



Texas Public Policy Foundation

Center for Energy & the Environment

84th Texas Legislature in Review

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Fewer environmental bills seeking to expand the scope of government oversight of the environment were filed during the 84th Texas Legislature, and none were successful. Although a handful of bills were filed with climate change and increased agency regulation in mind, this session's legislators were not swayed by environmental alarmists and instead took a cautious, more prudent perspective on the environment. Accordingly, small reforms to existing legal structures were passed where tangible benefits could be proven.

That is not to say the 84th Texas Legislature was without its big victories. Texans everywhere won when the Legislature passed, and the governor signed, HB 40, the anti-fracking ban bill filed in response to the rash of oppressive

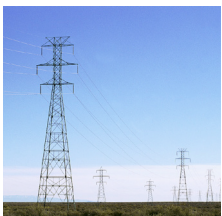


municipal regulations in Denton and elsewhere. The state also saw significant wins in streamlining environmental permits and strengthening private property rights in groundwater through bills that reduce unnecessary barriers to free-market development of private

property. Further triumphs were found in declining to pass certain bills. Several bills were filed that attempted to interfere with the free market by dictating a fuel mix through backing one type of fossil fuel over another. Rather than letting the market determine winners and losers, these bills would have used taxpayer money to subsidize the use of natural gas and artificially create a market for it that might otherwise not exist.

Clean Power Plan

Last summer, the Environmental Protection Agency (EPA) published one of its most controversial rules to date: The



Clean Power Plan (CPP). The CPP marks one of the most expansive and unconstitutional increases to the authority of a federal agency, under the guise of reversing the effects of supposed climate change. The EPA's proposed rule would require a complete

overhaul of the Texas competitive electric grid and would require closing over half the coal-fired electricity-

generating units across the state. The cost of this plan will reach into the billions, be borne by Texans, and endanger the reliability of electricity across the state. In turn, we would receive a reduction of global temperatures by 0.02°C, an infinitesimal amount in temperature reduction. At best, this trade is untenable.

Unfortunately, SCR 27, a resolution calling for final judicial review of the CPP before any state agency submitted its state plan, never made it out of committee. A similar bill suffering a similar fate in the House was HB 3590. If enacted, this bill would have restricted state agencies from complying with the EPA's rule.

While, regrettably, anti-CPP legislation went nowhere, bills in favor of the CPP or bills that sought long-term multi-agency planning for the effects of alleged climate change failed in committee.

Contested Case Reform

The 84th legislative session provided good news for environmental regulation and economic growth in Texas, as long-awaited reform for contested case hearings became law. Contested case hearings have increasingly delayed the permitting process for major new Texas businesses as a result of the shale revolution. This legislation deems that a draft permit issued by the Texas Commission on Environmental Quality's (TCEQ) executive director amounts to prima facie evidence that the permit meets the necessary federal and state requirements. This creates a rebuttable presumption in favor of the applicant, thus shifting the burden of proof to the affected party contesting the permit.

Further, groups may no longer be considered an affected person unless they can point to a specific individual who qualifies in their own right, by name and by physical address, and show that that person has responded or can respond to the written notice with a timely complaint. No longer can environmental-activist groups file for contested case hearings and then look for a plaintiff to represent.

This reform will bring greater efficiency and predictability to contested case hearings; it preserves public participation

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in the hearing while codifying recent Texas Supreme Court decisions that affirm the TCEQ's discretion in determining who is and is not an affected party. Additionally, this legislation maintains the state's authority to protect public health and natural resources while allowing the state to remain competitive and attract businesses otherwise deterred by the lengthy and uncertain permitting process.

Water

No legislation to reform inter-basin transfers made it through during the regular session. However, the Legislature was not entirely inactive regarding water rights. Legislation passed that provides Texans a mechanism for judicial appeal for determinations of desired future conditions made by Groundwater Conservation Districts. These changes begin to erode previously legislated water policy that stymied effective, efficient, and appropriate use of water in Texas.

Also passing this session was legislation requiring a study on the use and development of large-scale facilities for desalinating brackish groundwater and seawater, which would provide more potable drinking water for Texas. Desalinated water could be used to free up fresh water, with five of 16 Regional Planning Groups pointing toward desalination as a means of meeting projected needs by 2060 in the 2012 State Water Plan.

Going forward, the time to buck burdensome water policy is now. With population growth anticipated to continue to expand, Texas needs to make intelligent water choices, lest it begin to look more like drought-ravaged California.

Fracking

Another high note for the 84th Legislature was that it drove the nail into the coffin of municipal fracking bans. The state now expressly preempts municipal governance of oil and gas regulations, leaving municipalities only the ability to regulate surface activity in a commercially reasonable manner, based on a reasonable-prudent-operator standard, so long as their regulations do not de facto ban oil and gas operations.

Legislators paid heed to Governor Abbott's call that Texas not begin to look like a quilt of patchwork municipal bans and took steps to stop harmful regulations that inhibit the economic stimuli that caused Texas to succeed while the other 49 states were still embroiled in recession.

Conclusion

The fight is not over. The controversy regarding the CPP still looms over Texas, and it is likely it will bleed into the 85th legislative session as well as into the courts, with the final rule due sometime late this summer. This rule causes great uncertainty for utilities and the Texans it disadvantages the most: those with the lowest and fixed incomes.

Much more must also be done to reform water policy in Texas. While private-property owners won small victories this session, many more reforms must be made to restore their freedom and protection. In particular, the Legislature must remove the junior right that has all but ended non-exempted sale of water among basins, and it must return to free-market principles. ★

