

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Keffer, Crownover, Burnam, Parker,  
Strama, et al.

H.B. No. 3328

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the disclosure of the composition of hydraulic  
3 fracturing fluids used in hydraulic fracturing treatments.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 91, Natural Resources Code, is amended  
6 by adding Subchapter S to read as follows:

7 SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING  
8 FLUIDS

9 Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC  
10 FRACTURING FLUIDS. The commission by rule shall:

11 (1) require an operator of a well on which a hydraulic  
12 fracturing treatment is performed to:

13 (A) complete the form posted on the hydraulic  
14 fracturing chemical registry Internet website of the Ground Water  
15 Protection Council and the Interstate Oil and Gas Compact  
16 Commission with regard to the well;

17 (B) include in the form completed under Paragraph  
18 (A):

19 (i) the total volume of water used in the  
20 hydraulic fracturing treatment; and

21 (ii) each chemical ingredient that is  
22 subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2);

23 (C) post the completed form described by  
24 Paragraph (A) on the website described by that paragraph or, if the

1 website is discontinued or permanently inoperable, post the  
2 completed form on another publicly accessible Internet website  
3 specified by the commission;

4 (D) submit the completed form described by  
5 Paragraph (A) to the commission with the well completion report for  
6 the well; and

7 (E) in addition to the completed form specified  
8 in Paragraph (D), provide to the commission a list, to be made  
9 available on a publicly accessible website, of all other chemical  
10 ingredients not listed on the completed form that were  
11 intentionally included and used for the purpose of creating a  
12 hydraulic fracturing treatment for the well. The commission rule  
13 shall ensure that an operator, service company, or supplier is not  
14 responsible for disclosing ingredients that:

15 (i) were not purposely added to the  
16 hydraulic fracturing treatment;

17 (ii) occur incidentally or are otherwise  
18 unintentionally present in the treatment; or

19 (iii) in the case of the operator, are not  
20 disclosed to the operator by a service company or supplier. The  
21 commission rule shall not require that the ingredients be  
22 identified based on the additive in which they are found or that the  
23 concentration of such ingredients be provided;

24 (2) require a service company that performs a  
25 hydraulic fracturing treatment on a well or a supplier of an  
26 additive used in a hydraulic fracturing treatment on a well to  
27 provide the operator of the well with the information necessary for

1 the operator to comply with Subdivision (1);

2 (3) prescribe a process by which an entity required to  
3 comply with Subdivision (1) or (2) may withhold and declare certain  
4 information as a trade secret for purposes of Section 552.110,  
5 Government Code, including the identity and amount of the chemical  
6 ingredient used in a hydraulic fracturing treatment;

7 (4) require a person who desires to challenge a claim  
8 of entitlement to trade secret protection under Subdivision (3) to  
9 file the challenge not later than the second anniversary of the date  
10 the relevant well completion report is filed with the commission;

11 (5) limit the persons who may challenge a claim of  
12 entitlement to trade secret protection under Subdivision (3) to:

13 (A) the landowner on whose property the relevant  
14 well is located;

15 (B) a landowner who owns property adjacent to  
16 property described by Paragraph (A); or

17 (C) a department or agency of this state; and

18 (6) prescribe an efficient process for an entity  
19 described by Subdivision (1) or (2) to provide information,  
20 including information that is a trade secret as defined by Appendix  
21 D to 29 C.F.R. Section 1910.1200, to a health professional or  
22 emergency responder who needs the information in accordance with  
23 Subsection (i) of that section.

24 SECTION 2. Subchapter S, Chapter 91, Natural Resources  
25 Code, as added by this Act, applies only to a hydraulic fracturing  
26 treatment performed on a well for which an initial drilling permit  
27 is issued on or after the date the initial rules adopted by the


1 Railroad Commission of Texas under that subchapter take effect. A  
2 hydraulic fracturing treatment performed on a well for which an  
3 initial drilling permit is issued before the date the initial rules  
4 take effect is governed by the law as it existed immediately before  
5 the effective date of this Act, and that law is continued in effect  
6 for that purpose.

