

BILL ANALYSIS

Senate Research Center
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S.B. 655
By: Hegar
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Railroad Commission of Texas (railroad commission) serves as the state's primary regulator of the oil and gas industry. The agency's mission is to ensure the efficient production, safe transportation, and fair price of the state's energy resources, with minimal impacts to the environment.

The railroad commission is subject to the Sunset Act and will be abolished September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found that Texas has a clear and ongoing need to oversee Texas' oil, gas, and other energy resource industries—all vital sectors of the state's economy. However, fundamental changes in the state's current regulatory approach are needed to ensure responsive oversight of today's oil and gas industry.

S.B. 655 creates the Texas Oil and Gas Commission (commission) governed by a single, elected commissioner. The bill abolishes the railroad commission without requiring a constitutional amendment; phases in the elected Texas Oil and Gas Commissioner (commissioner), who is initially appointed by the governor until the general election in 2012; limits when the commissioner and anyone running for that office can accept campaign contributions to the year before the election and up to 30 days before the next legislative session; and continues the commission for the standard 12-year timeframe.

S.B. 655 requires that the commission's oil and gas program be self-supporting by authorizing the agency to levy surcharges on permits and licenses, annually saving the state more than \$25 million in general revenue. The bill also expands the oil field cleanup fund to cover both regulation and cleanup; maintains a focus on the ongoing importance of meeting performance goals for cleanup, but abolishes the oil field cleanup advisory committee as its purpose has been accomplished; and redirects fines and penalties collected to general revenue.

S.B. 655 also strengthens the commission's enforcement process to prevent future threats to environment and public safety; transfers enforcement and gas utility contested case hearings to the State Office of Administrative Hearings; and eliminates the commission's propane marketing program.

As proposed, S.B. 655 amends current law relating to the abolition of the Railroad Commission of Texas, the creation of the Texas Oil and Gas Commission, and the transfer of the powers and duties of the railroad commission to the oil and gas commission.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioners of the Railroad Commission of Texas (railroad commission) is transferred to the commissioner of the Texas Oil and Gas Commission (OGC) and modified in SECTION 10 (Section 81.01006, Natural Resources Code) of this bill.

Rulemaking authority is expressly granted to OGC in SECTION 22 (Sections 81.066, 81.070 and 81.071, Natural Resources Code) and SECTION 45 (Section 102.0125, Natural Resources Code) of this bill.

Rulemaking authority previously granted to the railroad commission is transferred to OGC and modified in SECTION 18 (Section 81.0531, Natural Resources Code); SECTION 46 (Section 117.012, Natural Resources Code); SECTION 50 (Section 102.006, Utilities Code); and SECTION 51 (Section 121.201, Utilities Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 81, Natural Resources Code, to read as follows:

CHAPTER 81. TEXAS OIL AND GAS COMMISSION

SECTION 2. Amends Section 81.001, Natural Resources Code, as follows:

Sec. 81.001. DEFINITIONS. Redefines, in this chapter, "commission" and "commissioner."

SECTION 3. Amends Subchapter A, Chapter 81, Natural Resources Code, by adding Section 81.003, as follows:

Sec. 81.003. REFERENCE TO RAILROAD COMMISSION OF TEXAS OR RAILROAD COMMISSIONER. Provides that a reference in law to:

- (1) the Railroad Commission of Texas (railroad commission) means the Texas Oil and Gas Commission (OGC); and
- (2) a railroad commissioner or a member of the railroad commission means the commissioner of OGC (commissioner).

SECTION 4. Amends Section 81.01001, Natural Resources Code, as effective April 1, 2011, as follows:

Sec. 81.01001. SUNSET PROVISION. Provides that OGC, rather than the railroad commission, is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, OGC is abolished September 1, 2023, rather than September 1, 2011.

SECTION 5. Amends Section 81.01002, Natural Resources Code, as effective April 1, 2011, as follows:

Sec. 81.01002. New heading: ELECTION AND TERM OF COMMISSIONER. (a) Creates this subsection from existing text. Provides that OGC is governed by one commissioner, rather than requiring the railroad commissioners to elect one commissioner as the chairman.

- (b) Provides that the commissioner is elected for a term of four years.

SECTION 6. Amends Section 81.01003, Natural Resources Code, as effective April 1, 2011, to make a conforming change.

