

House Bill 3328
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 91, Natural Resources Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS. The commission by rule shall:

(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):

(i) the total volume of water used in the hydraulic fracturing treatment; and

(ii) 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 commission;

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

(E) in addition to the completed form specified in Paragraph (D), provide to the commission a list, to be made available on a publicly accessible website, of all other chemical ingredients

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Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS. (a) The commission by rule shall:

(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):

(i) the total volume of water used in the hydraulic fracturing treatment; and

(ii) each chemical ingredient that is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients;

(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 commission;

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

(E) in addition to the completed form specified in Paragraph (D), provide to the commission a list, to be made available on a publicly accessible website, of all other chemical ingredients

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not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. The commission rule shall 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. The commission rule shall not require 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, 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 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

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not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. The commission rule shall 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. The commission rule shall not require 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, 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 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

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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. Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the date the initial rules adopted by the Railroad Commission of Texas under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect is governed

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located:

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

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is relevant;

(6) require, in the event of a trade secret challenge, that the commission promptly 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; and

(7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, 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.

(b) The protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code.

[FA1(1)-(7)]

SECTION 2. Same as House version.

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by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than **January 1, 2012**.

SECTION 4. This Act takes effect September 1, 2011.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 3. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than **July 1, 2012**. [FA1(8)]

SECTION 4. Same as House version.

SECTION __. The heading to Chapter 81, Natural Resources Code, is amended to read as follows:
CHAPTER 81. TEXAS OIL AND GAS [~~RAILROAD~~]
COMMISSION [~~OF TEXAS~~] [FA6]

SECTION __. Section 81.001, Natural Resources Code, is amended to read as follows:
Sec. 81.001. DEFINITIONS. In this chapter:
(1) "Commission" means the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~].
(2) "Commissioner" means any member of the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~]. [FA6]

SECTION __. Subchapter A, Chapter 81, Natural Resources Code, is amended by adding Section 81.003 to read as follows:

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Sec. 81.003. TEXAS OIL AND GAS COMMISSION. (a) The Railroad Commission of Texas is renamed the Texas Oil and Gas Commission.
(b) A reference in law to:
(1) the Railroad Commission of Texas means the Texas Oil and Gas Commission; and
(2) a railroad commissioner or a member of the Railroad Commission of Texas means a member of the Texas Oil and Gas Commission. [FA6]

No equivalent provision.

SECTION __. Section 81.01001, Natural Resources Code, is amended to read as follows:
Sec. 81.01001. SUNSET PROVISION. The Texas Oil and Gas [Railroad] Commission [of Texas] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2023 [2014]. [FA6]

No equivalent provision.

SECTION __. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Section 81.010015 to read as follows:
Sec. 81.010015. ELECTION AND TERMS OF COMMISSIONERS; CHAIRMAN. (a) The commission is composed of three commissioners elected at the general election for state and county officers.
(b) Commissioners serve terms of four years.
(c) The commissioner elected at the general election in 2014 and every fourth year after that year serves as the chairman of the commission. The other commissioners shall be elected at the general election in 2012 and every fourth year after.

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(d) The designation of the office of chairman of the commission under Subsection (c) identifies the office for all purposes, including identification on official ballots for primary and general elections. [FA6]

No equivalent provision.

SECTION __. Sections 81.01002 and 81.01004, Natural Resources Code, are amended to read as follows:

Sec. 81.01002. POWERS AND DUTIES OF CHAIRMAN.

(a) The ~~[commissioners shall elect one commissioner as the]~~ chairman of the commission:

(1) shall manage the administrative affairs of the commission, subject to the applicable provisions of this code and other law;

(2) may organize the divisions of the commission in any manner so as to maximize the efficiency and effectiveness of the commission;

(3) shall set the agenda for commission meetings and hearings; and

(4) may hire and terminate commission employees.

(b) The chairman of the commission may delegate the chairman's powers and duties to one or more deputies, including the administrative chief.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, ~~[AND]~~ CONFLICT OF INTEREST, AND DISCLOSURE OF REASON FOR RECUSAL. (a) A commissioner is subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

(b) A commissioner who voluntarily recuses the commissioner from a commission decision because the

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commissioner has a material interest in the matter shall disclose the material interest in writing. [FA6]

No equivalent provision.