7 SECTION 3. The Railroad Commission of Texas shall adopt  
8 rules under Subchapter S, Chapter 91, Natural Resources Code, as  
9 added by this Act, not later than January 1, 2012.

10 SECTION 4. This Act takes effect September 1, 2011.

# ADOPTED

MAY 25 2011

  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Fraser

1 Amend H.B. No. 3328 (senate committee printing) as follows:

2 (1) In SECTION 1 of the bill, in proposed Section 91.851,  
3 Natural Resources Code, between "FLUIDS." and "The" (page 1, line  
4 16), insert "(a)".

5 (2) In SECTION 1 of the bill, in proposed Section  
6 91.851(1)(B)(ii), Natural Resources Code, between  
7 "1910.1200(g)(2)" and the underlined semicolon (page 1, line 28),  
8 insert ", as provided by a service company or chemical supplier or  
9 by the operator, if the operator provides its own chemical  
10 ingredients".

11 (3) In SECTION 1 of the bill, in proposed Section  
12 91.851(5)(C), Natural Resources Code (page 2, line 10), strike  
13 "state; and" and substitute "state with jurisdiction over a matter  
14 to which the claimed trade secret is relevant;".

15 (4) In SECTION 1 of the bill, in proposed Section 91.851,  
16 Natural Resources Code, between Subdivisions (5) and (6) of the  
17 section (page 2, between lines 10 and 11), insert the following:

18 (6) require, in the event of a trade secret challenge,  
19 that the commission promptly notify the service company performing  
20 the hydraulic fracturing treatment on the relevant well, the  
21 supplier of the additive or chemical ingredient for which the trade  
22 secret claim is made, or any other owner of the trade secret being  
23 challenged and provide the owner an opportunity to substantiate its  
24 trade secret claim; and

25 (5) In SECTION 1 of the bill, in amended Section 91.851(6),  
26 Natural Resources Code (page 2, line 11), strike "(6)" and  
27 substitute "(7)".

28 (6) In SECTION 1 of the bill, in proposed Section 91.851(6),  
29 Natural Resources Code (page 2, line 11), strike "an efficient

1 process" and substitute "a process, consistent with 29 C.F.R.  
2 Section 1910.1200,".

3 (7) In SECTION 1 of the bill, at the end of proposed Section  
4 91.851, Natural Resources Code (page 2, between lines 16 and 17),  
5 insert the following:

6 (b) The protection and challenge of trade secrets under this  
7 section is governed by Chapter 552, Government Code.

8 (8) In SECTION 3 of the bill (page 2, line 29), strike  
9 "January" and substitute "July".

# ADOPTED

FLOOR AMENDMENT NO. 6

MAY 25 2011

BY: Steve Hegar

Atay Spaw  
Secretary of the Senate

Amend H.B. 3328 by inserting the following appropriately numbered sections and renumbering accordingly:

SECTION 1. The heading to Chapter 81, Natural Resources Code, is amended to read as follows:

CHAPTER 81. TEXAS OIL AND GAS [~~RAILROAD~~] COMMISSION [~~OF TEXAS~~]

SECTION 2. Section 81.001, Natural Resources Code, is amended to read as follows:

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~].

(2) "Commissioner" means any member of the Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~].

SECTION 3. Subchapter A, Chapter 81, Natural Resources Code, is amended by adding Section 81.003 to read as follows:

Sec. 81.003. TEXAS OIL AND GAS COMMISSION. (a) The Railroad Commission of Texas is renamed the Texas Oil and Gas Commission.

(b) A reference in law to:

(1) the Railroad Commission of Texas means the Texas Oil and Gas Commission; and

(2) a railroad commissioner or a member of the Railroad Commission of Texas means a member of the Texas Oil and Gas Commission.

SECTION 4. Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is

abolished September 1, 2023 [~~2011~~].

