

Energy & the Environment: 81st Legislative Session in Review

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Overview

A record number of bills related to environment and energy were filed during the 81st session. Not one of these bills imposing new regulatory dictates passed. More than 120 environmental bills devoted to air quality, greenhouse gases, waste disposal, water quality, and stricter permits failed, perhaps equally a result of the Foundation's active education and the House gridlock over voter ID. Changes in committee leadership and membership presented a challenge and facilitated the environmental activists' sophisticated efforts to misinform. Although Texas avoided enacting California-style environmental mandates exceeding federal law, the past Legislature came closer than previous ones.

Air Quality

- The major environmental laws over Texas are federal laws. Perhaps 70 percent of the environmental dictates implemented by the Texas Commission on Environmental Quality (TCEQ) derive from federal law and prescriptive EPA rules. TCEQ implements and enforces these federal programs through formal delegation agreements. The Foundation has worked to educate policymakers on the negative impacts of establishing additional environmental requirements that exceed current federal standards.
- Many bills in the last session would have created standards and permitting requirements exceeding federal mandates for air emissions related to ozone or toxins. Although Texas has reduced ozone-producing and toxic emissions far more effectively and rapidly than other states, many bills in the last session would have unrealistically heightened the bar. None of these bills passed.
- To meet rapidly growing demand for electric power, Texas needs to expand generation capacity from reliable, affordable, base-load capable power sources. Wisely, new coal-fired power plants are under construction in Texas, with several more planned. Although extremely costly, new emission control technology reduces the impacts from coal-fired plants to a level comparable with gas-fired plants. The Foundation continues to educate legislators about new clean coal technologies.
- Under the label of "cumulative effects," provisions in SB 16, the so-called "omnibus" air bill, would have restricted or blocked these needed new power plants and set Texas on the California path to energy shortages and soaring electric rates. Support from misinformed members led to Senate passage of these provisions. The Foundation's active educational efforts in the House were successful, as the House committee struck these cumulative effects provisions from SB 16. The remaining bill failed to pass in the House.
- Unlike California and many other states, the Texas Legislature has avoided global warming alarmism—until this past session. For the first time in Texas, global warming legislation abounded in the 81st session. State-only cap and trade mandates, carbon footprint requirements, and climate adaptation plans would have been mandated by 15 different bills. None of the bills with greenhouse gas reduction mandates passed.
- One non-regulatory bill did pass. Called the "no regrets" bill, SB 184 requires the Comptroller to identify greenhouse gas reduction strategies resulting in "no net cost" or "without financial cost" to consumers or businesses over "the lifetime of the strategy." Although viewed as an innocuous, prudent preparation for potential federal mandates, the metric of "net cost" could be misused. England and California used "net cost" to conclude that onerous carbon caps had less adverse economic impacts than global warming impacts. If enacted, the Founda-

tion will work with the Comptroller to avoid misleading economic analysis.

- The Foundation was a lone voice contesting prevalent claims about man-made global warming and the inevitability of aggressive carbon limits. With few exceptions, legislators did not question exaggerated global warming scenarios nor challenge the unprecedented economic damage that carbon mandates would impose on Texas. Scientists from Texas universities, testifying at multiple hearings, offered no alternative perspectives to boilerplate, man-made global warming alarmism. The Foundation will continue to challenge global warming dogma with sound science and to provide rigorous analysis of economic impacts.

Governance

- The Foundation initiated efforts to awaken the Legislature to the need for “regulatory transparency,” an important partner to “fiscal transparency.” The administrative process for adopting rules in Texas state agencies needs to require full disclosure of the costs of these regulations to the private sector. Such cost-effectiveness analysis is particularly needed in environmental rules, the fastest growing category of federal and state regulation. TCEQ now implements and enforces perhaps 7,000 environmental rules. Unlike the federal government and many states, Texas lacks regulatory transparency about the economic costs and environmental value of these rules to businesses and consumers.
- Texas’ environmental agency, the Texas Commission on Environmental Quality, translates federal and state environmental laws into thousands of state rules. Established 12 years ago, provisions in the Texas General Government Code requiring a cost-effectiveness of “major environmental rules” have never been implemented by TCEQ.
- The Foundation tried to resurrect these existing requirements through amendments to the major air bill. With the extended legislative delays and without a readily germane ve-

hide, the Foundation amendment was not successful but did gain support from key legislators—particularly in the House. The Foundation will pursue these regulatory transparency measures in appropriate interim committees and draft separate legislation for the next session.

Water Rights

- The Foundation supports the private property interests in state-appropriated surface water rights and landowners’ groundwater rights. Recognized in more than a century of Texas case law, these water rights are now questioned, if not expressly infringed, in regulatory decisions made by state agencies or local groundwater districts.
- Legal disputes about the scope of Texas water rights now occupy all levels of the Texas courts. Recent Texas Supreme Court rulings have upheld the property interests in both groundwater and surface water rights although they are subject to wide-ranging interpretations.
- The Foundation supports the need for legislative clarification of the property interest held in Texas water rights. Appropriate clarification in law provides more enduring certainty necessary for investment and market transactions. The possibility of legislation expressly diminishing water rights is a major risk. The Foundation needs broader support for legislative initiatives on water rights.
- The recent session avoided these fundamental legal questions about groundwater and surface water rights, and did not pass bills further impairing the property interest in these rights. The water bills passed in the recent session addressed local groundwater district or water utility issues.
- Clarification of Texas water rights needs to be addressed by the Texas Legislature. A remarkable number of Texas legislators, however, now seem to view water rights as permits to use state water rather than a vested, fungible property interest. Strategic education and coalition building on these legal issues are critical future steps. ★