SECTION 7. Amends Section 81.01004, Natural Resources Code, as effective April 1, 2011, to make a conforming change.

SECTION 8. Amends Subchapter B, Chapter 81, Natural Resources Code, by adding Section 81.010045, as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED. (a) Defines, in this section, "political contribution."

- (b) Prohibits the commissioner from knowingly accepting a political contribution given or offered with the intention that it be used in connection with a campaign

for or the holding of a statewide or federal office, including the office of commissioner, except:

(1) beginning one year before the date of the next general election at which the commissioner's office is filled; and

(2) ending on the 30th day before the date the first regular legislative session of the commissioner's succeeding term convenes.

(c) Prohibits a person other than the commissioner from knowingly accepting a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner, except:

(1) during the period beginning one year before the date of the next general election at which the commissioner's office is filled, and ending on the 30th day before the date the first regular legislative session of the commissioner's succeeding term convenes; or

(2) during the period beginning on the date a vacancy in the office of commissioner occurs and ending on the date that vacancy is filled.

SECTION 9. Amends Section 81.01005, Natural Resources Code, as effective April 1, 2011, as follows:

Sec. 81.01005. NAME AND SEAL. (a) Provides that the commission is known as the "Texas Oil and Gas Commission," rather than providing that the commissioners are known collectively as the "Railroad Commission of Texas."

(b) Provides that the seal of OGC contains a star of five points with the words "Texas Oil and Gas Commission," rather than "Railroad Commission of Texas," engraved on it.

SECTION 10. Amends Section 81.01006, Natural Resources Code, as effective April 1, 2011, to authorize the commissioner, rather than the commissioners, to adopt all rules necessary for the commission's government and proceedings.

SECTION 11. Amends Section 81.01007, Natural Resources Code, as effective April 1, 2011, to require that the commissioner, rather than the commissioners, be furnished necessary furniture, stationery, supplies, and expenses to be paid for on the order of the governor.

SECTION 12. Amends Section 81.01008, Natural Resources Code, as effective April 1, 2011, as follows:

Sec. 81.01008. New heading: PUBLIC HEARINGS. Authorizes OGC to hold public hearings, rather than sessions, at any place in the state when considered necessary.

SECTION 13. Amends Section 81.01013(d), Natural Resources Code, as effective April 1, 2011, to require OGC to provide to the commissioner, rather than the commissioners, and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 14. Amends Section 81.01016, Natural Resources Code, as effective April 1, 2011, to require OGC to develop and implement policies that clearly separate the policy-making responsibilities of the commissioner and the management responsibilities of the staff of OGC.

SECTION 15. Amends Section 81.017, Natural Resources Code, as follows:

Sec. 81.017. ADDITIONAL EMPLOYEES. Authorizes OGC to employ gaugers, inspectors, investigators, supervisors, and clerical employees. Requires that these

employees include a chief engineer and a chief petroleum engineer, and requires that their salaries be paid in the amounts provided in the General Appropriations Act. Deletes existing text requiring these employees to include an administrative chief. Makes a nonsubstantive change.

SECTION 16. Amends Section 81.018(b), Natural Resources Code, to require that warrants for expenses be issued only on duly verified statements of the persons entitled to the funds and on approval of the commissioner, rather than the chairman of the railroad commission.

SECTION 17. Amends Section 81.0521(c), Natural Resources Code, to require that two-thirds of the proceeds from this fee, excluding any penalties collected in connection with the fee, rather than including any penalties collected in connection with the fee, be deposited to the oil and gas regulation and cleanup fund (fund) as provided by Section 81.067, rather than be deposited to the oil-field cleanup fund as provided by Section 91.111 (Oil-Field Cleanup Fund).

SECTION 18. Amends Sections 81.0531(c), (d), and (e), Natural Resources Code, as follows:

(c) Requires OGC to consider the guidelines adopted under Subsection (d) in determining the amount of the penalty. Deletes existing text requiring the railroad commission to consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. Deletes existing text requiring the railroad commission to consider the guidelines adopted under Subsection (d) in determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety.

(d) Requires OGC by rule to adopt guidelines to be used in determining the amount of the penalty, rather than the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety.

(e) Requires that a penalty collected under this section be deposited to the credit of the general revenue fund, rather than the oil-field cleanup fund.

