

By: Bonnen of Brazoria

H.B. No. 2166

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation, functions, and name of the Railroad  
3 Commission of Texas; providing for the imposition of fees, the  
4 repeal of provisions for the suspension of the collection of fees,  
5 and the elimination of a fee.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. The heading to Chapter 81, Natural Resources  
8 Code, is amended to read as follows:

9 CHAPTER 81. TEXAS ENERGY RESOURCES [~~RAILROAD~~] COMMISSION [~~OF TEXAS~~]

10 SECTION 2. Section 81.001, Natural Resources Code, is  
11 amended to read as follows:

12 Sec. 81.001. DEFINITIONS. In this chapter:

13 (1) "Commission" means the Texas Energy Resources  
14 [~~Railroad~~] Commission [~~of Texas~~].

15 (2) "Commissioner" means any member of the Texas  
16 Energy Resources [~~Railroad~~] Commission [~~of Texas~~].

17 SECTION 3. Subchapter A, Chapter 81, Natural Resources  
18 Code, is amended by adding Section 81.003 to read as follows:

19 Sec. 81.003. TEXAS ENERGY RESOURCES COMMISSION. (a) The  
20 Railroad Commission of Texas is renamed the Texas Energy Resources  
21 Commission.

22 (b) A reference in law to:

23 (1) the Railroad Commission of Texas means the Texas  
24 Energy Resources Commission; and

1           (2) a railroad commissioner or a member of the  
2 Railroad Commission of Texas means a member of the Texas Energy  
3 Resources Commission.

4           SECTION 4. Section 81.01001, Natural Resources Code, is  
5 amended to read as follows:

6           Sec. 81.01001. SUNSET PROVISION. The Texas Energy  
7 Resources [Railroad] Commission [of Texas] is subject to Chapter  
8 325, Government Code (Texas Sunset Act). Unless continued in  
9 existence as provided by that chapter, the commission is abolished  
10 September 1, 2023 [~~2013~~].

11           SECTION 5. Subchapter B, Chapter 81, Natural Resources  
12 Code, is amended by adding Sections 81.010015, 81.010045, and  
13 81.010046 to read as follows:

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

17           (b) Commissioners serve staggered terms of six years, with  
18 the term of one commissioner expiring December 31 of each  
19 even-numbered year.

20           (c) The governor shall appoint a person to fill a vacancy on  
21 the commission until the next general election.

22           Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS  
23 RESTRICTED. (a) In this section, "political committee" and  
24 "political contribution" have the meanings assigned by Section  
25 251.001, Election Code.

26           (b) A commissioner may not knowingly accept a political  
27 contribution given or offered with the intention that it be used in

1 connection with a campaign for or the holding of any elective  
2 office, including the office of commissioner, except during the  
3 period:

4 (1) beginning 17 months before the date of the next  
5 general election at which the commissioner's office is filled; and

6 (2) ending on the 30th day after the date of that  
7 election.

8 (c) A person other than a commissioner may not knowingly  
9 accept a political contribution given or offered with the intention  
10 that it be used in connection with a campaign for the office of  
11 commissioner, except:

12 (1) during the period:

13 (A) beginning 17 months before the date of the  
14 next general election at which any commissioner's office is filled;  
15 and

16 (B) ending on the 30th day after the date of that  
17 election; or

18 (2) during the period beginning on the date a vacancy  
19 in the office of commissioner occurs and ending on the date that  
20 vacancy is filled.

21 (d) A commissioner may not knowingly accept a political  
22 contribution, and shall refuse a political contribution that is  
23 received, from a party in a contested case before the commission or  
24 a political committee affiliated with such a party during the  
25 period:

26 (1) beginning on the date notice of the hearing in the  
27 contested case is given; and

1           (2) ending on:

2                   (A) the 30th day after the date the decision in  
3 the contested case is rendered; or

4                   (B) if a request for rehearing is filed:

5                           (i) the date the request is denied; or

6                           (ii) the 30th day after the date the  
7 decision after rehearing is rendered.

8           (e) A commissioner shall return a political contribution  
9 that is received and refused under Subsection (d) not later than the  
10 30th day after the date the commissioner received the contribution.

11           (f) The commission shall adopt all rules necessary to  
12 implement Subsections (d) and (e), including rules that:

13                   (1) direct the commission to maintain a list of the  
14 contested cases before the commission and the parties to each case  
15 in order to aid the commissioners in complying with those  
16 subsections; and

17                   (2) ensure that each notice of a hearing in a contested  
18 case that is issued by the commission or a commissioner contains  
19 information about the political contributions prohibited under  
20 Subsection (d).

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

1 commissioner.

