

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

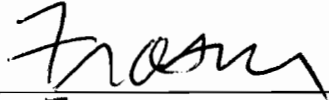


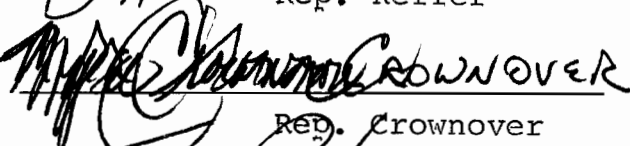
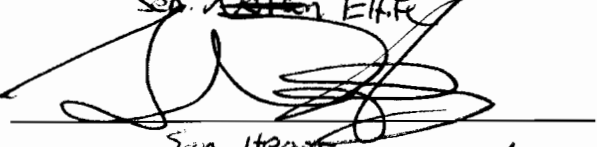
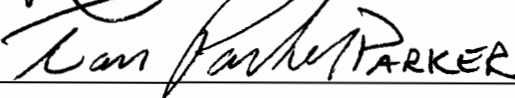
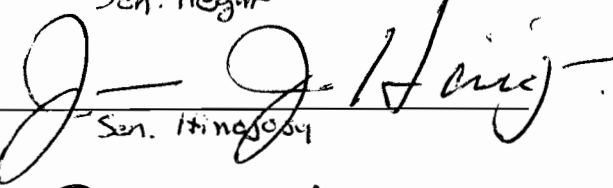
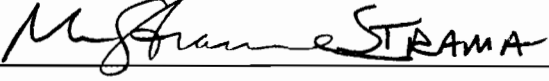
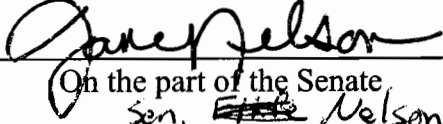
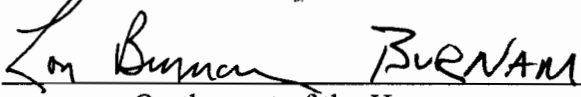
5/28/11
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3328 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

 _____ Sen. Fraser	 _____ Rep. Keffer
 _____ Sen. Elfr	 _____ Rep. Crownover
 _____ Sen. Hegar	 _____ Rep. Parker
 _____ Sen. Hingorani	 _____ Rep. Strama
 _____ On the part of the Senate, Sen. Elfr Nelson	 _____ On the part of the House Rep. Burnam Rep. Burnam

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3328

A BILL TO BE ENTITLED

AN ACT

relating to the disclosure of the composition of hydraulic fracturing fluids used in hydraulic fracturing treatments.

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

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

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING
FLUIDS

Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC
FRACTURING FLUIDS. (a) The commission by rule shall:

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

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

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

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

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

provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients;

(C) post the completed form described by Paragraph (A) on the website described by that paragraph or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet website specified by the commission;

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

(E) in addition to the completed form specified in Paragraph (D), provide to the commission a list, to be made available on a publicly accessible website, 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 for the well. The commission rule shall ensure that an operator, service company, or supplier is not responsible for disclosing ingredients that:

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

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

(iii) in the case of the operator, are not disclosed to the operator by a service company or supplier. The commission rule shall not require that the ingredients be

identified based on the additive in which they are found or that the concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator of the well with the information necessary for the operator to comply with Subdivision (1);

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

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

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

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

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

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is

relevant;

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

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

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

SECTION 2. Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, applies only to a hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued on or after the date the initial rules adopted by the Railroad Commission of Texas under that subchapter take effect. A hydraulic fracturing treatment performed on a well for which an initial drilling permit is issued before the date the initial rules take effect is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect

for that purpose.

SECTION 3. The Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than July 1, 2012, with the exception of those rules under paragraph (E), which are to be adopted not later than July 1, 2013.

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

House Bill 3328
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Adds Subchapter S, Chapter 91, Natural Resources Code, DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS, as follows:

Sec. 91.851. The commission by rule shall:

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

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

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

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

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

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

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

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

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

SENATE VERSION (IE)

SECTION 1. Same as House version, except as follows:

Sec. 91.851. (a) The commission by rule shall:

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

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

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

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

(ii) each chemical ingredient that is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients; . . .

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

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

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

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is relevant;

(6) require, in the event of a trade secret challenge, that the commission promptly notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade

CONFERENCE

SECTION 1. Same as Senate version.

