

BILL ANALYSIS

C.S.H.B. 1818
By: Gonzales, Larry
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Railroad Commission of Texas has primary oversight of the state's oil and natural gas industry, is subject to the Texas Sunset Act, and will be abolished September 1, 2017, unless continued by the legislature. C.S.H.B. 1818 seeks to continue the railroad commission with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTIONS 4 and 6 of this bill.

ANALYSIS

C.S.H.B. 1818 amends the Natural Resources Code to change from September 1, 2017, to September 1, 2029, the date the Railroad Commission of Texas is abolished unless continued in existence as provided by the Texas Sunset Act. The bill requires the railroad commission to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under the Governmental Dispute Resolution Act to assist in the resolution of internal and external disputes under the railroad commission's jurisdiction. The bill requires the railroad commission's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. The bill requires the railroad commission to coordinate the implementation of the alternative dispute resolution policy, provide training as needed to implement the procedures for alternative dispute resolution, and collect information concerning the effectiveness of those procedures.

C.S.H.B. 1818 requires the oil and gas division of the railroad commission to develop and publish an annual plan to use the oil and gas monitoring and enforcement resources of the railroad commission strategically to ensure public safety and protect the environment. The bill requires the railroad commission to seek input from stakeholders when developing each annual plan. The bill requires the railroad commission to collect and maintain information that accurately shows the railroad commission's oil and gas monitoring and enforcement activities, requires each annual plan to include a report of the information collected by the railroad commission that shows such activities over time, and requires the information to include data regarding violations of statutes or railroad commission rules that relate to oil and gas. The bill requires the railroad commission to publish each annual plan on the railroad commission's website not later than September 1 of the year preceding the year in which the railroad commission implements the plan. The bill establishes that the first year for which the railroad

commission is required to develop and publish the annual plan in 2019 and requires the railroad commission to publish the plan not later than September 1, 2018.

C.S.H.B. 1818 authorizes the railroad commission by rule to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the railroad commission's pipeline safety and regulatory program. The bill authorizes the railroad commission to establish fees to be assessed annually against permit or registration holders, as well as individual fees for new permits or registrations, permit or registration renewals, and permit or registration amendments. The bill requires the fees to be in amounts that in the aggregate are sufficient to support all pipeline safety and regulatory program costs. The bill requires the railroad commission by rule to establish the method or methods by which the fees will be calculated and assessed so that fee amounts will reflect the time spent and costs incurred to perform the regulatory work associated with permitting or registering pipelines, the effects of required fees on operators of all sizes, and other factors the railroad commission determines are important to the fair imposition of the fees. The bill authorizes the railroad commission to base the fees on any factor the railroad commission considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs. The bill authorizes the railroad commission by rule to establish a reasonable late payment penalty for a pipeline safety and regulatory fee. The bill establishes that the authority provided by these pipeline safety and regulatory fee provisions is in addition to the authority provided by pipeline safety and regulatory fee provisions in the Utilities Code and requires the railroad commission to consider any fees assessed under those provisions in establishing the fees to be assessed under the bill's provisions. The bill requires a fee collected under the bill's pipeline safety and regulatory fee provisions to be deposited to the credit of the oil and gas regulation and cleanup fund.

C.S.H.B. 1818 amends the Natural Resources Code, Health and Safety Code, and Utilities Code to provide for certain railroad commission rulemaking authority over safety standards relating to the prevention of damage to a pipeline facility.

C.S.H.B. 1818 repeals Section 91.1135, Natural Resources Code, which provides for the establishment and governance of the Oil and Gas Regulation and Cleanup Fund Advisory Committee.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1818 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 81.01001(a), Natural Resources Code, is amended to read as follows:

(a) The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, ~~2029~~ [2017].

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065 and 81.066 to read as follows:

Sec. 81.065. **NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.**

(a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect information concerning the effectiveness of those procedures.

Sec. 81.066. **OIL AND GAS DIVISION MONITORING AND ENFORCEMENT STRATEGIC PLAN.** (a) The oil and gas division of the commission shall develop and publish an annual plan to use the oil and gas monitoring and enforcement resources of the commission strategically to best ensure public safety and minimize damage to the environment.

