HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/2/2011 | SB 655 Hegar (Keffer) (CSSB 655 by Keffer)

SUBJECT: Continuing the RRC as the Texas Oil and Gas Commission

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: (*After recommitted:*)
7 ayes — Keffer, Carter, J. Davis, C. Howard, Lozano, Sheffield, Strama

0 nays

2 absent — Crownover, Craddick

SENATE VOTE: On final passage, April 4 — 29-2 (Ogden, Seliger)

WITNESSES: (*On committee substitute:*)
For — Tom Archer, Texas Association of Landmen; Phil Gamble, Gas Processors Association; David Jackson, Range Production Company; James Mann, Texas Pipeline Association; Kitty-Sue Quinn, Texas Land and Mineral Owners Association; Shannon Ratliff, Texas Civil Justice League; Cyrus Reed, Lone Star Chapter, Sierra Club; Douglass Robison, Texas Pipeline Association, Permian Basin Petroleum Association, Texas Oil and Gas Association, Texas Independent Producers and Royalty Owners Association (TIPRO), Panhandle Producers and Royalty Owners Association, Gas Producers Association, Texas Royalty Council, Texas Alliance of Energy Producers, and American Royalty Council; Bill Stevens, Texas Alliance of Energy Producers; Kerry Knorpp, Historic Texas Ranches; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum; Marty Allday, Copano Energy and Embridge Energy; Thure Cannon, Texas Pipeline Association; Tricia Davis, Texas Royalty Council; Delbert Fore, Enterprise Products Partners L.P.; Mark Gipson, Devon Energy; Hugo Gutierrez, Marathon Oil Corp.; Adam Haynes, Chesapeake Energy; Steve Hazlewood, Dow Chemical; Ron Lewis, Energy Transfer Co.; Stephen Minick, Texas Association of Business; Julie Moore, Occidental Petroleum Corporation; Nef Partida, EOG Resources; Steve Perry, Chevron USA; Grant Ruckel, Oneok; Jim Rudd, West Texas Gas Co.; Lindsay Sander, Regency Energy, MarkWest, and Kinder Morgan; Tom Sellers, Conoco Phillips; Sara Tays, Exxon Mobil Corporation; Julie Williams, Texas Propane Gas Association; Shayne Woodard, DCP Midstream)

Against — RA Dyer, Atmos Cities Steering Committee; Tom Mechler, Makar Production Company; Obie O'Brien, Apache Corporation, Stowe Castle, and Mark Henkhaus; Rex H. White, Jr.; (*On original version*: *Registered, but did not testify*: Michael Sullivan, Texans for Fiscal Responsibility)

On — Elizabeth Ames-Jones, Railroad Commission; James Brazell, Atmos Texas Municipalities; Teddy Carter, Texas Independent Producers and Royalty Owners Association (TIPRO); David Porter; Andy Wilson, Public Citizen Inc.; (*Registered, but did not testify:* Cathleen Parsley, State Office of Administrative Hearings; John Tintera, Railroad Commission)

BACKGROUND: The Legislature created the Railroad Commission of Texas (RRC) in 1891 to oversee operations and rates of railroads, terminals, wharves, and express companies. Today the commission regulates the oil and natural gas industry, pipeline operators, natural gas utilities, and surface mining. In accordance with the Texas Constitution, Art. 16, sec. 30, three commissioners elected statewide serve staggered six-year terms on the governing board. The commissioners elect the chair.

The RRC has about 660 employees, 58 percent of whom work at agency headquarters in Austin. The remaining 42 percent are spread among 13 field offices. Most field staff perform inspections of oil, natural gas, and pipeline facilities.

The commission monitors more than 375,000 oil and gas wells, 280,000 of which are actively producing. In fiscal 2009, the RRC plugged 1,460 orphaned wells and remediated 323 abandoned and polluted sites. The RRC conducts pipeline safety inspections for 170,000 miles of regulated intrastate pipeline. The commission also oversees 24 coal mining operations.

The Oil Field Cleanup Fund is a dedicated fund consisting of fees, fines, and other revenue related to oil and gas industry regulation. Money in the fund is used to conduct environmental site assessments, clean up oil and gas waste, plug abandoned wells, and enforce rules, orders, and permits issued by the RRC. Natural Resources Code, sec. 91.111 prohibits the comptroller from collecting fees if the fund reaches $20 million, but requires fee collection to resume if the fund falls below $10 million.
The commission's budget for fiscal 2010-11 was $155.1 million, with $113.8 million from general revenue and general revenue-dedicated funds.

The RRC is subject to the Texas Sunset Act and will expire September 1, 2011, unless continued by the Legislature.

DIGEST:

CSSB 655 would change the name of the Railroad Commission of Texas to the Texas Oil and Gas Commission (OGC) and would continue the agency until September 1, 2023. The bill would retain the agency's governing structure of three elected commissioners, allow the OGC to impose surcharges on fees, introduce restrictions related to political contributions and campaigning, require the OGC to adopt a formal enforcement policy while keeping enforcement hearings in-house, and eliminate propane marketing.

Name change. The bill would change the name of the RRC to the OGC, effective January 1, 2012.

