

- SUBJECT:** Continuing the Railroad Commission of Texas
- COMMITTEE:** Energy Resources — committee substitute recommended
- VOTE:** 9 ayes — R. Lewis, Merritt, Carter, Christian, Crabb, Driver, Hawley, Kitchen, Williams
- 0 nays
- SENATE VOTE:** On final passage, April 17 — voice vote (Haywood recorded nay)
- WITNESSES:** (*On House companion bill, HB 3018:*)
- For — Carol Biedrzycki, Texas Ratepayers Organization to Save Energy; Janee Briesemeister, Consumers Union; Charles Fox, Kinder Morgan; David Garlick, Texans for Enhanced Recovery and Conservation; Gene Montgomery, Occidental Permian; Douglass Robison, Henry Petroleum L.P.; Tom “Smitty” Smith, Public Citizen; Bill Stevens, Texas Alliance of Energy Producers
- Against — Paul B. Covert and Stephen K. Mayer, National Association of Royalty Owners-Texas; Robert Grable, Bass Enterprises Production Co.
- On — A. Scott Anderson, Texas Independent Producers and Royalty Owners Association; Steve Burlison, Boley-Featherston Insurance; Tony Garza, Charles Matthews, and Michael Williams, Texas Railroad Commission; Don Leverty, Conserv Utilities; Ben Sebree, Texas Oil and Gas Association
- BACKGROUND:** The Legislature created the Railroad Commission of Texas (RRC) in 1891 to oversee operations and rates of railroads, terminals, wharves, and express companies. Today, the commission regulates the oil and natural gas industry, pipeline operators, natural gas utilities, rail safety, and surface mining.
- Three commissioners elected statewide serve staggered six-year terms on the agency’s governing board. The commissioners elect the chair. The RRC has about 790 employees, 65 percent of whom work at agency headquarters in Austin. The remaining 35 percent are spread among 15 regional and district offices. More than two-thirds of the RRC staff are allocated to regulation of

oil and gas production. The second largest portion of the staff focuses on regulating gas utilities, including liquefied petroleum gas (LPG), compressed natural gas (CNG), and liquefied natural gas (LNG). Other employees are involved in promoting LPG usage and regulating coal and uranium mining and railroads.

The commission monitors more than 355,000 oil and gas wells. More than 16,500 abandoned wells have been plugged with money from the Oil Field Cleanup Fund. Texas now has more than 100,000 inactive wells. Of the more than 280,000 miles of pipeline in Texas, the RRC monitors 157,000. The commission also oversees more than 255,000 coal mining operations and one uranium mine, now undergoing reclamation. Texas also has 10,700 miles of mainline railroad track, more than any other state.

The cleanup fund is supported by fees on oilfield activities, such as drilling permit and oil and gas waste generation fees. Money in the fund is used to conduct environmental site assessments, clean up oil and gas wastes, plug abandoned wells, and enforce rules, orders, and permits issued by the RRC. Fees are not required to be collected if the fund rises above \$10 million.

A person or entity operating wells or engaging in other activities overseen by the RRC must execute a bond or provide an alternate form of financial security. Natural Resources Code, sec. 91.104 allows as acceptable forms of financial security for people or entities involved in petroleum production:

- ! an individual bond;
- ! a blanket bond;
- ! a \$100 annual fee, if the person or entity can demonstrate an acceptable record of environmental compliance;
- ! a fee equal to 3 percent of the bond that otherwise would be required; or
- ! a first lien on personal property associated with oil and gas production.

The commission's budget for fiscal 2000 was \$52.3 million, 47 percent from general revenue. The Oil Field Cleanup Fund contributed about 28 percent of the agency's budget, and federal funds accounted for about 14 percent. The RRC is subject to the Texas Sunset Act and will expire September 1, 2001, unless continued by the Legislature.

DIGEST:

CSSB 310 would continue the RRC until September 1, 2013, and would revise the agency's duties, including increasing fees and penalties, requiring bonding or letters of credit as financial security by 2004, and establishing a voluntary cleanup program.