(b) The commission shall seek input from stakeholders, including groundwater conservation districts and other political subdivisions, when developing each annual plan.

(c) The commission shall collect and maintain information that accurately shows the effectiveness of the commission's oil and gas monitoring and enforcement activities. Each annual plan must include a report of the information collected by the commission that shows the effectiveness of the commission's oil and gas monitoring and enforcement activities over time.

SECTION 2. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065 and 81.066 to read as follows:

Sec. 81.065. **ALTERNATIVE DISPUTE RESOLUTION POLICY.**

(a) The commission shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for alternative dispute resolution; and

(3) collect information concerning the effectiveness of those procedures.

Sec. 81.066. **OIL AND GAS DIVISION MONITORING AND ENFORCEMENT STRATEGIC PLAN.** (a) The oil and gas division of the commission shall develop and publish an annual plan to use the oil and gas monitoring and enforcement resources of the commission strategically to ensure public safety and protect the environment.

(b) The commission shall seek input from stakeholders when developing each annual plan.

(c) The commission shall collect and maintain information that accurately shows the commission's oil and gas monitoring and enforcement activities. Each annual plan must include a report of the information collected by the commission that shows the commission's oil and gas monitoring and enforcement activities over time.

(d) The information described by Subsection (c) must include:

(1) data regarding violations of statutes or commission rules that relate to oil and gas, including:

(A) the number, type, and severity of:

(i) violations the commission found to have occurred;

(ii) violations the commission referred for enforcement to the section of the commission responsible for enforcement; and

(iii) violations for which the commission imposed a penalty or took other enforcement action;

(B) the number of major violations for which the commission imposed a penalty or took other enforcement action; and

(C) the number of repeat violations, categorized by individual oil or gas lease, if applicable; and

(2) the amount of time spent by field inspectors overseeing activities that are designated as high risk compared to the amount of time spent overseeing other activities.

(e) The commission shall publish each annual plan on the commission's Internet website not later than September 1 of the year preceding the year in which the commission implements the plan.

SECTION 3. 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

(d) The information described by Subsection (c) must include data regarding violations of statutes or commission rules that relate to oil and gas, including:

(1) the number, type, and severity of:

(A) violations the commission found to have occurred;

(B) violations the commission referred for enforcement to the section of the commission responsible for enforcement; and

(C) violations for which the commission imposed a penalty or took other enforcement action;

(2) the number of major violations for which the commission imposed a penalty or took other enforcement action; and

(3) the number of repeat major violations, categorized by individual oil or gas lease, if applicable.

(e) The commission shall publish each annual plan on the commission's Internet website not later than September 1 of the year preceding the year in which the commission implements the plan.

SECTION 3. Section 81.067(c), Natural Resources Code, is amended to conform to the repeal of Section 81.112, Natural Resources Code, by Chapter 470 (S.B. 757), Acts of the 84th Legislature, Regular Session, 2015, and is further 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);
 - (10) hazardous oil and gas waste generation fees collected under Section 91.605;
 - (11) oil-field cleanup regulatory fees on oil collected under Section 81.116;
 - (12) oil-field cleanup regulatory fees on gas collected under Section 81.117;
 - (13) fees for a reissued certificate collected under Section 91.707;
 - (14) fees collected under Section 91.1013;
 - (15) fees collected under Section 89.088;
 - (16) fees collected under Section 91.142;
 - (17) fees collected under Section 91.654;
 - (18) costs recovered under Sections 91.656 and 91.657;
 - (19) fees collected under Section 81.0521;
 - (20) fees collected under Sections 89.024 and 89.026;
 - (21) legislative appropriations;
 - (22) any surcharges collected under Section 81.070;
 - (23) fees collected under Section 91.0115;
 - (24) money deposited to the credit of the fund under Section 81.112;
 - (25) fees collected under Subchapter E, Chapter 121, Utilities Code; ~~and~~
 - (26) fees collected under Section 27.0321, Water Code; and
 - (27) fees collected under Section 81.071.

SECTION 4. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.071 to read as follows:

Sec. 81.071. PIPELINE SAFETY AND REGULATORY FEES.

(a) The commission by rule may establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the commission's pipeline safety and regulatory program.

