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RAILROAD COMMISSION OF TEXAS
EXECUTIVE OFFICE

November 12, 2015

OPINION COMMITTEE

The Honorable Ken Paxton
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-47866-15
I.D. # 47866

RQ-0072-KP

Via certified mail and email

RE: The Effect of House Bill 7 and Senate Bill 787, 84th Legislative Session

Dear General Paxton:

The Railroad Commission of Texas (RRC) respectfully requests a formal opinion regarding a conflict found in House Bill No. 7 and Senate Bill No. 787, passed this year by the 84th Legislative Session. Specifically, the Railroad Commission asks the Opinion Committee to resolve the following question:

When the legislature, in the same session, first repeals the tax on the production of crude oil but later, in separate legislation, directs the dedication of that tax to a specific fund, does the tax remain in effect?

Senate Bill No. 757 (hereinafter referred to as "SB 757") has repealed sections 81.111-81.114 of the Texas Natural Resources Code, and House Bill No. 7 (hereinafter referred to as "HB 7") has amended sections 81.112 and 81.067 (relating to dedication of section 81.112 revenue) of the Texas Natural Resources Code. Both HB 7 and SB 757 were signed into law by Governor Abbott on June 15, 2015. It is the position of the RRC that the legislature did not intend to repeal sections 81.111-81.112 but instead intended to amend section 81.112 (and by extension, section 81.111) as reflected in HB 7. In support of this position, the legislative history of sections 81.111 and 81.112, an analysis of legislative intent, and the resolution of the conflicting statutory provisions is provided below.

I. The Legislative History of Sections 81.111.-81.114 of the Texas Natural Resources Code

Sections 81.111-81.114 were first passed by the Regular Session of the 65th Legislature in 1977. Section 81.111 levied a tax "on crude petroleum produced in this state in the amount of

three-sixteenths of one cent on each barrel of 42 standard gallons.” Section 81.112 dedicated the tax to be “deposited in the Railroad Commission operating fund in the State Treasury.” Thus, the original legislative intention of Sections 81.111-81.114 was for the tax to be used by the RRC.

Later, the 67th legislature in 1981 amended section 81.112 to dedicate the tax to the General Revenue fund. That is likely because, in the early 1980s, the General Revenue fund was emerging as the “catchall” fund used to finance state agencies. Rather than doling out funds per agency, monies were funneled to agencies through the General Revenue fund. As such, this appears to have been intended as an administrative change regarding the process of financing state agencies and not a redirection of the funds away from the RRC.

Sections 81.111-81.114 were addressed yet again at the most recent legislative session with the legislature passed SB 757 which repealed all four sections. Specifically, SB 757 repeals the tax in section 81.111 on crude petroleum and the dedication of that tax to the General Revenue fund in section 81.112.

However, the legislature also amended Section 81.112 (in accordance with the original legislative intent of the 65th Legislature) when it passed HB 7 to ensure that the tax under section 81.111 was specifically dedicated to the RRC. Section 81.112, as stated in HB 7, places the section 81.111 tax in the Oil and Gas Regulation and Cleanup Fund—a fund created for and used exclusively by the RRC. HB 7 also amended section 81.067 of the Texas Natural Resources Code to provide that sourcing for the Oil and Gas Regulation and Cleanup fund consist, in part, of “money deposited to the credit of the fund under section 81.112.” HB 7 was passed after SB 757, and it states that the section 81.111 is to be placed in the Oil and Gas Regulation and Cleanup Fund to benefit the RRC.

II. The Legislature Intended for the Section 81.111 Tax on Crude Petroleum to Be Placed Into the Oil and Gas Regulation and Cleanup Fund As Is Reflected By Legislative History and the Passage of Three Separate Bills

A close examination of the original intent of the 65th Legislature in creating the section 81.111 tax and the current intent of the 84th Legislature in its passage of HB 7 show that both Legislatures intended to provide financial support in the form of funds collected from the petroleum tax to the RRC’s Oil and Gas Regulation and Cleanup Fund—a fund serving the interests of the general public throughout the State of Texas. The original legislative intent of section 81.112 was to dedicate the tax to the RRC so that it may accomplish its mission of serving the citizens of the Texas through its clean-up and regulatory efforts. Similarly, current legislative intent is for the section 81.111 tax to be dedicated to the RRC through the Oil and Gas Regulation and Cleanup Fund so that the RRC may continue to serve the citizens of Texas through its cleanup and regulatory efforts.

Aside from passing HB 7, the 84th Legislature additionally passed the amendments to section 81.112 and section 81.067 in another bill—House Bill No. 4034 (hereinafter referred to as “HB 4034”). Before the amended section 81.112 language was placed into in HB 7, it was in HB 4034. A record vote was taken on HB 4034 in the House of Representatives on May 6,

2015, and the bill passed¹. HB 4034 was subsequently passed to the Senate, where it was referred to the Finance Committee. HB 4034 was left pending in the Senate Finance Committee at the close of the legislative session but shortly thereafter HB 4034 passed the House of Representatives, and the amended section 81.112 language was instead placed into HB 7. Thus, the amended section 81.112 (and related section 81.067) was in fact passed by the House of Representatives on two separate occasions, first in HB 4034, and later in HB 7, further evidencing a strong intent by the legislature to dedicate the tax under 81.111 to the RRC.

Similarly, House Bill No. 6 (hereinafter referred to as “HB 6”) also affirmed that the section 81.112 tax dedication was intended by the legislature to be the law. Section 2 of HB 6 states:

Except as otherwise specifically provided by this Act, all funds and accounts created or re-created by an Act of the 84th Legislature, Regular Session, 2015, that becomes law and all dedications or rededications of revenue collected by a state agency for a particular purpose by an Act of the 84th Legislature, Regular Session, 2015, that becomes law are abolished on the later of August 31, 2015, or the date the Act creating or re-creating the fund or account or dedicating or rededicating revenue takes effect.

