

## **BILL ANALYSIS**

C.S.H.B. 964  
By: Darby  
Energy Resources  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation provided a tort liability shield for oil and gas operators who transfer their waste drill cuttings to a person who holds a recycling permit with the contractual understanding that the drill cuttings will be recycled for road building or another beneficial use. Under current law and current markets, however, the extent to which the tort liability shield is applicable is questionable and clarification is needed with regard to the ancillary disposal of the transferred drill cuttings. It has been noted that the intent of the original legislation was to have the tort liability shield apply when operators transfer drill cuttings and waste for commercial recycling or disposal. C.S.H.B. 964 seeks to address this issue by revising the applicable tort liability shield provisions.

### **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. 964 amends the Natural Resources Code to remove a provision that exempts a person who generates drill cuttings and transfers the drill cuttings to a permit holder with the contractual understanding that the drill cuttings will be used in connection with road building or another beneficial use from liability in tort for a consequence of the subsequent use of the drill cuttings by the permit holder or by another person. The bill replaces that provision with a provision that, unless otherwise provided by a contract or other written agreement, exempts a person who generates drill cuttings and transfers the drill cuttings in an arm's length transaction to an unaffiliated third-party permit holder under a contract that requires that the drill cuttings be used in connection with road building or another beneficial use or disposed of from liability in tort for a consequence of the subsequent use or disposal of the drill cuttings by the permit holder or by another person under the following conditions:

- the person who generates the drill cuttings has the legal and contractual right to transfer the drill cuttings to the permit holder;
- the method and location of the use or disposal are not prohibited by law, contract, or other written agreement; and
- the consequence was caused solely by the permit holder.

C.S.H.B. 964 includes as a permit holder for purposes of provisions relating to the treatment and recycling for beneficial use of drill cuttings a person who holds a permit from the Railroad Commission of Texas to operate a commercial oil and gas waste disposal facility. The bill

includes as drill cuttings any associated sand, silt, drilling fluid, spent completion fluid, workover fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the wellbore.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 964 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute specifies that the oil and gas waste disposal facility for which a person who holds an operating permit is considered a permit holder is a commercial oil and gas waste disposal facility.

The substitute includes language revising responsibility in tort provisions relating to the following:

- an exception to the liability exemption;
- the type of transaction for the transfer of the drill cuttings;
- the type of permit holder who is the recipient of the drill cuttings;
- contractual understanding regarding the use of the drill cuttings; and
- the conditions under which the liability exemption applies.