

BILL ANALYSIS

Senate Research Center

H.B. 3328
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Natural Resources
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Hydraulic fracturing stimulation of unconventional hydrocarbon formations has allowed for the extraction of natural gas and oil that was previously thought to be unrecoverable. The technique has been a key driver of the recent boom in natural gas production both nationally and in Texas. However, interested parties note that, despite the assertion of the technique's obvious economic benefits and potential to reduce dependence on foreign sources of oil, the safety of hydraulic fracturing has recently been called into question. Specifically, the parties note that certain groups and individuals have asserted that hydraulic fracturing poses a threat to Texas water supplies and have used the lack of publicly available information regarding the chemical makeup of hydraulic fracturing fluids to bolster these claims. Additionally, the interested parties note that this assertion is unfortunate and contend that the stimulation process poses no inherent danger to water supplies and that there have been no documented cases of groundwater pollution attributed to hydraulic fracturing in Texas or any other state. The parties note, however, that it is understandable how misconceptions and suspicions could arise in an environment where there is limited public understanding of the science of hydraulic fracturing and little transparency required of the industry regarding the practice, and that Texas has the opportunity to once again take the lead in effective, common-sense regulation of energy development.

Interested parties note that legislation is required to address the lack of transparency in an industry practice that is poorly understood by the public that could play a vital role in the energy future and broader economy of the state through rulemaking to require operators and service providers to disclose to the state all fluids, additives, and chemicals used in any hydraulic fracturing stimulation in Texas, which would then be posted on a public website and be readily accessible. The parties assert that such legislation could create the nation's strongest hydraulic fracturing fluid disclosure regime, thus earning the support of several environmental groups and the backing of many in industry because the legislation provides certain limited trade secret protections that will allow operators and service providers to protect their intellectual property. H.B. 3328 seeks to achieve this goal by addressing matters relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

H.B. 3328 amends current law relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 1 (Section 91.851, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS. Requires the Railroad Commission of Texas (railroad commission) by rule to:

(1) require an operator of a well on which a hydraulic fracturing treatment is performed to:

(A) complete the form posted on the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission with regard to the well;

(B) include in the form completed under Paragraph (A) the total volume of water used in the hydraulic fracturing treatment, and each chemical ingredient that is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2);

(C) post the completed form described by Paragraph (A) on the website described by that paragraph or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet website specified by the railroad commission;

(D) submit the completed form described by Paragraph (A) to the railroad commission with the well completion report for the well; and

(E) in addition to the completed form specified in Paragraph (D), provide to the railroad commission a list, to be made available on a publicly accessible website, of all other chemical ingredients not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. Requires that the railroad commission rule ensure that an operator, service company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;

(ii) occur incidentally or are otherwise unintentionally present in the treatment; or

(iii) in the case of the operator, are not disclosed to the operator by a service company or supplier. Prohibits the railroad commission rule from requiring that the ingredients be identified based on the additive in which they are found or that the concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator of the well with the information necessary for the operator to comply with Subdivision (1);

(3) prescribe a process by which an entity required to comply with Subdivision (1) or (2) may withhold and declare certain information as a trade secret for purposes of Section 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), Government Code, including the identity and amount of the chemical ingredient used in a hydraulic fracturing treatment;

(4) require a person who desires to challenge a claim of entitlement to trade secret protection under Subdivision (3) to file the challenge not later than the second anniversary of the date the relevant well completion report is filed with the railroad commission;

(5) limit the persons who may challenge a claim of entitlement to trade secret protection under Subdivision (3) to:

(A) the landowner on whose property the relevant well is located;

(B) a landowner who owns property adjacent to property described by Paragraph (A); or

(C) a department or agency of this state; and

(6) prescribe an efficient process for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or emergency responder who needs the information in accordance with Subsection (i) of that section.

SECTION 2. Makes application of Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, prospective.

SECTION 3. Requires the railroad commission to adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than January 1, 2012.

SECTION 4. Effective date: September 1, 2011.