**Fees and penalties.** The bill would increase from \$50 to \$150 the fee for applying for an exception to a commission rule. The \$100 increase, along with any penalties collected that were related to the fee, would go to the oil field cleanup fund. The bill also would allow the RRC to set the Natural Gas Policy Act application fee — now \$50 — at an amount up to \$150.

The commission would have to adopt guidelines to determine penalties for violations of rules, permits, pipeline certificates, pipeline safety standards, or other provisions. The guidelines would have to take into account:

- ! a permittee's history of previous violations;
- ! the seriousness of the violation and of any resulting pollution;
- ! any hazard to public health or safety;
- ! the degree of guilt;
- ! the demonstrated good faith of the alleged violator; and
- ! any other factor considered relevant.

The bill would double oilfield cleanup fees to 5/8 of 1 cent on each 42-gallon barrel of oil and to 1/15 of 1 cent for each thousand cubic feet of gas.

Drilling permit fees would increase by \$100 each to \$200 for a well 2,000 feet deep or less, \$225 for a well between 2,000 and 4,000 feet deep, \$250 for a well from 4,000 to 9,000 feet deep, and \$300 for a well deeper than 9,000 feet. An applicant would have to submit an additional \$200 fee to request an exception from well spacing or density requirements. Fees also would rise from \$50 to \$150 for a request to expedite a permit application and from \$100 to \$300 for an extension of time to plug a well.

An entity submitting an organization report for operations under the RRC's jurisdiction also would have to submit a fee based on the number of wells or pipelines, as follows:

- ! \$300 for an operator with 25 or fewer wells;
- ! \$500 for 25 to 100 wells;
- ! \$1,000 for more than 100 wells;
- ! \$300 to \$500 for a pipeline operator with no wells; and
- ! \$300 to \$1,000 for a pipeline operator with wells.

Permit fees for fluid-injection wells would increase from \$100 to \$200.  
Surface water discharge permit fees would increase from \$200 to \$300.

**Financial responsibility of pipeline systems.** By March 1, 2002, the RRC would have to study and report on the desirability of requiring bonding or other financial security for pipeline operators. The commission could require bonding or other financial security if the results of its study revealed that such requirements were desirable. The rules would have to consider whether the pipeline system had a history of violations or was located over a public drinking water supply, a natural resource, or a critical groundwater resource, or near a school or other populated area.

**First lien on equipment.** The bill would require the RRC to foreclose on its lien on the operator's equipment — to which it is entitled by statute — if the operator failed to request a hearing within 15 days of receiving notice that the commission had entered into a contract to plug a delinquent inactive well.

**Acceptable forms of financial security.** Upon its effective date, CSSB 310 would make the following changes to acceptable forms of financial security:

- ! allowing a letter of credit as an acceptable form of financial security;
- ! increasing the annual fee for the option of demonstrating an acceptable record of environmental compliance from \$100 to \$1,000 (a person would be eligible to pay the annual fee only if the RRC determined that bonds were not available at reasonable prices);
- ! increasing the annual fee from 3 to 12.5 percent of the bond that otherwise would be required; and
- ! eliminating the option of a first lien on oil and gas equipment and property.

The RRC could set the amount of a bond required for bay or offshore wells above the amount required for onshore wells.

As of September 1, 2004, only an individual bond, blanket bond, or letter of credit would be considered an acceptable form of financial security. The letter of credit would have to be for \$25,000 for 10 or fewer wells, \$50,000 for 10 to 1,000 wells, and \$250,000 for more than 100 wells. No other forms of financial security would be accepted.

**Oil field cleanup fund.** The bill would raise the cap on the oil field cleanup fund from \$10 million to \$20 million. Fees would have to be collected again if the fund later fell below \$10 million. Additional fees and recovered costs would be added to the fund, including:

- ! an organization report fee;
- ! a fee for an application for the voluntary cleanup program;
- ! costs recovered under the voluntary cleanup program; and
- ! two-thirds of the fee for applying for an exception to a commission rule.

The RRC would have to establish performance goals for the fund, including the number of site investigations and assessments to be conducted, the number of abandoned wells to be plugged, and the number of surface locations to be remedied. The commission also would have to make its report to the Legislature available to the public and would have to detail its activities by region. The report would have to include a detailed accounting of expenditures from the fund.

