

BILL ANALYSIS

C.S.S.B. 655
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Railroad Commission of Texas (Railroad Commission) serves as the State's primary regulator of the oil and gas industry. The agency's mission is to ensure the efficient production, safe transportation, and fair price of the State's energy resources, with minimal impacts to the environment.

The Railroad Commission is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The Sunset Commission found that Texas has a clear and ongoing need to oversee Texas' oil, gas, and other energy resource industries. However, fundamental changes in the State's current regulatory approach are needed to ensure responsive oversight of today's oil and gas industry.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Oil and Gas Commission in SECTION 10, SECTION 12, SECTION 35, SECTION 36, and SECTION 40 of this bill.

ANALYSIS

Renames the Railroad Commission of Texas as the Texas Oil and Gas Commission.

Effective January 1, 2012, CSSB 655 renames the Railroad Commission of Texas to be the Texas Oil and Gas Commission. A reference in law to the Railroad Commission of Texas means the Texas Oil and Gas Commission; similarly, references to a Railroad Commissioner mean a member of the Texas Oil and Gas Commission. The bill contains a number of transitional provisions relating to renaming the agency, including stating that the powers, duties, rights, and obligations of the Railroad Commission of Texas are those of the Texas Oil and Gas Commission, which is the successor to the Railroad Commission in all respects. CSSB 655 makes conforming changes to statute to reflect the agency's new name.

Establishes the election and terms of the Commissioners and the Chairman.

CSSB 655 provides that the Texas Oil and Gas Commission is composed of three Commissioners elected at the general election for state and county officers. The bill specifies that the Commissioners serve staggered terms of six years, with one Commissioner's term expiring December 31 of each even-numbered year. CSSB 655 provides that the Commissioner elected at the general election in 2012 and every sixth year thereafter serves as the chairman of the Commission and has the duty of ensuring that the Commission carries out its administrative duties and responsibilities. The bill authorizes the Commission to hire personnel necessary to perform its duties.

Continues the Commission until 2023.

CSSB 655 continues the Texas Oil and Gas Commission until September 1, 2023.

Requires Commissioners to disclose reasons for recusal.

CSSB 655 requires that a Commissioner who voluntarily recuses himself or herself from a Commission decision shall disclose the material interest related to the recusal in writing.

Makes restrictions on political contributions.

CSSB 655 prohibits Commissioners from knowingly accepting political contributions, as defined by Section 251.001, Election Code, for a statewide or federal office, other than Commissioner. The bill further provides that a Commissioner may not knowingly accept a political contribution for the office of Commissioner except during the period beginning one year before the next general election for any Commissioner's office up to 30 days before the next regular legislative session convenes after that general election.

The bill also prohibits a person other than a Commissioner from accepting a political contribution for the office of Commissioner except: 1) beginning one year before the next general election in which any Commissioner's office is filled and ending on the 30th day before the first regular legislative session convening after that general election; or 2) during the period from the date of a vacancy in the office of Commissioner and ending when that vacancy is filled.

Provides for a Commissioner's automatic resignation on announcing or becoming a candidate for other office.

CSSB 655 provides for a Commissioner's automatic resignation if the Commissioner announces or becomes a candidate for elected office, other than the office of Commissioner, in any general, special, or primary election under the laws of Texas or the United States, if a Commissioner's remaining term exceeds one year.

Applies a standard Sunset across-the-board recommendation.

CSSB 655 requires the Texas Oil and Gas Commission to develop and implement a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Reconstitutes the Oil Field Cleanup Fund as the Oil and Gas Regulation and Cleanup Fund to pay for the Oil and Gas program, and establishes surcharges on fees to help raise necessary revenues.

CSSB 655 reconstitutes the Oil Field Cleanup Fund as the Oil and Gas Regulation and Cleanup Fund, established as a special fund in the State Treasury. The bill retains a number of provisions relating to the current Oil Field Cleanup Fund, including provisions directing fee revenues to the Oil Field Cleanup Fund, and applies these provisions to the new Oil and Gas Regulation and Cleanup Fund. The bill expands this list of revenues to include surcharges imposed under Section 81.071.

CSSB 655 establishes that the new Oil and Gas Regulation and Cleanup Fund may be used for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, remediation, well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

CSSB 655 requires the Commission to provide, by rule, for the imposition of reasonable surcharges on fees to be deposited in the Oil and Gas Regulation and Cleanup Fund, with some exceptions. The bill requires the surcharges to be in amounts sufficient to enable the Commission to recover the costs of performing the functions set out for the Oil and Gas Regulation and Cleanup Fund. The bill requires the Commission to develop, by rule, the methodology for determining the amount of each surcharge, and sets factors for the Commission to take into account.

CSSB 655 specifies that money appropriated to the Commission for oil and gas regulation and cleanup purposes shall be paid from the Oil and Gas Regulation and Cleanup Fund, except that the Legislature may supplement these funds with money from General Revenue.

