LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **HB3328** by Keffer (Relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3328, As Passed 2nd House: a positive impact of $51,100,000 through the biennium ending August 31, 2013.

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
2012	$25,800,000
2013	$25,300,000
2014	$25,300,000
2015	$25,300,000
2016	$25,300,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from *General Revenue Fund* 1	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Savings/ (Cost) from *Oil-field Cleanup Acct* 145	Probable Revenue Gain/(Loss) from *Oil-field Cleanup Acct* 145
2012	$22,567,000	$3,233,000	$27,500,000	($55,201,000)
2013	$22,567,000	$2,733,000	$27,500,000	($25,111,000)
2014	$22,567,000	$2,733,000	$27,500,000	($25,268,000)
2015	$22,567,000	$2,733,000	$27,500,000	($25,483,000)
2016	$22,567,000	$2,733,000	$27,500,000	($25,696,000)

Fiscal Year	Probable Savings/ (Cost) from *New General Revenue Dedicated*	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated*	Probable Savings/ (Cost) from *Alter Fuels Research Acct* 101	Probable Revenue Gain/(Loss) from *Alter Fuels Research Acct* 101
2012	($50,300,000)	$50,300,000	$1,700,000	($2,600,000)
2013	($50,300,000)	$50,300,000	$1,700,000	($2,100,000)
2014	($50,300,000)	$50,300,000	$1,700,000	($2,100,000)
2015	($50,300,000)	$50,300,000	$1,700,000	($2,100,000)
2016	($50,300,000)	$50,300,000	$1,700,000	($2,100,000)

Fiscal Year	Change in Number of State Employees from FY 2011
2012	(10.0)
2013	(10.0)
2014	(10.0)
2015	(10.0)
2016	(10.0)

Fiscal Analysis

The bill would require the Railroad Commission to adopt rules that require an operator to disclose chemicals used in hydraulic fracturing of an oil or gas well by completing the form on the Internet chemical disclosure registry developed and implemented by the Ground Water Protection Council (GWPC) and the Interstate Oil and Gas Compact Commission (IOGCC). Information would include each chemical ingredient regardless of whether it must be listed on a Material Safety Data Sheet under the federal Occupational Health and Safety Act (OSHA). An operator would be required to post the completed form on the GWPC/IOGCC website. The operator would also be required to submit the completed form to the Commission with the well completion report. In addition to the completed form, an operator would also be required to provide to the Railroad Commission a list of all other chemical ingredients not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment. An operator would not be required to disclose ingredients that were not purposely added to the hydraulic fracturing treatment, occur incidentally, or are not disclosed to the operator.

The bill would require the Railroad Commission to adopt rules to prescribe a process by which an operator or a service company could designate certain information as a trade secret not subject to Texas open records law, and it would authorize the entity claiming the trade secret to withhold information asserted to be a trade secret. The rules would require that a trade secret claim be filed within 2 years of filing the completion report with the Commission and limit a person who could challenge such a claim to the landowner on whose property the well is located or who owns adjacent property, or a department or agency of Texas. The rules would be required to include an efficient process for an entity for whom a trade secret claim has been claimed or approved to provide information to a health professional or an emergency responder in accordance with OSHA regulations.

The bill would abolish the Railroad Commission and would transfer all of its programs and functions to the newly created the Oil and Gas Commission (OGC).

The bill would create the Oil and Gas Regulation and Cleanup (OGRC) Fund as a an account in the General Revenue Fund. The OGRC would replace the existing General Revenue-Dedicated Oil Field Cleanup (OFCU) Account No. 145, with all balances in that account transferring to the OGRC Fund, and all current revenue streams to the OFCU Account No. 145, except penalties, accruing to the OGRC Fund. Penalties would be deposited to the credit of the General Revenue Fund. The bill would authorize surcharges on the agency's existing fees to provide that the OGRC Fund cover all of the agency's costs related to the regulation of oil and gas development. The bill would provide a specific methodology for the OGC to determine the amount of such surcharges. In addition, the bill would require that the Comptroller notify the OGC when the OGRC Fund has an unexpended balance of $20.0 million or greater, at which point the agency would cease collecting oil-field cleanup regulatory fees, until the unexpended balance of the OGRC Fund falls to $10.0 million.

The bill would require the OGC to establish specific performance goals for oil and gas regulation through the appropriations process for: the number of orphaned wells plugged with the use of state funds; the number of abandoned sites to be investigated, assessed, or cleaned up; and the number of surface locations to be remediated. The OGC would also be required to submit quarterly reports to the Legislative Budget Board on OGRC Fund revenues and expenditures and progress towards the performance goals. Annually, the OGC would be required to report to the Legislature a review of the effectiveness of money provided in the OGRC Fund at enabling the agency to better protect the environment.

The bill would require that the State Office of Administrative Hearings (SOAH) conduct all contested case hearings in enforcement proceedings under laws administered by the OGC. It would also require that all Gas Utility Regulatory Act hearings be conducted by SOAH.

The bill would expand the use of the pipeline safety fee to include costs incurred in gas utility regulation.

The bill would abolish the Alternative Fuels Research and Education (AFRED) program and the General Revenue-Dedicated AFRED Account No. 101. Funds remaining in the AFRED Account No. 101 would be transferred to the undedicated portion of the General Revenue Fund.

