

SUBJECT: Reporting contamination by common carrier, pipeline owner, or operator

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Keffer, Crabb, Craddick, Farabee, Gonzalez Toureilles,
Hardcastle, Rios Ybarra, Strama

0 nays

1 absent — Crownover

WITNESSES: For — James Mann, Texas Pipeline Assoc.; (*Registered, but did not testify*: Marty Allday, Enbridge Energy and Copano Energy; Mark Gipson, Devon Energy Corp.; Ken Kramer, Lone Star Chapter, Sierra Club; Ben Sebree, Texas Oil & Gas Association)

Against — (*Registered, but did not testify*: Ken Whalen, Texas Daily Newspaper Association and Texas Press Association)

On — Donna Warndof, Texas Independent Producers and Royalty Owners Association; (*Registered, but did not testify*: Charles Ross, Railroad Commission of Texas; Bill Stevens, Texas Alliance of Energy Producers)

BACKGROUND: Under the Natural Resources Code, sec. 81.056, if common carriers or owners or operators of a pipeline, while in the process of placing, repairing, replacing, or maintaining a pipeline, observe or detect any petroleum-based contamination of soil or water in proximity to the pipeline, they are required to report the contamination to the Railroad Commission and the owner of the land on which the pipeline is located.

This law was enacted in 2005 as SB 1130 by Hinojosa by the 79th Legislature. However, a provision of that bill that would have released from liability the common carrier, owner, or operator of the pipeline for the contamination or the cleanup of the contamination covered by that report did not take effect because the bill did not receive the necessary three-fifths vote to be enacted into law under Art. 3, sec. 66(e) of the Texas Constitution, which requires that vote to enact laws limiting non-economic damages.

DIGEST: CSHB 472 would reenact Natural Resources Code, sec. 81.056(e), providing that a common carrier or pipeline owner or operator that made a contamination report would be released from all liability for the contamination or the cleanup of the contamination covered by that report, except for any contamination caused by the common carrier or pipeline owner or operator.

CSHB 472 would allow the Railroad Commission (RRC) to use money from the oil-field cleanup fund, up to the amount collected for reporting fees, to implement the contamination report provisions.

Natural Resources Code, sec. 81.056(e) would take effect only if passed by a three-fifths record vote of the membership of each house, as required by Art. 3, sec. 66(e) of the Texas Constitution.

The bill would take effect September 1, 2009.

SUPPORTERS SAY: CSHB 472 would provide a common carrier, pipeline owner or operator release from liability for any third-party contamination that person reported to the RRC, as was intended by previous legislation. This bill also would allow the use of the oil-field cleanup fund to cover the fees associated with those contamination reports.

OPPONENTS SAY: CSHB 472 would not do an adequate job of informing landowners when a pipeline spill occurred. A public notice in a newspaper should be required so that adjacent landowners and the general public could be informed.

NOTES: The committee substitute differs from the bill as filed by:

- removing provisions to make the law relating to a contamination report inapplicable to certain contamination;
- removing requirements to report under law;
- removing specific requirements to report contamination to an owner of land;
- removing reporting and contamination sample collection deadlines; and

- allowing a portion of the oil-field cleanup fund to be used for the reporting fees for third-party contamination and limiting the amount, whereas the bill as filed would have repealed the provision that prohibits the RRC from using money in the oil-field cleanup fund for this purpose.

The RRC estimates that CSHB 472 would result in an additional 75 contamination reports annually. The RRC likely would use a third party to collect a sample of the contamination. The estimated cost for each sample collection is \$2,700, resulting in a cost of \$202,500 to be paid out of the oil-field cleanup account per fiscal year.

The companion bill, SB 1907 by Hinojosa, has been referred to the Senate Natural Resources Committee.