(a) Same as Senate version.

House Bill 3328
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

No equivalent provision.

SECTION 2. Saving provision.

SECTION 3. Requires the Railroad Commission of Texas to adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by the bill, not later than January 1, 2012.

SECTION 4. Effective date.

No equivalent provision.

secret being challenged and provide the owner an opportunity to substantiate its trade secret claim; and

(7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or emergency responder who needs the information in accordance with Subsection (i) of that section. [FA1(1)-(7)]

(b) Provides that the protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code. [FA1(1)-(7)]

SECTION 2. Same as House version.

SECTION 3. Same as House version, except sets the date by which rules are required to be adopted as not later than July 1, 2012. [FA1(8)]

SECTION 4. Same as House version.

SECTIONS ___ to ___. Amends certain sections of Chapter 81, Natural Resources Code, relating to, among other provisions, the abolishment of the Railroad Commission of Texas, the creation of the Texas Oil and Gas Commission, and the

(b) Same as Senate version.

SECTION 2. Same as House version.

SECTION 3. Substantially the same as Senate version, except that the Railroad Commission of Texas shall adopt rules under Subchapter S, Chapter 91, Natural Resources Code, as added by this Act, not later than July 1, 2012, with the exception of those rules under paragraph (E), which are to be adopted not later than July 1, 2013.

SECTION 4. Same as House version.

Same as House version.

House Bill 3328
 Conference Committee Report
 Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

transfer of the powers, duties, functions, programs, and activities of the Railroad Commission of Texas to the Texas Oil and Gas Commission. [FA6]

No equivalent provision.

SECTION __. Amends Section 85.2021(d), Natural Resources Code. [FA6]

Same as House version.

No equivalent provision.

SECTIONS __ to __. Amends certain sections of Chapter 89, Natural Resources Code, relating to abandoned oil and gas wells. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends certain sections of Chapter 91, Natural Resources Code, relating to provisions generally applicable to the conservation and regulation of oil and gas. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Adds Sections 102.0125 and 102.0165, Natural Resources Code.. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends Section 117.012(a), Natural Resources Code. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends Section 211.033(q), Natural Resources Code. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends Section 52.092(c), Election Code. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends Section 756.126, Health and Safety Code. [FA6]

Same as House version.

No equivalent provision.

SECTION __. Amends Section 102.006, Utilities Code.

Same as House version.

House Bill 3328
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
	[FA6]	
No equivalent provision.	SECTION __. Amends Section 121.201(a), Utilities Code [FA6]	Same as House version.
No equivalent provision.	SECTION __. Amends Section 29.015, Water Code. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Amends the heading to Section 121.211, Utilities Code. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Amends Sections 121.211(a), (b), (c), (d), (e), and (h), Utilities Code. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Repeals the following provisions of the Natural Resources Code: (1) Section 91.111; (2) Section 91.112; (3) Section 91.1135; and (4) Subchapter I, Chapter 113. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Transition provision relating to abolishment and transfer of certain funds. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Transition provision relating to certain officers of the Texas Oil and Gas Commission. [FA6]	Same as House version.
No equivalent provision.	SECTION __. Transition provision relating the abolishment of the Railroad Commission of Texas, the creation of the Texas Oil and Gas Commission, and the transfer of the powers, duties, functions, programs, and activities of the	Same as House version.

House Bill 3328
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HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

Railroad Commission of Texas to the Texas Oil and Gas Commission [FA6]

SECTION __. Transition provision relating to a timetable for phasing in the use of the name of the Texas Oil and Gas Commission. [FA6]

Same as House version.

No equivalent provision.

SECTION __. This Act takes effect September 1, 2011. [FA6]

Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 28, 2011

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
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.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

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 that in the event of a trade secret challenge that the Railroad Commission notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim.

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. The bill's requirement that the agency provide notification of trade secret claims would also require additional agency resources. 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.

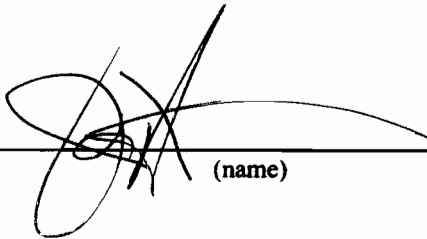
Source Agencies: 455 Railroad Commission

LBB Staff: JOB, SZ, TL

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3328 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5/28/11

(date)