

BILL ANALYSIS

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C.S.S.B. 1574
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Natural Resources
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the Railroad Commission of Texas (railroad commission) lacks statutory authority to address the issue of older oilfield lease contracts being outdated and containing few, if any, provisions relating to safety, environmental harm, or idle equipment. Some leases date back to the 1920s and have transferred to multiple operators since that time.

According to a Department of State Health Services mortality report, the 2006 wildfires in the Texas panhandle burned more than 900,000 acres and caused 12 reported human deaths. The two largest of these fires were caused by power lines downed by sustained winds of 46 miles per hour and gusts up to 52 miles per hour. Allegedly, at least one of the downed lines was an oilfield electric line that had not been properly maintained. While the majority of electrical lines are built to generally accepted standards, some oilfield leases throughout this state contain sagging electrical lines connected to crossbars that are dangling on deteriorated poles. These lines represent an extreme hazard to public health and property.

Furthermore, a number of Texas oilfield leases are littered with equipment on well sites that have been idle for years. Under current railroad commission rules, operators are allowed to effectively leave idle wells and related equipment on a lease indefinitely. Since many of these lease contracts are outdated and did not contemplate these future issues, landowners are left with little opportunity to return their land to its natural state once a well stops producing. This equipment litters the land and can pose a safety threat to humans and livestock.

Finally, although gathering lines are regulated by federal law, the railroad commission has no statutory authority to regulate production and flow lines. Production and flow lines beneath roads are often buried at the surface or only a few inches below the road. Graders may inadvertently rupture these lines, leading to human and environmental harm.

C.S.S.B. 1574 requires the railroad commission to adopt minimum standards for the construction, operation, and maintenance of any production and flow lines beneath a road on leased premises and any electrical power lines that are located or to be located on leased premises for use in connection with oil and gas-related activities on the lease. This bill requires the operator, if a well has been inactive for more than 12 months, to transfer the equipment for use in another well or remove the well site equipment from the leased premises. Finally, this bill provides measures for enforcement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 (Sections 91.703, Natural Resources Code) and SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 91, Natural Resources Code, by adding Subchapter P, as follows:

SUBCHAPTER P. MISCELLANEOUS PROVISIONS REGARDING USE OF SURFACE OF LAND IN CONNECTION WITH OIL AND GAS-RELATED ACTIVITIES

Sec. 91.701. DEFINITIONS. Defines “inactive well,” “operator,” “primary ranch road,” “well,” and “well-site equipment.”

Sec. 91.702. TRANSFER OR REMOVAL OF WELL-SITE EQUIPMENT. (a) Provides that this section applies only to an inactive well.

(b) Requires the operator of a oil or gas well (operator) to transfer or remove the well-site equipment, in the manner provided by Subsection (c), from the site of a inactive well that has been inactive for more than 60 months, unless the lease or other agreement with the lessor provides otherwise.

(c) Requires the operator, not later than the 90th day after the date of written notice from the lessor (as provided by Section 91.705) complaining of the failure of the operator to remove well-site equipment from an inactive well, to transfer or remove the equipment as set forth in this subsection.

(d) Requires the operator, if the operator transfers the well-site equipment to another well-site on the leased premises for use in connection with another well as provided by Subsection (c)(1), to employ a substantial portion of the transferred equipment in connection with the active well to which it has been transferred within the next 12 months or remove all transferred equipment from the leased premises.

Sec. 91.703. STANDARDS FOR MAINTENANCE OF CERTAIN PIPELINES. (a) Requires the Railroad Commission of Texas (railroad commission) by rule to establish minimum standards for maintaining pipelines on leased premises that lie on or beneath established primary ranch roads located on the leased premises.

(b) Limits the rules adopted under this section to those establishing a required minimum soil depth above a pipeline or requiring an alternative means of protection reasonably necessary to protect the pipeline from damage from expected vehicular traffic and allow the maintenance of the surface of the road on or beneath which the pipeline lies.

Sec. 91.704. STANDARDS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRICAL POWER LINES. (a) Requires the operator to construct, operate, and maintain electrical power lines serving well sites and other surface facilities employed in operations incident to oil and gas development and production in accordance with the National Electric Code published by the National Fire Protection Association and adopted by the Texas Department of Licensing and Regulation under Chapter 1305 (Electricians), Occupations Code.

(b) Requires the operator to de-energize lines to well sites and other surface facilities when equipment is transferred from the site or removed from the leased premises.

