

- SUBJECT:** Increasing criminal penalties for thefts relating to oil and gas operations
- COMMITTEE:** Energy Resources — committee substitute recommended
- VOTE:** 9 ayes — Darby, Canales, Craddick, Dale, Keffer, P. King, Landgraf, Meyer, Riddle
- 1 nay — Wu
- 3 absent — Paddie, Anchia, Herrero
- WITNESSES:** For — Clete Buckaloo, Anadarko Petroleum; Robert Ream, Energy Security Council; Mike Peters, Lewis Energy Group; Rene Pena; (*Registered, but did not testify:* Adrian Acevedo, Anadarko Petroleum Corp.; Dan Hinkle, Association of Energy Service Companies, EOG Resources; Paula Barnett, BP America; June Deadrick, CenterPoint Energy; Steve Perry, Chevron USA; Tom Sellers, ConocoPhillips; Teddy Carter, Devon Energy; Chris Hosek, Linn Energy, SM Energy; Hugo Gutierrez, Marathon Oil Corporation; Mark Gipson, Pioneer Natural Resources; Kinnan Golemon, Shell Oil Company; Jay Brown, Talisman Energy; Gloria Leal, Texas Alliance of Energy Producers; Stephanie Simpson, Texas Association of Manufacturers; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Mari Ruckel, Texas Oil and Gas Association; Tricia Davis, Texas Royalty Council; Greg Macksood)
- Against — None
- On — Forrest Mitchell, Office of Attorney General
- BACKGROUND:** Under Natural Resources Code, sec. 85.389, an unauthorized person who knowingly destroys, breaks, removes, or otherwise tampers with oil and gas equipment commits a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).
- DIGEST:** CSHB 3291 would increase the penalty for tampering with oil and gas

equipment from a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Additionally, the bill would make purchasing or selling oil, gas, or condensate without the applicable tender or permit from the Railroad Commission relating to oil or gas a second-degree felony.

This bill also would amend Penal Code, sec. 31.03 to make theft of oil, gas, condensate, or oil and gas equipment a second-degree felony if the value of the property stolen was worth between \$10,000 and \$200,000.

If the actor who committed this offense was employed by or in a contractual relationship with the owner of the stolen property and the actor used his employment or position in the contractual relationship in the commission of the offense, the bill would make the offense a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

This bill would take effect September 1, 2015, and would apply only to an offense committed on or after its effective date.

**SUPPORTERS
SAY:**

CSHB 3291 would increase public safety and economic security and would serve as a valuable tool for prosecutors to break down criminal enterprises. The state currently loses billions of dollars every year in economic activity due to oil and gas theft operations, costing the state tens of millions of dollars in severance tax revenue annually.

This bill would increase enforcement effectiveness. Because of the stronger punishments available, prosecutors could bargain more effectively with defendants to get them to reveal information about larger criminal enterprises to which they may belong. This would allow law enforcement to more effectively target organized crime.

Theft operations of oil and gas have serious public safety impacts. Because they are illegal, theft operations in oil and gas storage facilities have little or no regard for safety, which can cause leaks that endanger

both landowners and the general public. Criminal penalties should reflect this additional broader risk to public safety.

Although the penalties for some offenses would be strong, they would not be excessive or disproportional because these crimes threaten public safety. Moreover, prosecutors have discretion in requesting punishment based on the situation and surrounding circumstances if, for instance, the actor was a first-time offender.

The primary way oil and gas is stolen is by vacuum trucks, which are designed to remove water that collects at the bottom of oil storage tanks. The truck operators collect oil along with the water, selling the oil to the “oil launderers,” who transfer the oil to legitimate companies called “gatherers.” The bill would make selling oil or gas without a permit a second-degree felony, which would further discourage the sale of stolen oil and gas.

Increasing criminal penalties would provide a strong disincentive to criminal operations, which often rely on employees or contractors of oil and gas operators to facilitate theft. This bill would minimize economic damage, increase severance tax revenue by reducing the amount of oil that was sold illegally, and provide prosecutors with the tools they need to take down criminal enterprises.

OPPONENTS
SAY:

CSHB 3291 would not effectively decrease the crime rate. The best way to deter criminal enterprises is to increase enforcement of the law, but this bill only would increase punishment when the law was enforced. Criminal enterprises would not necessarily be deterred by increased punishment if the risk of being caught was not high enough.

Additionally, this bill would create a special category of offenses, applying extra penalties only to thefts relating to oil and gas operations. One industry should not receive special consideration when determining criminal penalties.

Finally, this bill could result in excessive and disproportionate punishment

for first-time offenders. A person could be sentenced as a first-degree felon, even as a first-time offender, for stealing more than \$10,000 worth of property from an oil and gas company that employed the offender. While this offense certainly should be punished, it should not be classified as a first-degree felony, which is also applied to violent crimes such as aggravated assault and murder.

NOTES: The Senate companion bill, SB 1393 by Zaffirini, was referred to the Senate Committee on Natural Resources and Economic Development on March 18.