

NARO-TX POST-SESSION WRAP UP REPORT

SUMMARY: There were more bills than usual introduced to provide oversight or transparency in the area of oil & gas exploration, drilling and production. This included bills to:

- regulate landmen,
- report ‘lost and unaccounted for’ gas,
- require broader public notice prior to drilling for exploration or disposal of wastes, and
- revamp the Commission structure of the Texas Railroad Commission.

Although the bills got varying degrees of attention and legislative support, at the end of the Session, I believe it is more ‘business as usual’ than not. That having been said, in the upcoming interim prior to the 2011 Session, there will likely be more than one Legislative Interim Study in this area. Additionally, the Special Session resulted in a revised review schedule for the Sunset Committee that includes accelerating review for the Railroad Commission. So that agency will be undergoing Sunset scrutiny prior to the 2011 Session, with the process likely to begin in coming months. To follow is a brief summary of the key bills and their outcome.

HB4246 by Keffer: “LUG2”. This bill addresses the reporting of lost and unaccounted for gas and the tax due by first purchaser. It is the legislation filed in line with the report that NARO-TX received from me in January.

The Ways and Means Committee chairman was quoted in today’s paper on the heavy workload before the committee, so we may want to consider looking at the membership and getting grassroots push for a hearing. Plus, apparently at last Monday’s TXOGA legislative meeting, the entire group really jumped on Apache and is talking about how this bill will be devastating to production. The Committee heard the bill on April 15th. Albert Ward provided testimony, with Cynthia and also Ed Sealy on hand to show support. The pipes and American Royalty Council worked hard against the bill, claiming it would cause an undue tax increase and also shut down marginal fields.

FAILED TO PASS. Rep. Keffer has said he will push for an interim study *by the Legislature – not RRC* – on this issue.

HB1231 and HJR62 by Farabee: “3 to 1” legislation. Currently the TXRRC is governed by 3 elected commissioners who serve staggered six year terms. In past several years, many who work closely with the RRC have felt the commission might operate more efficiently and cost-effectively if governed by one elected commissioner serving a four year term. HB1231, and accompanying HJR62 (would set it on a ballot to amend constitution) would do that.

The House Committee heard public testimony, including comments by Chairman Carillo, Clayton Williams, and Steve Howell (who mentioned in particular the RRC has paid insufficient attention to mineral and royalty owner interests) about the current RRC being inefficient and unresponsive. The legislation died and the constitutional amendment failed to get enough votes to go to the ballot.

FAILED TO PASS

SB341/HB499 by Wentworth/Orr: Simply changes the name of the RRC to the ‘Texas Energy Commission’. The bill did pass the full Senate, but neither bill ever made it out of House Committee.

FAILED TO PASS

HB2259/SB1378 by Crownover/Duncan: “Inactive wells and surface cleanup”. This bill is the result of the inactive well study group which met during the interim and is supposedly ‘agreed to’ by stakeholders. The bill essentially requires

- New accountability and financial assurance measures for inactive wells to further decrease the odds that wells enter the fund;
- Addresses other surface issues such as abandoned power lines, tanks, etc that were included in Sen Duncan’s legislation two years ago;
- Effectively assigns costs to producers responsible for their wells and away from the fund.

Industry groups all support the bill. TLMA testified ‘neutral’ on the bill and TSWCRA testified ‘for’ it, but have said it does not go far enough towards land/water protection.

PASSED. SIGNED BY GOVERNOR. EFFECTIVE 9/1.

HB469 by Phil King: “incentives for clean energy”. This bill addresses incentives for clean coal technology power plants and includes language requiring

- Capture and permanent sequestration in onshore geologic formation of at least 60% of carbon output from the plant
- Exemption/reduction from oil production tax for production using through enhanced oil recovery (EOR) using same CO₂

Mineral or royalty ownership is not addressed at all, so any EOR production from the geologic formation in question would be subject to negotiation between producer and mineral owner.

There was testimony given that a CO₂ program like this will increase production from EOR.

PASSED. SIGNED BY GOVERNOR. EFFECTIVE 9/1.

HB2811 by Hardcastle: “clean coal incentive”. This bill addresses franchise tax abatements, grants, loans, expedited permitting, etc for clean coal power plants. It also addressed CO₂ injection and expressly gives RRC authority over it. Similar to the bill described above.

FAILED TO PASS

HB2669/SB1387 by Crownover/Seliger: This bill relates to the regulation and storage of man-made CO₂. The bill requires the RRC to certify to TCEQ that no oil or gas reserves will be damaged. The TCEQ would certify that no freshwater/groundwater strata will be damaged due to issuance of permits to allow carbon injection wells. The RRC statement must also include comment that there will be “no impairment” of oil and gas mineral rights in that geologic formation. The TCEQ and RRC will be undergoing rulemakings to implement these permitting and oversight regulations. The bill requires a GLO report to the Legislature of the impact on State owned lands, as well as a joint RRC/TCEQ report on the permitting process.

