

BILL ANALYSIS

Senate Research Center
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S.B. 212
By: Nichols; Huffman
Natural Resources
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission on the Railroad Commission of Texas (railroad commission). The 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 underwent Sunset review in 2011 but the agency's Sunset bill failed to pass. The railroad commission was continued for two years and under the Sunset Act will be abolished on September 1, 2013, unless continued by the legislature. The Sunset Advisory Commission found that Texas has a clear and ongoing need to regulate its energy resource industries—all vital sectors of the state's economy. However, statutory changes to the state's regulatory approach included in the legislation are needed to ensure transparent and effective oversight of today's booming oil and gas industry.

The Sunset Advisory Commission found that the railroad commission's name does not reflect its duties, is unclear to the increasing number of people coming into contact with oil and gas production, and confuses voters about the duties of the three commissioners the public elects on a statewide basis. Having three statewide-elected commissioners also raises questions regarding the commissioners' regulatory role versus their need to solicit campaign funds. With campaigns requiring millions of dollars and an increasing majority of these funds coming from the regulated community, the public needs assurance that the railroad commission's regulatory decisions are made in the public's interest.

Ensuring the effective functioning of the railroad commission's recently expanded authority to self-fund its operations is also important. However, exponential growth in oil and gas production may soon put the railroad commission at risk of exceeding the \$20 million cap on the agency's new Oil and Gas Regulation and Cleanup Fund.

For pipeline safety, the railroad commission relies on a back-end fee paid by gas utility customers, with no front-end fee on pipeline operators to obtain a permit. This approach limits the railroad commission's ability to cover its costs to ensure appropriate public safety and oversight of a growing network of oil and gas pipelines.

Inadequate enforcement efforts, a concern raised in 2011 by the Sunset Advisory Commission, led to railroad commission initiatives to beef up its enforcement processes, with higher penalties for repeat and serious violations. However, clear statutory direction will help to ensure these efforts continue.

As proposed, S.B. 212 amends current law relating to the continuation, functions, and name of the Railroad Commission of Texas, and provides for the imposition of fees, the repeal of provisions for the suspension of the collection of fees, and the elimination of a fee.

[**Note:** This bill changes references in law to the Railroad Commission of Texas to the Texas Energy Resources Commission and references to a railroad commissioner to a member of the Texas Energy Resource Commission.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Energy Resources Commission in SECTION 5 (Section 81.010045, Natural Resources Code), SECTION 9 (Section 81.0645, Natural Resources Code), SECTION 11 (Section 81.071, Natural Resources Code), and SECTION 16 (Section 117.012, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is rescinded in SECTION 8 (Section 81.0531, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the Railroad Commission of Texas is transferred to the Texas Energy Resources Commission and modified in SECTION 19 (Section 121.201, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 81, Natural Resources Code, to read as follows:

CHAPTER 81. TEXAS ENERGY RESOURCES COMMISSION

SECTION 2. Amends Section 81.001, Natural Resources Code, as follows:

Sec. 81.001. DEFINITIONS. Defines in this chapter, "commission" to mean the Texas Energy Resources Commission (commission), rather than the Railroad Commission of Texas (railroad commission), and "commissioner" to mean any member of the Texas Energy Resources Commission, rather than the railroad commission.

SECTION 3. Amends Subchapter A, Chapter 81, Natural Resources Code, by adding Section 81.003, as follows:

Sec. 81.003. TEXAS ENERGY RESOURCES COMMISSION. (a) Provides that the railroad commission means the Texas Energy Resources Commission.

(b) Provides that a reference in law to the railroad commission means the commission and a railroad commissioner or a member of the railroad commission means a member of the commission.

SECTION 4. Amends Section 81.01001, Natural Resources Code, as follows:

Sec. 81.01001. SUNSET PROVISION. Provides that the commission, rather than the railroad commission, is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that the commission, unless continued in existence as provided by that chapter, is abolished September 1, 2023, rather than September 1, 2013.

SECTION 5. Amends Subchapter B, Chapter 81, Natural Resources Code, by adding Sections 81.010015, 81.010045, and 81.010046, as follows:

Sec. 81.010015. ELECTION AND TERMS OF COMMISSIONERS; VACANCIES. (a) The commission is composed of three commissioners elected at the general election for state and county officers.