Sec. 91.705. ENFORCEMENT: ACTION FOR INJUNCTION OR COSTS; MANDATORY MEDIATION. (a) Authorizes the lessor, if the operator violates this subchapter, to give notice of the violation to the operator and request that the operator remedy the violation. Requires the notice to be mailed by certified mail to the address of the operator as shown by the records of the railroad commission and to specifically describe the violation.

(b) Authorizes the lessor to bring an action against the operator for damages or injunctive relief to require the operator to remedy the violation described in the notice if the operator fails to remedy the violation before the 90th day after the date the notice is mailed under Subsection (a). Provides that the district court in the county in which the land subject to the lease is located has jurisdiction to hear a suit brought under this section. Requires the trier of fact to determine whether the violation alleged by the lessor has occurred. Authorizes the court, after a trial and if it is determined that the operator has violated this subchapter in the manner described in the notice from the lessor, to issue an injunction requiring the operator to comply, within a reasonable time of the injunction's entry, the

particular provision or provisions of this subchapter that have been found to have been violated. Provides that the general requirements for the issuance of an injunction need not be satisfied for the lessor to be entitled to injunctive relief. Prohibits a bond from being required of the lessor as a condition to the issuance of an injunction. Authorizes the trial court to suspend the injunction's operation pending appeal by the operator, conditioned on the operator posting bond in an amount necessary to pay the costs of compliance with this subchapter regarding the found violation.

(c) Authorizes the trial court, absent a timely appeal by the operator, on complaint by the affected lessor, to remedy the failure by the operator to comply with the terms of the injunction by requiring the operator to post a bond payable to the lessor in an amount sufficient to remedy the violation, conditioned on the lessor having remedied the violation at the lessor's expense. Requires the amount of any judgment rendered against the bond to be only for those costs determined by the trial court to have been reasonably necessary to remedy the violation. Authorizes the court, if remedying the violation requires the removal of well-site equipment, to order the equipment forfeited and authorize the lessor to sell it and recover the proceeds. Requires the amount of an judgment rendered against the bond to be reduced by the amount of proceeds received from such sale. Provides that any proceeds received from such sale in excess of the reasonable and necessary cost of remedying the violation are subject to further court order.

(d) Authorizes the lessor, if the operator fails to comply with the injunction and post the ordered bond, to bring an action in the district court for the county in which the land subject to lease is located to recover the reasonable and necessary costs incurred by the lessor in remedying the violation. Authorizes the court, if remedying the violation requires the removal of well-site equipment, to order the equipment forfeited and authorize the lessor to sell it and recover the proceeds. Requires the amount of an judgment rendered against the bond to be reduced by the amount of proceeds received from such sale. Provides that any proceeds received from such sale in excess of the reasonable and necessary cost of remedying the violation are subject to further court order.

(e) Requires the party who prevails in an action under this section to be awarded its reasonable attorney's fees and court costs.

(f) Requires the court, for a suit that arises from a violation of this subchapter, to refer the matter to mediation among all parties and by order set the time and place of the mediation.

(g) Requires the court to appoint a mediator if the parties do not agree on a mediator.

(h) Requires each party to participate in the mediation in good faith and share the mediation fee equally.

(i) Provides that Sections 154.023(a) and (b) (regarding mediation procedures), Civil Practice and Remedies Code, and Subchapters C (Impartial Third Parties) and D (regarding miscellaneous provisions for alternative dispute resolution), Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and the mediation process provided by this section.

(j) Authorizes the court to proceed with the trial on the matter if the parties are unable to agree after participating in the ordered mediation.

SECTION 2. Requires the railroad commission to adopt rules to implement Subchapter P, Chapter 91, Natural Resources Code, as added by this Act, not later than January 1, 2008.

SECTION 3. (a) Prohibits the Act from being construed to revive any cause of action barred under the law as it existed immediately before its effective date brought by a lessor to require the

removal of equipment from the leased premises based on a claim of breach of contract arising out of the relationship between lessor and lessee or a tort claim arising out of operations on the leased premises by the operator or a predecessor of the operator.

(b) Provides that this Act does not impede a lessor from contracting with a surface owner for enforcement or rights granted by this Act.

(c) Prohibits this Act from being construed to impose a duty on a lessor or surface owner to enforce a violation of this Act or liability on a lessor or surface owner for failure to enforce a violation or for agreeing not to enforce a violation.

SECTION 4. Effective date: upon passage or September 1, 2007.