SECTION 5. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Section 81.010015 to read as follows:

Sec. 81.010015. ELECTION AND TERMS OF COMMISSIONERS; CHAIRMAN. (a) The commission is composed of three commissioners elected at the general election for state and county officers.

(b) Commissioners serve terms of four years.

(c) The commissioner elected at the general election in 2014 and every fourth year after that year serves as the chairman of the commission. The other commissioners shall be elected at the general election in 2012 and every fourth year after.

(d) The designation of the office of chairman of the commission under Subsection (c) identifies the office for all purposes, including identification on official ballots for primary and general elections.

SECTION 6. Sections 81.01002 and 81.01004, Natural Resources Code, are amended to read as follows:

Sec. 81.01002. POWERS AND DUTIES OF CHAIRMAN. (a) The ~~[commissioners shall elect one commissioner as the]~~ chairman of the ~~commission:~~

(1) shall manage the administrative affairs of the commission, subject to the applicable provisions of this code and other law;

(2) may organize the divisions of the commission in any manner so as to maximize the efficiency and effectiveness of the commission;

(3) shall set the agenda for commission meetings and hearings; and

(4) may hire and terminate commission employees.

(b) The chairman of the commission may delegate the chairman's powers and duties to one or more deputies, including



the administrative chief.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, [AND] CONFLICT OF INTEREST, AND DISCLOSURE OF REASON FOR RECUSAL. (a) A commissioner is subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

(b) A commissioner who voluntarily recuses the commissioner from a commission decision because the commissioner has a material interest in the matter shall disclose the material interest in writing.

SECTION 7. Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Sections 81.010045 and 81.010046 to read as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED. (a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

(b) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of a statewide or federal office, other than the office of commissioner.

SECTION 8. Sections 81.01005, 81.01008, and 81.017, Natural Resources Code, are amended to read as follows:

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~]."

(b) The seal of the commission contains a star of five points with the words "Texas Oil and Gas [~~Railroad~~] Commission [~~of Texas~~]" engraved on it.

Sec. 81.01008. PUBLIC HEARINGS [~~SESSIONS~~]. The commission may hold public hearings [~~sessions~~] at any place in this state

when considered necessary.

SECTION 9. Section 81.0521(c), Natural Resources Code, is amended to read as follows:

(c) The ~~[Two thirds of the]~~ proceeds from this fee, excluding ~~[including]~~ any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and ~~[oil field]~~ cleanup fund ~~[as provided by Section 91.111]~~.

SECTION 10. Sections 81.0531(c), (d), and (e), Natural Resources Code, are amended to read as follows:

(c) In determining the amount of the penalty, the commission shall consider the ~~[permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the]~~ guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty ~~[for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety]~~. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

- (1) the permittee's history of previous violations, including the number of previous violations;
- (2) the seriousness of the violation and of any

pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) the economic benefit gained through the violation; and

(7) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the general revenue [~~oil field cleanup~~] fund.

SECTION 11. Section 81.056(g), Natural Resources Code, is amended to read as follows:

(g) The commission may use money in the oil and gas regulation and [~~oil field~~] cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.

SECTION 12. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Sections 81.065, 81.066, 81.067, 81.068, 81.069, 81.070, and 81.071 to read as follows:

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the

resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The commission's alternative dispute resolution procedures do not apply to the resolution of an informal complaint described by Section 81.059 or filed under Section 85.065.

SECTION 13. Sec. 81.066. ENFORCEMENT POLICY. (a) The commission by rule shall adopt an enforcement policy to guide the employees of the commission in evaluating violations of the provisions of this title that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertains to safety or the prevention or control of pollution and is issued under this title.

(b) The enforcement policy adopted under this section must include:

(1) a specific process for classifying violations based on:

(A) the seriousness of any pollution resulting from the violation; and

(B) any hazard to the health or safety of the public; and

(2) standards to provide guidance to commission employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.