SECTION 19. Amends Section 81.056(g), Natural Resources Code, to authorize OGC to use money in the fund, rather than the oil-field cleanup fund, to implement this section.

SECTION 20. Amends the heading to Section 81.064, Natural Resources Code, as effective April 1, 2011, to read as follows:

Sec. 81.064. POWERS OF DESIGNATED EMPLOYEE IN CASES BEFORE COMMISSION.

SECTION 21. Amends Sections 81.064(a) and (b), Natural Resources Code, as effective April 1, 2011, as follows:

(a) Authorizes an authorized OGC employee, in a case before OGC, designated by the commissioner for that purpose, in the same manner as if the commissioner were present to take certain actions. Makes conforming changes

(b) Provides that the record of a hearing or investigation made under this section that is certified to by the employee has the same effect as if made before the commissioner. Requires the commissioner to determine a case in which the record is made under this section in the same manner as if the record had been made before the commissioner. Makes conforming changes.

SECTION 22. Amends Subchapter C, Chapter 81, Natural Resources Code, by adding Sections 81.065-81.071, as follows:

Sec. 81.065. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires OGC to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of OGC rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under OGC's jurisdiction.

(b) Requires that OGC's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires OGC to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated settlement or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

Sec. 81.066. ENFORCEMENT POLICY. (a) Requires OGC by rule to adopt an enforcement policy to guide the employees of OGC in evaluating violations of the provisions of this title that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertains to safety or the prevention or control of pollution and is issued under this title.

(b) Requires that the enforcement policy adopted under this section include:

(1) a specific process for classifying violations based on the seriousness of any pollution resulting from the violation, and any hazard to the health or safety of the public; and

(2) standards to provide guidance to OGC employees on which violations may be dismissed once the permittee comes into compliance and which violations must be forwarded for enforcement.

(c) Requires that the standards adopted under Section (b)(2) require an OGC employee to take into account the permittee's history of previous violations in determining whether to dismiss a violation once the permittee comes into compliance or forward the violation for enforcement.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) Provides that the fund is created as a special fund in the state treasury.

(b) Requires OGC to certify to the comptroller of public accounts (comptroller) the date on which the balance in the fund equals or exceeds \$20 million. Prohibits the oil-field cleanup regulatory fees on oil and gas from being collected or from being required to be paid on or after the first day of the second month following the certification, except that the comptroller is required to resume collecting the fees on receipt of an OGC certification that the fund has fallen below \$10 million. Requires the comptroller to continue collecting the fees until collections are again suspended in the manner provided by this subsection.

(c) Provides that the fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) (providing that a person required to file a

bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells is considered to have met that requirement for a well if the well bore is included in a well-specific plugging insurance policy that meets certain criteria) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091 (Refund), if applicable;

(2) private contributions, including contributions made under Section 89.084 (Money Paid Commission by Private Person);

(3) expenses collected under Section 89.083 (First Lien on Equipment);

(4) fees imposed under Section 85.2021 (Drilling Permit Fee);

(5) costs recovered under Section 91.457 (Removal of Unauthorized Pit) or 91.459 (Civil Penalty);

(6) proceeds collected under Sections 89.085 (Possession and Sale of Equipment to Cover Plugging Costs) and 91.115 (First Lien on Equipment and Stored Hydrocarbons);

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015 (Application Fee), Water Code;

(9) costs recovered under Section 91.113(f) (authorizing OGC, if OGC conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, to recover all costs incurred by OGC from any person who was required by law, rules adopted by OGC, or a valid order of OGC to control or clean up the oil and gas wastes or other substances or materials);

(10) hazardous oil and gas waste generation fees collected under Section 91.605 (Hazardous Oil and Gas Waste Generation Fee);

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116 (Oil-Field Cleanup Regulatory Fee on Oil);

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117 (Oil-Field Cleanup Regulatory Fee on Gas);

(13) fees for a reissued certificate collected under Section 91.707 (Fee for Reissued Certificate);

(14) fees collected under Section 91.1013 (Application Fees);

(15) fees collected under Section 89.088 (Record of Request for Notice by Lienholder or Nonoperator);

(16) fees collected under Section 91.142 (Report to Commission);

(17) fees collected under Section 91.654 (Application to Participate in Voluntary Cleanup Program);

(18) costs recovered under Sections 91.656 (Voluntary Cleanup Agreement) and 91.657 (Termination of Agreement; Cost Recovery);

(19) two-thirds of the fees collected under Section 81.0521 (Fee for Application for Exception to Railroad Commission Rule);

(20) fees collected under Sections 89.024 (Abeyance of Plugging Report) and 89.026 (Fluid Level or Hydraulic Pressure Test);

(21) legislative appropriations; and

(22) any surcharges collected under Section 81.070.

