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| BILL ANALYSIS |

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| C.S.H.B. 49 |
| By: Darby |
| Energy Resources |
| Committee Report (Substituted) |

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| **BACKGROUND AND PURPOSE** Under current state law, fluid oil and gas waste treatment facilities are generally indemnified from liability for subsequent uses of treated waste products related to oil and gas production, with exceptions for personal injury, death, or property damage resulting from exposure to the waste or its treated products. The bill author has informed the committee that this indemnification does not extend to oil and gas producers, third-party conveyers, or to all beneficial uses of treated products and that the current framework allows for broad exceptions to indemnification, potentially exposing entities to significant liability risks. C.S.H.B. 49 seeks to expand and clarify indemnification protections for entities involved in the production, conveyance, and treatment of fluid oil and gas waste by revising applicable statutory provisions relating to tort responsibility in order to offer clearer legal standards and promote innovative, sustainable waste reuse. |
| **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 rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 2 of this bill. |
| **ANALYSIS** C.S.H.B. 49 amends the Natural Resources Code to make the following changes to the general exemption from liability in tort for a consequence of the subsequent use of a treated item granted to a person who takes possession of fluid oil and gas waste, produces a treated item from the waste, and transfers the treated item to another person with a certain contractual understanding regarding its use:* specifies that the taking of possession of fluid oil and gas waste is for treatment;
* changes the type of produced treated item from a treated product generally considered in the oil and gas industry to be suitable for use in connection with the drilling for or production of oil or gas to treated waste;
* includes as an action which the exempt person may take as an alternative to transferring the treated item the putting of the treated item to a beneficial use; and
* changes the nature of the contractual understanding from an understanding that the treated item will be used in connection with the drilling for or production of oil or gas to an understanding that the treated item will be put to a beneficial use.

C.S.H.B. 49 exempts, except as otherwise provided, a person, including an owner of the surface estate of real property, who produces fluid oil and gas waste or who supplies or conveys fluid oil and gas waste to a treatment facility for the purpose of generating treated waste from liability in tort for the following:* a consequence of the subsequent treatment of that fluid oil and gas waste to generate treated waste;
* the subsequent use of that treated waste by any person; and
* exposure to any component of the waste or any byproduct of the process used to generate treated waste.

C.S.H.B. 49 exempts, except as otherwise provided, an owner of the surface estate of real property on or under which fluid oil and gas waste is produced, conveyed, or transported from liability in an action for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste, treated waste, or a byproduct of a process used to generate treated waste.C.S.H.B. 49 makes the following changes with respect to the provision that establishes that tort responsibility provisions do not affect the liability of a person in an action brought by a claimant for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste or a treated item:* changes the treated item from a treated product to treated waste;
* removes the specification that the liable person is a person who treats fluid oil and gas waste for beneficial use;
* includes exposure to a byproduct of a process used to generate treated waste as an applicable exposure; and
* conditions the provision on the exposure occurring as a result of the following:
	+ the person's gross negligence or intentional, wrongful act or omission; or
	+ the person's negligence and the person not treating, generating, using, or disposing of the fluid oil and gas waste, treated waste, or byproduct in conformity with applicable Railroad Commission of Texas (RRC) rules or with an applicable Texas Pollutant Discharge Elimination System program permit issued by the Texas Commission on Environmental Quality.

The bill prohibits a claimant awarded damages for a tort premised solely on the liable person's negligence and regulatory nonconformity under the bill from being awarded exemplary damages. C.S.H.B. 49 specifies that the oil and gas waste for which the RRC is required to adopt rules to govern treatment and beneficial use is fluid oil and gas waste and requires the RRC to adopt rules to govern the treatment and beneficial use also of treated waste and any byproduct of a process used to generate treated waste.C.S.H.B. 49 applies only to a cause of action that accrues on or after the bill's effective date. A cause of action that accrues before the bill's effective date is governed by the law as it existed immediately before the bill's effective date, and that law is continued in effect for that purpose. |
| **EFFECTIVE DATE** September 1, 2025. |
| **COMPARISON OF INTRODUCED AND SUBSTITUTE**While C.S.H.B. 49 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.The substitute omits the provisions from the introduced that did the following:* revised provisions relating to the ownership of fluid oil and gas waste that is transferred for treatment and subsequent beneficial use by changing the specified purpose for which a person takes possession of the waste from treating the waste for a subsequent beneficial use to generating treated product; and
* defined "treated product" as the product of a process that treats, filters, refines, extracts, or otherwise alters any portion or component of fluid oil and gas waste to render it suitable for a beneficial use.

While both the introduced and the substitute revise the general exemption from liability in tort for a consequence of the subsequent use of a treated item granted to a person who takes possession of fluid oil and gas waste, produces a treated item from the waste, and transfers the treated item to another person with a certain contractual understanding regarding its use, the introduced retained the statutory treated item as a treated product, whereas the substitute changes the treated item from a treated product to treated waste and makes conforming changes throughout the bill to reflect this change. The substitute includes a specification that is not in the introduced that the taking of possession of fluid oil and gas waste is for treatment.With regard to the bill's exemption for a person who produces fluid oil and gas waste or who supplies or conveys fluid oil and gas waste to a treatment facility for the purpose of generating an applicable treated item from liability in tort for, among other things, exposure to an applicable process byproduct, the substitute includes the following which were not included in the introduced:* a specification that such an exempt person includes an owner of the surface estate of real property; and
* exposure to any component of the waste.

The substitute includes an exemption that is not included in the introduced for, except as otherwise provided by the bill, an owner of the surface estate of real property on or under which fluid oil and gas waste is produced, conveyed, or transported from liability in an action for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste, treated waste, or a byproduct of a process used to generate treated waste. |
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