

By: Darby, Keffer, King of Parker,  
Thompson of Harris, Oliveira, et al.

H.B. No. 40

Substitute the following for H.B. No. 40:

By: Darby

C.S.H.B. No. 40

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the exclusive jurisdiction of this state to regulate  
3 oil and gas operations in this state and the express preemption of  
4 local regulation of those operations.

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

6 SECTION 1. The legislature finds that the laws and policy of  
7 this state have fostered successful development of oil and gas  
8 resources in concert with the growth of healthy and economically  
9 vibrant communities for over 100 years. The legislature  
10 acknowledges this cooperative progress and that mutual benefit is  
11 derived from the statutes already in effect, which provide  
12 effective and environmentally sound regulation of oil and gas  
13 operations that is so comprehensive and pervasive that the  
14 regulation occupies the field, while facilitating the overriding  
15 policy objective of this state of fully and effectively exploiting  
16 oil and gas resources while protecting the environment and the  
17 public's health and safety. The legislature recognizes that in  
18 order to continue this prosperity and the efficient management of a  
19 key industry in this state, it is in the interest of this state to  
20 explicitly confirm the authority to regulate oil and gas operations  
21 in this state. The legislature intends that this Act expressly  
22 preempt the regulation of oil and gas operations by municipalities  
23 and other political subdivisions, which is impliedly preempted by  
24 the statutes already in effect.

1 SECTION 2. Subchapter C, Chapter 81, Natural Resources  
2 Code, is amended by adding Section 81.0523 to read as follows:

3 Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS  
4 PREEMPTION. (a) In this section:

5 (1) "Commercially reasonable" means a condition that  
6 would allow a reasonably prudent operator to fully, effectively,  
7 and economically exploit, develop, produce, process, and transport  
8 oil and gas, as determined based on the objective standard of a  
9 reasonably prudent operator and not on an individualized assessment  
10 of an actual operator's capacity to act.

11 (2) "Oil and gas operation" means an activity  
12 associated with the exploration, development, production,  
13 processing, and transportation of oil and gas, including drilling,  
14 hydraulic fracture stimulation, completion, maintenance,  
15 reworking, recompletion, disposal, plugging and abandonment,  
16 secondary and tertiary recovery, and remediation activities.

17 (b) An oil and gas operation is subject to the exclusive  
18 jurisdiction of this state. Except as provided by Subsection (c), a  
19 municipality or other political subdivision may not enact or  
20 enforce an ordinance or other measure, or an amendment or revision  
21 of an ordinance or other measure, that bans, limits, or otherwise  
22 regulates an oil and gas operation within the boundaries or  
23 extraterritorial jurisdiction of the municipality or political  
24 subdivision.

25 (c) The authority of a municipality or other political  
26 subdivision to regulate an oil and gas operation is expressly  
27 preempted, except that a municipality may enact, amend, or enforce

1 an ordinance or other measure that:

2 (1) regulates only aboveground activity related to an  
3 oil and gas operation that occurs at or above the surface of the  
4 ground, including a regulation governing fire and emergency  
5 response, traffic, lights, or noise, or imposing notice or  
6 reasonable setback requirements;

7 (2) is commercially reasonable;

8 (3) does not effectively prohibit an oil and gas  
9 operation conducted by a reasonably prudent operator; and

10 (4) is not otherwise preempted by state or federal  
11 law.

12 (d) An ordinance or other measure is considered prima facie  
13 to be commercially reasonable if the ordinance or other measure has  
14 been in effect for at least five years and has allowed the oil and  
15 gas operations at issue to continue during that period.

16 SECTION 3. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2015.