(b) Provides that commissioners serve staggered terms of six years, with the term of one commissioner expiring December 31 of each even-numbered year.

(c) Requires the governor to appoint a person to fill a vacancy on the commission until the next general election.

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED. (a) Defines "political committee" and "political contribution" in this section.

(b) Prohibits a commissioner from knowingly accepting a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of any elective office, including the office of commissioner, except during the period beginning 17 months before the date of the next general election at which the commissioner's office is filled and ending on the 30th day after the date of that election.

(c) Prohibits a person other than a commissioner from knowingly accepting a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner, except during the period beginning 17 months before the date of the next general election at which any commissioner's office is filled and ending on the 30th day after the date of that election; or during the period beginning on the date a vacancy in the office of commissioner occurs and ending on the date that vacancy is filled.

(d) Prohibits a commissioner from knowingly accepting a political contribution, and is required to refuse a political contribution that is received, from a party in a contested case before the commission or a political committee affiliated with such a party during the period beginning on the date notice of the hearing in the contested case is given; and ending on the 30th day after the date the decision in the contested case is rendered; or if a request for rehearing is filed the date the request is denied; or the 30th day after the date the decision after rehearing is rendered.

(e) Requires a commissioner to return a political contribution that is received and refused under Subsection (d) not later than the 30th day after the date the commissioner received the contribution.

(f) Requires the commission to adopt all rules necessary to implement Subsections (d) and (e), including rules that direct the commission to maintain a list of the contested cases before the commission and the parties to each case in order to aid the commissioners in complying with those subsections and ensure that each notice of a hearing in a contested case that is issued by the commission or a commissioner contains information about the political contributions prohibited under Subsection (d).

Sec. 81.010046. **AUTOMATIC RESIGNATION.** Provides that if a person who is a member of the commission announces the person's candidacy, or in fact becomes a candidate, in any general, special, or primary election for any elective office other than the office of commissioner at any time when the unexpired term of the office then held by the person exceeds 18 months, that announcement or that candidacy constitutes an automatic resignation of the office of commissioner.

SECTION 6. Amends Section 81.01005, Natural Resources Code, as follows:

Sec. 81.01005. **NAME AND SEAL.** (a) Provides that the commissioners are known collectively as the "Texas Energy Resources Commission," rather than the "Railroad Commission of Texas."

(b) Provides that the seal of the commission contains a star of five points with the words "Texas Energy Resources Commission," rather than "Railroad Commission of Texas," engraved on it.

SECTION 7. Amends the heading to Section 81.0521, Natural Resources Code, to read as follows:

Sec. 81.0521. **FEE FOR APPLICATION FOR EXCEPTION TO COMMISSION RULE.**

SECTION 8. Amends Sections 81.0531(c) and (d), Natural Resources Code, as follows:

(c) Requires the commission, in determining the amount of a penalty, to consider the guidelines adopted under Subsection (d). Deletes existing text requiring the commission, in determining the amount of the penalty, to 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. Deletes existing text requiring the commission, 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, to consider the guidelines adopted under Subsection (d).

(d) Requires the commission to adopt guidelines to be used in determining the amount of the penalty, rather than requiring the commission by rule to 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. Requires the commission to provide an opportunity for public input on the guidelines. Requires that the guidelines provide for different penalties for different violations based on the seriousness of the violation and any hazard to the health or safety of the public resulting from the violation. Requires that the guidelines take into account certain information, including the number of times the permittee's certificate of compliance issued under Subchapter P (Certificate of Compliance), Chapter 91 (Provisions Generally Applicable), has been canceled. Makes nonsubstantive changes.

SECTION 9. Amends Subchapter C, Chapter 81, Natural Resources Code, by adding Sections 81.0645, 81.065, and 81.066, as follows:

Sec. 81.0645. EX PARTE COMMUNICATIONS. Requires the commission by rule to develop a policy to prohibit an ex parte communication between a hearings examiner and a commissioner or between a hearings examiner and a member of the technical staff of the commission who has participated in a hearing. Requires that the policy prohibit a commissioner from communicating with a hearings examiner other than in a formal public hearing.