(d) Provides that all revenues and balances in the oil and gas regulation and cleanup fund created in this section are exempt from Section 403.095(b) (relating to dedicated revenues over a certain estimate by certain date being available for general governmental purposes), Government Code.

Sec. 81.068. PURPOSE OF OIL AND GAS REGULATION AND CLEANUP FUND. Authorizes money in the fund to be used by OGC or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, oil and gas well plugging, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND. (a) Requires OGC, through the legislative appropriations request process, to establish specific performance goals for the fund for the next biennium, including goals for each quarter of each state fiscal year of the biennium for the number of orphaned wells to be plugged with state-managed funds; abandoned sites to be investigated, assessed, or cleaned up with state funds; and surface locations to be remediated.

(b) Requires OGC to provide quarterly reports to the Legislative Budget Board (LBB) that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund; and

(D) OGC's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance; and

(2) any additional information or data requested in writing by the LBB.

(c) Requires OGC to submit to the legislature and make available to the public, annually, a report that reviews the extent to which money provided under Section 81.067 has enabled OGC to better protect the environment through oil-field cleanup activities. Requires that the report include:

(1) the performance goals established under Subsection (a) for that state fiscal year, OGC's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or

surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with OGC rules, by region;

(5) the status of enforcement proceedings for all wells in violation of OGC rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which OGC sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O (Railroad Commission Voluntary Cleanup Program), Chapter 91 (Provisions Generally Applicable), by region.

Sec. 81.070. ESTABLISHMENT OF SURCHARGES ON FEES. (a) Requires OGC by rule, except as provided by Subsection (b), to provide for the imposition of reasonable surcharges as necessary on fees imposed by OGC that are required to be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067 in amounts sufficient to enable OGC to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) Prohibits OGC from imposing a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) Requires OGC by rule to establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which OGC's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors OGC determines to be important to the fair and equitable imposition of the surcharge.

(d) Requires OGC to collect a surcharge on a fee at the time the fee is collected.

(e) Requires that a surcharge collected under this section to be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

Sec. 81.071. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Requires SOAH, notwithstanding any other law, to conduct each contested case hearing in an enforcement proceeding under a law administered by OGC. Requires that a hearing be conducted in accordance with the rules and procedures adopted by OGC.

(b) Authorizes OGC to delegate to SOAH the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) Requires OGC by rule to define the procedures by which it delegates final decision-making authority under Subsection (b).

(d) Provides that for the purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of OGC unless OGC requests formal review of the decision.

SECTION 23. Amends Section 81.115, Natural Resources Code, as follows:

Sec. 81.115. New heading: APPROPRIATIONS TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES. Requires that money appropriated to OGC, rather than the oil and gas division of the railroad commission, under the General Appropriations Act for the purposes described by Section 81.068 be paid from the oil and gas regulation and cleanup fund, rather than from the General Revenue Fund.

SECTION 24. Amends Sections 81.116(d) and (e), Natural Resources Code, as follows:

(d) Requires the comptroller to suspend collection of the fee in the manner provided by Section 81.067, rather than Section 91.111.

(e) Requires that proceeds from the fee, excluding any penalties collected in connection with the fee, be deposited to the fund as provided by Section 81.067, rather than requiring proceeds from the fee, including any penalties collected in connection with the fee, be deposited to the oil-field cleanup fund as provided by Section 91.111 of this code.

SECTION 25. Amends Sections 81.117(d) and (e), Natural Resources Code, as follows:

(d) Requires the comptroller to suspend collection of the fee in the manner provided by Section 81.067, rather than Section 91.111.

(e) Requires that proceeds from the fee, excluding any penalties collected in connection with the fee, be deposited to the fund as provided by Section 81.067, rather than requiring that proceeds from the fee, including any penalties collected in connection with the fee, be deposited to the oil-field cleanup fund as provided by Section 91.111 of this code.