Governing structure and political contributions. The bill would retain the agency's current governing structure of three elected commissioners, but would provide that the commissioner elected in 2012 and every sixth year after would serve as the chairman, instead of having the commissioners elect the chairman. The chairman would ensure that the commission executed and implemented the commission's administrative duties and responsibilities.

A commissioner who recused himself or herself from a commission decision because of a material interest in the matter would have to disclose the material interest in writing.

The bill also would limit a commissioner from accepting political contributions for his or her commissioner campaign to between one year before the general election for the seat and the 30th day before the regular legislative session after that election. A noncommissioner campaigning for the OGC would be subject to the same time limits on political contributions, except that he or she could accept contributions during a commissioner's seat vacancy if one occurred.

The bill would prohibit a commissioner from knowingly accepting a political contribution for a statewide or federal office, other than the office of commissioner. A commissioner who announced candidacy or became a candidate for any other office would automatically resign from the OGC, unless his or her remaining term as commissioner was one year or less.

Commission funding and surcharges on fees. The bill would replace the Oil Field Cleanup Fund with a new Oil and Gas Regulation and Cleanup Fund. The new fund would consist of newly allowed surcharges on fees, plus revenue currently deposited into the oil field cleanup fund, minus certain penalty charges. The fee surcharges could be imposed to recover the costs of the commission's functions but could not be imposed on the oil field cleanup regulatory fee on oil or gas. The OGC would have to establish a methodology for determining surcharge amounts, taking into account the time required for regulatory work, the number of individuals or entities from which commission costs could be recovered, the effect of the surcharge on operators of all sizes, the balance in the fund, and any other factors the commission deemed important.

Money in the new fund could be used for any purpose related to the regulation of oil and gas development. The bill also would allow the Legislature to supplement the fund with general revenue.

The penalties that would be redirected from the Oil Field Cleanup Fund to general revenue would include penalties for violations related to safety, pollution, abandoned wells, underground storage facilities for natural gas, saltwater disposal pits, and hazardous liquid salt dome storage facilities.

The bill also would make an adjustment for fees paid when applying for an exception to OGC rules. Currently, applicants pay a $150 fee, two-thirds of which is deposited into the Oil Field Cleanup Fund. The bill would require the entire fee to be deposited into the new Oil and Gas Regulation and Cleanup Fund, minus any penalties collected in relation to the fee.

CSSB 655 would require the OGC to establish specific performance goals for the new fund for the next fiscal biennium, including goals for the number of orphaned wells to be plugged, abandoned sites to be cleaned up, and surface locations to be remediated. The OGC would have to provide quarterly reports to the Legislative Budget Board and the Oil and Gas Regulation and Cleanup Fund Advisory Committee (currently the Oil Field Cleanup Fund Advisory Committee) that would have to include updates on its progress in meeting the performance goals. The renamed committee would have to meet with the OGC at the chairman's call, instead of at least quarterly as in current law.

Enforcement policy and hearings. The bill would require the OGC to adopt an enforcement policy to guide OGC employees in evaluating safety and pollution violations. The enforcement policy would have to include a specific process for classifying violations and standards to guide employees on which violations could be dismissed once compliance was achieved. Employees would be required to take into account the permittee's history of previous violations in determining whether to dismiss a violation. The bill would make no change to current law regarding the OCG's practice of conducting its own enforcement hearings.

Propane marketing. The bill would abolish the Alternative Fuels Research and Education Division of the agency, which promotes propane.

Pooling. The bill would allow OGC, upon request of an interested party, to hold the hearing on an application for pooling of mineral interests in person or by telephone at a location near the proposed unit. The OGC would be able to contract with another state agency to hold in-person hearings or telephone hearings at the field offices of the agency.

The bill would require the OGC to establish procedures requiring an interested owner who applied for the pooling of mineral interests to notify the OGC before withdrawing the application if a hearing had been scheduled, and requiring an applicant who refiled an application that was withdrawn without proper notice to pay an extra filing fee.

Pipeline safety. The bill would direct the OGC to adopt safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities. Under current law, the agency oversees only damage prevention for intrastate pipelines.

Sunset provisions. The bill would add standard Sunset provisions governing negotiated rulemaking and alternative dispute resolution.

Effective date. The bill would take effect on September 1, 2011, except as otherwise provided.

SUPPORTERS SAY:

Name change. The Railroad Commission of Texas no longer regulates railroads, making its name both outdated and misleading. CSSB 655 continue the RRC under a new name that reflects its longstanding responsibility to regulate the oil and gas industry that is so vital to the state's economy. Abolition of the agency could result in the state losing primary enforcement responsibility for the Underground Injection Control Program, which is subject to Environmental Protection Agency (EPA) approval.

Governing structure and political contributions. A three-member agency would keep OGC as a deliberative body while allowing public discussion of policy issues in open meetings. The diversity of experience and knowledge provided by three commissioners enables better decision-making. Three commissioners are ideal because the agency decides contested case hearings, weighing facts and law similarly to an appellate court's panel of judges. Retaining three commissioners also would prevent major swings in Texas energy policy that could be detrimental to the state economy. With three commissioners, significant policy changes would not occur without the concurrence of at least one other commissioner.