(c) The standards adopted under Subsection (b)(2) must require a commission employee to take into account the permittee's history of previous violations in determining whether to dismiss a violation once the permittee comes into compliance or forward the violation for enforcement.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND.

(a) The oil and gas regulation and cleanup fund is created as an account in the general revenue fund of the state treasury.

(b) The commission shall certify to the comptroller the date on which the balance in the fund equals or exceeds \$20 million. The oil-field cleanup regulatory fees on oil and gas may not be collected or required to be paid on or after the first day of the second month following the certification, except that the comptroller shall resume collecting the fees on receipt of a commission certification that the fund has fallen below \$10 million. The comptroller shall continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies,

subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;

(18) costs recovered under Sections 91.656 and 91.657;

(19) fees collected under Section 81.0521;

(20) fees collected under Sections 89.024 and 89.026;

(21) legislative appropriations; and

(22) any surcharges collected under Section 81.071.

(d) All revenues and balances in the oil and gas regulation and cleanup fund created in this section are exempt from Section 403.095(b), Government Code.

Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND. (a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next fiscal biennium, including goals for each quarter of each state fiscal year of the fiscal biennium for the number of:

(1) orphaned wells to be plugged with state-managed funds;

(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and

(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil and gas regulation and cleanup fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund;

(D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(E) the total number of permits issued by the commission;

(F) the average amount of time taken by the commission to complete the process for issuing a permit; and

(G) the average amount of time taken by the commission to rule on a contested case; and

(2) any additional information requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public annually a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under



Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next fiscal biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Sec. 81.070. IMPOSITION OF SURCHARGES ON FEES. (a)

Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to

be deposited to the credit of the oil and gas regulation and cleanup fund in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund.

Sec. 81.071. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Notwithstanding any other law, the State Office of Administrative Hearings shall conduct each contested case hearing in an enforcement proceeding under a law

administered by the commission. A hearing must be conducted in accordance with the rules and procedures adopted by the commission.

(b) The commission may delegate to the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) For purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the commission unless the commission requests formal review of the decision.

Section 81.115, Natural Resources Code, is amended to read as follows:

Sec. 81.115. APPROPRIATIONS [PAYMENTS] TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES [OIL AND GAS DIVISION]. Money appropriated to the [~~oil and gas division of the~~] commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund [General Revenue Fund].

Sections 81.116(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [91.111]. The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil-field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 15. Sections 81.117(d) and (e), Natural Resources Code, are amended to read as follows:

(d) The comptroller shall suspend collection of the fee in the manner provided by Section 81.067 [~~91.111~~]. The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding [~~including~~] any penalties collected in connection with the fee, shall be deposited to the credit of the oil and gas regulation and [oil-field] cleanup fund [~~as provided by Section 91.111 of this code~~].

SECTION 16. Section 85.2021(d), Natural Resources Code, is amended to read as follows:

(d) All fees collected under this section shall be deposited in the oil and gas regulation and [~~state oil field~~] cleanup fund.

SECTION 17. Section 89.024(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files an abeyance of plugging report must pay an annual fee of \$100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and [~~oil-field~~] cleanup fund.

SECTION 18. Section 89.026(d), Natural Resources Code, is amended to read as follows:

(d) An operator who files documentation described by

Subsection (a) must pay an annual fee of \$50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and [~~oil-field~~] cleanup fund.

SECTION 19. Section 89.048(d), Natural Resources Code, is amended to read as follows:

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and [~~oil-field~~] cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

SECTION 20. Section 89.083(j), Natural Resources Code, is amended to read as follows:

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and [~~state-oil-field~~] cleanup fund.

SECTION 21. Section 89.085(d), Natural Resources Code, is amended to read as follows:

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and [~~oil-field~~] cleanup fund. The commission shall separately account for money and credit received for each well.

SECTION 22. The heading to Section 89.086, Natural Resources Code, is amended to read as follows:

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND

~~[THE OIL FIELD]~~ CLEANUP FUND.