SECTION 26. Amends Section 85.2021(d), Natural Resources Code, to require that all fees collected under this section be deposited in the fund, rather than the state oil-field cleanup fund.

SECTION 27. Amends Section 89.024(d), Natural Resources Code, as follows:

(d) Requires an operator who files an abeyance of plugging report to pay an annual fee of \$100 for each well covered by the report. Requires that a fee collected under this section be deposited in the fund, rather than the oil-field cleanup fund.

SECTION 28. Amends Section 89.026(d), Natural Resources Code, as follows:

(d) Requires an operator who files documentation described by Subsection (a) to pay an annual fee of \$50 for each well covered by the documentation. Requires that a fee collected under this section be deposited in the fund, rather than the oil-field cleanup fund.

SECTION 29. Amends Section 89.048(d), Natural Resources Code, as follows:

(d) Authorizes the surface estate owner, on successful plugging of the well by the well plugger, to submit documentation to OGC of the cost of the well-plugging operation. Requires OGC to reimburse the surface estate owner from money in the fund, rather than the oil-field cleanup fund, in an amount not to exceed 50 percent of the lesser of the documented well-plugging costs, or the average cost incurred by OGC in the preceding 24 months in plugging similar wells located in the same general area.

SECTION 30. Amends Section 89.083(j), Natural Resources Code, to require that money collected in a suit under this section be deposited in the fund, rather than the state oil-field cleanup fund.

SECTION 31. Amends Section 89.085(d), Natural Resources Code, as follows:

(d) Requires OGC to deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the fund. Requires OGC to separately account for money and credit received for each well. Makes a conforming change.

SECTION 32. Amends the heading to Section 89.086, Natural Resources Code, to read as follows:

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND CLEANUP FUND.

SECTION 33. Amends Sections 89.086(a), (h), (i), (j), and (k), Natural Resources Code, as follows:

(a) Authorizes a person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 to make a claim against the fund unless an element of the transaction giving rise to the interest occurs after OGC forecloses its statutory lien under Section 89.083. Makes a conforming and a nonsubstantive change.

(h) Requires OGC to suspend an amount of money in the fund equal to the amount of the claim until the claim is finally resolved. Requires OGC, if the provisions of Subsection (k) prevent suspension of the full amount of the claim, to treat the claims as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount for the claim. Makes a conforming and a nonsubstantive claim.

(i) Authorizes OGC, if a claimant is a person who is responsible under law or OGC rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by OGC or a court for a violation of a commission rule or order, to recoup from or offset against a valid claim an expense incurred by the fund that is not otherwise reimbursed or any penalties owed. Makes conforming and nonsubstantive changes.

(j) Makes conforming changes.

(k) Provides that if the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and cleanup fund is not liable for any subsequently filed claims that related to the same equipment or hydrocarbons unless and until OGC releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. Requires OGC, if OGC releases money, to suspend money in the amount of subsequently filed claims in the order of filing.

SECTION 34. Amends Section 89.121(b), Natural Resources Code, to require that civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code be deposited in the general revenue fund, rather than the state oil-field cleanup fund.

SECTION 35. Amends Section 91.1013(c), Natural Resources Code, to require that fees collected under this section be deposited in the fund, rather than the state oil-field cleanup fund.

SECTION 36. Amends Section 91.108, Natural Resources Code, as follows:

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Requires that proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to refund provisions of Section 91.1091, if applicable, be deposited in the oil and gas regulation and cleanup fund and, notwithstanding Sections 81.068 and 91.113 (Investigation, Assessment, or Cleanup by Commission), may be used only for actual well plugging and surface remediation.

SECTION 37. Amends Section 91.109(a), Natural Resources Code, to require that proceeds from any bond or other form of financial security required by this section, subject to the refund provisions of Section 91.1091 be placed in the oil and gas regulation and cleanup fund, rather than the oil-field cleanup fund.

SECTION 38. Amends Sections 91.113(a) and (f), Natural Resources Code, as follows:

(a) Authorizes OGC, through its employees or agents, if oil and gas wastes or other substances or materials regulated by OGC under Section 91.101 (Rules and Orders) are causing or are likely to cause the pollution of surface or subsurface water, to use money in the oil and gas regulation and cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or material if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(f) Makes a conforming change.

