

SUBJECT: Higher penalty for Surface Coal Mining and Reclamation Act violation

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 6 ayes — Hardcastle, Farabee, Crownover, Chisum, Crabb,
Gonzalez Toureilles

0 nays

1 absent — Corte

SENATE VOTE: On final passage, April 12 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On similar House bill, HB 2232:*)
For — None

Against — None

On —Melvin Hodgkiss, Railroad Commission, Surface Mining Division

BACKGROUND: Natural Resources Code, sec. 134.174 sets the maximum administrative penalty under the Texas Surface Coal Mining Reclamation Act (TSCMRA) at \$5,000 per violation. Penalties can be assessed for violations of the act or specific provisions of a permit issued by the Texas Railroad Commission. Typical violations under the act include disturbances over an active gas pipeline, failing to submit stream flow monitoring data, conducting mining activities outside of a bonded area, and failing to use on-site sediment control measures. Each day a violation continues can be considered a separate violation for the purpose of penalty assessments.

DIGEST: SB 1667 would raise the maximum administrative penalty of TSCMRA from \$5,000 to \$10,000 per violation.

The bill would take effect September 1, 2007.

SUPPORTERS SB 1667 would raise the administrative penalty for surface coal mining

SAY: violations to keep up with inflation. The current maximum penalty of \$5,000 per violation has not been adjusted since it originally was introduced in 1979. Since then, the consumer price index has risen by about 250 percent, which has resulted in a real dollar reduction in the cost of committing a TSCMRA violation. Likewise, administrative costs have risen in the past 28 years, and an increase in the penalty is needed in order for the state to cost effectively identify, process, and respond to TSCMRA violations.

Increasing the maximum penalty for surface coal mining violations would encourage good business practices without presenting a financial hardship. On average, the Railroad Commission identifies 20 or 30 violations of the TSCMRA each year, which resulted in only \$19,000 in collected penalties in 2006. Because mining projects are handled by large corporations, the relatively small cost of the penalties is not a serious impediment to business. Rather, the costs associated with remediation and the stigma associated with having received a penalty are primary motivating factors for good stewardship. Further, the bill only would increase the maximum penalty and would not require the Railroad Commission to impose the maximum amount as a penalty across the board.

OPPONENTS SAY: This bill would double the administrative penalty for violations of the TSCMRA. When a violation occurs, a business already must incur the expense of remediation and should not be further burdened by a large administrative fine from the state. While the fine may appear small, each day a violation continues can be considered a separate violation, which can add up to a significant expense in a very short time. Since most TSCMRA violations are accidental, this bill would not discourage bad business practices but further would penalize businesses seeking to comply with the law.

OTHER OPPONENTS SAY: The penalty should be indexed to inflation. In this way, the penalty could continue to serve as a deterrent in the future without requiring the Legislature to change the statute every time it wished to raise the fine.

NOTES: A similar bill, HB 2232 by Corte, which would raise the maximum penalty of TSCMRA to \$13,000 per violation, passed the House by 142-0 on April 13 and has been referred to the Senate Natural Resources Committee.