

- SUBJECT:** Ownership of fluid waste from oil and gas exploration
- COMMITTEE:** Energy Resources — committee substitute recommended
- VOTE:** 9 ayes — Keffer, Crownover, Canales, Craddick, Dale, Lozano, Paddie, R. Sheffield, Wu
- 1 nay — Burnam
- 1 absent — P. King
- WITNESSES:** For — Warren Sumner, Omni Water Solutions; (*Registered, but did not testify*: Steve Perry, Chevron USA; Bill Stevens, Texas Alliance of Energy Producers)
- Against — (*Registered, but did not testify*: Jason Byrd, Texas Trial Lawyers Association; Luke Metzger, Environment Texas; Tom “Smitty” Smith, Public Citizen; Calvin Tillman)
- On — Scott Anderson, Environmental Defense Fund; Sharon Wilson (*Registered, but did not testify*: David Cooney and Leslie Savage, Railroad Commission of Texas)
- DIGEST:** CSHB 2767 would transfer the ownership of fluid oil and gas waste (waste fluid) to a person who took the waste fluid for the purpose of treating it for subsequent use and consider it to be that person’s property until it was transferred to another person for disposal or use, unless otherwise provided in writing.
- The bill would define fluid oil and gas waste as waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water, produced water, or other fluid that arose out or was incidental to oil and gas drilling.
- The treated waste fluid or byproduct from the treatment process would then become the property of the person to whom it was transferred for disposal or beneficial use.
- A person who took waste fluid for treatment, produced a treated product

suitable for use in the oil and gas drilling, and transferred the treated product to another person with the contractual understanding that it would be used in connection with oil and gas drilling, would not be liable in tort for a consequence of the subsequent use of the treated product by another person to whom it was transferred.

The RRC would adopt rules to govern the treatment and beneficial use of oil and gas waste.

The bill would take effect September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 2767 would remove barriers to recycling water resulting from oil and gas exploration, encourage responsible water use, and ensure that liability for waste fluid was properly assigned by clarifying the ownership and tort liability throughout the process of treating hydraulic fracturing water.

Currently, because of murky ownership laws, drillers that produce waste fluid are wary of releasing it to recyclers, and recyclers are similarly reticent when selling recycled water. There is the fear that an end user could improperly use or irresponsibly dispose of treated water, and the producer or recycler could be held responsible for that person's behavior. Clarifying that ownership would transfer with the sale of a product would put the liability where it belongs and clear the way for more water recycling.

Most waste fluid produced from hydraulic fracturing is disposed of in injection wells, which removes it from the water cycle. This bill would help to foster new technology and business innovation that would conserve water as hydraulic fracturing grows and water remains scarce.

**OPPONENTS  
SAY:**

CSHB 2767 would relieve the waste fluid producer that should be primarily responsible for handling the waste fluid from liability, making it harder to hold a company accountable for spills or improper use of recycled water and other process byproducts.