In cleaning up abandoned wells, the RRC would have to identify wells that posed a high risk of surface or groundwater contamination, test high-risk wells periodically, and prioritize the plugging of high-risk wells with compromised casings.

An oil field cleanup fund advisory committee would have to meet quarterly with the commission, receive information about rules relating to the fund, review the commission's recommendations for legislation, and monitor the fund's effectiveness. The 10-member committee would include members of the Legislature, the public, academia, and industry trade associations. The commission would have to submit quarterly reports to the committee and the Legislative Budget Board that included the amount of money deposited and spent and the fund balance, as well as the number of wells plugged, sites remediated, and wells abandoned. The advisory committee would have to

report biennially on its activities, including legislative recommendations and an analysis of any problems with the fund.

**Voluntary cleanup program.** CSSB 310 would create a voluntary cleanup program. Any contaminated site could participate, except for any part already subject to a commission order. A participant would have to pay all of the RRC's costs for overseeing the cleanup.

An application for the program would have to include information on the site and applicant, any background information requested by the commission, an environmental assessment of the contaminant threat at the site, authorization from the property owner, and a \$1,000 application fee. The environmental assessment would have to include, along with other information, the site's operational history, the nature and extent of any contamination, and the potential for human exposure to any contamination. Applications would be processed in the order received. Money collected through the application fee would be deposited into the oil field cleanup fund.

The RRC could reject an application if a state or federal action concerning contaminant remediation was pending on the site, if a federal grant required an enforcement action, if the application was inaccurate, or if the site was ineligible for the program. If it rejected an application, the commission would have to explain the reasons for the rejection and would have to refund half of the application fee, unless the applicant wished to resubmit the application. If the application was rejected because it was incomplete or inaccurate, the commission would have to provide a list of information needed to complete the application. An applicant could resubmit an application within 45 days without paying an additional fee.

A participant would have to enter into an agreement with the commission that established a payment schedule for recovering the RRC's related costs. The agreement would have to identify laws and rules with which the participant would have to comply; describe any work plan or report to be submitted to the commission; establish a schedule for submitting reports; and state the technical standards to be applied in evaluating the plans and reports. Either party could withdraw from the agreement, and the RRC could retain the application fee if an agreement was not reached within 30 days of the negotiations.

Either party could terminate the contract by giving 15 days' advance written notice. If a participant did not pay the costs associated with a cleanup to the commission within 30 days of receiving notice of costs due, the RRC could ask the attorney general to bring an action to recover the amount owed and legal expenses.

The RRC would have to review and decide whether to approve work plans and other reports associated with the cleanup. After considering future use, the RRC could approve plans and reports that did not fully remove or remedy discharges, releases, and threatened releases if a partial response would protect human health and the environment, would not cause or contribute to any contamination that was not removed, and would not interfere with or increase the cost of actions to remove any remaining contamination.

The RRC would have to provide a certificate for successful completion of the program. The certificate would have to acknowledge liability protection, indicate proposed future land use, and include a legal description of the property. Upon certification, a participant who otherwise was not required by law or the RRC to control or clean up oil and gas wastes would be released from liability to the state for cleanup of areas covered by the certificate, except for any releases or consequences the participant caused. A release from liability would not apply to a person who contributed to contamination at the certified site, acquired a certificate by fraud or knew that a certificate was obtained by fraud, or changed land use from the use specified in the certification.

**Regulation of LPG activities.** CSSB 310 would eliminate the statutorily separate LPG division within the commission, the LPG examination fund, and fees established in statute for LPG license categories. The commission would be responsible for regulating LPG activities and could determine application, license, and renewal fees.

The commission could hold a patent, copyright, or trademark for an idea, publication, or other original innovation, including a logo, service mark, study, graphic design, manual, automated systems software, audiovisual work, or sound recording related to alternative fuels. The commission also could enter into a license agreement in return for a fee or royalty. Money

from fees or royalties associated with a logo, service mark, study, or graphic design would have to be deposited into the alternative fuels research and education fund.