2 SECTION 6. Section 81.01005, Natural Resources Code, is  
3 amended to read as follows:

4 Sec. 81.01005. NAME AND SEAL. (a) The commissioners are  
5 known collectively as the "Texas Energy Resources [~~Railroad~~]  
6 Commission [~~of Texas~~]."

7 (b) The seal of the commission contains a star of five  
8 points with the words "Texas Energy Resources [~~Railroad~~] Commission  
9 [~~of Texas~~]" engraved on it.

10 SECTION 7. The heading to Section 81.0521, Natural  
11 Resources Code, is amended to read as follows:

12 Sec. 81.0521. FEE FOR APPLICATION FOR EXCEPTION TO  
13 [~~RAILROAD~~] COMMISSION RULE.

14 SECTION 8. Sections 81.0531(c) and (d), Natural Resources  
15 Code, are amended to read as follows:

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

24 (d) The commission [~~by rule~~] shall adopt guidelines to be  
25 used in determining the amount of the penalty. The commission shall  
26 provide an opportunity for public input on the guidelines [~~for a~~  
27 ~~violation of a provision of this title or a rule, order, license,~~

1 ~~permit, or certificate that relates to pipeline safety~~]. The  
2 guidelines must [~~shall~~] include a penalty calculation worksheet  
3 that specifies the typical penalty for certain violations,  
4 circumstances justifying enhancement of a penalty and the amount of  
5 the enhancement, and circumstances justifying a reduction in a  
6 penalty and the amount of the reduction. The guidelines must  
7 provide for different penalties for different violations based on  
8 the seriousness of the violation and any hazard to the health or  
9 safety of the public resulting from the violation. The guidelines  
10 must [~~shall~~] take into account:

11 (1) the permittee's history of previous violations,  
12 including the number of previous violations;

13 (2) the seriousness of the violation and of any  
14 pollution resulting from the violation;

15 (3) any hazard to the health or safety of the public;

16 (4) the degree of culpability;

17 (5) the demonstrated good faith of the person charged;

18 [~~and~~]

19 (6) the number of times the permittee's certificate of  
20 compliance issued under Subchapter P, Chapter 91, has been  
21 canceled; and

22 (7) any other factor the commission considers  
23 relevant.

24 SECTION 9. Subchapter C, Chapter 81, Natural Resources  
25 Code, is amended by adding Sections 81.0645, 81.065, and 81.066 to  
26 read as follows:

27 Sec. 81.0645. EX PARTE COMMUNICATIONS. The commission by

1 rule shall develop a policy to prohibit an ex parte communication  
2 between a hearings examiner and a commissioner or between a  
3 hearings examiner and a member of the technical staff of the  
4 commission who has participated in a hearing. The policy must  
5 prohibit a commissioner from communicating with a hearings examiner  
6 other than in a formal public hearing.

7 Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE  
8 RESOLUTION POLICY. (a) The commission shall develop and implement  
9 a policy to encourage the use of:

10 (1) negotiated rulemaking procedures under Chapter  
11 2008, Government Code, for the adoption of commission rules; and

12 (2) appropriate alternative dispute resolution  
13 procedures under Chapter 2009, Government Code, to assist in the  
14 resolution of internal and external disputes under the commission's  
15 jurisdiction.

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

21 (c) The commission shall:

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

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

27 (3) collect information concerning the effectiveness

1 of those procedures.

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

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

11 (1) a specific process for classifying violations  
12 based on:

13 (A) the seriousness of any pollution resulting  
14 from the violation; and

15 (B) any hazard to the health or safety of the  
16 public; and

17 (2) standards to provide guidance to commission  
18 employees on which violations may be dismissed once the permittee  
19 comes into compliance and which violations must be forwarded for  
20 enforcement.

21 (c) The standards adopted under Subsection (b)(2) must  
22 require a commission employee to take into account the permittee's  
23 history of previous violations in determining whether to dismiss a  
24 violation once the permittee comes into compliance or forward the  
25 violation for enforcement.

26 SECTION 10. Sections 81.069(b) and (c), Natural Resources  
27 Code, are amended to read as follows:



1 (b) The commission shall provide to the Legislative Budget  
2 Board and post on the commission's Internet website quarterly  
3 reports [~~to the Legislative Budget Board~~] that include:

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

6 (A) the amount of money deposited in the oil and  
7 gas regulation and cleanup fund;

8 (B) the amount of money spent from the fund for  
9 the purposes described by Subsection (a);

10 (C) the balance of the fund; and

11 (D) the commission's progress in meeting the  
12 quarterly performance goals established under Subsection (a) and,  
13 if the number of orphaned wells plugged with state-managed funds,  
14 abandoned sites investigated, assessed, or cleaned up with state  
15 funds, or surface locations remediated is at least five percent  
16 less than the number projected in the applicable goal established  
17 under Subsection (a), an explanation of the reason for the  
18 variance; and

19 (2) any additional information or data requested in  
20 writing by the Legislative Budget Board.