Redirects fines previously deposited in the Oil Field Cleanup Fund to General Revenue.

CSSB 655 redirects revenues from fines previously deposited into the Oil Field Cleanup Fund to the General Revenue Fund.

Requires reporting on progress in meeting performance goals for the Oil and Gas Regulation and Cleanup Fund.

The bill requires the Commission, through its legislative appropriations request, to establish specific performance goals for the Oil and Gas Regulation and Cleanup Fund, including the number of orphaned wells to be plugged with State-managed funds; abandoned sites to be investigated, assessed, or cleaned up with state funds; and surface locations to be remediated.

CSSB 655 requires the Commission to submit to the Legislative Budget Board and the Oil and Gas Regulation and Cleanup Fund Advisory Committee a quarterly report that includes updated information, such as the amount of money deposited in the Fund, the agency's progress in meeting performance goals, the total number of permits issued, the average amount of time taken by the Commission to complete the process for issuing a permit, and other information. The bill also requires that these reports include information related to total Fund expenditures for clean up and remediation.

The bill requires the Commission to submit to the Legislature and the Oil and Gas Regulation and Cleanup Fund Advisory Committee, and make available to the public, an annual report reviewing the extent to which money provided from the Fund has enabled the Commission to better protect the environment through oil field cleanup activities. The bill defines certain information required in the report, including certain performance goals and a projection of the amount of money needed in the next biennium for cleanup efforts.

Reconstitutes the Oil Field Cleanup Fund Advisory Committee as the Oil and Gas Regulation and Cleanup Fund Advisory Committee.

CSSB 655 creates the Oil and Gas Regulation and Cleanup Fund Advisory Committee as a replacement to the Oil Field Cleanup Fund Advisory Committee, abolished in the bill. The bill establishes the ten-member committee to include members from the Texas House and Senate, various industry groups, the public, and the academic fields of geology and economics. CSSB 655 requires the advisory committee to meet with the Commission at the call of the Chairman of the Commission and monitor the effectiveness of the Oil and Gas Regulation and Cleanup Fund.

CSSB 655 authorizes the committee to submit comments to the agency regarding proposed rules relating to the Oil and Gas Regulation and Cleanup Fund and to request information from the Commission to carry out its duties.

CSSB 655 requires that, not later than November 15 of each even-numbered year, the advisory committee report to the Governor, Lieutenant Governor, and Speaker of the House, providing an analysis of any problems with the administration of the Fund and recommendations for any legislation needed to address these problems or further the purpose of the Fund.

Requires the Commission to develop, in rule, an enforcement policy to guide staff in evaluating and ranking oil- and natural gas-related violations.

CSSB 655 requires the Commission to adopt, by rule, an enforcement policy to guide agency employees in evaluating certain violations, including those that relate to safety or the prevention or control of

pollution. The bill requires the policy to include specific processes for classifying violations based on the seriousness of the threat of pollution, and the potential risk to health or public safety.

The bill also requires that the policy detail standards to provide guidance to agency staff on which type of violations to appropriately dismiss based on compliance, versus violations that should be forwarded to the central office for enforcement action. CSSB 655 also requires the Commission to develop standards that take into account a permittee's history of previous violations when determining whether to forward a violation for enforcement action.

Requires the Commission to formally adopt penalty guidelines in rule.

CSSB 655 requires the Commission to adopt penalty guidelines in rule for areas of the agency beyond pipeline safety.

Eliminates the Commission's statutory authority to promote the use of propane.

CSSB 655 repeals Natural Resources Code, Subchapter I, Chapter 113, Alternative Fuels Research and Education. Elimination of this Chapter includes eliminating the Commission's statutory authority to promote propane, including its marketing, research, and education functions. CSSB 655 also eliminates the Alternative Fuels Research and Education Fund and transfers unexpended balances from this Fund to the General Revenue Fund.

Authorizes the Commission to enforce damage prevention requirements for interstate pipelines.

CSSB 655 authorizes the Commission to amend its pipeline damage prevention rules to apply to interstate, as well as intrastate, pipelines and to enforce these rules for violations that affect both types of pipelines. The bill grants the Commission authority to assess administrative penalties against operators and excavators that violate damage prevention rules on interstate lines.

Authorizes a party affected by forced pooling to request a hearing on the matter in the county where the proposed well will be drilled.

CSSB 655 authorizes an interested party to request a local hearing, either in person or via telephone, on the pooling application. The bill authorizes the Commission to enter into contracts with other state agencies that have field offices to hold such hearings either in person or by phone.

Authorizes the Commission to develop a fee schedule for increased charges associated with re-filing permits that have been previously withdrawn.

