Legislative Update – Part 1

On May 27, the 86th Regular Session of the Texas Legislature adjourned *Sine Die* (meaning, without day – meaning not to convene again until either a Special Session or until the start of the 87th Legislature in January 2021). Here is some legislation that passed, but not necessarily signed by the Governor, that impacts the oil and gas industry.

HB 2675 – Funding the Railroad Commission

HB 2675 by Geren and Birdwell was passed on May 6 and signed by the Governor on May 17, to be effective on September 1. §81.067 TNRC provides for an "oil and gas regulation and cleanup fund" as an account in the general revenue fund of the state treasury. Into it are deposited various fees, bond proceeds, the lien proceeds from equipment sold for plugging, permit fees, proceeds from enforcement actions to close saltwater pits, waste hauler permit fees, hazardous oil and gas waste generation fees, cleanup regulatory fees, organization report fees, exception application fees, and various other fees and surcharges. When this fund reaches $30 million, the RRC must quit collecting certain of these fees. HB 2675 removes this $30 million ceiling.

HB 3838 – Limitation on Purchasing Underlying Minerals

HB 3838 by Bailes, Harris and Birdwell was passed on May 24 and sent to the governor on May 26; the Governor has until June 16 to decide whether to sign it into law or file it without signing it (which constitutes approval). The Texas Property Code, in §5.151, currently says that a person who mails a mineral or royalty owner an offer to purchase that interest and sends a draft or other form of payment with the offer must provide a notice, in 14 point type ("same size as"), that the offeree is selling all or a portion of their mineral or royalty interest. If this provision is violated, the hoodwinked offeree may sue to recover the real value of the interest sold and may recover its costs. §5.151 states that the taking of an oil and gas lease "shall not be deemed a purchase of a mineral or royalty interest" *for the purposes of §5.151*.

HB 3838 adds a new section, §5.152 of the Property Code, that appears to be aimed at the same miscreants. However, it is not limited to the *mailing* of an offer, applies *only* if you call the conveyance an "oil and gas lease", a "gas royalty lease" or something similar, excludes a top lease, applies to a conveyance for a term, is limited to mineral or royalty interests already covered by an existing oil, gas, or mineral lease, and requires the insertion of a notice on each page in 14 point type containing language similar, but not identical, to that required in §5.151. Under this section, the conveyance is *void* if the proper notices are not provided and the deceived assignor may recover any royalties and bonuses paid to the miscreant, along with costs and attorney's fees.

So, if you are buying the minerals underlying an existing lease or the royalty under an existing lease, you cannot call it a lease; if you do, then you must provide a notice that says "THIS IS NOT AN OIL AND GAS LEASE. YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN [described property]" on each page of the conveyancing instrument. You may still take a top lease and should be able to take a lease so long as the underlying lease has expired; if it has not yet expired make sure your lease says that it will not vest in possession until after the expiration of the lease in effect at the time you take your new lease.

SB 533 – Severance Tax Relief for Re-Activated Wells

SB 533 by Birdwell, Creighton, Paddie and Springer was passed on April 25 and was signed by the governor on May 7, to be effective September 1. It provides severance tax relief for wells that have been returned to active status after two years of more of inactivity. A two-year inactive well is one that has not produced oil or gas in more than one month in the two years preceding the date of application for exemption. Excluded are wells included in

P.O. Box 864
Cedar Creek, Texas 78612
mgibson@gibsonoilgas.com
512-614-7785

an enhanced oil recovery project and drilled but uncompleted wells with no record of hydrocarbon production. If the well qualifies, it is entitled to a five-year exemption from severance tax and applies to both oil and gas wells. One must apply to the Railroad Commission for a two-year inactive well certification and hydrocarbons sold after the date of certification are eligible for the exemption. SB 533 is designed to incentivize operators to reactive inactive wells.

SB 925 – Change in Calculating Low-Producing Wells

SB 925 by Flores and Bailes was passed on May 8 and was signed by the Governor on May 20, to be effective September 1. Texas Tax Code §201.059 provides a reduction in severance taxes for low producing gas wells. A low producing well is a gas well whose production during a three-month period is no more than 90 mcf per day, excluding gas flared. A low producing oil well is one where for a 90-day period, production is less than (i) 15 bbls/day or (ii) 5% recoverable oil per barrel of produced water. §202.058 Texas Tax Code. If qualified, then the producer gets a credit against severance taxes imposed on production from that well based on a sliding scale (since the credit for oil production is eliminated if the oil price exceeds $30/bbl, only the gas credit is set out):

>$3.50/mcf		no credit
> $3.00	<$3.50	25%
>$2.50	<$3.00	50%
<$2.50		100%

Each month the Comptroller certifies the average taxable price of gas, adjusted to 2005 dollars during the previous three months. The May 2019 natural gas price was $1.82/Mcf meaning that natural gas production qualifies for the 100% credit. The May 2019 crude oil price was $42.91, meaning that no oil production qualifies.

Currently the determination of whether a well qualifies for the credit is based on production reports to the RRC. SB 925 changes the qualifying production to the greater of what is reported to the RRC or to the Comptroller. The reference price for natural gas is published by the Comptroller in the Texas Register. Application must be made to the comptroller not later than the end of the applicable period for filing a tax refund under Texas Tax Code §111.104. The net effect of the change should be to reduce the number of qualifying wells but there is no estimate of how many might be affected; the Legislative Budget Board certified that no fiscal implication to the State is anticipated.