

BILL ANALYSIS

C.S.H.B. 2766
By: Hardcastle
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a company conducting geochemical or geophysical exploration to evaluate oil & gas opportunities may operate within the right-of-way in Texas free of charge. Further, the exploration company may do so to the detriment of the adjacent landowner by evaluating the terrain and obtaining proprietary information for an area without the adjacent landowner's knowledge. The adjacent landowner is left with potentially devalued property or the expense of conducting more extensive studies.

CSHB 2766 prohibits exploration companies from operating in the right-of-way along both state highways and county roads without: 1) obtaining a permit from the Texas Department of Transportation; 2) the permit holder must pay a \$650 fee per mile of applicable exploration; and 3) demonstrate notification from adjacent landowners. H.B. 2766 also provides for penalties for failure to comply, and authorizes county authorities to implement such regulation for the right-of-way along county roads. When exploration is conducted on county roads, the fee collected by county authorities will go to the county's General Revenue Fund instead of the state's General Revenue Fund.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 1 (Subtitle Z, Title 6, Section 473.004, Section 473.054, Section 473.057, and Section 473.058, Transportation Code) of this bill.

ANALYSIS

The language of this bill mirrors much of the statutory language in place in the Natural Resources Code Subchapter I, Section 52.321 et seq., with the Transportation Code regulating seismic companies in the rights-of-way along roadsides the same as the Natural Resources Code does for seismic companies on Public School land.

SECTION 1. Amends Subtitle Z, Title 6 of the Transportation Code by adding Chapter 473, "Geochemical and Geophysical Exploration."

Sec. 473.001 establishes the intent as to compensate state and counties for the use of rights of way for geochemical or geophysical exploration activities.

Sec. 473.002 establishes definitions. Specifically:

 "Adjacent land" is defined as land that is contiguous to the right-of-way of a roadway on which geochemical or geophysical activity is conducted.

 and (3) define the geochemical and geophysical exploration activities used to locate oil and gas prospects by using a techniques involving soil sampling and analysis, and magnetic, gravitational, seismic or electrical techniques.

The definition does not define rights of way or mention county permits.

This section also does not define "Commission" or "Department", but the implication is the Texas Transportation Commission and Texas Department of Transportation as these are within the Transportation Code.

Sec. 473.003 says this chapter speaks to exemptions and the act does not apply to geochemical or geophysical exploration activities that are: (1) airborne; (2) within the

corporate limits of a municipality; (3) in area where there are more than 15 separately owned tracts of land that front one or both sides of any mile of roadway; and (4) on or along any mile-long section of a right-of-way by a company that (a) holds or (b) is contracting with a company that holds an oil and gas lease or geophysical permit to all properties contiguous to the right of way where the permitted exploration occurs.

Sec. 473.004 speaks to the authority of the commission.

Sections 473.005-473.050 reserved for expansion.

Sec. 473.051. speaks to a permit required to conduct geochemical or geophysical exploration activities on the right-of-way in the state highway system.

Sec. 473.052. speaks to applying for a permit. (a) A permit application must be filed with the department by the person proposing to conduct exploration; (b) An application must be in the form prescribed by the commission and state the name and address of the geophysical exploration company as well as any other information required by the commission.

Sec. 473.053. speaks to the permit fee (a) The department shall impose and collect \$650 for each mile on which the applicant proposes exploration. Only one fee may be imposed or collected for each applicable geochemical or geophysical exploration. (b) Each fee collected by the department under Subsection (a) will be deposited to the credit of the general revenue fund.

Section 473.054 speaks to notice needed for geochemical or geophysical exploration activities. (a) The commission by rule shall require an applicant for a permit under this subchapter to provide: (1) the name and address of each owner of the applicable adjacent land; and (2) evidence showing that each owner of that adjacent land has been informed by the applicant about the proposed exploration in the right-of-way.

Sec. 473.055. speaks to compliance.

Sec. 473.056. speaks to exploration activity information permit holders may provide. (a) The commission may require (1) a permit applicant to provide the commission information describing the right-of-way and location on the right-of-way where exploration is proposed; or (2) at the commission's request, a permit holder is to provide information describing the location on the right-of-way where the exploration under permit is being conducted. (b) The commission may not require a permit holder to provide interpretive data. (c) Information collected by the commission under Subsection (a) or Section 473.054 is for the confidential use of the commission and the department and may not be disclosed to the public or another agency of this state, except as directed by court order.

