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S.B. No. 212

A BILL TO BE ENTITLED

AN ACT

relating to the continuation, functions, and name of the Railroad Commission of Texas; providing for the imposition of fees and the elimination of a fee.

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

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

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

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

Sec. 81.001. DEFINITIONS. In this chapter:

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

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

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

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

(b) A reference in law to:

(1) the Railroad Commission of Texas means the Texas 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. Subsections (c) and (d), Section 81.0531,
15 Natural Resources 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. Subsection (b), Section 81.067, Natural
27 Resources Code, is amended to read as follows:

1 (b) The commission shall certify to the comptroller the date
2 on which the balance in the fund equals or exceeds \$30 [~~\$20~~]
3 million. The oil-field cleanup regulatory fees on oil and gas shall
4 not be collected or required to be paid on or after the first day of
5 the second month following the certification, except that the
6 comptroller shall resume collecting the fees on receipt of a
7 commission certification that the fund has fallen below \$25 [~~\$10~~]
8 million. The comptroller shall continue collecting the fees until
9 collections are again suspended in the manner provided by this
10 subsection.

11 SECTION 11. Section 81.068, Natural Resources Code, is
12 amended to read as follows:

13 Sec. 81.068. PURPOSES [~~PURPOSE~~] OF OIL AND GAS REGULATION
14 AND CLEANUP FUND. Money in the oil and gas regulation and cleanup
15 fund may be used by the commission or its employees or agents for
16 any purpose related to the regulation of oil and gas development,
17 including oil and gas monitoring and inspections, oil and gas
18 remediation, and oil and gas well plugging, alternative fuels
19 programs under Section 81.0681, public information and services
20 related to those activities, and administrative costs and state
21 benefits for personnel involved in those activities.

22 SECTION 12. Subchapter C, Chapter 81, Natural Resources
23 Code, is amended by adding Section 81.0681 to read as follows:

24 Sec. 81.0681. ALTERNATIVE FUELS PROGRAMS. (a) The
25 commission may adopt all necessary rules relating to activities
26 regarding the use of alternative fuels that are or have the
27 potential to be effective in improving the air quality, energy

1 security, or economy of this state.

2 (b) The commission may use the oil and gas regulation and
3 cleanup fund to pay for activities relating to the use of
4 alternative fuels, including direct and indirect costs relating to:

5 (1) researching all possible uses of liquefied
6 petroleum gas and natural gas as alternative fuels;

7 (2) researching, developing, and implementing
8 marketing, advertising, and informational programs relating to
9 alternative fuels to make alternative fuels more understandable and
10 readily available to consumers;

11 (3) developing and implementing conservation and
12 distribution plans to minimize the frequency and severity of
13 disruptions in the supply of alternative fuels;

14 (4) developing a public information plan that will
15 provide advisory services relating to alternative fuels to
16 consumers;

17 (5) developing voluntary participation plans to
18 promote the use of alternative fuels by federal, state, and local
19 agencies; and

20 (6) other functions the commission determines are
21 necessary to add a program established by the commission for the
22 purpose of promoting the use of liquefied petroleum gas, natural
23 gas, or other alternative fuels.

24 SECTION 13. Subsections (b) and (c), Section 81.069,
25 Natural Resources Code, are amended to read as follows:

26 (b) The commission shall provide to the Legislative Budget
27 Board and post on the commission's Internet website quarterly

1 reports [~~to the Legislative Budget Board~~] that include:

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

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

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

8 (C) the balance of the fund; and

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

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

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

25 (1) the performance goals established under
26 Subsection (a) for that state fiscal year, the commission's
27 progress in meeting those performance goals, and, if the number of

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

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

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

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

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

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

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

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

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

1 locations; and

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

5 SECTION 14. Subchapter C, Chapter 81, Natural Resources
6 Code, is amended by adding Section 81.071 to read as follows:

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

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

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

- 27 (1) the length of the pipeline;

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

3 (3) the number of pipeline systems.