Public and private schools would have to perform pressure tests for leakage on LPG piping systems at least once every two years to determine whether the piping would hold at least the amount of pressure specified by the National Fire Protection Association (NFPA). School districts would have to inform the commission of test or inspection results. Before introducing LPG into a piping system, a district would have to verify to the supplier that the piping had been tested in accordance with NFPA requirements. A supplier would have to terminate service if a test showed hazardous leakage or if a test was not performed.

**Liaison activities with emergency response officials.** The RRC would have to require hazardous liquid, carbon dioxide, or gas pipeline operators to communicate and conduct liaison activities with fire, police, and other appropriate emergency response officials. If an operator could not arrange a meeting in person by mailing a written request, sending a request by fax, and making or sending at least one telephone call or e-mail, the operator would have to make the same efforts to arrange a telephone conference. An operator who could not arrange a telephone conference could mail the community liaison information to the appropriate officials.

**Pipeline assessment and testing.** The RRC could require a pipeline operator to file a plan for assessing or testing a pipeline if the commission believed that the pipeline could present a hazard to public health or safety, if the commission lacked adequate information to assess the risk to public health or safety, or if a plan was necessary to a pipeline safety investigation. The RRC could take enforcement action against an operator who failed to submit a plan or participate in a safety investigation.

The commission could require that the plan identify risk factors associated with a pipeline system and information about previous inspections, pressure tests, leaks, operating characteristics, corrosion protection, and other information related to risk assessment. Approval of a plan would not certify or represent that the pipeline was in compliance or exempt from safety standards.



**Gas and pipeline utilities.** The commission would have exclusive original jurisdiction over gas utilities inside a municipality that surrendered its jurisdiction to the commission.

The utilities division of the State Office of Administrative Hearings would have to conduct hearings in a contested case in which the hearing was not conducted by members of the RRC. The hearing would have to be conducted in accordance with commission rules. The RRC could delegate to the utilities division the authority to make final decisions, findings of fact, and other orders in proceedings in which there was not a contested issue of fact or law. The RRC's utility division would have to conduct contested case hearings and could make final decisions and issue findings of fact or other orders in other proceedings.

A city could surrender its jurisdiction over gas utilities to the RRC with voter approval. The city would have to include the issue in a municipal election if it received a petition by 20,000 qualified voters or 10 percent of the number of voters that voted in the preceding election, whichever was fewer.

The commission could consider a capital cost or gas purchase expense to be reasonable and just if it was within a range of expense that would be incurred by a prudent manager facing the same circumstances at the same time. A utility could send bills over the Internet upon a customer's request. A gas pipeline utility would have to serve a commercial customer if the utility could do so without reducing service to other customers.

**Miscellaneous provisions.** CSSB 310 would repeal the Texas Experimental Research and Recovery Activity program, under which the RRC maintains an inventory of producing wells for use in gathering data, production testing, and developing and testing enhanced recovery techniques.

The RRC could authorize payment of fees, fines, penalties, and charges for goods and services by credit card or other electronic means over the Internet, over the telephone, or in person. The commission could require a service charge to recover costs involved in processing the payment.

The bill would add standard sunset provisions governing conflict of interest, development of an equal employment opportunity policy, maintenance of complaint information, separation of policy-making and management responsibilities, public participation, and provision of information on the State Employee Incentive Program. It also would add standard provisions relating to licensing, including standardizing time frames and fees for renewing licenses, providing notice of licensing examination score within a certain time frame, establishing procedures for applicants who hold licenses from other states, authorizing provisional licenses, authorizing a full range of penalties, revising rules on advertising and competitive bidding practices, and requiring adoption of continuing education requirements.

The bill would take effect September 1, 2001, except as otherwise provided.

**SUPPORTERS  
SAY:**

CSSB 310 would continue the Railroad Commission until 2013 and would implement Sunset Advisory Commission recommendations. The RRC plays a vital role in protecting Texas' natural resources, consumer interests, and the environment. Also, the commission's efforts in plugging abandoned wells and remediating contaminated drilling sites has taken on growing importance as the oil and gas industry matures.