SECTION 23. Sections 89.086(a), (h), (i), (j), and (k), Natural Resources Code, are amended to read as follows:

(a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 ~~[of this code]~~ may make a claim against the oil and gas regulation and ~~[oil field]~~ cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(h) The commission shall suspend an amount of money in the oil and gas regulation and ~~[oil field]~~ cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) ~~[of this section]~~ prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the

commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and [~~oil-field~~] cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and [~~oil-field~~] cleanup fund in the manner provided by Subsection (j) [~~of this section~~].

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [~~oil-field~~] cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and [~~oil-field~~] cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and [~~oil-field~~] cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and [~~oil-field~~] cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a

particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and [~~oil field~~] cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

SECTION 24. Section 89.121(b), Natural Resources Code, is amended to read as follows:

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue [~~state oil field cleanup~~] fund.

SECTION 25. Section 91.1013(c), Natural Resources Code, is amended to read as follows:

(c) Fees collected under this section shall be deposited in the oil and gas regulation and [~~state oil field~~] cleanup fund.

SECTION 26. Section 91.108, Natural Resources Code, is amended to read as follows:

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund and, notwithstanding Sections 81.068 [~~91.112~~] and 91.113,



may be used only for actual well plugging and surface remediation.

SECTION 27. Section 91.109(a), Natural Resources Code, is amended to read as follows:

(a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091 [~~of this code~~], proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and [oil-field] cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

SECTION 28. Sections 91.113(a) and (f), Natural Resources Code, are amended to read as follows:

(a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and [oil-field] cleanup fund to conduct a site investigation or environmental assessment or

control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the credit of the oil and gas regulation and [oil-~~field~~] cleanup fund.

SECTION 29. Section 91.264(c), Natural Resources Code, is amended to read as follows:

(c) A penalty collected under this section shall be

deposited to the credit of the general revenue [~~oil field cleanup~~] fund [~~account~~].

SECTION 30. Section 91.457(b), Natural Resources Code, is amended to read as follows:

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) [~~of this section~~] fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and [~~oil field~~] cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

SECTION 31. Section 91.459(c), Natural Resources Code, is amended to read as follows:

(c) Any [~~penalties or~~] costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund.

SECTION 32. Section 91.605(e), Natural Resources Code, is amended to read as follows:

(e) The fees collected under this section shall be deposited in the oil and gas regulation and [~~oil field~~] cleanup fund.

SECTION 33. Section 91.654(e), Natural Resources Code, is amended to read as follows:

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and [~~oil field~~] cleanup fund [~~under Section 91.111~~].

SECTION 34. Section 91.707(b), Natural Resources Code, is amended to read as follows:

(b) Fees collected under this section shall be deposited

to the credit of the oil and gas regulation and [oil field] cleanup fund.

SECTION 35. Subchapter B, Chapter 102, Natural Resources Code, is amended by adding Sections 102.0125 and 102.0165 to read as follows:

Sec. 102.0125. WITHDRAWAL AND REILING OF APPLICATION.

(a) The commission by rule shall:

(1) provide procedures requiring an interested owner who applies to the commission for the pooling of mineral interests to give notice to the commission before withdrawing the application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Rules adopted under Subsection (a)(1) must specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) At the request of an interested party, the commission may hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) The commission may contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency.

SECTION 36. Section 117.012(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) [~~including~~] safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities [~~such a facility~~] resulting from the movement of earth by a person in the vicinity of such a [~~the~~] facility, other than movement by tillage that does not exceed a depth of 16 inches.

SECTION 37. Section 211.033(q), Natural Resources Code, is amended to read as follows:

(q) A penalty collected under this section shall be remitted to the comptroller for [~~the~~] deposit to the credit of the general revenue [~~oil field cleanup~~] fund.

SECTION 38. Section 52.092(c), Election Code, is amended to read as follows:

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) chairman of the Texas Oil and Gas Commission;
- (8) [~~railroad~~] commissioner of the Texas Oil and Gas Commission;
- (9) [~~8~~] chief justice, supreme court;
- (10) [~~9~~] justice, supreme court;
- (11) [~~10~~] presiding judge, court of criminal

appeals;

(12) ~~(11)~~ judge, court of criminal appeals.

