

BILL ANALYSIS

C.S.H.B. 40
By: Darby
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that oil and gas activity has coexisted with Texas cities for more than a century. The parties further note that stringent state oil and gas regulations protect the environment and allow the oil and gas industry to grow jobs and anchor the Texas economy. However, the parties contend that recently adopted municipal regulations create a patchwork of inconsistent regulation that undermines the safe and efficient production of oil and gas. C.S.H.B. 40 seeks to ensure consistent statewide regulation of the oil and gas industry.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 40 sets out findings relating to the impact and effectiveness of state law and policy on the development of oil and gas resources to confirm the state's authority with respect to the regulation of oil and gas activities within the state. The bill amends the Natural Resources Code to subject an oil and gas operation to the exclusive jurisdiction of the state. The bill prohibits a municipality or other political subdivision from enacting or enforcing an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision. The bill expressly preempts the authority of a municipality or other political subdivision to regulate an oil and gas operation but authorizes a municipality to enact, amend, or enforce an ordinance or other measure that regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements; that is commercially reasonable; that does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and that is not otherwise preempted by state or federal law. The bill establishes that an ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

C.S.H.B. 40 defines "commercially reasonable" as a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act. The bill

defines "oil and gas operation" as an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

INTRODUCED

SECTION 1. The legislature finds that the laws and policy of this state have fostered successful development of oil and gas resources in concert with the growth of healthy and economically vibrant communities for over 100 years. The legislature acknowledges this cooperative progress and mutual benefit is derived from current statutes that provide effective and environmentally sound regulation of oil and gas operations that is so comprehensive and pervasive that it occupies the field, while facilitating the overriding policy objective to fully and effectively exploit oil and gas resources and protecting the environment and public's health and safety. The legislature recognizes that in order to continue this prosperity and the efficient management of a key industry in this state it is in the state's interest to explicitly confirm the authority for regulation of oil and gas activities within the state. The legislature intends that this Act expressly preempts regulation of oil and gas operations by municipalities and other political subdivisions that is already impliedly preempted by state law.

SECTION 2. Chapter 81, Natural Resources Code, is amended by adding a new Section to read as follows:

Sec. 81.071. EXPRESS PREEMPTION.

(a) In this section:

(1) "Commercially reasonable" is defined as a condition that permits a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The legislature finds that the laws and policy of this state have fostered successful development of oil and gas resources in concert with the growth of healthy and economically vibrant communities for over 100 years. The legislature acknowledges this cooperative progress and that mutual benefit is derived from the statutes already in effect, which provide effective and environmentally sound regulation of oil and gas operations that is so comprehensive and pervasive that the regulation occupies the field, while facilitating the overriding policy objective of this state of fully and effectively exploiting oil and gas resources while protecting the environment and the public's health and safety. The legislature recognizes that in order to continue this prosperity and the efficient management of a key industry in this state, it is in the interest of this state to explicitly confirm the authority to regulate oil and gas operations in this state. The legislature intends that this Act expressly preempt the regulation of oil and gas operations by municipalities and other political subdivisions, which is impliedly preempted by the statutes already in effect.

SECTION 2. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.0523 to read as follows:

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) In this section:

(1) "Commercially reasonable" means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce,

process, and transport oil and gas.

(2) "Oil and gas operation" is defined as an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery techniques, and remediation activities.

(b) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality is authorized to enact, amend, or enforce an ordinance or other measure that regulates only surface activity that is incident to an oil and gas operation, is commercially reasonable, does not effectively prohibit an oil and gas operation, and is not otherwise preempted by state or federal law.

(c) Except as to the authority recognized in Subsection (b), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an existing ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within its boundaries or extraterritorial jurisdiction. An oil and gas operation is subject to the exclusive jurisdiction of the state.

(See Subsection (b) above.)

process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.

(2) "Oil and gas operation" means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.

(See Subsection (c) below.)

(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably

prudent operator; and

(4) is not otherwise preempted by state or federal law.

(d) An ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.