

SUBJECT: Permits and fees for oil and gas exploration along state and county roads

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Krusee, Phillips, Hamric, Edwards, Garza, Harper-Brown, Hill,
Mercer

0 nays

1 absent — Laney

WITNESSES: For — None

Against — None

On — Susan Combs, Texas Department of Agriculture

DIGEST: CSHB 1340 would add Transportation Code, ch. 473, requiring a person to obtain a fee-based permit before conducting geochemical or geophysical exploration on state or county right-of-way (ROW) to search for oil and gas. It would authorize administrative penalties for violations of the bill's provisions or of associated rules or permit terms.

Activities requiring permit authorization would include soil sampling and analysis and magnetic, gravitational, seismic, or electrical techniques. The bill would exclude activities conducted by air, within city limits, in areas with more than 15 separately owned tracts of land fronting one or both sides of any mile of roadway, or on or along any mile-long ROW section by companies with oil and gas leases or permits for all properties contiguous to that ROW, or who contracted with such lease or permit holders.

The Texas Department of Transportation (TxDOT) would issue the permits and charge a fee of \$650 per mile of ROW on which exploration activities were conducted. Collections would be deposited into general revenue. Permits would have to contain the names and addresses of each owner of adjacent land and evidence that each owner had been notified that exploration activities were to occur on ROW adjacent to their property.

The Texas Transportation Commission (TTC) could require permit applicants and holders to provide information describing where they searched or planned to search, but not interpretive data. All information provided would be confidential and not disclosable except by court order. TTC would have to require permit holders to restore any damage to property fronting the ROW sustained during exploration and to compensate for any ROW surface damage. Violations of permit terms or applicable TTC rules would be grounds for permit revocation.

Permit and property damage provisions also would apply to county ROW. County commissioners courts would have the same authority granted to TTC under the bill. Fee collections by counties would be deposited into their general funds.

TxDOT could impose administrative penalties of \$100 to \$1,000 per day on people who violated the bill's provisions, applicable TTC or county commission rules, or permit terms.

This bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Neither the state nor counties charge for oil and gas exploration on their rights-of-way (ROW) along Texas roads. In the past, this would not have been an issue, because companies would have had to conduct tests directly on the property where they hoped to find oil and gas and would have had to compensate landowners for doing so. However, technological advances in exploration — primarily multidimensional seismic data gathering — have made it possible to map geologic formations from land adjacent to the land being tested.

This development has allowed firms to avoid paying landowners for proprietary information pertaining to their property, while turning government property into oil and gas testing grounds. It also has created the potential for devaluing private property by depriving landowners of exploration fees, effectively “condemning” property on which no deposits were indicated and putting landowners at a competitive disadvantage in negotiations with exploration companies who may know more than the landowner knows about the prospective mineral deposits beneath the land.

CSHB 2766 would bring this situation back into balance through a fee-based permitting process with penalties for noncompliance. It would compensate the state and counties for what has been the free use of public lands by private for-profit interests, as well as for incidental damages. Even relatively small amounts of new revenue could be significant for sparsely populated and rural counties that are economically depressed and fiscally challenged.

**OPPONENTS
SAY:**

CSHB 2766 would address a virtually nonexistent problem. The two-dimensional seismic technology at which it is aimed already has produced maps of land along virtually every road in Texas where oil and gas might be found. This technology is being replaced rapidly by 3-D imaging. Unlike the more linear 2-D imaging, 3-D requires access to the property itself in order to produce a complete grid image of the subsurface. Consequently, use of ROW for geologic oil and gas mapping is becoming rare in Texas.

Geologic mapping is only one small part of the economic equation that explorers and producers must solve before investing in drilling operations. The fees and penalties in this bill would not produce significant revenue for state or county government.

Though not onerous, CSHB 2766 would present one more bureaucratic hurdle to the already challenged oil and gas industry. The state should encourage more domestic production, not find new ways to make a difficult task even more so. This bill also might lay the foundation for legal claims against oil and gas companies in the future.

**OTHER
OPPONENTS
SAY:**

CSHB 2766 would not do enough to protect property rights. It should require payments to landowners that would be shared with the state or counties and should apply to all types of mineral interests. Landowners should have some say in whether or not their land is explored and mapped.

NOTES:

The bill's fiscal note projects no significant fiscal implication to the state. TxDOT estimated that the required permit fees would generate \$48,750 in general revenue based on an anticipated 75 permits. Affected counties also would gain some revenue.

The committee substitute would:

- remove a requirement for fee payments to landowners, 75 percent of which would have had to be split with the state or with counties;
- delete other mineral interests;
- exempt three exploration activities;
- set a \$650-per-mile fee, rather than allowing TTC to set the fee;
- require notice to landowners instead of consent;
- restrict compliance to permit holders only;
- limit the information that permit holders must provide and the property they must restore if damaged;
- authorize administrative rather than criminal penalties; and
- modify the “adjacent land” definition.