SECTION 39. Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Texas Oil and Gas ~~[Railroad]~~ Commission ~~[of Texas]~~ shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

SECTION \_ Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS ~~[IN CONTESTED CASES]~~. (a) The ~~[railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of~~ the] State Office of Administrative Hearings shall ~~[to]~~ conduct each hearing in a contested case under this subtitle ~~[that is not conducted by one or more members of the railroad commission]~~. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to ~~[a railroad commission hearings examiner or to the utility division of]~~ the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there

is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) [~~to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings~~].

(d) For purposes of judicial review, an administrative law judge's [~~the~~] final decision [~~of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated~~] under Subsection (b) has the same effect as a final decision of the railroad commission unless [~~a member of~~] the commission requests formal review of the decision.

~~[(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.]~~

SECTION \_\_. Section 121.201(a), Utilities Code, is amended to read as follows:

(a) The railroad commission may:

(1) by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline [~~such a~~] facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not

exceed a depth of 16 inches;

(2) by rule require an operator that does not file operator organization information under Section 91.142, Natural Resources Code, to provide the information to the commission in the form of an application;

(3) by rule require record maintenance and reports;

(4) inspect records and facilities to determine compliance with safety standards prescribed or adopted under Subdivision (1);

(5) make certifications and reports from time to time;

(6) seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate gas pipeline facilities located in this state; and

(7) by rule take any other requisite action in accordance with 49 U.S.C. Section 60101 et seq., or a succeeding law.

SECTION 41. Section 29.015, Water Code, is amended to read as follows:

Sec. 29.015. APPLICATION FEE. With each application for issuance, renewal, or material amendment of a permit, the applicant shall submit to the railroad commission a nonrefundable fee of \$100. Fees collected under this section shall be deposited in the oil and gas regulation and ~~[oil-field]~~ cleanup fund.

SECTION \_\_\_\_\_. The heading to Section 121.211, Utilities Code, is amended to read as follows:

Sec. 121.211. PIPELINE SAFETY AND REGULATORY FEES.

SECTION \_\_\_\_\_. Sections 121.211(a), (b), (c), (d), (e), and (h), Utilities Code, are amended to read as follows:



(a) The railroad commission by rule may adopt a    fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities and natural gas master metered pipelines and their pipeline facilities subject to this title   .

(b) The railroad commission by rule shall establish the method by which the fee will be calculated and assessed. In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among operators of the costs of administering the railroad commission's pipeline safety and regulatory program under this title   .

(c) The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the amount estimated by the railroad commission to be necessary to recover the costs of administering the railroad commission's pipeline safety and regulatory program under this title   , excluding costs that are fully funded by federal sources.

(d) The commission may assess each operator of a natural gas distribution system subject to this title    an annual    fee not to exceed one dollar for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this title    an annual    fee not to exceed \$100 for each master metered system. The fee is due June 30 of each year.

(h) A fee collected under this section shall be deposited to the credit of the general revenue fund to be used for the pipeline safety and regulatory program.

SECTION 42. The following provisions of the Natural Resources Code are repealed:

- (1) Section 91.111;
- (2) Section 91.112;
- (3) Section 91.1135; and
- (4) Subchapter I, Chapter 113.

SECTION 54. On the effective date of this Act:

(1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;

(2) any money remaining in the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(4) any claim against the oil-field cleanup fund is transferred to the oil and gas regulation and cleanup fund;

(5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;

(6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the oil and gas regulation and cleanup fund; and

(7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund.

SECTION 55. (a) As soon as possible after the effective date of this Act, the governor shall appoint the initial commissioners of the Texas Oil and Gas Commission two of whom serve a term that expires January 1, 2013 and the chairman who serves a term that expires January 1, 2015.

