

## **BILL ANALYSIS**

C.S.H.B. 1863  
By: Wu  
Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the administrative, civil, and criminal penalty amounts for violations of the state's pipeline safety statutes and rules have not changed in several decades. The parties further contend that annual federal audits of the Railroad Commission of Texas pipeline safety program take into account whether the state's penalty amounts match those imposed under federal law and that, as a result of the recent enactment of certain federal law, the state's applicable penalty amounts are below the federal penalty amounts. Interested parties contend that federal funding funds approximately half of the railroad commission's pipeline safety program. The parties further note that the program has been advised that for all work done in the 2012 calendar year the program will be penalized if the state statute penalty amounts do not at least match the federal minimum penalty amounts and that such penalization affects the amount of federal funding. C.S.H.B. 1863 seeks to address these issues in order to bring Texas statute in line with federal law.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1863 amends the Natural Resources Code to increase the maximum amount of a civil penalty for a violation of oil and gas provisions relating to safety or to the prevention or control of pollution from \$10,000 to \$200,000 a day for each violation that is related to pipeline safety and caps the maximum penalty that may be assessed for any related series of violations related to pipeline safety at \$2 million.

C.S.H.B. 1863 increases the cap on a civil penalty relating to a violation of provisions governing the hazardous liquid or carbon dioxide pipeline transportation industry generally from \$25,000 to \$200,000 for each act of violation and for each day of violation, removes the minimum penalty of \$50 for such violation, and increases from \$500,000 to \$2 million the maximum civil penalty that may be assessed for any related series of violations. The bill increases from \$25,000 to \$2 million the maximum amount of a fine that may be assessed as a criminal penalty for the offense of intentionally violating those same general provisions or a related rule and of a fine for the offense of intentionally injuring or destroying a pipeline facility and specifies that in the prosecution of a defendant for multiple offenses of these kinds, respectively, all of the offenses are considered to be part of the same criminal episode and that the sentences of confinement shall run concurrently. The bill caps the cumulative total of fines imposed for these offenses at the maximum amount imposed on conviction of a single offense, respectively. The bill decreases from 15 years to five years the maximum term of confinement for an offense of intentionally injuring or destroying a pipeline facility.

C.S.H.B. 1863 amends the Utilities Code to increase from \$25,000 to \$200,000 the maximum amount of a civil penalty for each day of each violation of a safety standard adopted under

provisions relating to gas pipeline safety and to increase from \$500,000 to \$2 million the maximum amount of a penalty that may be assessed for any related series of violations. The bill increases from \$10,000 to \$200,000 the maximum amount of an administrative penalty for a violation of provisions relating to Railroad Commission of Texas safety rules regarding gas pipeline safety and caps the maximum penalty that may be assessed for any related series of violations at \$2 million.

C.S.H.B. 1863 increases the civil penalty for each violation by a gas utility of provisions relating to gas pipelines and for each failure of the utility to perform a duty under those provisions or to comply with an order of the railroad commission from not less than \$100 and not more than \$1,000 to not more than \$200,000 for each violation or failure that is related to pipeline safety and caps the maximum penalty that may be assessed for any related series of violations related to pipeline safety at \$2 million.

C.S.H.B. 1863 increases from \$10,000 a day to \$200,000 a day the maximum amount of a pollution or public safety administrative penalty against a gas utility for certain violations or failures relating to pipeline safety and caps the maximum penalty that may be assessed for any related series of violations related to pipeline safety at \$2 million. The bill changes the fine for an offense by certain applicable persons relating to a wilful violation of provisions governing gas pipelines or the gas utility pipeline tax from not less than \$50 and not more than \$1,000 to not more than \$2 million for an offense related to pipeline safety. The bill establishes that in the prosecution of a defendant for multiple offenses relating to the wilful violation of such provisions by such persons all of the offenses related to pipeline safety are considered to be part of the same criminal episode and that the sentences of confinement shall run concurrently. The bill caps the cumulative total of fines imposed for such offenses related to pipeline safety at the maximum amount imposed on conviction of a single offense.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1863 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 81.0531, Natural Resources Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The penalty may not exceed:

(1) ~~\$25,000~~ ~~[\$10,000]~~ a day for each violation that is not related to pipeline safety; or

(2) \$200,000 a day for each violation that is related to pipeline safety.

(b-1) Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 81.0531, Natural Resources Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The penalty may not exceed:

(1) ~~\$10,000~~ a day for each violation that is not related to pipeline safety; or

(2) \$200,000 a day for each violation that is related to pipeline safety.

(b-1) Each day a violation continues may be considered a separate violation for purposes of penalty assessments, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed \$2

million.

SECTION 2. Section 117.051, Natural Resources Code, is amended to read as follows:

Sec. 117.051. CIVIL PENALTY. A person who violates this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not less than \$500 or [\$50,000] more than \$200,000 [\$25,000] for each act of violation and for each day of violation, provided that the maximum civil penalty that may be assessed for any related series of violations may not exceed \$2 million [\$500,000].

