

SUBJECT: Indemnity between electrical cooperatives and lignite miners

COMMITTEE: Civil Practices — favorable, without amendment

VOTE: 6 ayes — Bosse, Clark, Hope, Martinez Fischer, Smithee, Zbranek
2 nays — Janek, Nixon
1 absent — Dutton

WITNESSES: For — Garner S. Kendrick, San Miguel Electric Cooperative
Against — Andrew S. Good, North American Coal Corp.

BACKGROUND: Civil Practice and Remedies Code, chapter 127 provides that certain indemnity provisions between oil and gas producers and the companies with whom they contract to drill on their leases are void because they are against public policy. Specifically, the contracts may not require one party to indemnify the other for the indemnitee's or their agent's negligence. If the indemnity provision runs only one way and is not reciprocal, the indemnitor cannot be required to indemnify for more than \$500,000.

DIGEST: HB 1047 would allow an otherwise prohibited indemnity agreement if the indemnitee was a nonprofit electric cooperative corporation under Utility Code, chapter 161, and the indemnitor was a lessee or contractor who provided services or products related to lignite surface mining.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS SAY: HB 1047 would create an exception that is necessary to further the intent of the indemnity rules set up by Chapter 127. The Legislature's intent was to protect the weaker party to the contract, which, in oil and gas drilling, is typically the contractor who operates the well. However, in the case of a nonprofit electrical coop that leases its land to a lignite mining company, the power structure is reversed, with the weaker party being the small electrical coop and the party with more bargaining power being the corporation mining the lignite.

This bill would eliminate protections that the stronger party does not need and that the Legislature did not intend to run in that party's favor.

Because it would be a very large, unfair economic imposition on the cooperative to insure against liability that might arise from mining activities over which the cooperative had no control, the bill properly and fairly would allow the parties to allocate liability between themselves as they originally agreed. The lignite miner is much more able both to prevent accidents and liability and to insure against liability.

The bill would expose mining companies only to liability for which they contracted by eliminating the statutory prohibition against such contractual provisions. This would be apply to existing as well as future contracts.

OPPONENTS
SAY:

HB 1047 represents an attempt by a single electric cooperative to have the Legislature help it avoid the law that existed at the time of its contract. The Legislature should not become involved in such private and local disputes, nor should it absolve a party from responsibility for failing to do due diligence in researching the law when writing its contracts.

The bill unfairly would expose mining companies to liability that they believed was capped at \$500,000.

NOTES:

The companion bill, SB 1618 by Armbrister, was considered in a public hearing by the Senate Business and Commerce Committee on March 20 and left pending.