Sec. 473.057. (a) The commission by rule shall require a permit holder under this chapter to restore property fronting the right of way, such as fences, ditches or water troughs, that may be damaged incidental to exploration in the right of way, to its condition immediately before the exploration activities were conducted.

Sec. 473.058. speaks to surface rights-of-way damages. (a) The commission by rule shall establish procedures for: (1) the restoration of the surface of a right-of-way damaged by exploration; and (2) compensation for any damage caused by exploration. (b) Subsection (a) does not apply to land covered by Subtitle F, Title 2, Natural Resources Code.

Sec. 473.059. speaks to the permit's revocation.

Sections. 473.060-473.100 reserved for expansion.

Sec. 473.101. speaks to permits for county rights-of-way. Except as provided by Section 473.102, the provisions of Subchapter B applicable to land that is right-of-way of the state highway system apply equally to land that is right-of-way of a county road system

or is adjacent land to that right-of-way of a county road, to the extent that they can be made applicable. A reference to the commission in that subchapter means the commissioners court of a county. A reference to the department in that subchapter means the county.

Sec.473.102 speaks to fees collected by county commissioners and says they will be deposited to the credit of the county's general fund.

Sec. 473.103. says the county commissioners court may notify the Texas Department of Transportation about each permit court issues under this subchapter.

Sections 473.104-473.150 reserved for expansion.

Sec. 473.151. provides administrative penalties for violations of this subchapter, with fines ranging from \$100 up to \$1,000 for each violation.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUE

Overall the substitute cleans up the language from the original bill while still retaining the bill's main components. Specifically, the substitute removes payments to landowners of adjacent land that were to be split 75 percent to the state or county and 25 percent to applicable adjacent landowners for exploration work in the rights-of-way. The substitute applies only to oil and gas and deletes references made in the original bill to other mineral interests. The substitute makes a distinction between the Texas Transportation Commission, which sets rules and policies, and the Texas Department of Transportation, which would handle the issuing of permits and fees. The substitute changes a reporting requirement in the original bill to voluntary for commissioners' court to report to TXDOT each permit issued for exploration.

Sec. 473.001. The substitute changes the intent of the chapter from "protecting rights-of-way" in the original to "compensating the state and counties" for exploration activities conducted in the rights of way.

Sec. 473.002. The substitute changes the definition of adjacent lands to include land that is contiguous to rights-of-way to cover property that only touches at a point on the right of way. The reference "within one-quarter mile" of exploration is also removed.

Sec. 473.003 The substitute adds the following three exemptions for geochemical or geophysical exploration that is conducted: (2) inside the corporate limits of a municipality; (3) in an area where there are more than 15 separately owned tracts of land that front one or both sides of any mile of roadway; and (4) on or along any mile-long section of a right-of-way by a company that (A) holds or (B) is contracting with a company that holds an oil and gas lease or geophysical permit to all properties contiguous to the right of way where the permitted exploration occurs.

Sec. 473.052. The substitute changes the information required from the name and address of "each person for whom the exploration is being conducted" to "the person proposing to conduct the exploration."

Sec. 473.053. (a) The substitute sets a \$650 fee for each mile on which the applicant proposes exploration in statute instead of allowing the commission to set the fee.

Sec. 473.054 The substitutes strikes a requirement that consent be obtained and requires that permit applicants only demonstrate notification of applicable adjacent landowners about the proposed exploration activities.

Sec. 473.055 The substitute requires compliance only of the permit holder and removes compliance required by “a person who holds an oil and gas lease on land to which this chapter applies” because oil and gas leases are not held on rights-of-way.

Sec. 473.056. The substitute restricts the information that permit holders must provide to the commission to information that (1) describes the right-of-way and location of right-of-way where exploration is proposed; (2) at the request of the commission, a permit holder must provide information describing the location on the right-of-way where exploration is being conducted. The original requested proprietary info such as maps, plats, reports and data. (b) is not changed in the substitute. The substitute adds Section 473.054 to (c) so that information on permits also is confidential.

Sec. 473.057. The substitute limits restoration to property such as fences, ditches or water troughs fronting the right of way that that may be damaged incidental to the exploration in the right of way and requires the commission to require permit holders to restore damaged property fronting rights-of-way.

Sec. 473.101. The substitute clarifies that the chapter applies to “land that is right-of-way of the state highway system”, not “land...that is adjacent to the right-of-way” as in the original.

Sec. 473.151. The substitute provides for administrative penalties, instead of criminal penalties provided for in the original.