21 (c) The commission shall submit to the legislature and make  
22 available to the public, including by posting on the commission's  
23 Internet website, annually, a report that reviews the extent to  
24 which money provided under Section 81.067 has enabled the  
25 commission to better protect the environment through oil-field  
26 cleanup activities. The report must include:

27 (1) the performance goals established under

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

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

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

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

13 (5) the status of enforcement proceedings for all  
14 wells in violation of commission rules and the period during which  
15 the wells have been in violation, by region in which the wells are  
16 located;

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

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

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

27 (9) a projection of the amount of money needed for the

1 next biennium for plugging orphaned wells, investigating,  
2 assessing, and cleaning up abandoned sites, and remediating surface  
3 locations; and

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

7 SECTION 11. Subchapter C, Chapter 81, Natural Resources  
8 Code, is amended by adding Section 81.071 to read as follows:

9 Sec. 81.071. PIPELINE SAFETY AND REGULATORY FEES. (a) The  
10 commission by rule may establish pipeline safety and regulatory  
11 fees to be assessed for permits or registrations for pipelines  
12 under the jurisdiction of the commission's pipeline safety and  
13 regulatory program. The fees must be in amounts that in the  
14 aggregate are sufficient to support all pipeline safety and  
15 regulatory program costs, including:

- 16 (1) permitting or registration costs;  
17 (2) administrative costs; and  
18 (3) costs of employee salaries and benefits.

19 (b) The commission by rule must establish the method or  
20 methods by which the fees will be calculated and assessed so that  
21 fee amounts will reflect the time spent and costs incurred to  
22 perform the regulatory work associated with permitting or  
23 registering pipelines, the effects of required fees on operators of  
24 all sizes, and other factors the commission determines are  
25 important to the fair imposition of the fees. The commission may  
26 base the fees on any factor the commission considers necessary to  
27 efficiently and fairly recover the pipeline safety and regulatory

1 program's costs, including:

2 (1) the length of the pipeline;

3 (2) the number of new permits, permit renewals, or  
4 permit amendments; or

5 (3) the number of pipeline systems.

6 (c) The commission by rule may establish a reasonable late  
7 payment penalty for a fee charged under this section.

8 (d) The authority provided by this section is in addition to  
9 the authority provided by Section 121.211, Utilities Code, and the  
10 commission shall consider any fees assessed under that section in  
11 establishing the fees to be assessed under this section.

12 SECTION 12. Section 81.116(d), Natural Resources Code, is  
13 amended to read as follows:

14 (d) [~~The comptroller shall suspend collection of the fee in~~  
15 ~~the manner provided by Section 81.067.~~] The exemptions and  
16 reductions set out in Sections 202.052, 202.054, 202.056, 202.057,  
17 202.059, and 202.060, Tax Code, do not affect the fee imposed by  
18 this section.

19 SECTION 13. Section 81.117(d), Natural Resources Code, is  
20 amended to read as follows:

21 (d) [~~The comptroller shall suspend collection of the fee in~~  
22 ~~the manner provided by Section 81.067.~~] The exemptions and  
23 reductions set out in Sections 201.053, 201.057, 201.058, and  
24 202.060, Tax Code, do not affect the fee imposed by this section.

25 SECTION 14. Section 91.1135(e), Natural Resources Code, is  
26 transferred to Section 81.069, Natural Resources Code,  
27 redesignated as Section 81.069(d), Natural Resources Code, and

1 amended to read as follows:

2 (d) [~~(e)~~] The commission shall provide to the Legislative  
3 Budget Board and post on the commission's Internet website  
4 quarterly reports [~~to the committee and the Legislative Budget~~  
5 ~~Board~~] that include[~~+~~

6 [~~(1)~~] the following information with respect to the  
7 period since the last report was provided as well as cumulatively:

8 (1) [~~(A)~~] the amount of money deposited in the oil and  
9 gas regulation and [~~oil-field~~] cleanup fund;

10 (2) [~~(B)~~] the amount of money spent from the fund;

11 (3) [~~(C)~~] the balance of the fund;

12 (4) [~~(D)~~] the number of wells plugged with money from  
13 the fund;

14 (5) [~~(E)~~] the number of sites remediated with money  
15 from the fund; and

16 (6) [~~(F)~~] the number of wells abandoned[~~, and~~

17 [~~(2) any additional information or data requested in~~  
18 ~~writing by the committee].~~

19 SECTION 15. Subchapter B, Chapter 102, Natural Resources  
20 Code, is amended by adding Section 102.0165 to read as follows:

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

25 (b) The commission may contract with another state agency to  
26 hold hearings on applications for pooling of interests into a unit  
27 under the provisions of this chapter in person or by telephone at

1 field offices of that agency.