SECTION __. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Sections 81.010045 and 81.010046 to read as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED. (a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

(b) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of a statewide or federal office, other than the office of commissioner. [FA6]

No equivalent provision.

SECTION __. Sections 81.01005, 81.01008, and 81.017, Natural Resources Code, are amended to read as follows:

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~]."

(b) The seal of the commission contains a star of five points with the words "Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~]" engraved on it.

Sec. 81.01008. PUBLIC HEARINGS [~~SESSIONS~~]. The commission may hold public hearings [~~sessions~~] at any place in this state when considered necessary. [FA6]

No equivalent provision.

SECTION __. Section 81.0521(c), Natural Resources Code, is amended to read as follows:

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(c) ~~The [Two-thirds of the]~~ proceeds from this fee, excluding ~~[including]~~ any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil field] cleanup fund [as provided by Section 91.111].
[FA6]

No equivalent provision.

SECTION __. Sections 81.0531(c), (d), and (e), Natural Resources Code, are amended to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the ~~[permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the]~~ guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty ~~[for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety]~~. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

- (1) the permittee's history of previous violations, including the number of previous violations;
- (2) the seriousness of the violation and of any pollution resulting from the violation;

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- (3) any hazard to the health or safety of the public;
 - (4) the degree of culpability;
 - (5) the demonstrated good faith of the person charged; ~~and~~
 - (6) the economic benefit gained through the violation; and
 - (7) any other factor the commission considers relevant.
- (e) A penalty collected under this section shall be deposited to the credit of the general revenue ~~[oil field cleanup]~~ fund.
[FA6]

No equivalent provision.

SECTION __. Section 81.056(g), Natural Resources Code, is amended to read as follows:

(g) The commission may use money in the oil and gas regulation and ~~[oil field]~~ cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.
[FA6]

No equivalent provision.

SECTION __. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065, 81.066, 81.067, 81.068, 81.069, 81.070, and 81.071 to read as follows:

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a)
The commission shall develop and implement a policy to encourage the use of:
(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and
(2) appropriate alternative dispute resolution procedures

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under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The commission's alternative dispute resolution procedures do not apply to the resolution of an informal complaint described by Section 81.059 or filed under Section 85.065. [FA6]

No equivalent provision.

SECTION . Sec. 81.066. ENFORCEMENT POLICY. (a) The commission by rule shall adopt an enforcement policy to guide the employees of the commission in evaluating violations of the provisions of this title that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertains to safety or the prevention or control of pollution and is issued under this title.

(b) The enforcement policy adopted under this section must include:

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(1) a specific process for classifying violations based on:
(A) the seriousness of any pollution resulting from the violation; and
(B) any hazard to the health or safety of the public; and
(2) standards to provide guidance to commission employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.
(c) The standards adopted under Subsection (b)(2) must require a commission employee to take into account the permittee's history of previous violations in determining whether to dismiss a violation once the permittee comes into compliance or forward the violation for enforcement.
Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as a an account in the general revenue fund of the state treasury.
(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 million. The oil-field cleanup regulatory fees on oil and gas may not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.
(c) The fund consists of:
(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to

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the refund provisions of Section 91.1091, if applicable;
(2) private contributions, including contributions made under Section 89.084;
(3) expenses collected under Section 89.083;
(4) fees imposed under Section 85.2021;
(5) costs recovered under Section 91.457 or 91.459;
(6) proceeds collected under Sections 89.085 and 91.115;
(7) interest earned on the funds deposited in the fund;
(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;
(9) costs recovered under Section 91.113(f);
(10) hazardous oil and gas waste generation fees collected under Section 91.605;
(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;
(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;
(13) fees for a reissued certificate collected under Section 91.707;
(14) fees collected under Section 91.1013;
(15) fees collected under Section 89.088;
(16) fees collected under Section 91.142;
(17) fees collected under Section 91.654;
(18) costs recovered under Sections 91.656 and 91.657;
(19) fees collected under Section 81.0521;
(20) fees collected under Sections 89.024 and 89.026;
(21) legislative appropriations; and
(22) any surcharges collected under Section 81.071.
(d) All revenues and balances in the oil and gas regulation and cleanup fund created in this section are exempt from Section 403.095(b), Government Code.
Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION

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AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND. (a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next fiscal biennium, including goals for each quarter of each state fiscal year of the fiscal biennium for the number of:

- (1) orphaned wells to be plugged with state-managed funds;
- (2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and
- (3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

- (A) the amount of money deposited in the oil and gas regulation and cleanup fund;
- (B) the amount of money spent from the fund for the purposes described by Subsection (a);
- (C) the balance of the fund;
- (D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds,

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abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(E) the total number of permits issued by the commission;

(F) the average amount of time taken by the commission to complete the process for issuing a permit; and

(G) the average amount of time taken by the commission to rule on a contested case; and

(2) any additional information requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public annually a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the

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wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next fiscal biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Sec. 81.070. IMPOSITION OF SURCHARGES ON FEES.

(a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for

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determining the amount of a surcharge that takes into account:
(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;
(2) the number of individuals or entities from which the commission's costs may be recovered;
(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;
(4) the balance in the oil and gas regulation and cleanup fund;
and
(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.
(d) The commission shall collect a surcharge on a fee at the time the fee is collected.
(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund.
Sec. 81.071. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Notwithstanding any other law, the State Office of Administrative Hearings shall conduct each contested case hearing in an enforcement proceeding under a law administered by the commission. A hearing must be conducted in accordance with the rules and procedures adopted by the commission.
(b) The commission may delegate to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.
(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).
(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect

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as a final decision of the commission unless the commission requests formal review of the decision. [FA6]

No equivalent provision.

SECTION __. Section 81.115, Natural Resources Code, is amended to read as follows:

Sec. 81.115. APPROPRIATIONS [PAYMENTS] TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES [OIL AND GAS DIVISION]. Money appropriated to the [~~oil and gas division of the~~] commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund [~~General Revenue Fund~~].

Sections 81.116(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [~~oil field~~] cleanup fund [~~as provided by Section 91.111 of this code~~]. [FA6]

No equivalent provision.

SECTION __. Sections 81.117(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 201.053,

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201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, ~~excluding~~ ~~including~~ any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and ~~oil field~~ cleanup fund ~~[as provided by Section 91.111 of this code]~~. [FA6]

No equivalent provision.

SECTION __. Section 85.2021(d), Natural Resources Code, is amended to read as follows:

(d) All fees collected under this section shall be deposited in the oil and gas regulation and ~~state oil field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 89.024(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files an abeyance of plugging report must pay an annual fee of \$100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and ~~oil field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 89.026(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of \$50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and ~~oil field~~ cleanup fund. [FA6]

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No equivalent provision.

SECTION __. Section 89.048(d), Natural Resources Code, is amended to read as follows:

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and [oil-field] cleanup fund in an amount not to exceed 50 percent of the lesser of:

- (1) the documented well-plugging costs; or
- (2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area. [FA6]

No equivalent provision.

SECTION __. Section 89.083(j), Natural Resources Code, is amended to read as follows:

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and [state-oil-field] cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 89.085(d), Natural Resources Code, is amended to read as follows:

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and [oil-field] cleanup fund. The commission shall separately account for money and credit received for each well. [FA6]

No equivalent provision.

SECTION __. The heading to Section 89.086, Natural Resources Code, is amended to read as follows:

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Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND [THE OIL-FIELD] CLEANUP FUND.
[FA6]

No equivalent provision.

SECTION __. Sections 89.086(a), (h), (i), (j), and (k), Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 ~~[of this code]~~ may make a claim against the oil and gas regulation and [oil-field] cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(h) The commission shall suspend an amount of money in the oil and gas regulation and [oil-field] cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) ~~[of this section]~~ prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a

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claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and [oil field] cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and [oil field] cleanup fund in the manner provided by Subsection (j) ~~[of this section]~~.

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [oil field] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [oil field] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [oil field] cleanup fund the amount

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of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and ~~[oil field]~~ cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing. [FA6]

No equivalent provision.

SECTION __. Section 89.121(b), Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue ~~[state oil field cleanup]~~ fund. [FA6]

No equivalent provision.