PASSED. SIGNED BY GOVERNOR. EFFECTIVE 9/1.

HB 4/SB533 by Orr/Duncan: “eminent domain”. This is the bill that is supposedly agreed upon and the Governor’s office has expressed support for – does not include the language that got similar legislation vetoed last session. The bill:

- Expressly extends eminent domain authority to common carrier pipelines;
- Governmental entities must hold public meeting and record vote before initiating condemnation proceedings;
- Requires attempt to purchase or lease property at fair market value before proceeding to condemnation;
- Requires the entity to pay for and provide appraisal reports to landowners impacted;
- Requires the entity to prove it negotiated in good faith before moving to condemnation;
- Provides for reimbursement of legal costs if condemnation fails to meet the tests;
- Provides for a ‘buy back’ if the project does not proceed;
- Changes definition of ‘governmental entity with condemnation authority’ to ‘entity with eminent domain authority’ throughout.

FAILED TO PASS

HJR14/SJR42 by Corte/Duncan: “eminent domain” constitutional amendment limiting the public “taking” of private property. Specifically, the amendment proposes an amendment to the Texas Constitution to prohibit “taking” of private property for public use unless the taking, damage, or destruction is necessary for the ownership, use, and enjoyment of the property by the State, a political subdivision of the State, or the public at large or an entity granted the power of eminent domain, or the elimination of urban blight on a particular parcel of property. The term "public use" is clarified to exclude the taking of property for transfer to a private entity for economic development purposes. On or after January 1, 2010, the legislature's ability to grant the power of eminent domain to an entity will require a two-thirds vote of all the members elected to each house.

PASSED. WILL BE ON 11/03/09 BALLOT

SB656 by Fraser: Currently, applicants for oil & gas waste disposal permits are required to notify adjacent surface owners of their permit application, but those surface owners have no obligation to notify a tenant or contract- for-deed purchaser occupying the property. Thus, the land-occupier is given no course of action by which to formally protest the disposal well or request a public hearing. SB 656 requires surface owners who receive such notice to provide notice to surface lessees, purchasers under contract for deed, executory contract, or other executory conveyance of the tract. All who receive such notice have opportunity to request a public hearing on the permit application. Also requires newspaper publication and notification of county judge.

FAILED TO PASS

SB540 by Estes: “Groundwater Control District (GCD) notification”. This bill requires applicants filing for nonhazardous disposal well permits and injection well permits to notify a GCD when an application for an injection site in their district has been submitted to the commission. Also extends the time frame that a GCD can protest a permit from 15 days of filing to 30 days. TXOGA has raised ‘legal implications’ and the Senator is circulating a cmte substitute to try and get something passed, instead of producers killing the bill. The cmte substitute:

- Requires the RRC to wait 30 days before approving the permits;
- Removes the requirement that applicants provide notice to GCDs;
- Requires applicant to send copy of the two page permit application to GCDs;

- Does not expressly state that GCDs may protest the permits or request hearings.

The bill has passed the Senate. It was heard in House Energy Cmte where TXOGA et al testified against it, even though they supposedly agreed to Estes' changes.

FAILED TO PASS

HB1405/SB1154 by Geren/Davis: Bill would have required licensing of landmen by the Texas Real Estate Commission. Many people got up in arms early, and neither bill even received a hearing in committee. Although dead for this session, the bill sponsors indicated they will likely seek a legislative interim study on this issue.

FAILED TO PASS

HB834 by Sid Miller: Bill would have required registration of all mineral ownerships with county clerks by a certain date. Would have treated those minerals who are not registered by such time as 'abandoned' and automatically attached to the surface property. The bill got a lot of attention very early on from oil and gas interests, as well as county governments, as being problematic on many levels. The sponsor never even sought a hearing on the bill.

FAILED TO PASS

HB569 by Sid Miller: Currently, the RRC requires a permit applicant for a commercial (oil & gas) disposal well to notify any landowner whose land is adjacent to the proposed site of the permit and also requires an applicant to publish a notice in the newspaper of general circulation in the county, yet many other affected parties receive no notification. H.B. 569 directs the commission to adopt rules requiring notification not only to the adjacent landowners, but also to the commissioners' court of the county and to any affected groundwater conservation district. The bill directs the commission to place a notice in the newspaper of general circulation for the county or the newspaper of closest proximity to the proposed site. Additionally, H.B. 569 directs the commission to adopt rules requiring the owner of the surface property adjacent to the proposed well to notify any tenant or contract-for-deed purchaser occupying his or her land.

FAILED TO PASS

7/22/2009 12:29 PM