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

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

10 SECTION 15. Subsection (e), Section 91.1135, Natural
11 Resources Code, is transferred to Section 81.069, Natural Resources
12 Code, redesignated as Subsection (d), Section 81.069, Natural
13 Resources Code, and amended to read as follows:

14 (d) [~~e~~] The commission shall provide to the Legislative
15 Budget Board and post on the commission's Internet website
16 quarterly reports [~~to the committee and the Legislative Budget~~
17 Board] that include[~~+~~

18 [~~1~~] the following information with respect to the
19 period since the last report was provided as well as cumulatively:

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

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

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

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

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

1 (6) [~~(F)~~] the number of wells abandoned[~~, and~~
2 ~~[(2) any additional information or data requested in~~
3 ~~writing by the committee].~~

4 SECTION 16. Subchapter B, Chapter 102, Natural Resources
5 Code, is amended by adding Section 102.0165 to read as follows:

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

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

14 SECTION 17. Subsection (a), Section 117.012, Natural
15 Resources Code, is amended to read as follows:

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

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

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

27 SECTION 18. Subsection (c), Section 52.092, Election Code,

1 is amended to read as follows:

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

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

15 SECTION 19. Section 756.126, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The
18 Texas Energy Resources [~~Railroad~~] Commission [~~of Texas~~] shall adopt
19 and enforce safety standards and best practices, including those
20 described by 49 U.S.C. Section 6105 et seq., relating to the
21 prevention of damage by a person to a facility, including an
22 interstate or intrastate pipeline facility, under the jurisdiction
23 of the commission.

24 SECTION 20. Subsection (a), Section 121.201, Utilities
25 Code, is amended to read as follows:

- 26 (a) The railroad commission may:
- 27 (1) by rule prescribe or adopt safety standards for

1 the transportation of gas and for gas pipeline facilities,
2 including safety standards related to the prevention of damage to
3 an interstate or intrastate gas pipeline [~~such a~~] facility
4 resulting from the movement of earth by a person in the vicinity of
5 the facility, other than movement by tillage that does not exceed a
6 depth of 16 inches;

7 (2) by rule require an operator that does not file
8 operator organization information under Section 91.142, Natural
9 Resources Code, to provide the information to the commission in the
10 form of an application;

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

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

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

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

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

22 SECTION 21. The following provisions of the Natural
23 Resources Code are repealed:

24 (1) the heading to Section 91.1135;

25 (2) Subsections (a), (b), (c), (d), (f), and (g),
26 Section 91.1135; and

27 (3) Subchapter I, Chapter 113.

1 SECTION 22. (a) On the effective date of this Act:

2 (1) the alternative fuels research and education fund
3 is abolished;

4 (2) any money remaining in the alternative fuels
5 research and education fund is transferred to the undedicated
6 portion of the general revenue fund;

7 (3) any claim against the alternative fuels research
8 and education fund is transferred to the undedicated portion of the
9 general revenue fund; and

10 (4) any amount required to be deposited to the credit
11 of the alternative fuels research and education fund shall be
12 deposited to the credit of the undedicated portion of the general
13 revenue fund.

14 (b) Any money transferred from the alternative fuels
15 research and education fund to the undedicated portion of the
16 general revenue fund that was deposited in the alternative fuels
17 research and education fund as a gift, grant, or other form of
18 assistance under former Subchapter I, Chapter 113, Natural
19 Resources Code, and is encumbered by the specific terms of the gift,
20 grant, or other form of assistance may be spent only in accordance
21 with the terms of the gift, grant, or other form of assistance.
22 Subchapter I, Chapter 113, Natural Resources Code, is continued in
23 effect for the limited purpose of administering this subsection.

24 SECTION 23. On the effective date of this Act, the name of
25 the Railroad Commission of Texas is changed to the Texas Energy
26 Resources Commission. The change of the agency's name does not
27 affect:

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

3 (2) the agency's personnel, equipment, data,
4 documents, facilities, contracts, items, other property,
5 appropriations, rules, or decisions;

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

8 (4) the terms of the chairman or other members of the
9 governing body of the agency.

10 SECTION 24. This Act takes effect September 1, 2013.