(b) The office of commissioner of the Texas Oil and Gas Commission exists for purposes of the primary and general election in 2012. The office of the chairman of the Texas Oil and Gas Commission exists for the purposes of the primary and general election in 2014.

(c) The initial two elected commissioners of the Texas Oil

and Gas Commission shall be elected at the general election for state and county officers in 2012 to serve a four-year term. The initial chairman of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2014 to serve a four-year term.

(d) The initial two elected commissioners of the Texas Oil and Gas Commission shall take office January 1, 2013. The initial elected chairman of the Texas Oil and Gas Commission shall take office January 1, 2015.

SECTION 56. (a) On the date the initial appointed commissioners of the Texas Oil and Gas Commission take office:

- (1) the Texas Oil and Gas Commission is created;
- (2) the Railroad Commission of Texas is abolished and the terms of the members of the Railroad Commission of Texas serving on that date expire;
- (3) the powers, duties, functions, programs, and activities of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (4) an employee of the Railroad Commission of Texas becomes an employee of the Texas Oil and Gas Commission;
- (5) all obligations and contracts of the Railroad Commission of Texas are transferred to the Texas Oil and Gas Commission;
- (6) all property and records in the custody of the Railroad Commission of Texas and all funds appropriated by the legislature to the Railroad Commission of Texas shall be transferred to the Texas Oil and Gas Commission;
- (7) all complaints, investigations, or contested cases that are pending before the Railroad Commission of Texas, or the governing body of the Railroad Commission of Texas, are transferred without change in status to the Texas Oil and Gas

Commission;

(8) a rule or form adopted by the Railroad Commission of Texas is a rule or form of the Texas Oil and Gas Commission and remains in effect until altered by that commission;

(9) a reference in law to the Railroad Commission of Texas means the Texas Oil and Gas Commission;

(10) a reference in law to a railroad commissioner or a member of the Railroad Commission of Texas means the commissioner of the Texas Oil and Gas Commission; and

(11) a license, permit, or certification in effect that was issued by the Railroad Commission of Texas is continued in effect as a license, permit, or certification of the Texas Oil and Gas Commission.

(b) The abolition of the Railroad Commission of Texas and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 57. The Railroad Commission of Texas shall adopt a timetable for phasing in the use of the name of the Texas Oil and Gas Commission so as to minimize the fiscal impact of the change of name of the entity responsible for performing the functions of the Railroad Commission of Texas. Until January 1, 2012, to allow for phasing in the use of the name of the Texas Oil and Gas Commission and in accordance with the timetable established as required by this section, the Texas Oil and Gas Commission may perform any act authorized by law for the Railroad Commission of Texas as the Railroad Commission of Texas

or as the Texas Oil and Gas Commission and any act of the Texas Oil and Gas Commission acting as the Railroad Commission of Texas is an act of the Texas Oil and Gas Commission.

SECTION 58. This Act takes effect September 1, 2011.

**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 <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>Oil-field Cleanup Acct</i> 145	Probable Revenue Gain/(Loss) from <i>Oil-field Cleanup Acct</i> 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 <i>New General Revenue Dedicated</i>	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated</i>	Probable Savings/ (Cost) from <i>Alter Fuels Research Acct</i> 101	Probable Revenue Gain/(Loss) from <i>Alter Fuels Research Acct</i> 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)

<b>Fiscal Year</b>	<b>Change in Number of State Employees from FY 2011</b>
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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 18, 2011**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural 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 Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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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 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.

**Local Government Impact**

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

**Source Agencies:** 455 Railroad Commission

**LBB Staff:** JOB, SZ, TL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 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.), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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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 or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet site specified by the Commission. The operator would also be required to submit the completed form to the Commission with the well completion report.

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, or, if that section is repealed, as a trade secret under the federal Emergency Planning and Community Right-To-Know Act. 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 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.

**Local Government Impact**

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

**Source Agencies:** 455 Railroad Commission

**LBB Staff:** JOB, SZ, TL

**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