SECTION 39. Amends Section 91.264(c), Natural Resources Code, to require that a penalty collected under this section be deposited to the credit of the general revenue fund, rather than the oil-field cleanup fund account.

SECTION 40. Amends Section 91.457(b), Natural Resources Code, to authorize OGC, if a person ordered to close a saltwater disposal pit under Subsection (a) fails or refuses to close the pit in compliance with OGC's order and rules, to close the pit using money from the fund, rather than the oil-field cleanup fund, and direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by OGC in closing the saltwater disposal pit.

SECTION 41. Amends Section 91.459(c), Natural Resources Code, to require that any costs, rather than penalties or costs recovered by the attorney general under this subchapter be deposited in the fund, rather than the oil-field cleanup fund.

SECTION 42. Amends Section 91.605(e), Natural Resources Code, to require that the fees collected under this section be deposited in the oil and gas regulation and cleanup fund, rather than the oil-field cleanup fund.

SECTION 43. Amends Section 91.654(e), Natural Resources Code, to require that fees collected under this section be deposited to the credit of the oil and gas regulation and cleanup fund under Section 81.067, rather than Section 91.111.

SECTION 44. Amends Section 91.707(b), Natural Resources Code, to require that fees collected under this section be deposited to the oil and gas regulation and cleanup fund, rather than the oil-field cleanup fund.

SECTION 45. Amends Subchapter B, Chapter 102, Natural Resources Code, by adding Sections 102.0125 and 102.0165, as follows:

Sec. 102.0125. WITHDRAWAL AND REILING OF APPLICATION. (a) Requires OGC by rule to:

(1) provide procedures requiring an interested owner who applies to the commission for the pooling of mineral interests to give notice to the commission before withdrawing the application if a hearing on the application has been scheduled; and

(2) require an applicant who refiles an application that was withdrawn without proper notice as required by rules adopted under Subdivision (1) to pay a filing fee that exceeds the amount of any fee required for filing the initial application.

(b) Requires that rules adopted under Subsection (a)(1) specify the deadline for giving notice of withdrawal of the application before the hearing is held.

Sec. 102.0165. LOCATION OF HEARING. (a) Authorizes OGC, at the request of an interested party, to hold the hearing on the application in person or by telephone at a location in the vicinity of the proposed unit.

(b) Authorizes OGC to contract with another state agency to hold hearings on applications for pooling of interests into a unit under the provisions of this chapter in person or by telephone at field offices of that agency.

SECTION 46. Amends Section 117.012(a), Natural Resources Code, as follows:

(a) Requires OGC to adopt rules that include:

(1) safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities resulting from the

movement of earth by a person in the vicinity of such a facility, other than movement by tillage that does not exceed a depth of 16 inches.

Makes nonsubstantive changes.

SECTION 47. Amends Section 211.033(q), Natural Resources Code, to require that a penalty collected under this section be remitted to the comptroller for deposit to the credit of the general revenue fund, rather than the oil-field cleanup fund. Makes a nonsubstantive change.

SECTION 48. Amends Section 52.092(c), Election Code, as follows:

(c) Requires that statewide offices of the state government be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) commissioner of the General Land Office;
- (6) commissioner of agriculture;
- (7) commissioner of OGC, rather than railroad commissioner;
- (8) chief justice, supreme court;
- (9) justice, supreme court;
- (10) presiding judge, court of criminal appeals;
- (11) judge, court of criminal appeals.

SECTION 49. Amends Section 756.126, Health and Safety Code, to require OGC, rather than the railroad commission, to adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of OGC.

SECTION 50. Amends Section 102.006, Utilities Code, as follows:

Sec. 102.006. New heading: POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Requires SOAH to conduct each hearing in a contested case under this subtitle. Requires that a hearing be conducted in accordance with the rules and procedures adopted by the railroad commission. Deletes existing text requiring the railroad commission by rule to provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearing examiners, or by the utility division of SOAH. Deletes existing text requiring that the rules provide for a railroad commission hearings examiner or the utility division of SOAH to conduct each hearing in a contested case that is not conducted by one or more members of the railroad commission.

