

## **BILL ANALYSIS**

Senate Research Center  
84R19407 JXC-F

H.B. 40  
By: Darby et al. (Fraser)  
Natural Resources & Economic Development  
4/24/2015  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties note that oil and gas activity has coexisted with Texas cities for more than a century. The parties further note that stringent state oil and gas regulations protect the environment and allow the oil and gas industry to grow jobs and anchor the Texas economy. However, the parties contend that recently adopted municipal regulations create a patchwork of inconsistent regulation that undermines the safe and efficient production of oil and gas. H.B. 40 seeks to ensure consistent statewide regulation of the oil and gas industry.

H.B. 40 amends current law relating to the exclusive jurisdiction of this state to regulate oil and gas operations in this state and the express preemption of local regulation of those operations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that the legislature finds that the laws and policy of this state have fostered successful development of oil and gas resources in concert with the growth of healthy and economically vibrant communities for over 100 years. Provides that the legislature acknowledges this cooperative progress and that mutual benefit is derived from the statutes already in effect, which provide effective and environmentally sound regulation of oil and gas operations that is so comprehensive and pervasive that the regulation occupies the field, while facilitating the overriding policy objective of this state of fully and effectively exploiting oil and gas resources while protecting the environment and the public's health and safety. Provides that the legislature recognizes that in order to continue this prosperity and the efficient management of a key industry in this state, it is in the interest of this state to explicitly confirm the authority to regulate oil and gas operations in this state. Provides that the legislature intends that this Act expressly preempt the regulation of oil and gas operations by municipalities and other political subdivisions, which is impliedly preempted by the statutes already in effect.

SECTION 2. Amends Subchapter C, Chapter 81, Natural Resources Code, by adding Section 81.0523, as follows:

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) Defines "commercially reasonable" and "oil and gas operation."

(b) Provides that an oil and gas operation is subject to the exclusive jurisdiction of this state. Prohibits a municipality or other political subdivision, except as provided by Subsection (c), from enacting or enforcing an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) Provides that the authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal law.

(d) Provides that an ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

SECTION 3. Effective date: upon passage or September 1, 2015.