CSSB 655 requires the Commission, by rule, to provide procedures requiring an interested owner who applies to the Commission for the pooling of mineral interests to give notice to the Commission before withdrawing an application, if the hearing on the application has already been scheduled. The bill requires the Commission to develop rules that require an applicant who re-files an application for pooling rights, when they have previously submitted and withdrawn an application set for hearing without giving proper notice, to pay a higher filing fee. The bill also requires the Commission to develop the timeframe and the fee associated with re-filing under these circumstances.

The bill repeals the following statutory provisions.

Natural Resources Code, §91.111

Natural Resources Code, §91.112

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute changes the name of the Railroad Commission of Texas to the Texas Oil and Gas Commission and states that all powers, duties, rights, and obligations, and other items of the Railroad Commission are that of the Texas Oil and Gas Commission, effective January 1, 2012. The substitute contains transitional language to account for the renamed agency and makes conforming changes as necessary in the bill related to the renamed agency. The original bill abolished the Railroad Commission of Texas and created a new agency called the Texas Oil and Gas Commission on the effective date of the Act, September 1, 2011. The original bill transferred all powers, duties, functions, programs, activities, and other items from the Railroad Commission of Texas to the new Texas Oil and Gas Commission and made conforming changes as necessary to account for the new agency and its name.

The substitute establishes a three-member elected Commission serving staggered six-year terms, and provides for election of a Chairman as one of the Commissioners. The substitute states that the Chairman shall ensure that the Commission executes and implements the Commission's administrative duties and responsibilities. The substitute provides that the Commission may employ personnel as necessary to perform its duties, and eliminates references to employment of several specific employees, including an administrative chief. The original bill provided for one elected Commissioner serving a four-year term, and eliminated the requirement that the agency employ an administrative chief. The original bill made technical changes as necessary to provide for governance by a single Commissioner.

The substitute provides that a Commissioner who voluntarily recuses himself or herself from a Commission decision because of a material interest in a matter shall disclose the material interest in writing. The original bill did not contain such a provision.

The substitute provides that a Commissioner may not knowingly accept a political contribution for use in a campaign for a statewide or federal office. The original bill limited the single Commissioner from knowingly accepting a political contribution for use in a campaign for a statewide or federal office except during certain timeframes.

The substitute provides that a Commissioner, or any other person running for that office, may not knowingly accept a political contribution for use in a campaign for office of commissioner except beginning one year before the date of the next general election at which "any" commissioner's office is filled and ending on the 30th day before the subsequent legislative session. The original bill contained a similar provision, limiting the single Commissioner, or any other person running for that office, from accepting a political contribution for use in a campaign for that office of commissioner except beginning one year before the date of the next general election at which the commissioner's office is filled and ending on the 30th day before the subsequent legislative session.

The substitute provides for automatic resignation of a Commissioner in the case that the Commissioner announces or becomes a candidate for an elected office under the laws of Texas or the United States

other than the office of Commissioner at any time when the Commissioner's unexpired term exceeds one year. The original bill had no such provision.

The substitute provides that all proceeds from the fee for application for exception to an agency rule set up in Section 81.0521 of the Natural Resources Code shall be deposited to the credit of the Oil and Gas Regulation and Cleanup Fund. The original bill provided for two-thirds of the fee to be deposited to the Oil and Gas Regulation and Cleanup Fund.

The substitute does not contain language contained in the original bill that requires the State Office of Administrative Hearings to conduct contested case hearings in enforcement proceedings under a law administered by the agency. In addition, the substitute does not contain language contained in the original bill that requires the State Office of Administrative Hearings to conduct each hearing in a contested case under the Gas Utility Regulatory Act.

The substitute reconstitutes the Oil Field Cleanup Fund Advisory Committee as the Oil and Gas Regulation and Cleanup Advisory Committee. The original bill abolished the Oil Field Cleanup Fund Advisory Committee and does not create a new advisory committee.

The substitute requires the Commission to provide certain reports relating to the Oil and Gas Regulation and Cleanup Fund to, among others, the Oil and Gas Regulation and Cleanup Fund Advisory Committee. The original bill included similar reports but did not include reporting to the Oil and Gas Regulation and Cleanup Fund Advisory Committee since that advisory committee did not exist in the original bill.

The substitute requires that the quarterly report on the Fund contain, among other items, information on the total number of permits issued by the Commission; the average amount of time taken by the Commission to complete the process for issuing a permit; and the average amount of time taken by the Commission to rule on a contested case. The original bill did not specify such information.

The substitute establishes that money appropriated to the Commission for oil and gas regulation and cleanup be paid from the Oil and Gas Regulation and Cleanup Fund, except that those amounts may be supplemented with General Revenue. The original bill did not provide for supplemental amounts from General Revenue.

The substitute adds language to clarify that the alternative dispute resolution procedures adopted under Section 81.065 do not apply to the resolution of an informal complaint described by Section 81.058 or filed under 85.065. The original bill did not contain this clarifying language.