SECTION 3. Section 117.053(b), Natural Resources Code, is amended to read as follows:

(b) An offense under this section is punishable by a fine of not more than \$2 million [\$25,000], confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

SECTION 4. Section 117.054(b), Natural Resources Code, is amended to read as follows:

(b) An offense under this section is punishable by a fine of not more than \$2 million [\$25,000], confinement in the Texas Department of Criminal Justice for a term of not more than 15 years, or both such fine and imprisonment.

SECTION 2. Section 117.051, Natural Resources Code, is amended to read as follows:

Sec. 117.051. CIVIL PENALTY. A person who violates this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not [less than \$50 nor] more than \$200,000 [\$25,000] for each act of violation and for each day of violation, provided that the maximum civil penalty that may be assessed for any related series of violations may not exceed \$2 million [\$500,000].

SECTION 3. Section 117.053, Natural Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section is punishable by a fine of not more than \$2 million [\$25,000], confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

SECTION 4. Section 117.054, Natural Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section is punishable by a fine of not more than \$2 million [\$25,000], confinement in the Texas Department of Criminal Justice for a term of not more than five [15] years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by

Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

SECTION 5. Section 121.204, Utilities Code, is amended to read as follows:

Sec. 121.204. CIVIL PENALTY. Each day of each violation of a safety standard adopted under this subchapter is subject to a civil penalty of not more than \$200,000 [~~\$25,000~~], except that the maximum penalty that may be assessed for any related series of violations may not exceed \$2 million [~~\$500,000~~]. The penalty is payable to the state.

SECTION 6. Section 121.206(b), Utilities Code, is amended to read as follows:

(b) The penalty for each violation may not exceed \$200,000 [~~\$10,000~~]. Each day a violation continues may be considered a separate violation for the purpose of penalty assessment.

SECTION 7. Section 121.302, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A gas utility is subject to a civil penalty if the gas utility:

- (1) violates this chapter;
- (2) fails to perform a duty imposed by this chapter; or
- (3) fails to comply with an order of the railroad commission if the order is not stayed or suspended by a court order.

(a-1) A penalty under this section is payable to the state and shall be not less than \$1,000 [~~\$100~~] and not more than \$200,000 [~~\$1,000~~] for each violation or failure.

SECTION 5. Same as introduced version.

SECTION 6. Section 121.206(b), Utilities Code, is amended to read as follows:

(b) The penalty for each violation may not exceed \$200,000 [~~\$10,000~~]. Each day a violation continues may be considered a separate violation for the purpose of penalty assessment, provided that the maximum penalty that may be assessed for any related series of violations may not exceed \$2 million.

SECTION 7. Section 121.302, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) A gas utility is subject to a civil penalty if the gas utility:

- (1) violates this chapter;
- (2) fails to perform a duty imposed by this chapter; or
- (3) fails to comply with an order of the railroad commission if the order is not stayed or suspended by a court order.

(a-1) A penalty under this section is payable to the state and shall be:

- (1) not less than \$100 and not more than \$1,000 for each violation or failure that is not related to pipeline safety; or
- (2) not more than \$200,000 for each violation or failure that is related to pipeline safety, provided that the maximum penalty that may be assessed for any related series

of violations related to pipeline safety may not exceed \$2 million.

SECTION 8. Section 121.304(b), Utilities Code, is amended to read as follows:

(b) The penalty for each violation or failure may not exceed \$200,000 [~~\$10,000~~] a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

SECTION 8. Section 121.304(b), Utilities Code, is amended to read as follows:

(b) The penalty for each violation or failure that is not related to pipeline safety may not exceed \$10,000 a day. The penalty for each violation or failure that is related to pipeline safety may not exceed \$200,000 a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed \$2 million.

SECTION 9. Section 121.310(b), Utilities Code, is amended to read as follows:

(b) An offense under this section is punishable by a fine of not less than \$500 [~~\$50~~] and not more than \$2 million [~~\$1,000~~]. In addition to the fine, the offense may be punishable by confinement in jail for not less than 10 days nor more than six months.

SECTION 9. Section 121.310, Utilities Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section that is not related to pipeline safety is punishable by a fine of not less than \$50 and not more than \$1,000. An offense under this section that is related to pipeline safety is punishable by a fine of not more than \$2 million. In addition to the fine, the offense may be punishable by confinement in jail for not less than 10 days nor more than six months.  
(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses related to pipeline safety are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section for offenses related to pipeline safety may not exceed the maximum amount imposed on conviction of a single offense under this section.

SECTION 10. The changes in law made by this Act apply only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose. For purposes of this section, a violation was committed before the effective

SECTION 10. Same as introduced version.

date of this Act if any element of the violation was committed before that date.

SECTION 11. This Act takes effect September 1, 2013.

SECTION 11. Same as introduced version.