Methodology

With respect to the bill's provisions regarding hydraulic fracturing, the bill would require the Railroad Commission to develop a process for making the legal determination as to whether information claimed to be a trade secret actually qualified as such under the Open Records Act as modified by the bill. The agency reports that currently the majority of permitting activity concerns unconventional reservoirs in which all wells are fracture stimulated. Operators generally consider the components and composition of certain chemical components of the treatments to be trade secrets and vary them from field to field and in different areas of the same field. However, the agency expects that no additional FTEs would be necessary to review trade secret claims.The Railroad Commission is expected to require additional staff time to review completion forms to flag those forms on which an operator would indicate a trade secret and coordinate with the public that may be affected by the passage of this legislation. This estimate assumes that such costs would not be minimal but could be absorbed using existing agency resources.

Regarding the creation of the OGRC Fund, this estimate assumes that all balances in the OFCU Account No. 145 as of August 31, 2011 as reported in the Comptroller's Biennial Revenue Estimate (BRE) for 2012-13 of $30.2 million would transfer to the new General Revenue-Dedicated OGRC Fund and effectively be a loss to the General Revenue Fund. Current revenues to the OFCU Account No. 145, estimated at approximately $25 million per year based on the Comptroller's BRE, minus an estimated $2.5 million in penalties, or $22.5 million per year, would begin to accrue to the new OGRC Fund, and is shown in the table above as a revenue gain, while a loss of $25.0 million per fiscal year is shown to the OFCU Account No. 145. The $2.5 million per year in penalty revenues is shown in the table above as a gain to the General Revenue Fund.

The bill would require the OGC to cover all costs of oil and gas-related activities. Currently in the 2012-13 biennium, $18.9 million in annual expenditures for oil- and gas-related strategies are being paid out of the General Revenue Fund, along with an estimated $3.9 million in associated employee benefits, for a total of $22.8 million. This amount is shown as a savings to the General Revenue Fund in the table above.

Based on the agency's 2012-13 Legislative Appropriations Request, the Railroad Commission's costs in 2010-11 out of the OFCU No. 145 of $27.5 million exceed revenues by $2.5 million, including benefits costs. Upon passage of the bill, $2.5 million in penalties would no longer be available, increasing that deficit to $5.0 million per year. This estimate assumes that the agency would have to set fees sufficient to cover that deficit, along with the $22.8 million amount to replace current General Revenue appropriations. It is therefore estimated that the OGC would have to set surcharges sufficient to raise $27.8 million in new revenue per fiscal year. Because the agency would spend all of the new revenue stream plus amounts covered by revenues to the OFCU Account No. 145 ($22.5 million per fiscal year that would transfer to the new OGRC Fund), the OGRC would have total annual estimated costs of $50.3 million. As shown in the table above, this estimate assumes that revenue to the new OGRC Fund would be equal to total costs out of the Fund.

Because the bill would require SOAH to handle all contested case hearings in enforcement proceedings and all Gas Utility Regulatory Act hearings, the OGC would be required to contract with SOAH for hearings that the Railroad Commission conducts under current law. Based on SOAH's estimates, the additional costs would total $312,482 in fiscal year 2012 and $291,971 in future years and require an additional 2.5 FTEs. This estimate assumes that 2.5 FTEs and related appropriations would be paid for by the OGC using savings experienced by no longer having to conduct the hearings on its own, and that the OGC would thus require 2.5 fewer FTEs.

The elimination of the AFRED program would result in balances in the AFRED Account No. 101 being deposited to the General Revenue Fund. Although the Comptroller's Biennial Revenue Estimate for 2012-13 reports a projected balance in the account of $10.0 million on September 1, 2011, the Railroad Commission reports that the majority of these cash balances will, in fact, be spent prior to the end of fiscal year 2011. Therefore, this estimate assumes only $500,000 in AFRED Account No. 101 balances will actually move to the General Revenue Fund. In addition, $2.1 million in annual revenues to the AFRED Account No. 101 will be lost, partially offset by an estimated $1.7 million in annual expenditures, based on 2010-11 expenditure levels. Elimination of the marketing and education program would also result in 10.0 fewer FTEs being needed, as compared to 2010-11. It should be noted that FTEs in House Bill 1, As Introduced, were reduced by 4.8 FTEs to reflect recommended reductions to funding for the AFRED marketing and public education program.

The bill's expansion of the pipeline safety fee to include gas utility regulatory functions would enable the agency to recover costs associated with the agency's gas utility regulation activities in Strategy A.2.1, Gas Utility Compliance, which currently receives approximately $1.5 million in General Revenue that is not fee supported, plus related benefits costs. Although this could allow the agency to raise the pipeline safety fee to the maximum rate under current law of $1 per line, as compared to the $0.70 currently in place by agency rule, thereby raising an estimated $1.4 million per year, this estimate assumes that the agency would raise the fee by $0.05 per line, thereby generating an estimated $233,000 per fiscal year to the General Revenue Fund, which is included in the table above. This additional revenue would be used to cover $233,000 in additional appropriations provided in the Conference Committee Report for House Bill 1, and partially offsets the General Revenue savings in the table above.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 360 State Office of Administrative Hearings, 455 Railroad Commission, 304 Comptroller of Public Accounts

LBB Staff: JOB, SZ, TL, SD, KM, ZS