

## **BILL ANALYSIS**

Senate Research Center  
87R16120 JXC-F

H.B. 964  
By: Darby et al. (Hughes)  
Natural Resources & Economic Development  
5/10/2021  
Engrossed

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

In 2015, the Texas Legislature unanimously passed a law in both chambers that provides a tort liability shield to oil and gas operators who transfer their waste drill cuttings to a person who holds a recycling permit with the contractual understanding that the drill cuttings will be recycled for road building or another beneficial use. (H.B. 1331, 84th Legislature, Regular Session, 2015)

Unfortunately, under current law and current markets, the extent to which the tort liability shield provides protection is highly questionable if it exists at all. For various reasons, no market has developed for drill cuttings that are recycled for use in connection with road building. Accordingly, under current conditions, neither landowners, the environment, nor oil and gas operators are benefitting from the original intention of the 2015 law.

Additionally, current law extends the tort liability shield only insofar as it concerns the drill cuttings. It does not extend the shield for associated waste streams such as sands, silts, drilling fluids, spent completion fluids, workover fluids, debris, oil scum, paraffin, and other materials cleaned out of the wellbore that are part of the same waste stream as the cuttings. These associated wastes are inextricably mixed with the drill cuttings when they are sent for commercial recycling and/or disposal.

H.B. 964 restores and clarifies legislation originally passed in 2015 (H.B. 1331) by providing a tort liability shield for oil and gas operators who choose to send their drill cuttings and associated wastes for commercial recycling and/or commercial disposal.

H.B. 964 amends current law relating to the treatment, recycling for beneficial use, or disposal of drill cuttings.

### **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. Amends Sections 123.001(2) and (3), Natural Resources Code, to redefine "drill cuttings" and "permit holder" for purposes of Chapter 123 (Treatment and Recycling for Beneficial Use of Drill Cuttings).

SECTION 2. Amends Section 123.003, Natural Resources Code, as follows:

Sec. 123.003. RESPONSIBILITY IN TORT. Provides that, unless otherwise provided by a contract or other written agreement, a person who generates drill cuttings and transfers the drill cuttings in an arm's length transaction to an unaffiliated third-party permit holder under a contract that requires, rather than transfers the drill cuttings to a permit holder with the contractual understanding, that the drill cuttings be used in connection with road building or another beneficial use or disposed of is not liable in tort for a consequence of the subsequent use or disposal of the drill cuttings by the permit holder or by another person if:

(1) the person who generates the drill cuttings has the legal and contractual right to transfer the drill cuttings to the permit holder;

(2) the method and location of the use or disposal are not prohibited by law, contract, or other written agreement; and

(3) the consequence was caused solely by the permit holder.

Makes nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2021.