

SUBJECT: Railroad Commission authority to file liens for mine reclamation

COMMITTEE: Energy Resources —favorable, without amendment

VOTE: 6 ayes — Hardcastle, Crownover, Chisum, Corte, Crabb,
Gonzalez Toureilles

0 nays

1 absent — Farabee

WITNESSES: For — (*Registered, but did not testify:* Stephen Smith, Texas Mining and
Reclamation Association)

Against — None

On — Melvin Hodgkiss, Railroad Commission - Surface Mining Division

BACKGROUND: In 1977, Congress enacted the federal Surface Mining Control and
Reclamation Act (SMCRA), which reclaims and restores land and water
resources and protects the public from the adverse effects of pre-law
(August 3, 1977) mining practices. This program is fully funded by the
federal Office of Surface Mining Reclamation and Enforcement through a
production tax levied on active coal mining operations. Subsequently,
federal law has been amended in order to reclaim lands adversely affected
by coal mining after August 3, 1977.

In accordance with the original program, Texas created an Abandoned
Mine Reclamation Program in 16 TAC, part 1, ch. 12, subch. R, which
operates through the Railroad Commission and assists in reclaiming mines
for property owners that owned their property prior to May 2, 1977 and
did not consent to, participate in, or exercise control over the mining
operation that necessitated the reclamation.

Those who owned their property after May 2, 1977, and are eligible for
abandoned mine reclamation are treated differently under Texas law.
When reclaiming an abandoned mine on property that the landowner
acquired after May 2, 1977, the Railroad Commission must gain
permission from the landowner to begin reclamation and have an

independent appraiser provide a notarized appraisal of the property value before and after reclamation. The landowner then receives a statement of the increase in market value, an itemized statement of reclamation expenses, and notices that a lien will be filed against the property. The lien placed on the property is second in priority only to a property tax lien and must be paid at the time of transfer of ownership.

Only those who owned their property before May 2, 1977, currently are eligible for a lien exemption in the state of Texas.

DIGEST: HB 2231 would eliminate the requirement of ownership before May 2, 1977, to be eligible for a mine reclamation lien exemption.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. The change in the law would apply only to a project to reclaim privately owned land completed on or after December 20, 2006.

SUPPORTERS SAY: HB 2231 would encourage more landowners to work with the Railroad Commission to reclaim abandoned mines on their property. No one wants a lien placed on their land, since it encumbers title upon transfer of ownership. Few property owners who acquired their property after May 2, 1977, are willing to take on the financial burden of a lien due to having their land reclaimed, even if it means eliminating a safety hazard to the public. To date, only seven property owners have participated in the program.

The Railroad Commission currently works with property owners to encourage reclamation, but cannot do so without permission. With many more properties still waiting to be reclaimed, it is necessary to bring Texas code up to the federal standard to encourage more participation in the abandoned mine reclamation program. If those who owned their land after May 2, 1977, were afforded the lien exemptions provided to those who owned their land before May 2, 1977, the Railroad Commission would be able to convince far more property owners to participate in the reclamation program.

OPPONENTS SAY: Because this bill would not apply retroactively, it would punish those who already have participated in the abandoned mine reclamation program. Property owners who acquired their land after May 2, 1977, and had a lien

filed against their property as a result of participation in the program would not be eligible for lien exemptions. Therefore, this bill would provide a financial benefit to those who were least motivated to be good environmental stewards while doing nothing to reward those who proactively participated in the state reclamation program.

NOTES:

The companion bill, SB 1666 by Averitt, was reported favorably, without amendment, by the Senate Natural Resources Committee on April 4 and recommended for the Local and Uncontested Calendar.