(b) Authorizes the railroad commission to delegate to SOAH, rather than to a railroad commission hearings examiner or to the utility division of SOAH, the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) Requires the railroad commission by rule to define the procedures by which it delegates final decision-making authority under Subsection (b), rather than requiring the railroad commission by rule to define the procedures by which it delegates final decision-making authority under Subsection (b) to the railroad commission hearings examiner or to the utility division of SOAH.

(d) Provides that, for purposes of judicial review, an administrative law judge's final decision under Subsection (b) has the same effect as a final decision of the railroad commission unless the railroad commission requests formal review of the decision, rather than the final decision of a railroad commission hearings examiner or an administrative law judge of SOAH in a matter delegated under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the railroad commission request formal review of the decision.

Deletes existing Subsection (e) requiring SOAH to charge certain fees for railroad commission hearings.

SECTION 51. Amends Section 121.201(a), Utilities Code, as follows:

(a) Authorizes the railroad commission to take certain actions, including to prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to an interstate or intrastate gas pipeline facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches.

SECTION 52. Amends Section 29.015, Water Code, as follows:

Sec. 29.015. APPLICATION FEE. Requires the applicant, with each application for issuance, renewal, or material amendment of a permit, to submit to the railroad commission a nonrefundable fee of \$100. Requires that fees collected under this section be deposited in the fund, rather than the oil-field cleanup fund.

SECTION 53. Repealers: Sections 91.111 (Oil-Field Cleanup Fund), Section 91.112 (Purpose of the Fund), Section 91.1135 (Oil-Field Cleanup Fund Advisory Committee), and Subchapter I (Alternative Fuels Research and Education), Chapter 113 (Liquefied Petroleum Gas), Natural Resources Code.

SECTION 54. Provides that on the effective date of this Act:

- (1) the oil-field cleanup fund and the alternative fuels research and education fund are abolished;
- (2) any money remaining in the oil-field cleanup fund is transferred to the fund;
- (3) any money remaining in the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;
- (4) any claim against the oil-field cleanup fund is transferred to the fund;
- (5) any claim against the alternative fuels research and education fund is transferred to the undedicated portion of the general revenue fund;
- (6) any amount required to be deposited to the credit of the oil-field cleanup fund shall be deposited to the credit of the fund; and

(7) any amount required to be deposited to the credit of the alternative fuels research and education fund shall be deposited to the credit of the undedicated portion of the general revenue fund.

SECTION 55. (a) Requires the governor, as soon as possible after the effective date of this Act, to appoint the initial commissioner to serve a term that expires January 1, 2013.

(b) Provides that the office of commissioner of OGC exists for purposes of the primary and general election in 2012.

(c) Requires the initial elected commissioner to be elected at the general election for state and county officers in 2012 to serve a two-year term.

(d) Requires the initial elected commissioner to take office January 1, 2013.

SECTION 56. (a) Provides that on the date the initial commissioner takes office:

(1) OGC is created;

(2) the railroad commission is abolished and the terms of the members of the railroad commission serving on that date expire;

(3) the powers, duties, functions, programs, and activities of the railroad commission are transferred to OGC;

(4) an employee of the railroad commission becomes an employee of OGC;

(5) all obligations and contracts of the railroad commission are transferred to OGC;

(6) all property and records in the custody of the railroad commission and all funds appropriated by the legislature to the railroad commission be transferred to OGC;

(7) all complaints, investigations, or contested cases that are pending before the railroad commission, or the governing body of the railroad commission, are transferred without change in status to OGC;

(8) a rule or form adopted by the railroad commission is a rule or form of OGC and remains in effect until altered by OGC;

(9) a reference in law to the railroad commission means OGC;

(10) a reference in law to a railroad commissioner or a member of the railroad commission means the commissioner; and

(11) a license, permit, or certification in effect that was issued by the railroad commission is continued in effect as a license, permit, or certification of OGC.

(b) Provides that the abolition of the railroad commission and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 57. Requires the railroad commission to adopt a timetable for phasing in the use of the name of OGC so as to minimize the fiscal impact of the change of name of the entity responsible for performing the functions of the railroad commission. Authorizes OGC, until January 1, 2012, to allow for phasing in the use of the name of OGC and in accordance with the

timetable established as required by this section, to perform any act authorized by law for the railroad commission as the railroad commission or as the OGC and any act of OGC acting as the railroad commission is an act of OGC.

SECTION 58. Effective date: September 1, 2011.