(b) The commission may establish fees to be assessed annually against permit or registration holders, as well as individual fees for new permits or registrations, permit or registration renewals, and permit or registration amendments.

- 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);
 - (10) hazardous oil and gas waste generation fees collected under Section 91.605;
 - (11) oil-field cleanup regulatory fees on oil collected under Section 81.116;
 - (12) oil-field cleanup regulatory fees on gas collected under Section 81.117;
 - (13) fees for a reissued certificate collected under Section 91.707;
 - (14) fees collected under Section 91.1013;
 - (15) fees collected under Section 89.088;
 - (16) fees collected under Section 91.142;
 - (17) fees collected under Section 91.654;
 - (18) costs recovered under Sections 91.656 and 91.657;
 - (19) fees collected under Section 81.0521;
 - (20) fees collected under Sections 89.024 and 89.026;
 - (21) legislative appropriations;
 - (22) any surcharges collected under Section 81.070;
 - (23) fees collected under Section 91.0115;
 - (24) ~~money deposited to the credit of the fund under Section 81.112;~~
 - ~~[(25)]~~ fees collected under Subchapter E, Chapter 121, Utilities Code;
 - ~~(25)~~ ~~and~~ ~~(26)~~ fees collected under Section 27.0321, Water Code; and
 - (26) fees collected under Section 81.071.

SECTION 4. Same as introduced version.

(c) The fees must be in amounts that in the aggregate are sufficient to support all pipeline safety and regulatory program costs, including:

(1) permitting or registration costs;

(2) administrative costs; and

(3) costs of employee salaries and benefits.

(d) The commission by rule must establish the method or methods by which the fees will be calculated and assessed so that fee amounts will reflect the time spent and costs incurred to perform the regulatory work associated with permitting or registering pipelines, the effects of required fees on operators of all sizes, and other factors the commission determines are important to the fair imposition of the fees. The commission may base the fees on any factor the commission considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs, including:

(1) the length of the pipeline;

(2) the number of new permits or registrations, permit or registration renewals, or permit or registration amendments; or

(3) the number of pipeline systems.

(e) The commission by rule may establish a reasonable late payment penalty for a fee charged under this section.

(f) The authority provided by this section is in addition to the authority provided by Section 121.211, Utilities Code, and the commission shall consider any fees assessed under that section in establishing the fees to be assessed under this section.

(g) A fee collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

SECTION 5. Section 117.012, Natural Resources Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) [~~including~~] safety standards related to

SECTION 5. Same as introduced version.

the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities ~~[such a facility]~~ resulting from the movement of earth by a person in the vicinity of such a ~~[the]~~ facility, other than movement by tillage that does not exceed a depth of 16 inches.

(a-1) Rules adopted under Subsection (a) ~~[this subsection]~~ that apply to the intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations and intrastate hazardous liquid and carbon dioxide gathering pipeline facilities in rural locations must be based only on the risks the transportation and the facilities present to the public safety, except that the commission shall revise the rules as necessary to comply with Subsection (c) and to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts rules that include safety standards applicable to the transportation and facilities.

SECTION 6. Section 756.126, Health and Safety Code, is amended to read as follows:
Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce rules prescribing safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

SECTION 6. Same as introduced version.

SECTION 7. Section 121.201(a), Utilities Code, is amended to read as follows:

- (a) The railroad commission may:
- (1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline ~~[such a]~~ facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;
 - (2) by rule require an operator that does not file operator organization information under

SECTION 7. Same as introduced version.

Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state;

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law; and

(8) by rule establish safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5:

(A) based only on the risks the facilities and activities present to the public safety, to the extent consistent with federal law; or

(B) as necessary to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts safety standards and practices for gathering facilities and transportation activities in Class 1 locations, as defined by 49 C.F.R. Section 192.5.

SECTION 8. Section 91.1135, Natural Resources Code, is repealed.

SECTION 9. The first year for which the Railroad Commission of Texas is required by Section 81.066, Natural Resources Code, as added by this Act, to develop and publish the annual plan required by that section is 2019. The commission shall publish the plan not later than September 1, 2018.

No equivalent provision.

SECTION 10. This Act takes effect

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 11. Same as introduced version.

September 1, 2017.

85R 17939

Substitute Document Number: 85R 17639

17.74.571