However, section 13 of HB 6 specifically exempts HB 4034 from HB 6’s section 2 abolition. “[T]he following dedications or rededications of revenue collection for a particular purpose are exempt from Section 2 of this Act, if dedicated or rededicated by an Act of the 84th Legislature, Regular Session, 2015: . . . the dedication of tax revenue to the oil and gas regulation and cleanup fund by House Bill No. 4034 or *similar legislation*.” *Id.* (emphasis added).

Although the legislature eventually moved the section 81.112 language from HB 4034 into HB 7, HB 6 unequivocally states the legislature’s intent that the section 81.111 tax be placed in the Oil and Gas Regulation and Cleanup Fund to benefit the RRC as it was specifically exempt from HB 6’s abolitions.² The legislature intentionally added the language “or similar legislation” to section 13 of HB 6. The “or similar legislation” language contemplates that the legislature intended the section 81.112 amendment, no matter in what bill it eventually passed, to become law.

The original legislative intent of section 81.112 was to dedicate the tax to the RRC. Current legislative intent as evidenced in HB 7, HB 4034, and HB 6 is in accordance with that original legislative intent. As a result, it is the opinion of the RRC that the section 81.111 tax

¹ HB 4034 contained only the section 81.112 amendment to place the tax in the Oil and Gas Regulation and Cleanup Fund and the section 81.067 amendment to list section 81.112 as a source of the funds to be placed in the Oil and Gas Regulation and Cleanup Fund, while HB 7 contained the sections 81.112 and 81.067 amendments amongst other, unrelated amendments of legislation. Placing the amendments in HB 4034 alone show a further intention by the legislature to ensure that the two sections were amended.

² HB 6 was passed by a record vote on May 31, 2015 and signed into law by Governor Abbott on June 16, 2015, just one day after HB 7 was signed into law.

and the section 81.112 dedication to the Oil and Gas Regulation and Cleanup Fund should control and SB 757's repeal of sections 81.111-81.112 should be considered null and void.

III. An Irreconcilable Conflict Exists Between HB 7 and SB 757, and Current State Law Dictates that HB 7 Must Prevail

Notwithstanding legislative intent, there is an irreconcilable conflict between section 81.112 as repealed in SB 757 and section 81.112 as stated in HB 7. Common law provides that acts on the same subject are to be taken together and construed so that, if possible, effect is given to all the provisions of each. See *Wright v. Broeter*, 196 S.W.2d 82, 85 (Tex. 1946). However, it is impossible to read the SB 757 and HB 7 versions of section 81.112 together so as to give effect to both. SB 757 repeals section 81.112 while HB 7 amends section 81.112. It is impossible to give effect to an amendment and a repeal of the same section.

When two acts cannot be read together to give effect to the provisions of each, the latest enactment is to be read as an implied repeal of the earlier act to the extent of the conflict. See Tex. Gov't Code § 311.025(a) (“[I]f statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute *latest* in date of enactment prevails.”) (emphasis added); See also *Ex parte de Jesus de la O.*, 227 S.W.2d 212, 213 (Tex. Crim. 1950) (“Where two acts passed at the same session of the legislature cannot be reconciled by any known rule of construction, the first in time or position must give way to the last, and the latter act will stand as the final expression of the legislative will.”); Op. Tex. Att’y Gen. No MW-139 (1980). The date of enactment is defined as “the date on which the last legislative vote is taken on the bill enacting the statute.” Tex. Gov’t Code § 311.025(d).

The last legislative vote taken on SB 757, which repeals section 81.112, occurred on May 22, 2015. The last legislative vote taken on HB 7, which dedicates the former 81.111 tax to the Oil and Gas Regulation and Cleanup Fund, occurred on May 29, 2015. The statute latest in date of enactment is HB 7. Thus, it is the opinion of the RRC that section 81.112, as reflected in HB 7, controls.

It is important to note that HB 7 only amended section 81.112 to dedicate the tax to the Oil and Gas Regulation and Cleanup Fund and did not amend section 81.111, which creates the tax. However, it is highly unlikely that the legislature would amend section 81.112 without presupposing that the actual tax would indeed be in force. Indeed, the Texas Supreme Court stated over sixty years ago that there is “no better statement of law applicable in the construction of two acts of the same session of the legislature than that made by Justice Wheeler:”

[N]othing short of expressions so plain and positive as to force upon the mind an irresistible conviction, or absolute necessity, will justify a court in presuming, that it was the intention of the legislature that their acts passed at the same session, should abrogate and annul one another.


Wright, 196 S.W.2d at 85 (quoting *Cain v. State*, 20 Tex. 355 (Tex. 1857)). Section 81.112 necessarily relies on the existence of Section 81.111. Thus, by amending section 81.112, the

legislature *intended* both 81.111 and 81.112 to remain in full force and effect. It appears that to abrogate the amendments found in HB 7, HB 4034, and HB 6 in favor of SB 757, enacted on an earlier date, would have the effect of ignoring the laws of statutory construction and the intent of the 84th Legislature.

IV. CONCLUSION

The RRC respectfully requests clarification of the current, standing law on sections 81.111 and 81.112 and whether the tax on crude petroleum is currently in effect. Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you need any additional information regarding this request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lindil C. Fowler, Jr.", written in a cursive style.

Lindil C. Fowler, Jr.
Interim Executive Director