SECTION __. Section 91.1013(c), Natural Resources Code, is amended to read as follows:

(c) Fees collected under this section shall be deposited in the oil and gas regulation and ~~[state oil field]~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 91.108, Natural Resources Code, is amended to read as follows:

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Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and [oil field] cleanup fund and, notwithstanding Sections 81.068 [91.112] and 91.113, may be used only for actual well plugging and surface remediation. [FA6]

No equivalent provision.

SECTION __. Section 91.109(a), Natural Resources Code, is amended to read as follows:

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [oil field] cleanup fund. Each bond or other form of financial security shall be renewed and continued in

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effect until the conditions have been met or release is authorized by the commission. [FA6]

No equivalent provision.

SECTION __. Sections 91.113(a) and (f), Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and ~~oil field~~ cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

- (1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;
- (2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or
- (3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover

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those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the credit of the oil and gas regulation and ~~oil field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 91.264(c), Natural Resources Code, is amended to read as follows:

(c) A penalty collected under this section shall be deposited to the credit of the general revenue ~~oil field cleanup~~ fund ~~account~~. [FA6]

No equivalent provision.

SECTION __. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) ~~[of this section]~~ fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and ~~oil field~~ cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit. [FA6]

No equivalent provision.

SECTION __. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any ~~[penalties or]~~ costs recovered by the attorney general

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under this subchapter shall be deposited in the oil and gas regulation and ~~oil-field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 91.605(e), Natural Resources Code, is amended to read as follows:

(e) The fees collected under this section shall be deposited in the oil and gas regulation and ~~oil-field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Section 91.654(e), Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and ~~oil-field~~ cleanup fund ~~[under Section 91.111]~~. [FA6]

No equivalent provision.

SECTION __. Section 91.707(b), Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and ~~oil-field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. Subchapter B, Chapter 102, Natural Resources Code, is amended by adding Sections 102.0125 and 102.0165 to read as follows:

Sec. 102.0125. WITHDRAWAL AND REFILEING OF APPLICATION. (a) The commission by rule shall:

(1) 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 the

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application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Rules adopted under Subsection (a)(1) must specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) At the request of an interested party, the commission may hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) The commission may contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency. [FA6]

No equivalent provision.

SECTION __. Section 117.012(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) [~~including~~] safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities [~~such a facility~~] resulting from the movement of earth by a person in the vicinity of such a [~~the~~] facility, other than movement by tillage that does not exceed a depth of 16 inches. [FA6]

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No equivalent provision.

SECTION __. Section 211.033(q), Natural Resources Code, is amended to read as follows:

(q) A penalty collected under this section shall be remitted to the comptroller for ~~the~~ deposit to the credit of the general revenue ~~[oil field cleanup]~~ fund. [FA6]

No equivalent provision.

SECTION __. Section 52.092(c), Election Code, is amended to read as follows:

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) chairman of the Texas Oil and Gas Commission;
- (8) ~~[railroad]~~ commissioner of the Texas Oil and Gas Commission;
- (9) ~~(8)~~ chief justice, supreme court;
- (10) ~~(9)~~ justice, supreme court;
- (11) ~~(10)~~ presiding judge, court of criminal appeals;
- (12) ~~(11)~~ judge, court of criminal appeals. [FA6]

No equivalent provision.

SECTION __. Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Texas Oil and Gas ~~[Railroad]~~ Commission

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~~[of Texas]~~ shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission. [FA6]

No equivalent provision.

SECTION __. Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS ~~[IN CONTESTED CASES]~~.

(a) ~~The [railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the] State Office of Administrative Hearings shall [to] conduct each hearing in a contested case under this subtitle [that is not conducted by one or more members of the railroad commission].~~ A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to ~~[a railroad commission hearings examiner or to the utility division of]~~ the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) ~~[to a railroad commission]~~

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~~hearings examiner or to the utility division of the State Office of Administrative Hearings].~~

(d) For purposes of judicial review, an administrative law judge's ~~[the]~~ final decision ~~[of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated]~~ under Subsection (b) has the same effect as a final decision of the railroad commission unless ~~[a member of]~~ the commission requests formal review of the decision.

~~[(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.;FA6]~~

No equivalent provision.