An elected chairman would make the agency more efficient and would ensure that one person was ultimately responsible for the direction of the OGC and accountable for any problems.

Voters have elected the current commissioners. Switching to a one-commissioner structure, as the Senate-passed version would do, would improperly remove duly elected officials.

The bill would encourage commissioners to focus on their current positions with the OGC instead of a campaign for another office by limiting campaign contributions and introducing a resign-to-run provision. The bill also would eliminate the problem of commissioners running for office against each other when they are supposed to be working together.

Commission funding and surcharges on fees. The bill would make the OGC self-supporting, saving $25 million in general revenue. This change also would ensure that the agency was fully funded and able to attract and retain qualified employees.

The bill would retain the Oil Field Cleanup Fund Advisory Committee as the Oil and Gas Regulation and Cleanup Fund Advisory Committee. The Senate-passed version of the bill would abolish the committee, but it has been an important part of efforts to accelerate the plugging of orphaned wells and the remediation of orphaned sites.

Enforcement policy and hearings. By requiring the OGC to adopt an enforcement policy in rule, the bill would lead to a more consistent enforcement policy and allow for public input on enforcement, which is not possible under the commission's current informal penalty guidelines.

Since the OGC is best suited to conduct enforcement hearings, it is better for the OGC to continue its current practice of doing so. The State Office of Administrative Hearings (SOAH) lacks both technical expertise and an understanding of all the pieces of the industry, including the often conflicting property rights involved. While OGC staff could be transferred to SOAH, these staffers typically perform other functions and would need to be replaced.

The Legislature already tried to move contested utility rate cases to SOAH in 2001, but moved the hearings back to the RRC in 2003 when promised savings were not achieved. Prior experience indicates that the OGC would be best equipped to conduct the hearings.

Propane marketing. The commission's propane marketing expenses have exceeded revenue collected through industry fees in recent years. The agency's primary responsibility is to ensure the safe handling and distribution of propane, and involvement in promoting propane can present a conflict of interest. The state should not promote a specific product, because the state should not even appear to be partial to one industry or product over another.

Pooling. Pooling hearings currently are held in Austin, which can be inconvenient for Texans in major producing regions such as the Barnett Shale. The bill would allow for in-person and telephone hearings in other locations and would introduce penalties for canceling hearings.

OPPONENTS SAY:

Governing structure and political contributions. Moving to a one-commissioner structure would save an estimated $1.2 million per year in salaries and benefits for the commissioners and their staff. The three-commissioner structure is inefficient and often leads to conflicting mission goals. It allows each commissioner to champion separate priorities instead of working with the other commissioners. The three-commissioner structure also has led to finger-pointing and a lack of accountability when problems arise. The conflicting opinions of each commissioner have resulted in inconclusive guidance for the Legislature, impairing its ability to act. The RRC is the only state agency with three elected officials.

Several other state agencies operate with one commissioner, such as the General Land Office and the Department of Agriculture.

The bill's political contribution provisions would not go far enough to remove the appearance of a conflict of interest. A cap on contributions, perhaps modeled after federal campaign finance limits, is necessary to avoid any appearance of impropriety as would prohibiting contributions from those with business before the commission.

Enforcement policy and hearings. The RRC's current lack of enforcement activity does not deter potential violators. While a standardized enforcement policy should lead to more consistent enforcement, fine amounts should be evaluated and adjusted as necessary to ensure deterrence.

The commission also should develop better rules for monitoring coal ash waste disposal sites. Coal ash often is returned to the mine bed, which could risk the contamination of drinking water.

SOAH adds a level of independence and impartiality to the regulatory process. Transferring hearings to SOAH would clearly separate the OGC's role as a party in the hearing from its role as the hearing conductor. SOAH routinely hears complex enforcement cases, such as for the Texas Commission on Environmental Quality and Public Utility Commission, involving highly technical matters. Fifty state agencies had hearings conducted by SOAH in 2009. Transferring hearings to SOAH should not cost more, but would simply shift costs from the OGC to SOAH.

NOTES:

The bill's fiscal note estimates a positive impact to the state of about $51.4 million during fiscal 2012-13, mainly because the OGC would become self-supporting instead of relying on general revenue.

Major changes by the committee substitute to the Senate-passed version include:

- keeping three commissioners rather than reducing the commission to one commissioner;
- keeping enforcement hearings at the agency;
- requiring a commissioner automatically resign if he or she ran for a another office; and
- retaining the Oil Field Cleanup Fund Advisory Committee as the Oil and Gas Regulation and Cleanup Fund Advisory Committee.

During second-reading consideration of SB 655 by the House on April 28, the bill was recommitted to the Energy Resources Committee after a point of order was sustained. The committee substitute reported by the Energy Resources Committee in a formal meeting on April 28 is identical to the substitute reported previously.

During the 2009 regular session, HJR 62 by Farabee, which proposed a constitutional amendment to require that the RRC be governed by a single commissioner whose term of office would be four years, did not receive the necessary two-thirds vote in the House by 89 ayes, 53 nays.