

SUBJECT: Increasing penalties for pipeline violations

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 11 ayes — Keffer, Crownover, Burnam, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

WITNESSES: For — James Mann, Texas Pipeline Association; Cyrus Reed, Lone Star Chapter - Sierra Club; (*Registered, but did not testify*: Marty Allday, Enbridge; Rita Beving, Public Citizen; Thure Cannon, Texas Pipeline Association; June Deadrick, CenterPoint Energy; David Matiella; Montealvo; Virginia Palacios, Environmental Defense Fund; William Stevens; David Weinberg, Texas League of Conservation Voters)

Against — (*Registered, but did not testify*: Steve Perry, Chevron USA)

On — Mary “Polly” Ross McDonald, Railroad Commission; (*Registered, but did not testify*: Lindsay Sander, Markwest Energy)

BACKGROUND: Natural Resources Code, sec. 81.0531 allows the Railroad Commission (RRC) to assess an administrative penalty for violating a rule, order, license, permit, or certificate related to safety provisions designed to prevent or reduce pollution.

Sec. 117.051 allows the RRC to assess a civil penalty for violating a safety standard related to the pipeline transport of carbon dioxide or other hazardous liquid, including petroleum, refined petroleum products, or any liquid determined by the United States secretary of transportation to pose a significant risk when transported by pipeline facilities.

Sec. 117.053 makes it a crime to violate intentionally any safety provisions governing the transportation of hazardous liquids by pipeline and provides a penalty for doing so. Sec. 117.054 makes it a crime to intentionally damage or attempt to damage a hazardous liquid pipeline facility and provides a penalty for doing so.

Utilities Code, sec. 121.204 makes it a civil penalty to violate a provision

related to gas pipelines and allows the attorney general to act on behalf of the RRC.

Utilities Code, sec. 121.206 allows the RRC to assess an administrative penalty for a violation of pipeline safety provisions.

Utilities Code, sec. 121.302 makes it a civil penalty for a gas utility to violate a safety provision related to pipeline safety.

Utilities Code, sec. 121.304 allows the RRC to assess an administrative penalty for a gas utility's violation of the Railroad Commission's public safety and pollution provisions.

Utilities Code, sec. 121.310 makes it a crime to willfully violate a provision governing gas pipelines or a gas utility pipeline tax.

DIGEST:

CSHB 1863 would amend various provisions of the Natural Resources Code and the Utilities Code to increase administrative, civil, and criminal penalties for violations of the state's pipeline safety and related statutes. The bill would:

- set the maximum administrative penalties for violating a rule, order, license, permit, or certificate requirement relating to oil and gas safety or the prevention or control of pollution at \$10,000 a day for a violation not related to pipeline safety and to \$200,000 a day for a violation related to pipeline safety and cap the maximum penalty for related violations at \$2 million;
- increase the maximum civil penalty for a violation of safety provisions related to pipeline transportation of carbon dioxide or other hazardous liquids from \$25,000 to \$200,000 for each act of violation and for each day of violation, remove the minimum civil penalty of \$50 a day, and raise the cap for related violations from \$500,000 to \$2 million;
- increase the maximum fine for an intentional violation of safety provisions related to a pipeline transportation of carbon dioxide or other hazardous liquids from \$25,000 to \$2 million, treat multiple offenses as part of a single criminal episode and cap the cumulative total of fines at \$2 million;

- increase the maximum fine for intentionally damaging or attempting to damage a carbon dioxide or other hazardous liquid pipeline facility from \$25,000 to \$2 million, reduce the maximum jail term from 15 years to five years, treat multiple offenses as part of a single criminal episode and cap the cumulative total of fines at \$2 million;
- increase the maximum civil penalty for a gas utility's violation of gas pipeline safety standards from \$25,000 to \$200,000 and the maximum penalty for a related series of violations from \$500,000 to \$2 million;
- increase the maximum administrative penalty for the violation of Railroad Commission safety standards related to pipeline safety to from \$10,000 to \$200,000 for each violation and cap the maximum penalty for a related series of violations at \$2 million;
- set the civil penalty for a gas utility's violations not related to pipeline safety at \$100 to \$1,000, increase the maximum administrative penalty for the violations related to pipeline safety at \$200,000, and cap the maximum penalty for a related series of violations at \$2 million;
- cap the administrative penalty for a gas utility's violation of a gas pipeline standard not related to pipeline safety at \$10,000 a day, and \$200,000 a day for a violation related to pipeline safety, and cap the maximum penalty for related violations at \$2 million; and
- set a criminal penalty under Utilities Code, sec. 121.310 for willfully violating a provision not related to pipeline safety at \$50 to \$1,000, cap the maximum penalty for related violations at \$2 million, and consider multiple pipeline safety offenses to be a single criminal episode as it relates to penalties.

**SUPPORTERS
SAY:**

CSHB 1863 would update 30-year-old penalty rates, bring the penalties in line with federally mandated standards, deter irresponsible behavior of bad actors in the oil and gas industry, increase the Railroad Commission's receipt of federal grant money, and ensure the program's certification.

Texas' penalties for violations of pipeline safety provisions have not changed since 1983. The state should raise the penalty to reflect inflation

and increased oil and gas exploration and transportation in the state. It also should stiffen the penalties for violations that harm the environment, as has been done by other state regulatory agencies, such as the Texas Commission on Environmental Quality and the Public Utility Commission. The increased penalties would reflect the seriousness of the violations. Low penalties may be accepted by bad actors as merely the cost of doing business.

The enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 increased maximum federal penalty amounts to \$200,000 per violation. Texas should increase its pipeline safety penalties to comply with federal standards.

Failing to increase the state's pipeline penalties would decrease the Railroad Commission's federal funding and jeopardize the agency's pipeline safety program. Federal money provides roughly half of the program's funding, and because the state pipeline safety programs are intrastate, they are expected to have penalties consistent with federal guidelines as part of the assessment. Not raising the penalties would reduce the points that the agency receives on its grade from the U.S. Department of Transportation and could even jeopardize the agency's certification and right to regulate the state's pipelines.

CSHB 1863 has wide support from industry members and includes provisions that the RRC and oil and gas industry leaders believe would deter the irresponsible behavior of bad actors and allow the RRC to receive the resources it needs to oversee pipeline safety in the state.

**OPPONENTS
SAY:**

CSHB 1863 contains a number of provisions that would raise the cap on violations not related to pipeline safety. These separate penalties and fees are inappropriately included in this bill and could give the Railroad Commission new authority beyond the updated penalty and fee schedule.

NOTES:

The committee substitute differs from the bill as filed by:

- including a maximum penalty assessment of \$2 million for related pipeline violations;
- removing a provision in the bill as introduced that would have raised the penalty on certain violations not related to pipeline safety to \$25,000 and setting those penalties at \$10,000;
- including a provision that would treat multiple criminal offenses as

- part of the same criminal episode;
- removing a provision that would have raised the minimum penalty for certain civil violations not related to pipelines to \$1,000 from \$100 and the maximum to \$200,000 from \$1,000 and instead maintaining the penalties at a minimum of \$100 and a maximum of \$1,000;
 - setting the administrative penalty for a gas utility's violation of a gas pipeline safety standard not related to pipeline safety at \$10,000 a day.

The companion bill, SB 900 by Fraser, was passed by the Senate on April 17 and reported favorably from the House Energy Resources Committee on April 24.