2 SECTION 16. Section 117.012(a), Natural Resources Code, is  
3 amended to read as follows:

4 (a) The commission shall adopt rules that include:

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

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

15 SECTION 17. Section 52.092(c), Election Code, is amended to  
16 read as follows:

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

- 19 (1) governor;
- 20 (2) lieutenant governor;
- 21 (3) attorney general;
- 22 (4) comptroller of public accounts;
- 23 (5) commissioner of the General Land Office;
- 24 (6) commissioner of agriculture;
- 25 (7) energy resources [~~railroad~~] commissioner;
- 26 (8) chief justice, supreme court;
- 27 (9) justice, supreme court;

1 (10) presiding judge, court of criminal appeals;

2 (11) judge, court of criminal appeals.

3 SECTION 18. Section 756.126, Health and Safety Code, is  
4 amended to read as follows:

5 Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The  
6 Texas Energy Resources [Railroad] Commission [of Texas] shall adopt  
7 and enforce safety standards and best practices, including those  
8 described by 49 U.S.C. Section 6105 et seq., relating to the  
9 prevention of damage by a person to a facility, including an  
10 interstate or intrastate pipeline facility, under the jurisdiction  
11 of the commission.

12 SECTION 19. Section 121.201(a), Utilities Code, is amended  
13 to read as follows:

14 (a) The railroad commission may:

15 (1) by rule prescribe or adopt safety standards for  
16 the transportation of gas and for gas pipeline facilities,  
17 including safety standards related to the prevention of damage to  
18 an interstate or intrastate gas pipeline [such a] facility  
19 resulting from the movement of earth by a person in the vicinity of  
20 the facility, other than movement by tillage that does not exceed a  
21 depth of 16 inches;

22 (2) by rule require an operator that does not file  
23 operator organization information under Section 91.142, Natural  
24 Resources Code, to provide the information to the commission in the  
25 form of an application;

26 (3) by rule require record maintenance and reports;

27 (4) inspect records and facilities to determine

1 compliance with safety standards prescribed or adopted under  
2 Subdivision (1);

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

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

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

10 SECTION 20. The following provisions of the Natural  
11 Resources Code are repealed:

12 (1) Section 81.067(b);

13 (2) the heading to Section 91.1135;

14 (3) Sections 91.1135(a), (b), (c), (d), (f), and (g);

15 and

16 (4) Subchapter I, Chapter 113.

17 SECTION 21. (a) On the effective date of this Act:

18 (1) the alternative fuels research and education fund  
19 is abolished;

20 (2) any money remaining in the alternative fuels  
21 research and education fund is transferred to the undedicated  
22 portion of the general revenue fund;

23 (3) any claim against the alternative fuels research  
24 and education fund is transferred to the undedicated portion of the  
25 general revenue fund; and

26 (4) any amount required to be deposited to the credit  
27 of the alternative fuels research and education fund shall be



1 deposited to the credit of the undedicated portion of the general  
2 revenue fund.

3 (b) Any money transferred from the alternative fuels  
4 research and education fund to the undedicated portion of the  
5 general revenue fund that was deposited in the alternative fuels  
6 research and education fund as a gift, grant, or other form of  
7 assistance under former Subchapter I, Chapter 113, Natural  
8 Resources Code, and is encumbered by the specific terms of the gift,  
9 grant, or other form of assistance may be spent only in accordance  
10 with the terms of the gift, grant, or other form of assistance.  
11 Subchapter I, Chapter 113, Natural Resources Code, is continued in  
12 effect for the limited purpose of administering this subsection.

13 SECTION 22. On the effective date of this Act, the name of  
14 the Railroad Commission of Texas is changed to the Texas Energy  
15 Resources Commission. The change of the agency's name does not  
16 affect:

17 (1) the agency's powers, duties, rights, or  
18 obligations;

19 (2) the agency's personnel, equipment, data,  
20 documents, facilities, contracts, items, other property,  
21 appropriations, rules, or decisions;

22 (3) a proceeding of or involving the agency under the  
23 name of the Railroad Commission of Texas; or

24 (4) the terms of the chairman or other members of the  
25 governing body of the agency.

26 SECTION 23. This Act takes effect September 1, 2013.