



Environmental Legislative Update

Annual STEP Joint DFW Meeting July 21, 2011

Presented by:

Ty H. Embrey

tembrey@lglawfirm.com

(512) 322-5829

*816 Congress Avenue
Suite 1900*

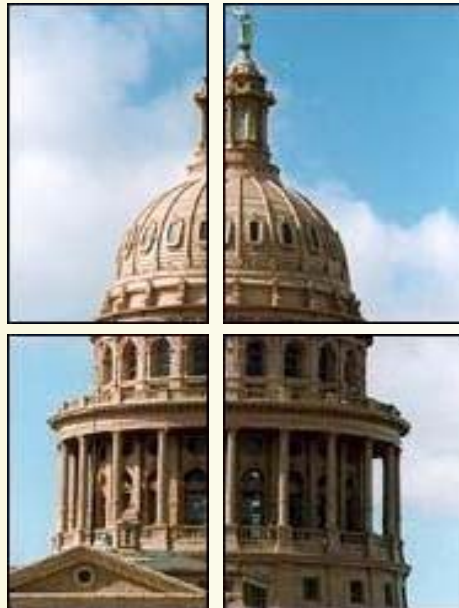
Austin, Texas 78701

(512) 322-5800

(512) 472-0532 Fax

www.lglawfirm.com

***News from the Texas Capitol
82nd Legislature***



Areas to be covered

- I. Big Ticket Items
- II. Sunset Legislation
- III. Environmental Legislation
 - I. Water
 - II. Air
 - III. Waste

82nd Legislature - Big Ticket Items

- Budget
 - \$172.3 Billion for Biennium
 - Projected >\$20 Billion Dollar Budget Shortfall
 - Cuts in Services and State Agency Budgets
- Redistricting
 - Texas Senate
 - Texas House
 - U.S. House

82nd Legislature Statistics

Bill Type	Filed	Passed
House Bills	3865	797
Senate Bills	1931	582
House Joint Resolutions	154	3
Senate Joint Resolutions	53	8
House Concurrent Resolutions	173	101
Senate Concurrent Resolutions	60	41
Totals	6236	1532

November 2010 Election Results

Senate

19 Republicans

12 Democrats

2 Freshmen Members

House

101 Republicans

49 Democrats

35 Freshmen Members

House Natural Resources Committee

- Chairman:** Allan Ritter - Nederland
- Vice Chair:** Tracy O. King - Batesville
- Membership:** Marva Beck - Centerville
Brandon Creighton - Conroe
Chuck Hopson - Jacksonville
Jim Keffer - Granbury
Lyle Larson - San Antonio
Eddie Lucio III - San Benito
Trey Martinez Fischer - San Antonio
Doug Miller - New Braunfels
Walter "Four" Price - Amarillo



House Environmental Regulation Committee

- Chairman:** Wayne Smith - Baytown
- Vice Chair:** Jessica Farrar - Houston
- Membership:** Jose Aliseda - Beeville
Lon Burnam - Forth Worth
Warren Chisum - Pampa
Kelly Hancock - Forth Worth
Ken Legler - Pasadena
Lanham Lyne - Wichita Falls
Ron Reynolds – Missouri City

Senate Natural Resources Committee

Chairman: Troy Fraser – Horseshoe Bay

Vice Chair: Craig Estes – Wichita Falls

Membership: Bob Deuell - Greenville

Robert Duncan - Lubbock

Kevin Eltife - Tyler

Glenn Hegar, Jr. - Katy

Juan “Chuy” Hinojosa - Mission

Mike Jackson – La Porte

Robert Nichols – Jacksonville

Kel Seliger - Amarillo

Carlos Uresti – San Antonio

Sunset Advisory Commission: What is it?

- In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies.
- The 12-member body of legislators and public members are appointed by the Lt. Governor and Speaker of the House.
- The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature.

Sunset Advisory Commission Members

Senate Members:

- **Glenn Hegar, Jr., Chair**
- Juan "Chuy" Hinojosa
- Joan Huffman
- Robert Nichols
- John Whitmire
- Charles McMahan, Public Member

House Members:

- **Dennis Bonnen, V- Chair**
- Carl Isett
- Linda Harper-Brown
- Rafael Anchia
- Byron Cook
- Lamont Jefferson, Public Member

TCEQ Sunset Bill

- **HB 2694** (Wayne Smith / Huffman). This bill is the TCEQ Sunset legislation which continues the TCEQ until 2023 and abolishes the On-site Wastewater Treatment Research Council.
- Specifically, HB 2694 establishes a requirement that each person who holds a water right issued by the commission or who impounds, diverts, or otherwise uses state water shall maintain water use information on a monthly basis during those months the water rights holder uses permitted water.
- Gives TCEQ Executive Director the authority to take steps to address drought conditions, such as temporarily suspend the right of any person who holds a water right to use the water; and adjusting the allocation of water between water rights holders.
- The bill also requires commission to exempt dams of a certain size and specification from dam safety requirements, and allows commission to enter into agreements with dam owners required to meet dam safety requirements to establish a timeline for such compliance.

