

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 19, 2011

TO: Honorable Jim Keffer, Chair, House Committee on Energy Resources

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

IN RE: HB3749 by Oliveira (Relating to establishing certain rights of an owner of the surface estate in land who does not own any interest in the mineral estate in the land in connection with the exploration for and production of the minerals.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3749, As Introduced: an impact of \$0 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2012 | \$0 |
| 2013 | \$0 |
| 2014 | \$0 |
| 2015 | \$0 |
| 2016 | \$0 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from <i>General Revenue Fund</i> 1 | Probable Revenue (Loss) from <i>General Revenue Fund</i> 1 | Change in Number of State Employees from FY 2011 |
|-------------|---|---|---|
| 2012 | (\$3,185,589) | \$3,185,589 | 43.0 |
| 2013 | (\$2,968,734) | \$2,968,734 | 43.0 |
| 2014 | (\$2,968,734) | \$2,968,734 | 43.0 |
| 2015 | (\$2,968,734) | \$2,968,734 | 43.0 |
| 2016 | (\$2,968,734) | \$2,968,734 | 43.0 |

Fiscal Analysis

The bill would provide procedures relating to damages to the surface from subsurface mineral exploration and production activity and create damage fees to compensate surface owners. The bill would require a mineral interest user to mail notice to each surface tract owner at the surface tract owner's last known mailing address of his intention to enter the surface tract to explore for and produce minerals. The notice would be required to be sent not later than the 20th day before the date the mineral interest user begins using a surface tract and must include the proposed location of any mineral development site. A mineral interest user and the surface owner would be required to make a good faith attempt to agree to the amount of a damage fee and a use fee to be paid to the surface owner by the mineral interest user. If the parties would be unable to reach an agreement, either would be

authorized to file an application with the Railroad Commission (RRC) requesting that the RRC determine the amount of the damage fee and the use fee. Such an application would be required to be accompanied by: (1) an application fee set by the RRC in an amount sufficient to cover its cost in administering the surface protections provisions program created by the bill ; (2) a survey showing the boundaries of the surface tract and the proposed location of any mineral development site; and (3) if the application is filed by the mineral interest user, a description of all anticipated mineral development improvements to be installed or constructed on the surface tract.

The RRC would be authorized to issue an order determining the amount of the damage fee and the use fee, and a mineral interest user would be required to suspend operations until after paying each surface owner the damage fee and use fee. If a mineral interest user would fail to pay the damage fee and use fee within 10 days of the date the mineral interest user and the surface owner enter into an agreement or the RRC issues an order, the surface owner would be authorized to prohibit the mineral interest user from using the surface tract; and charge him interest on the unpaid amount of the damage fee or use fee at an annual rate of 10 percent per year.

The bill would provide that within 30 days of cessation of mineral development, a mineral interest user would be required to remove all mineral development improvements and restore the site to the condition it was in before the mineral interest user began using the site. If the mineral interest user would fail to comply with this requirement, the surface owner would be authorized to remove the improvements and restore the site and charge the mineral interest user for all costs incurred in connection with these actions. The bill would also prohibit an operator from using any groundwater under or surface water on the surface tract in connection with mineral development without the express prior written consent of the surface owner.

The bill would require the RRC to adopt rules governing the contents of an application; the procedure for conducting a hearing; the method for determining the appropriate amount of a damage fee and a use fee; and the contents of an affidavit.

Methodology

This bill would give the RRC jurisdiction over surface damage and mineral right agreements between surface owners and mineral rights owners. Additional staff would be required by the RRC to: hold hearings to determine fees to be paid to surface owners in cases where the parties cannot agree; enforce the terms of the RRC's orders determining fees; and enforce the mineral interest user's authorization to enter the surface tract and use it for exploration and production activities in accordance with the mineral interest user's contractual rights and applicable law following the payment to each surface owner in the amount of the damage fee and the use fee agreed to by the parties. In addition, the RRC would need additional staff to enforce the bill's following requirements: the provisions allowing a mineral interest user to suspend operations until having paid each surface tract owner the approved fees; provisions authorizing a mineral interest user from using the surface tract and to charge the mineral interest user interest on the unpaid amount of the fees; providing that a mineral interest user remove all equipment and improvements and restore the site within 30 days of cessation of exploration and production activities; and the prohibition against the mineral interest user using any groundwater or surface in connection with exploration and production without the express prior written consent of the surface owner. The RRC would also have to determine whether or not the use of the surface tract is reasonable, taking into consideration the use of the surface tract by each surface tract owner and the requirement that the mineral interest user reasonably accommodate any use of the surface tract by a surface tract owner.

The costs to the RRC in implementing the bill would depend upon the number of disputes that would arise between surface owners and mineral rights users subsequent to the bill's enactment. The RRC reports issuing 15,466 new drilling permits in fiscal year 2010. The RRC anticipates that approximately 25 percent of these, or approximately 3,900, could have had disputes that could be addressed by the new enforcement authority provided in the bill. The RRC's Oil and Gas Division field staff would conduct the additional inspections necessary to process enforcement actions under this legislation. To handle an expected 3,900 disputes per year it is estimated that each of the RRC's nine field offices would conduct approximately 433 additional inspections annually.

This estimate assumes that each field office would need 1.0 additional inspector and 2.0 additional support staff to investigate complaints, file reports and complete administrative tasks related to the bill's requirements, for a total of 27.0 FTE and related costs. In addition, the RRC's General Counsel would need additional staff to hold the hearings related to the contested case matters resulting from the bill. The hearings require an attorney and case worker to prepare for hearings, hold the hearings, and close the files once the hearings are resolved. After the fieldwork, the RRC reports that each hearing would require approximately four hours. Based on 3,900 hearings, the RRC would need eight hearings teams using to cover the estimated 3,900 hearings, for a total of 16.0 FTEs and related costs. This assumes two hearings per day and 250 working days a year.

Because the bill would allow the RRC to charge an application fee to recover the cost of administering the enforcement provisions added by the bill, this estimate assumes that the RRC would charge approximately \$800 for each application fee to cover the costs of determining the damage fee and use fee and holding hearings for the estimated 3,900 disputes, which would result in approximately \$3.2 million in revenues deposited to the General Revenue Fund being generated to cover the costs of implementing the bill in fiscal year 2012, including initial equipment costs of approximately \$217,000. Costs and revenues in future years are estimated at \$3.0 million per fiscal year as shown in the table above.

Local Government Impact

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

Source Agencies: 455 Railroad Commission

LBB Staff: JOB, SZ, ZS, TL