

BILL ANALYSIS

C.S.S.B. 785
By: Birdwell
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

State statute does not adequately address the ownership of geothermal energy and associated resources. C.S.S.B. 785 seeks to address this issue by establishing that, except as otherwise expressly provided by an applicable binding obligation, the geothermal energy and associated resources below the surface of land are owned as real property by the landowner or, if the surface estate and the mineral estate of the land have been severed, the owner of the surface estate of the land.

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.S.B. 785 amends the Natural Resources Code to establish that, except as otherwise expressly provided by a conveyance, contract, deed, reservation, exception, limitation, lease, or other binding obligation, the geothermal energy and associated resources below the surface of land are owned as real property by the following:

- the landowner; or
- if the surface estate and the mineral estate of the land have been severed, the owner of the surface estate of the land.

The bill establishes that, subject to the Geothermal Resources Act of 1975, the property rights described by these provisions of the bill entitle the owner of the geothermal energy and associated resources below the surface of land and the owner's lessee, heir, or assignee to drill for and produce the geothermal energy and associated resources. Such provisions expressly do not do the following:

- apply to minerals dissolved or otherwise contained in groundwater, including in hot brines; or
- change existing law regarding the following:
 - oil, gas, or mineral extraction regardless of its heat or energy potential;
 - the rights of the dominant and servient estates; or
 - the ownership and use of groundwater.

C.S.S.B. 785 excludes the following from the term "by-product" as applicable to the act:

- a mineral, as defined by Property Code provisions relating to unclaimed property with respect to Texas minerals; or

- oil, gas, or a product of oil or gas, as defined by Natural Resources Code provisions relating to the conservation of oil and gas.

C.S.S.B. 785 amends the Insurance Code to provide for an exception from coverage in a title insurance policy for the geothermal energy and associated resources below the surface of the land in the same manner that such an exception is provided for a mineral estate.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 785 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a provision absent in the introduced that establishes that the bill's provisions relating to the ownership of geothermal energy and associated resources expressly do not change existing law regarding the ownership and use of groundwater.

The substitute includes provisions absent in the introduced that provide for an exception from coverage in a title insurance policy for the geothermal energy and associated resources below the surface of the land in the same manner that such an exception is provided for a mineral estate.