

## **BILL ANALYSIS**

Senate Research Center

H.B. 49  
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Natural Resources  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Beginning in 2013, the Texas Legislature has taken several steps to encourage the recycling of fluid oil and gas waste—referred to in the industry as "produced water"—as an alternative to disposal of the waste via injection well. In relevant part, this includes legislative action to implement indemnifications from liability in tort for the treatment of produced water such that it is rendered suitable for a beneficial use.

In the years since the indemnification was first enacted, produced water recycling has expanded to new forms of beneficial use beyond reuse for fracking purposes as was originally comprehended by the legislature in 2013. For example, treated produced water may be used today for crop irrigation or lithium extraction.

To accommodate the expanding produced water treatment industry—and to further encourage reuse as an alternative to injection well disposal—H.B. 49 is intended to: (1) expand the existing liability protections for produced water treatment facilities to include (a) oil and gas producers that generate fluid oil and gas waste during oil and gas extraction processes and transfer that waste to a treatment facility, (b) landowners on whose property oil and gas is extracted, and (c) any third party that conveys produced water from a producer to a treatment facility; (2) narrow the existing exception to the indemnification such that an indemnified party is only liable in tort on a theory of negligence for an action that did not comply with the relevant administrative rules; and (3) prohibit punitive damages for tort claims premised solely on negligence and regulatory non-conformity.

H.B. 49 was extensively negotiated in the house of representatives, and now includes an exception to the expanded indemnification ensuring that the bill will not affect the rights in tort of landowners on whose property oil and gas are extracted.

H.B. 49 amends current law relating to the treatment and beneficial use of fluid oil and gas waste and related material, including a limitation on liability for that treatment or use.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Railroad Commission of Texas is modified in SECTION 2 (Section 122.004, Natural Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 122.003, Natural Resources Code, as follows:

Sec. 122.003. RESPONSIBILITY IN TORT. (a) Provides that, except as provided by Subsections (b) and (b-1), a person, including an owner of the surface estate of real property, who takes possession of fluid oil and gas waste for treatment, produces from that waste treated waste, and either puts the treated waste to beneficial use or transfers the treated waste to another person with the contractual understanding that the treated waste will be put to a beneficial use is not liable in tort for a consequence of the subsequent use of that treated waste by any person.

Deletes existing text providing that, except as provided by Subsection (b), a person who takes possession of fluid oil and gas waste, produces from that waste 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, and transfers the treated product to another person with the contractual understanding that the treated product will be used in connection with the drilling for or production of oil or gas is not liable in tort for a consequence of the subsequent use of that treated product by the person to whom the treated product is transferred or by another person. Makes nonsubstantive changes.

(a-1) Provides that, except as provided by Subsections (b) and (b-1), 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 is not liable in tort for 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, or exposure to any component of the waste or any byproduct of the process used to generate treated waste.

(a-2) Provides that an owner of the surface estate of real property on or under which fluid oil and gas waste is produced, conveyed, transported, or treated by others is not liable in an action for damages for personal injury, death, or property damage from exposure to fluid oil and gas waste, treated waste, or a byproduct of a process used to generate treated waste.

(b) Provides that this section does not affect the liability of a person in an action brought by a claimant, rather than the liability of a person that treats fluid oil and gas waste for beneficial use in an action brought by a person, 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, rather than treated product, if that exposure occurred as a result of the person's:

(1) gross negligence or intentional, wrongful act or omission; or

(2) negligence and the person did not treat, generate, use, or dispose of the fluid oil and gas waste, treated waste, or byproduct in conformity with certain provisions.

(b-1) Provides that this section does not affect the liability under common, statutory, regulatory, or other law of a producer or subsequent transferee of fluid oil and gas waste to the owner of the surface estate of real property, and any owner of an interest in the surface estate of real property, on or under which fluid oil and gas waste is produced, transported, or treated.

(c) Prohibits a claimant awarded damages for a tort premised solely on the person's negligence and regulatory nonconformity under Subsection (b)(2) from being awarded exemplary damages.

SECTION 2. Amends Section 122.004(a), Natural Resources Code, to require the Railroad Commission of Texas to adopt rules to govern the treatment and beneficial use of fluid oil and gas waste, treated waste, and any byproduct of a process used to generate treated waste.

SECTION 3. Makes application of Chapter 122 (Treatment and Recycling for Beneficial Use of Fluid Oil and Gas Waste), Natural Resources Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2025.