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

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

(c) Requires the commission to coordinate the implementation of the policy adopted under Subsection (a); provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect information concerning the effectiveness of those procedures.

Sec. 81.066. ENFORCEMENT POLICY. (a) Requires the commission to 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) Requires that the enforcement policy adopted under this section include:

(1) a specific process for classifying violations based on the seriousness of any pollution resulting from the violation and any hazard to the health or safety of the public; and

(2) standards to provide guidance to commission employees on which violations are authorized to be dismissed once the permittee comes into compliance and which violations are required to be forwarded for enforcement.

(c) Requires that the standards adopted under Subsection (b)(2) 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.

SECTION 10. Amends Sections 81.069(b) and (c), Natural Resources Code, as follows:

(b) Requires the commission to provide to the Legislative Budget Board (LBB) and post on the commission's Internet website quarterly reports that include certain information. Makes a nonsubstantive change.

(c) Requires the commission to submit to the legislature and make available to the public, including by posting on the commission's Internet website, annually, a report that reviews the extent to which money provided under Section 81.067 (Oil and Gas Regulation and Cleanup Fund) has enabled the commission to better protect the environment through oil-field cleanup activities. Sets forth the required content of the report.

SECTION 11. Amends Subchapter C, Chapter 81, Natural Resources Code, by adding Section 81.071, as follows:

Sec. 81.071. PIPELINE SAFETY AND REGULATORY FEES. (a) Authorizes the commission by rule to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the commission's pipeline safety and regulatory program. Requires that the fees be in amounts that in the aggregate are sufficient to support all pipeline safety and regulatory program costs, including permitting or registration costs, administrative costs, and costs of employee salaries and benefits.

(b) Requires the commission by rule to establish the method or methods by which the fees will be calculated and assessed so that fee amounts will reflect the time spent and costs incurred to perform the regulatory work associated with permitting or registering pipelines, the effects of required fees on operators of all sizes, and other factors the commission determines are important to the fair imposition of the fees. Authorizes the commission to base the fees on any factor the commission considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs, including the length of the pipeline; the number of new permits, permit renewals, or permit amendments; or the number of pipeline systems.

(c) Requires the commission by rule to establish a reasonable late payment penalty for a fee charged under this section.

(d) Provides that the authority provided by this section is in addition to the authority provided by Section 121.211 (Pipeline Safety and Regulatory Fees), Utilities Code, and requires the commission to consider any fees assessed under that section in establishing the fees to be assessed under this section.

SECTION 12. Amends Section 81.116(d), Natural Resources Code, as follows:

(d) Provides that the exemptions and reductions set out in Sections 202.052 (Rate of Tax), 202.054 (Qualification of Oil from New or Expanded Enhanced Recovery Project for Special Tax Rate), 202.056 (Exemption for Oil and Gas from Wells Previously Inactive), 202.057 (Tax Credit for Incremental Production Techniques), 202.059 (Exemption for Hydrocarbons from Terra Wells), and 202.060 (Exemption for Oil and Gas from Reactivated Orphaned Wells), Tax Code, do not affect the fee imposed by this section. Deletes existing text requiring the comptroller of public accounts of the State of Texas (comptroller) to suspend collection of the fee in the manner provided by Section 81.067.

SECTION 13. Amends Section 81.117(d), Natural Resources Code, as follows:

(d) Provides that the exemptions and reductions set out in Sections 201.053 (Gas not Taxed), 201.057 (Temporary Exemption or Tax Reduction for Certain High-Cost Gas), 201.058 (Tax Exemptions), and 202.060 (Exemption for Oil and Gas from Reactivated Orphaned Wells), Tax Code, do not affect the fee imposed by this section. Deletes existing text requiring the comptroller to suspend collection of the fee in the manner provided by Section 81.067.

