected, failed or refused to close any surface impoundment or removed or cause to be removed trash and equipment in compliance with the rules and regulations of the Commission, then the person shall forfeit from his bond, letter of credit or negotiable instrument or shall pay to this state, through the Commission, for deposit in the State Treasury, a sum equal to the cost of plugging the well, closure of any surface impoundment or removal of trash and equipment. The Commission may cause the remedial work to be done, issuing a warrant in payment of the cost thereof drawn against the monies accruing in the State Treasury from the forfeiture or payment. Any monies accruing in the State Treasury by reason of a determination that there has been a noncompliance with the provisions of the agreement or the rules and regulations of the Commission, in excess of the cost of remedial action ordered by the Commission, shall be credited to the Conservation Fund. The Commission shall also recover any costs arising from litigation to enforce this provision. Provided, before a person is required to forfeit or pay any monies to the state pursuant to this section, the Commission shall notify the person at his last-known address of the determination of neglect, failure or refusal to plug or replug any well, or close any surface impoundment or remove trash and equipment and said person shall have ten (10)

days from the date of notification within which to commence remedial operations. Failure to commence remedial operations shall result in forfeiture or payment as provided in this subsection.

F. It shall be unlawful for any person to drill or operate any oil or gas well subject to the provisions of this section, without the evidence of financial ability required by this section. The Commission shall shut in, without notice, hearing or order of the Commission, the wells of any such person violating the provisions of this subsection and such wells shall remain shut in for noncompliance until the required evidence of Category B surety is obtained and verified by the Commission.

G. If title to property or a well is transferred, the transferee shall furnish the evidence of financial ability to plug the well and close surface impoundments required by the provisions of this section, prior to the transfer.

~~G.~~ H. As used in this section:

1. "Affiliate" means an entity that owns twenty percent (20%) or more of the operator, or an entity of which twenty percent (20%) or more is owned by the operator; and

2. "Insider" means officer, director, or person in control of the operator; general partners of or in the operator; general or limited partnership in which the operator is a general partner; spouse of an officer, director, or person in control of the operator; spouse of a general partner of or in the operator; corporation of which the operator is a director, officer, or person in control; affiliate, or insider of an affiliate as if such affiliate were the operator; or managing agent of the operator.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 13th day of May, 1992.

President of the Senate

Passed the House of Representatives the 27th day of May, 1992.

Speaker of the House of Representatives