Increasing fees and penalties would improve the agency's ability to clean up abandoned well sites through the oil field cleanup fund. Revenue from the fees and raising the fund's cap to \$20 million would help the RRC plug more of Texas' abandoned wells. Establishing performance goals for the fund would allow the Legislature to monitor better the RRC's progress in plugging wells and remediating sites. Identifying and prioritizing high-risk wells would help ensure the remediation of sites that posed the gravest threat to the environment or the public's health and safety. Improved financial reporting requirements would promote transparency and accountability in regard to the fund's operation.

Abandoned wells are a serious problem in Texas. Currently, the state must pay to clean up more than 16,000 abandoned wells at a cost of \$4,000 to \$5,000 per well. Requiring operators to file a bond or letter of credit would help to ensure that the state was not left to clean up after unscrupulous operators.

CSSB 310 also would benefit financially responsible well operators, most of whom already provide bonds as financial assurance. Current law allows an operator to provide financial assurance simply by paying an annual fee or giving a lien on personal property. An unscrupulous operator can abandon a well with an expectation of few financial repercussions. Operators ultimately pay for well plugging and site remediation through the oil field cleanup fund, and this bill would help to reduce use of the fund for cleanup.

Phasing in the bonding and letter of credit requirements by 2004 would give the industry time to adjust to new requirements. Small or marginal operators would have time to develop a track record and to shop around for a suitable surety provider. Any burden of complying with the new financial security requirements would be lessened by the certainty of a date for implementation of the new requirements.

Texas' population growth has increased interest in developing rural areas. Implementing a voluntary cleanup program would allow the state to tap into that interest to clean up abandoned well sites. This program would enable the state to use private funding to clean up sites that otherwise could become the state's responsibility. The RRC would ensure that cleanup was conducted properly, and the developer would pay the commission for any associated costs. This program also would help to reduce the number of sites awaiting cleanup.

Other provisions in CSSB 310 would improve public safety. Pipeline operators would have an alternative means to conduct liaison activities with emergency response officials if they first had made every reasonable effort to arrange a meeting in person. The current commission rule requiring liaison activities to be conducted only by face-to-face meetings is overly restrictive. Although operators have held meetings in the evenings and during lunch breaks to provide every opportunity for people to attend, turnout at the meetings often is small. Public safety would be improved by providing alternative methods for operators to convey the necessary safety information to emergency response officials. Also, ensuring that LPG systems in public and private schools complied with NFPA standards through biennial pressure testing would improve the safety of children.

OPPONENTS  
SAY:

The higher fees that CSSB 310 would impose would put additional financial strain on marginal operators, especially during a slump in the oil and gas industry. Petroleum producers and their profit margins are at the mercy of a worldwide market. Many factors outside of Texas can influence prices and lead to an abrupt turnaround in the industry's health. Increasing fees and penalties would make it harder for energy producers to survive negative swings in the petroleum market.

Restricting forms of financial assurance to bonds and letters of credit would burden smaller or new operators. These operators may have difficulty obtaining bonds or letters of credit, for instance, if they lacked a proven track record. With a possible energy crisis looming, Texas should not discourage exploration of its energy resources.

Establishing alternative means for pipeline operators to conduct liaison activities with emergency response officials would allow pipeline operators to circumvent face-to-face meeting requirements. The bill should include a mechanism to ensure that meetings are held at times when people can attend before allowing operators to conduct liaison activities by telephone or mail.

NOTES:

The bill's fiscal note estimates a net cost to the state of about \$2.3 million in general revenue-related funds during fiscal 2002-03 and \$3 million in fiscal 2004-05, mainly because of additional well plugging, site cleanup, and high-risk well testing activities and personnel. The proposed fee increases would generate an additional \$9.1 million per year for the oil field cleanup fund.

Major changes made by the committee substitute to the Senate engrossed version include:

- ! establishing an oil field cleanup fund advisory committee;
- ! requiring the RRC to study the desirability of implementing bonding or other financial security requirements for pipeline operators;
- ! requiring testing of LPG systems in schools; and
- ! requiring pipeline operators to conduct liaison activities with emergency response officials.