SECTION __. Section 121.201(a), Utilities Code, is amended to read as follows:

- (a) The railroad commission may:
- (1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline ~~[such a]~~ facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches;
 - (2) by rule require an operator that does not file operator organization information under Section 91.142, Natural

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Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law. [FA6]

No equivalent provision.

SECTION __. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and ~~oil field~~ cleanup fund. [FA6]

No equivalent provision.

SECTION __. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES. [FA6]

No equivalent provision.

SECTION __. Subsections (a), (b), (c), (d), (e), and (h), Section 121.211, Utilities Code, are amended to read as

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follows:

(a) The railroad commission by rule may adopt a fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title .

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title .

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title , excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title an annual fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title an annual fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline

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safety and regulatory program. [FA6]

No equivalent provision.

SECTION __. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111;
- (2) Section 91.112;
- (3) Section 91.1135; and
- (4) Subchapter I, Chapter 113. [FA6]

No equivalent provision.

SECTION __. On the effective date of this Act:

- (1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;
- (2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;
- (3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;
- (4) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;
- (5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;
- (6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund; and
- (7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund. [FA6]

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No equivalent provision.

SECTION __. (a) As soon as possible after the effective date of this Act, the governor shall appoint the initial commissioners of the Texas Oil and Gas Commission two of whom serve a term that expires January 1, 2013 and the chairman who serves a term that expires January 1, 2015.

(b) The office of commissioner of the Texas Oil and Gas Commission exists for purposes of the primary and general election in 2012. The office of the chairman of the Texas Oil and Gas Commission exists for the purposes of the primary and general election in 2014.

(c) The initial two elected commissioners of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2012 to serve a four-year term. The initial chairman of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2014 to serve a four-year term.

(d) The initial elected commissioner of the Texas Oil and Gas Commission shall take office January 1, 2013. The initial elected chairman of the Texas Oil and Gas Commission shall take office January 1, 2015. [FA6]

No equivalent provision.

SECTION __. (a) On the date the initial appointed commissioners of the Texas Oil and Gas Commission takes office:

- (1) the Texas Oil and Gas Commission is created;
- (2) the Railroad Commission of Texas is abolished and the terms of the members of the Railroad Commission of Texas serving on that date expire;
- (3) the powers, duties, functions, programs, and activities of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;

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- (4) an employee of the Railroad Commission of Texas becomes an employee of the Texas Oil and Gas Commission;
 - (5) all obligations and contracts of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
 - (6) all property and records in the custody of the Railroad Commission of Texas and all funds appropriated by the legislature to the Railroad Commission of Texas shall be transferred to the Texas Oil and Gas Commission;
 - (7) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, are transferred without change in status to the Texas Oil and Gas Commission;
 - (8) a rule or form adopted by the Railroad Commission of Texas is a rule or form of the Texas Oil and Gas Commission and remains in effect until altered by that commission;
 - (9) a reference in law to the Railroad Commission of Texas means the Texas Oil and Gas Commission;
 - (10) a reference in law to a railroad commissioner or a member of the Railroad Commission of Texas means the commissioner of the Texas Oil and Gas Commission; and
 - (11) a license, permit, or certification in effect that was issued by the Railroad Commission of Texas is continued in effect as a license, permit, or certification of the Texas Oil and Gas Commission.
- (b) The abolition of the Railroad Commission of Texas and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or

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any penalty accrued under former law, and that law remains in effect for any action concerning those matters. [FA6]

No equivalent provision.

SECTION __. The Railroad Commission of Texas shall adopt a timetable for phasing in the use of the name of the Texas Oil and Gas Commission so as to minimize the fiscal impact of the change of name of the entity responsible for performing the functions of the Railroad Commission of Texas. Until January 1, 2012, to allow for phasing in the use of the name of the Texas Oil and Gas Commission and in accordance with the timetable established as required by this section, the Texas Oil and Gas Commission may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas or as the Texas Oil and Gas Commission and any act of the Texas Oil and Gas Commission acting as the Railroad Commission of Texas is an act of the Texas Oil and Gas Commission. [FA6]

No equivalent provision.

SECTION __. This Act takes effect September 1, 2011. [FA6]