

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 5, 2011

TO: Honorable Jim Keffer, Chair, House Committee on Energy Resources

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 Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3328, As Introduced: an impact of \$0 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	\$0
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>Oil-field Cleanup Acct</i> 145	Change in Number of State Employees from FY 2011
2012	(\$290,842)	2.0
2013	(\$182,842)	2.0
2014	(\$182,842)	2.0
2015	(\$182,842)	2.0
2016	(\$182,842)	2.0

Fiscal Analysis

This bill would require operators to disclose to the Railroad Commission (RRC) the composition of fluids used for fracture stimulation, and it would require the RRC to make the information available to the public on the web, unless the operator claimed and the Commission confirmed that the information was a trade secret. To qualify for trade secret protection, a person would have to submit a formal claim of entitlement to that protection on an RRC-approved form.

The bill would prescribe certain information that a person performing hydraulic fracture treatments would be required to provide to the Railroad Commission. Following the completion of hydraulic fracturing treatment on a well, an operator would be required to include in a well completion report on a RRC-approved form. A person performing hydraulic fracturing treatments would be required to provide to the operator of each well on which the person performs the treatment specific chemical

information as prescribed by the bill. Certain provisions relating to requests by health care professionals relating to chemical use in hydraulic fracturing are also included in the bill.

Because the bill would require that information on all additives used in hydraulic fracturing be submitted to the RRC, even those which qualify for trade secret protection, the bill would require the RRC to protect and hold confidential the identity of chemical constituents included in reports submitted to the agency.

In reviewing trade secret claims, if the RRC would determine that a claim of entitlement to trade secret protection is insufficient, the agency would be required to notify the claimant in writing of the determination by certified mail. Specific timelines are prescribed in the bill for claimants: within 15 days a claimant would be authorized to request the RRC to perform an additional review of the trade secret claim; within 30 days after receiving the request the RRC would be required to provide written notice of the RRC's determination; and for 30 days after a claimant receives notice its claim was rejected the RRC would be required to continue treating the information as a confidential trade secret. Additional appeal provisions for claimants are also included in the bill.

The bill would allow the RRC to disclose information otherwise subject to trade secret protection to a third-party testing firm in connection with the investigation of a claim of contamination of surface water or groundwater if the firm agrees in writing to keep the information confidential. In addition, the RRC would be authorized to use the results of a test conducted by a third-party testing firm in connection with such an investigation in any manner the commission considers necessary to protect public health and the environment.

Methodology

Passage of the bill is expected to result in significant administrative duties for the RRC, including the creation of forms for information required in the bill to be submitted and processes for making legal determinations as to whether information claimed to be a trade secret would actually qualify as such. In addition, the time frames set forth in the bill would require that information be processed, reviewed, and acted upon within short time frames. The RRC reports that currently the majority of permitting activity the agency handles concerns unconventional reservoirs in which all wells are fracture stimulated. Therefore, much of the agency's permits would be affected by the bill.

It is estimated that the RRC would need an additional 2 FTEs and related costs of \$182,842 per fiscal year to implement the requirements of the bill. In addition, it is expected that the agency would require the development of a new module within the RRC Online system to capture, track and report on the composition elements and associated data used in hydraulic fracturing treatments at an estimated cost of \$108,000. This additional cost is shown in fiscal year 2012 in the table above. This estimate assumes that costs associated with implementing the provisions of the bill would be paid out of the General Revenue-Dedicated Oil Field Cleanup Account No. 145.

Technology

The agency would require the development of a new module within the RRC Online system to capture, track and report on the composition elements and associated data used in hydraulic fracturing treatments. This module is considered medium in size and complexity, requiring contract programming services for nine months. The new module would take approximately 1,440 programming hours. The estimated contract rate is \$75 per programming hour for a total cost of \$108,000. This additional cost is shown in fiscal year 2012 in the table above.

Local Government Impact

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

Source Agencies: 455 Railroad Commission

LBB Staff: JOB, SZ, ZS, TL