TWDB Sunset Bill

- **SB 660 (Hinojosa and Hegar/Ritter)**. This legislation is the Texas Water Development Board (“TWDB”) Sunset legislation. SB 660 continues the TWDB for another twelve years and makes significant changes to the GMA process and Chapter 13 of the Water Code.
- SB 660 requires that the state water plan include an evaluation of the progress made in meeting the state's future water needs since adoption of the previous state water plan, and analysis of number of projects included in prior state water plan that received financial assistance.
- The bill also requires the TWDB and TCEQ, in consultation with the Water Conservation Advisory Council, to develop a uniform methodology for water use and conservation to be used by a municipality or water utility in developing its reports to be submitted under the Water Code.

Groundwater Ownership Bill

- **SB 332** (Fraser/Ritter). The legislation addresses groundwater ownership issues, including the ownership interest in groundwater by a landowner beneath the surface and the right of the landowner to produce groundwater.

Water Usage / Conservation Bill

- **SB 181** (Shapiro/Laubenberg). The legislation amends Chapter 16, Water Code, to require the TWDB to work with the TCEQ to develop a uniform methodology and guidance for calculating and reporting municipal water use that categorizes sector users and to incorporate that methodology into the various plans and reports required of water utilities under certain provisions of the Water Code.
- The bill also authorizes TWDB to develop a data collection and reporting program for utilities and municipalities with 3,300 or more connections and requires the Texas Water Development Board to submit a biennial report to the legislature on the data collected.

Water Audits Bill

- **HB 3090 (Creighton/Nichols)**. This legislation establishes that a water utility that receives financial assistance from the TWDB is required to perform an annual water audit that calculates the utility's system water loss during the preceeding year and file the audit with the TWDB.

Certificates of Convenience and Necessity (CCN) Bill

- **SB 573 (Nichols/Creighton).** The bill makes numerous significant revisions to Chapter 13 of the Water Code that address water and wastewater certificates of convenience and necessity (CCNs).
- New language was added to **§13.245** of the Water Code that applies to municipalities with populations of 500,000 or more. The new language establishes procedures enabling the TCEQ to grant water and wastewater CCNs within the extraterritorial jurisdiction (“ETJ”) of a municipality without the municipality’s consent if certain conditions are met, including that the municipality does not have the ability to provide service or the municipality has failed to make a good faith effort to provide service.
- SB 573 amends **§13.2451** to provide that the TCEQ may not extend a municipality’s CCN beyond the municipality’s ETJ if the owner of land located wholly or partially outside the ETJ elects to exclude some or all of the property within the proposed service area. This new provision also has limited application.
- The legislation also made substantial revisions to **§13.254** that address a landowner’s ability to remove its property from an existing CCN. SB 573 creates a new CCN decertification process (**§13.254(a-5)**) that enables the owner of at least 25 acres that is not receiving water or wastewater service to submit a petition for expedited release of the land from an existing CCN. The TCEQ is required to grant the petition for decertification within 60 days of submission. The new CCN decertification process is only available for properties located in 33 of the 34 counties listed below (Medina County is specifically not subject to this new CCN decertification process). The utility that is the subject of the decertification petition may be awarded compensation by the TCEQ.

Municipal Setting Designation Bill

- **HB 2826** (Murphy/Huffman). The bill amends the provisions of the Solid Waste Disposal Act in the Texas Health and Safety Code.
- Impacts the notice of an application for a municipal setting designation, to require a notice to include a statement that an affected municipality or public utility has 120 days from the date of receipt of the notice to pass a resolution opposing the application for a municipal designation setting if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements for issuance of a municipal setting designation certificate.
- Establishes that if the property for which a MSD is sought is located in a municipality that has a population of two million or more and the applicant has complied with applicable requirements, the applicant is considered to have complied with the requirements for eligibility for a municipal setting designation certificate.

TCEQ Education Bill

- **HB 965 (Callegari/Hegar)**. The legislation enables the TCEQ to recognize Internet-based continuing education programs.

Injection Well Notices

- **HB 444 (Creighton/Nichols)**. The bill adds increased notification requirements in Chapter 27 of the Water Code for applications submitted to the TCEQ for injection wells to dispose of industrial and municipal waste so that groundwater conservation districts will receive notice of applications, draft permits, and contested case hearing notices.

TWDB Funding Authority Bill

- **HB 1732 (Ritter/Hinojosa)**. The bill, along with SJR 4, makes the necessary revisions to Chapters 15, 16, and 17 of the Water Code to enable the TWDB to implement a revolving \$6 billion program to fund water and wastewater infrastructure projects in Texas.

TWDB Funding Authority

- **SJR 4 (Hinojosa/Ritter)**. This Joint Resolution provides that a constitutional amendment will be presented to the Texas voters to authorize the TWDB to issue fund bonds as part of a \$6 billion revolving bond program. This legislation would help fund water and wastewater infrastructure projects in Texas.

Rainwater Harvesting Bill

- **HB 3372 (Tracy King/Jackson)**. The bill requires the TCEQ and Texas Department of Health to develop rules for rainwater harvesting systems that can be used for indoor potable purposes and can be connected to a public water system.