SECTION 14. Transfers Section 91.1135(e), Natural Resources Code, to Section 81.069, Natural Resources Code, redesignates it as Section 81.069(d), Natural Resources Code, and amends it as follows:

(d) Requires the commission to provide to LBB and post on the commission's Internet website quarterly reports, rather than provide quarterly reports to the committee and LBB, that include certain information with respect to the period since the last report was provided as well as cumulatively, including in addition to other certain information, the amount of money deposited in the oil and gas regulation cleanup fund, rather than the oil-field cleanup fund. Deletes existing text requiring the commission to provide LBB and post on the commission's Internet website quarterly reports that include any additional information or data requested in writing by the committee. Makes nonsubstantive changes.

SECTION 15. Amends Subchapter B, Chapter 102, Natural Resources Code, by adding Section 102.0165, as follows:

Sec. 102.0165. LOCATION OF HEARING. (a) Authorizes the commission, at the request of an interested party and with the consent of each interested party, to hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) Authorizes the commission to 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.

SECTION 16. Amends Section 117.012(a), Natural Resources Code, to require the commission to adopt rules that include certain 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 safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities resulting from the movement of earth by a person in the vicinity of such a facility, other than movement by tillage that does not exceed a depth of 16 inches and to make nonsubstantive changes.

SECTION 17. Amends Section 52.092(c), Election Code, to require statewide offices of the state government to be listed in a certain order, including energy resources commissioner, rather than railroad commissioner.

SECTION 18. Amends Section 756.126, Health and Human Safety Code, to require the commission, rather than the railroad commission, to 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.

SECTION 19. Amends Section 121.201(a), Utilities Code, to authorize the railroad commission to take certain actions, including to 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 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.

SECTION 20. Repealer: Section 81.067(b) (relating to the commission certifying to the comptroller of public accounts of the State of Texas the date on which the balance in the fund equals or exceeds \$20 million), Natural Resources Code.

Repealer: the heading to Section 91.1135 (Oil-Field Cleanup Fund Advisory Committee), Natural Resources Code.

Repealer: Sections 91.1135(a) (defining "committee"), Natural Resources Code.

Repealer: Section 91.1135(b) (relating to the composition of the Oil-Field Cleanup Fund Advisory Committee), Natural Resources Code.

Repealer: Section 91.1135(c) (relating to providing that an appointed member of the committee serves at the will of the authority that appointed the member), Natural Resources Code.

Repealer: Section 91.1135(d) (relating to certain requirements of the Oil-Field Cleanup Fund Advisory Committee), Natural Resources Code.

Repealer: Section 91.1135(f) (relating to authorizing the committee to submit and request certain information), Natural Resources Code.

Repealer: Section 91.1135(g) (relating to the requiring the Oil-Field Cleanup Fund Advisory Committee to report certain activities of the committee), Natural Resources Code.

Repealer: Subchapter I (Alternative Fuels Research and Education), Chapter 113, Natural Resources Code.

SECTION 21. (a) Provides that on the effective date of this Act:

- (1) the alternative fuels research and education fund is abolished;
- (2) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;
- (3) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund; and
- (4) any amount required to be deposited to the credit of the alternative fuels research and education fund is required to be deposited to the credit of the undedicated portion of the general revenue fund.

(b) Authorizes any money transferred from the alternative fuels research and education fund to the undedicated portion of the general revenue fund that was deposited in the alternative fuels research and education fund as a gift, grant, or other form of assistance under former Subchapter I, Chapter 113, Natural Resources Code, and is encumbered by the specific terms of the gift, grant, or other form of assistance to be spent only in accordance with the terms of the gift, grant, or other form of assistance. Provides that

Subchapter I, Chapter 113, Natural Resources Code, is continued in effect for the limited purpose of administering this subsection.

SECTION 22. Provides that on the effective date of this Act, the name of the railroad commission is changed to the Texas Energy Resources Commission. Provides that the change of the agency's name does not affect:

- (1) the agency's powers, duties, rights, or obligations;
- (2) the agency's personnel, equipment, data, documents, facilities, contracts, items, other property, appropriations, rules, or decisions;
- (3) a proceeding of or involving the agency under the name of the railroad commission;
or
- (4) the terms of the chairman or other members of the governing body of the agency.

SECTION 23. Effective date: September 1, 2013.