

BILL ANALYSIS

C.S.H.B. 3416
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Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many of the uniquely skilled workers in the drilling and production segment of the oil and gas industry work as subcontractors for contractors who have agreements with operators. The contractors support their subcontractors by billing the operator for the subcontractors' fees and facilitating payment to the subcontractors and by purchasing and providing liability insurance to protect the subcontractor and the operator. Notably, operators require high levels of liability insurance coverage, which is often unaffordable to individual subcontractors. C.S.H.B. 3416 seeks to provide transparency in these triparty relationship agreements and protect subcontractors by requiring a contractor, before entering into or renewing such an agreement with a subcontractor or third party, to provide written notice to the subcontractor regarding the subcontractor's indemnification obligations to the contractor and third party and written notice to the third party stating whether the subcontractor possesses liability insurance coverage or qualified self-insurance for the obligations and the dollar limits of the insurance.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3416 amends the Civil Practice and Remedies Code to require a contractor, before entering into or renewing a triparty relationship agreement pertaining to certain wells or mines with a subcontractor or third party, to provide the following;

- a written notice to the subcontractor that:
 - describes the subcontractor's indemnification obligations to the contractor and to the third party with respect to the services the subcontractor will provide under any related agreement between the contractor and subcontractor;
 - is provided as a separate document from the agreements with the subcontractor and third party; and
 - is written in plain English and in a manner that is clear, concise, and designed to enable the subcontractor to understand the subcontractor's contractual indemnity obligations in connection with any services performed by the subcontractor pursuant to the triparty relationship agreement; and
- a written notice to the third party that states:
 - whether the subcontractor possesses liability insurance coverage or qualified self-insurance for the subcontractor's indemnity obligations in connection with

- any services performed by the subcontractor pursuant to the triparty relationship agreement; and
- the dollar limits of the subcontractor's insurance policy or qualified self-insurance, if any.

The bill authorizes a contractor to satisfy the requirement to provide a third party written notice by providing the third party a certificate of insurance.

C.S.H.B. 3416 defines "triparty relationship agreement" as any agreement pertaining to a well for oil, gas, or water or to a mine for a mineral that provides the following:

- that a subcontractor may or will provide any part of a contractor's services required under a separate agreement with a third party; and
- for a mutual or unilateral indemnity obligation between the contractor and third party.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3416 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute requires a contractor to provide the written notices before entering into or renewing the agreement, which it refers to as a "triparty relationship agreement," whereas the original excludes such an agreement, without referring to it as such, from the applicability of statutory provisions governing indemnity provisions in certain mineral agreements if the contractor provides the written notices on or before entering into the agreement.

The substitute includes as one of the elements of such an agreement the provision for a mutual or unilateral indemnity obligation between the contractor and third party, whereas the original also included the subcontractor as a party to that obligation.

The substitute changes the contents of the written notices required in the original as follows:

- changes the notice provided to the subcontractor by specifying that the subcontractor's indemnification obligations described in the notice are with respect to the services the subcontractor will provide under any related agreement between the contractor and subcontractor, whereas the original restricted the applicable services described in the notice to those the subcontractor will provide under the agreement; and
- reflects that change in the required notice to the third party.

The substitute includes an authorization for the contractor to satisfy the requirement to provide the written notice to the third party by providing them a certificate of insurance, which was not included in the original.