Rainwater Harvesting & Water Conservation Bill

- **HB 3391 (Doug Miller/Seliger)**. The bill amends numerous provisions to encourage the use of rainwater harvesting systems in Texas.

Rules for on-site Sewage Disposal Systems Bill

- **HB 240** (Parker/Nelson). This legislation amends Section 366.012 of the Health and Safety Code to require the TCEQ to adopt rules governing the installation of on-site sewage disposal systems to prevent accidental or unintentional access.

Don't Mess With Texas' Water Bill

- **HB 451** (Lucio III/Hegar) The bill establishes a Don't Mess with Texas Water program to prevent illegal dumping that affects the state's surface waters. TCEQ, with the cooperation of TxDOT, is required to place signs at major highway water crossings that notify drivers of a toll-free number to call to report illegal dumping to the appropriate law enforcement agency. Local governments may participate in the program.

Rural Water Assistance Fund Bill

- **SB 360 (Frasier/Creighton)**. The bill makes substantial changes to Chapter 15 of the Water Code relating to the composition and use of money in the Rural Water Assistance Fund.

Notice to GCD's of Contamination

- **SB 430** (Nichols/Christian). The legislation requires the Executive Director of the TCEQ to provide written notice of groundwater contamination to a groundwater conservation district whose jurisdiction extends into the contaminated area.

Hydraulic Fracturing Disclosure Bill

- HB 3328 – amends the Natural Resources Code to establish a regulatory framework by which the composition of the fluids used in the hydraulic fracturing process are publicly disclosed.
-
- Railroad Commission of Texas working on rules to create disclosure process.

Idling of Motor Vehicles

- **SB 493** (Fraser/Wayne Smith). The legislation amends Chapter 382, Health and Safety Code, by allowing the "clean idle" engines to idle in this state as an exception to the rules relating to the idling of motor vehicles.
- Defines "idling" as allowing an engine to run while the motor vehicle is not engaged in forward or reverse motion and prohibits the commission from prohibiting or limiting the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

Rock Crushers & Concrete Plants Bill

- **SB 1003** (Fraser/Wayne Smith). The bill addresses penalties for, and emergency orders suspending, the operation of a rock crusher or certain concrete plants without a current permit under the Texas Clean Air Act.
- Applies to penalties for operating a rock crusher or concrete plant without a permit if the rock crusher or concrete plant had a permit and notifies TCEQ in advance that they will need to operate the facility beyond the expiration date of the permit.

Vehicle Retirement Program Bill

- **HB 3272** (Burnam/Deuell). The legislation revises Chapter 382, Health and Safety Code, to add electric vehicles and natural gas vehicles to the list of replacement vehicles eligible for the low-income vehicle repair, assistance, retrofit and retirement program.
- Adds that vehicles which have been certified to meet federal Tier 2, Bin 3, or a cleaner Bin certification are eligible as replacement vehicles. Further, the bill provides that the commission shall establish a partnership with representatives of the steel industry, automobile dismantlers and scrap metal recyclers to ensure that vehicles are scrapped or recycled.

Purchasing Preference for Recycled Products Bill

- **HB 3395** (Callegari/Lucio). The bill makes revisions and additions to the provisions of Chapter 2155 of the Government Code that cover state preferences for recycled products.

TV Recycling Bill

- **SB 329** (Watson/Chisum). The legislation amends Chapter 361 of the Health and Safety Code to establish a comprehensive program for the recycling of television equipment.
- Requires the TCEQ to develop an informational website and hotline to inform and educate the public about the program, and to establish an annual statewide recycling rate for television equipment.
- Authorizes TCEQ to audit, inspect, and enforce against retailers and recycling facilities implementing the program and requires TCEQ to provide an annual report to the Legislature regarding the program.

Metal Recycling Bill

- **SB 694** (West/Wayne Smith). The bill creates increased requirements that must be met by metal recycling entities. SB 694 requires DPS to establish an advisory committee relating to the DPS's regulation of metal recycling entities and include on that committee representatives of local law enforcement agencies and prohibits a metal recycling entity from paying for a purchase of regulated material in cash if the entity does not hold a certificate of registration and does not hold (if applicable) a license or permit required by a county, city, or other political subdivision, or has been prohibited by the department from paying cash.
- Authorizes county, city, or other political subdivision to enjoin the business operations of a business owner or operator of a recycling entity if the owner or operator has not submitted an application for a certificate of registration or, if applicable, a license or permit required by a county, city, or other political subdivision.
- Enables cities and counties to retain 10 percent of fines collected due to metal recycling violations.

Demolition Waste Bill

- **SB 1258** (Duncan/Hardcastle). The bill grants the Texas Commission on Environmental Quality the authority to adopt rules to create a process by which to issue a permit to authorize a city or county with a population of 10,000 or less to dispose of demolition waste from an abandoned building or building found to be a nuisance.

QUESTIONS

Thank You For Coming

Ty H. Embrey

tembrey@lglawfirm.com

(512) 322-5829