

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 7, 2019

TO: Honorable Chris Paddie, Chair, House Committee on Energy Resources

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB2871 by Biedermann (Relating to the regulation of certain aggregate production operations by the Railroad Commission of Texas; authorizing a fee; providing administrative penalties and other civil remedies; creating criminal offenses.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2871, As Introduced: a negative impact of (\$4,809,000) through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$2,930,025)
2021	(\$1,878,975)
2022	(\$1,884,775)
2023	(\$1,890,720)
2024	(\$1,896,810)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Water Resource Management</i> 153	Probable Revenue Gain from <i>New General Revenue- Dedicated Aggregate Production Operation Regulation Acct</i>	Probable (Cost) from <i>New General Revenue- Dedicated Aggregate Production Operation Regulation Acct</i>
2020	(\$2,930,025)	(\$92,000)	\$200,000	(\$200,000)
2021	(\$1,878,975)	(\$92,000)	\$200,000	(\$200,000)
2022	(\$1,884,775)	(\$92,000)	\$200,000	(\$200,000)
2023	(\$1,890,720)	(\$92,000)	\$200,000	(\$200,000)
2024	(\$1,896,810)	(\$92,000)	\$200,000	(\$200,000)

Fiscal Year	Change in Number of State Employees from FY 2019
2020	29.0
2021	29.0
2022	29.0
2023	29.0
2024	29.0

Fiscal Analysis

The bill would amend the Natural Resources Code and the Water Code to transfer the authority to issue rules and regulations regarding certain extraction operations at aggregate production operation sites from the Commission on Environmental Quality to the Railroad Commission. The Railroad Commission would issue permits, conduct inspections, ensure compliance, conduct hearings, and issue orders and civil or administrative penalties for the regulation of aggregate production operations and the commission would submit an annual report to the Governor, Lieutenant Governor, and Speaker of the House regarding the regulation of aggregate production operations. The bill would require the Railroad Commission to conduct an annual survey of the state to identify all active aggregate production operations and ensure compliance with registration requirements. Additionally, the bill would create the Aggregate Production Operation Regulation Account as a dedicated account in the General Revenue Fund.

Methodology

Based on analysis of the Railroad Commission, the fiscal impact to the agency under the provisions of the bill would be \$5,209,000 for the 2020-21 biennium, and a five year impact of \$11,481,306 in General Revenue. Costs include salaries for 29.0 FTEs, other operating costs, travel, capital equipment (i.e. vehicles), consumable supplies (i.e. publications and postage), professional services (i.e. technology), and benefits.

The agency would create a new department within the Surface Mining Division to regulate aggregate production operations. The Railroad Commission estimates the bill provisions related to permitting aggregate production operations would require one Manager III (1.0 FTEs), four Engineers III (4.0 FTEs), two Geoscientists III (2.0 FTEs), one Administrative Assistants II (1.0 FTEs), and one Accountant (1.0 FTEs). Based on LBB analysis, the additional FTEs would have a combined fiscal year cost of \$543,266 for salaries (\$402,628) and related benefits (\$140,638).

Related to inspections and enforcement, the Railroad Commission estimates the bill provisions would require thirteen Natural Resource Specialists II (12.0 FTEs). Based on LBB analysis, the additional FTEs would have a combined fiscal year cost of \$648,592 for salaries (\$480,688) and related benefits (\$167,904). Additionally, a one-time costs of \$300,300 is estimated to be needed for inspector vehicles. This analysis assumes the Railroad Commission would inspect all applicable aggregate production operations on an annual basis.

Related to hearings and issuing orders and civil or administrative penalties, the Railroad Commission estimated the bill provisions would require two Administrative Law Judges II (2.0 FTEs), two Attorneys III (2.0 FTEs), one Legal Assistant III (1.0 FTEs), one Legal Assistant II (1.0 FTEs), and on Administrative Assistant II (2.0 FTEs). Based on LBB analysis, the additional FTEs would have a combined fiscal year cost of \$443,134 for salaries (\$328,418) and related benefits (\$114,716).

Additionally, it is estimated the Railroad Commission would require funding for travel, other operating expenses, postage and publications, and professional services.

The Office of Court Administration indicated that, although the bill would create two new criminal offenses and although the bill would allow for certain court action, any new case volume driven by the bill could be absorbed by existing resources. Additionally, the Comptroller of Public Accounts indicated the amount of revenue due to fines, costs, or fees associated with the two new criminal offenses cannot be determined.

Currently, the Commission on Environmental Quality registers aggregate production operations through its water quality program and the agency has indicated there are approximately 1,000 active aggregate production operations in the state. The bill would require aggregate production operations that require a permit under the Health and Safety Code, Chapter 382, Clean Air Act, obtain a permit from the Railroad Commission instead of the Commission on Environmental Quality. According to the Commission on Environmental Quality, there are an estimated 200 aggregate production operations in the state that require a permit under the Health and Safety Code, Chapter 382. This analysis assumes there would be no reduction in staff at the Commission on Environmental Quality related to the bill provisions because activities related to aggregate production operations represent a limited portion of staff responsibilities in the water quality program. The Commission on Environmental Quality indicates that duties and responsibilities associated with implementing the bill provisions could be accomplished by utilizing existing resources.

Under current law, revenue collected by the Commission on Environmental Quality from aggregate production operation registrations is deposited to the credit of General Revenue-Dedicated Water Resource Management Account No. 153. According to the Comptroller of Public Accounts, the commission is projected to collect approximately \$455,000 in each fiscal year of the 2020-21 biennium from registrations or aggregate production operations. The Commission on Environmental Quality anticipates a revenue decrease of \$92,000 each fiscal year under the bill provisions related to the 200 aggregate production operations that would no longer be required to obtain a registration from the agency.

The Railroad Commission currently issues permits and conducts inspections of coal mining operations and uranium exploration sites, as well as conducts hearings and issues orders and civil or administrative penalties. The bill would require all 200 aggregate production operations regulated by the Railroad Commission register each fiscal year. The bill would require the agency to set the registration fee at an amount sufficient to maintain a registry of active aggregate production operations with a maximum fee of \$1,000. The agency anticipates it would collect \$200,000 each fiscal year from registration fees set at \$1,000. The bill would require aggregate production operations acquire a reclamation permit from the Railroad Commission and submit a reclamation plan and performance bond, but the bill would not authorize the agency to collect a fee for the permit.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current legislature.

Technology

There would be a technology impact related to development and enhancement of a permitting system, inspection system, and case management system. Based on LBB analysis, the fiscal impact

related to these technology items is estimated to be \$671,160 in fiscal year 2020 and \$100,674 in subsequent years.

Local Government Impact

An offense under provisions of the bill would be an offense punishable by a fine of not more than \$10,000, imprisonment for not more than one year, or both. Costs associated with enforcement, prosecution, and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

According to the Texas Association of Counties, no fiscal impact to counties is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 455 Railroad Commission, 582 Commission on Environmental Quality

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