

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 28, 2011**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB3328** by Keffer (Relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments. ), **Conference Committee Report**

**No significant fiscal implication to the State is anticipated.**

The bill would require the Railroad Commission to adopt rules that require an operator to disclose chemicals used in hydraulic fracturing of an oil or gas well by completing the form on the Internet chemical disclosure registry developed and implemented by the Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC). Information would include each chemical ingredient regardless of whether it must be listed on a Material Safety Data Sheet under the federal Occupational Health and Safety Act (OSHA). An operator would be required to post the completed form on the GWPC/IOGCC website. The operator would also be required to submit the completed form to the Commission with the well completion report. In addition to the completed form, an operator would also be required to provide to the Railroad Commission a list 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. An operator would not be required to disclose ingredients that were not purposely added to the hydraulic fracturing treatment, occur incidentally, or are not disclosed to the operator.

The bill would require the Railroad Commission to adopt rules to prescribe a process by which an operator or a service company could designate certain information as a trade secret not subject to Texas open records law, and it would authorize the entity claiming the trade secret to withhold information asserted to be a trade secret. The rules would require that a trade secret claim be filed within 2 years of filing the completion report with the Commission and limit a person who could challenge such a claim to the landowner on whose property the well is located or who owns adjacent property, or a department or agency of Texas. The rules would be required to include an efficient process for an entity for whom a trade secret claim has been claimed or approved to provide information to a health professional or an emergency responder in accordance with OSHA regulations.

The bill would require that in the event of a trade secret challenge that the Railroad Commission notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim.

The bill would require the Railroad Commission to develop a process for making the legal determination as to whether information claimed to be a trade secret actually qualified as such under the Open Records Act as modified by the bill. The agency reports that currently the majority of permitting activity concerns unconventional reservoirs in which all wells are fracture stimulated. Operators generally consider the components and composition of certain chemical components of the treatments to be trade secrets and vary them from field to field and in different areas of the same field. However, the agency expects that no additional FTEs would be necessary to review trade secret claims.

The Railroad Commission is expected to require additional staff time to review completion forms to flag those forms on which an operator would indicate a trade secret and coordinate with the public that may be affected by the passage of this legislation. The bill's requirement that the agency provide notification of trade secret claims would also require additional agency resources. This estimate assumes that such costs would not be minimal but could be absorbed using existing agency resources.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 455 Railroad Commission

**LBB Staff:** JOB, SZ, TL