

Chapter 30

H.B. No. 40

AN ACT

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.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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. 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. 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. 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. Subchapter C, Chapter 81, Natural Resources Code, is amended by adding Section 81.0523 to read as follows:

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) In this section:

(1) "Commercially reasonable" means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.

(2) "Oil and gas operation" means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.

(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce 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) 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

1 an ordinance or other measure that:

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

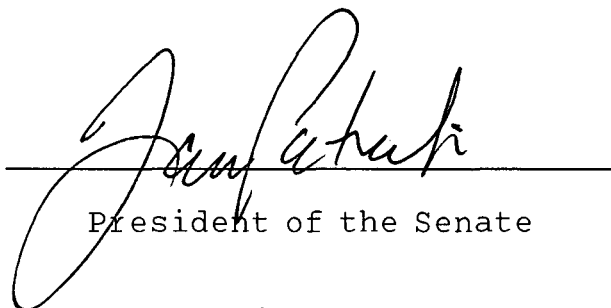
7 (2) is commercially reasonable;

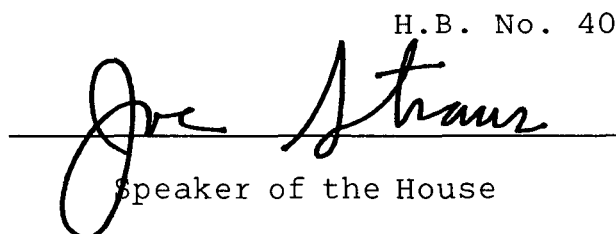
8 (3) does not effectively prohibit an oil and gas
9 operation conducted by a reasonably prudent operator; and

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

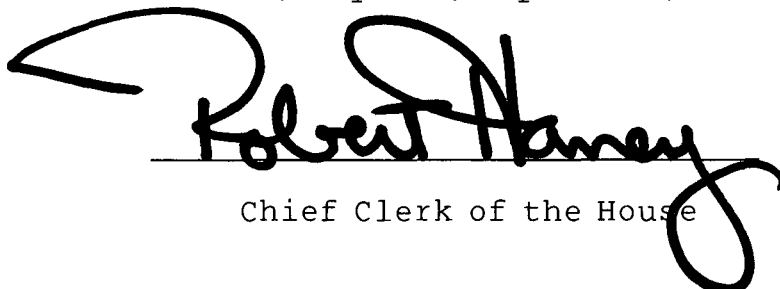
12 (d) An ordinance or other measure is considered prima facie
13 to be commercially reasonable if the ordinance or other measure has
14 been in effect for at least five years and has allowed the oil and
15 gas operations at issue to continue during that period.

16 SECTION 3. This Act takes effect immediately if it receives
17 a vote of two-thirds of all the members elected to each house, as
18 provided by Section 39, Article III, Texas Constitution. If this
19 Act does not receive the vote necessary for immediate effect, this
20 Act takes effect September 1, 2015.

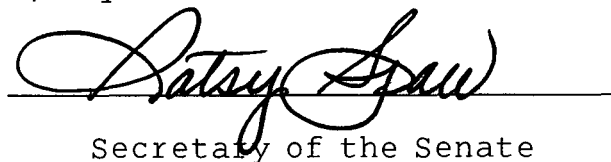

President of the Senate

H.B. No. 40

Speaker of the House

I certify that H.B. No. 40 was passed by the House on April 20, 2015, by the following vote: Yeas 125, Nays 20, 1 present, not voting.

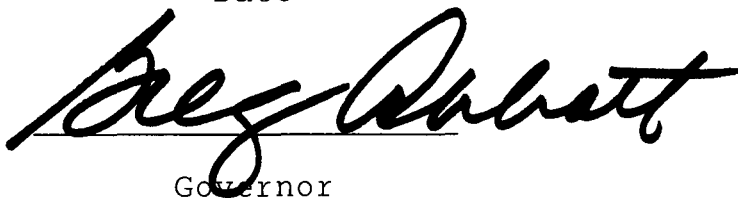

Chief Clerk of the House

I certify that H.B. No. 40 was passed by the Senate on May 4, 2015, by the following vote: Yeas 24, Nays 7.

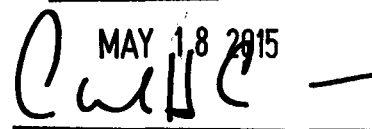

Secretary of the Senate

APPROVED: 5-18-2015

Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3^{PM} O'CLOCK


Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 24, 2015

TO: Honorable Troy Fraser, Chair, Senate Committee on Natural Resources & Economic Development

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB40 by Darby (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.), **As Engrossed**

Depending upon the number of political subdivisions that could be affected by a ban on oil and gas regulation, there could be an indeterminate fiscal impact to the state.

The bill would amend the Natural Resources Code to specify oil and gas operation is exclusive jurisdiction of the state and a political subdivision may not enact or enforce an ordinance that bans, limits or regulates oil and gas operation. The bill would permit a municipality to enact, amend, or enforce certain ordinances or measures that meet criteria set forth under the provisions of the bill. Under the provisions of the bill, an ordinance is considered to be commercially reasonable if the ordinance has been in effect for at least five years and has allowed the oil and gas operations to continue during that period.

Local Government Impact

There could be an impact on local entities that have regulations in place that do not meet the criteria put forth in the provisions of the bill.

Texas Municipal League reported no significant impact on municipalities is anticipated.

Source Agencies: 455 Railroad Commission

LBB Staff: UP, SZ, SD, EK

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

Revision 1

April 14, 2015

TO: Honorable Drew Darby, Chair, House Committee on Energy Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB40 by Darby (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.), **Committee Report 1st House, Substituted**

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LBB Staff: UP, SZ, SD, EK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 1, 2015

TO: Honorable Drew Darby, Chair, House Committee on Energy Resources

FROM: Ursula Parks, Director, Legislative Budget Board

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LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION
Revision 1

April 14, 2015

TO: Honorable Drew Darby, Chair, House Committee on Energy Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB40 by Darby (Relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state.), **As Introduced**

<p>Depending upon the number of political subdivisions that could be affected by a ban on oil and gas regulation, there could be an indeterminate fiscal impact to the state.</p>
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The bill would amend the Natural Resources Code to specify the authority of a political subdivision to regulate oil and gas is preempted, except that a municipality may regulate surface activity of oil and gas production. The bill would prohibit a political subdivision from enacting an ordinance or revising an existing ordinance to ban, limit, or otherwise regulate oil and gas operation within its boundaries or extraterritorial jurisdiction.

Local Government Impact

The bill would have an impact on local entities that already have regulations in place.

According to the Texas Municipal League, the bill would have a significant fiscal impact on a city that has regulations in place. The bill would have an impact on distance regulations established by municipalities. This impact could cause close proximity of oil and gas wells to homes and other structures, resulting in lower property values and lower local property tax revenues.

Source Agencies: 455 Railroad Commission

LBB Staff: UP, SZ, SD, EK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 20, 2015

TO: Honorable Drew Darby, Chair, House Committee on Energy Resources

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB40 by Darby (Relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state.), **As Introduced**

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