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## **78<sup>th</sup> Legislative Session Update**

*by*  
**Martin C. Rochelle**

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The 78<sup>th</sup> legislative session was influenced by several factors. New leadership, a \$10 billion budget deficit, tort reform and congressional redistricting all served to make this session a unique experience. While almost 5600 bills were filed this session, less than 1400 passed. Many bills had implications to those of us engaged in environmental law. While the bills that passed will certainly impact the world of environmental law in Texas, even legislation that did not pass may well serve as a foundation for interim studies or future legislation. This paper will profile some of these bills.

### **What Passed:**

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#### **GENERAL**

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##### **Senate Bill 1265**

**Author: Armbrister**

Relating to prosecution of environmental crimes.

**Summary:** This bill requires a peace officer to notify TCEQ in writing of an alleged violation of an environmental law. TCEQ is then required to evaluate the report, determine if an environmental violation exists, and determine an adequate remedy. This bill only applies in cases where the potential defendant holds a permit by TCEQ or is employed by a person holding such a permit.

##### **House Bill 425**

**Author: Christian**

Relating to procedures to help ensure that certain state agency actions are consistent with the meaning and intent of applicable legislative enactments.

**Summary:** HB 425 requires that before a state agency gives notice of its intention to adopt a rule the agency must: (1) research the legislative history and prepare a legislative history document on the bill or amendment that authorizes adoption of the rule; (2) establish an internal review process to ensure the proposed rule is consistent with legislative history; and (3) deliver a copy of the proposed rule to each member of the legislature not later than seven days before final adoption and inform the member of any public hearing related to the proposed rule. The agency must also deliver a copy of an emergency rule adopted to the primary author and sponsor of the law under which the rule was adopted. HB 425 mandates that the state agency order adopting a rule include a summary of any written comments received by members of the legislature.

HB 425 provides the Legislative Budget Board with authority to issue letters of legislative intent regarding appropriations matters.

While this bill passed, the Governor vetoed HB 425 on June 20 on the basis that the bill violated the Constitution's separation of powers provision, by improperly infringing on the powers of the executive branch of government. The Governor also opined that the bill would inappropriately allow the legal opinion of an unelected government employee to supercede the expressed will of the Legislature, and would require the executive branch of government to determine legislative intent, a function constitutionally left to the courts of our state.

**House Bill 2847**                      **Author: Farabee**

Relating to the transfer of the powers, duties, and functions under the Texas Aggregate Quarry and Pit Safety Act from the railroad commission to the department of transportation.

**Summary:** HB 2847 transfers the powers and functions exercised by the Texas Railroad Commission under Chapter 133, Natural Resources Code, to the Texas Department of Transportation.

**House Bill 3588**                      **Author: Krusee**

Relating to the construction, acquisition, financing, maintenance, management, operation, ownership, and control of transportation facilities and the progress, improvement, policing, and safety of transportation in the state; imposing criminal penalties.

**Summary:** HB 3588 provides for a comprehensive restructuring of the methods of developing, financing, operating, and policing the state's transportation system, so as to enhance safety, efficiency, and mobility. HB 3588 addresses the full scope of transportation issues facing the state. It creates new financing tools to generate the funding required to maintain a working transportation system. These include the use of bonds to generate cash flow, mechanisms for funding the Texas Mobility Fund, and an increase in fines and fees levied for traffic violations. Additional cash flow will be generated by increased reliance on turnpikes -- those funded by tolls paid by motorists and those built by local authorities and funded over time by the state. TxDOT is given the authority to encourage increased reliance on rail transportation. In addition, it will begin to plan and construct a new set of intermodal transportation facilities that will be known as the Trans-Texas Corridor and that will integrate highway, rail, and utility system components. Regional Mobility Authorities will give localities greater flexibility in addressing their local transportation needs

HB 3588 also requires TxDot to mitigate environmental damages associated with transportation projects, and authorizes the adoption of rules for the installation, construction, operation, maintenance, repair, renewal, relocation, or removal of a public utility facility in, on, along, over, or under a transportation project.

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## WATER

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### **Senate Bill 155**

**Author: Zaffirini**

Relating to the protection of public freshwater areas; providing a penalty.

**Summary:** Subtitle I, Chapter 90, is added to the Parks and Wildlife Code to prohibit the operation of a motor vehicle in the bed or bank of a navigable stream. Many exemptions apply, however: e.g., operation of a motor vehicle for the lawful construction, operation, or maintenance of facilities used for the production, treatment, or transportation of water or wastewater; a county, municipality, or river authority may adopt a plan for limited use of motor vehicles in protected areas, and the plan must be approved by TPWD. All peace officers of the state shall enforce the provisions of the Act. An offense is a Class C misdemeanor.

### **Senate Bill 1094**

**Author: Duncan**

Relating to the creation of a task force to evaluate matters regarding water conservation.

**Summary:** TWDB shall appoint and preside over a conservation task force to review, evaluate and recommend optimum levels of water use efficiency and conservation for the state. Not later than November 1, 2004, the task force shall develop a best management practices guide for use by regional planning groups and political subdivisions and shall make a final report.

### **Senate Bill 1639**

**Author: Staples**

Relating to regulating the waters of the state, including the spacing and production of groundwater and the control of instream flows.

**Summary:** SB 1639 amends Chapter 36, Water Code, to authorize a groundwater district to adopt different rules for each geologic strata or each geographic area within a district. This bill also amends Chapter 11 of the Water Code to create a study commission to consider public policy implications for balancing environmental and public water supply demands on surface water resources. The legislation confirms that no authority currently exists for the TCEQ to issue permits for strictly environmental flows and prohibits the agency from issuing such permits until August 31, 2005. The TCEQ may issue an amendment to an existing permit to authorize an environmental purpose of use.

### **House Bill 645**

**Author: Puente**

Relating to prohibiting the creation or enforcement of certain restrictive covenants that undermine water conservation.

**Summary:** HB 645 amends Sec. 202.007, Property Code, to prohibit a homeowners association from including or enforcing a deed restriction or covenant that prohibits or restricts a property owner from implementing measures promoting solid-waste composting of vegetation, including grass clippings, leaves, or brush, or leaving grass clippings uncollected on grass; installing rain barrels or a rainwater harvesting system; or implementing efficient irrigation systems, including underground, drip or other water conservation systems.

**House Bill 755**

**Author: Chisum**

Relating to the offense of failing to certify compliance of an underground storage tank before accepting delivery of the regulated substance to be stored in the tank.

**Summary:** Amends Section 26.3467(b), Water Code, to provide that a person who “knowingly violates,” rather than “violates,” Water Code Section 26.3467(a) commits an offense that is punishable as provided by Section 7.156 (Violation Relating to Underground Storage Tank) for an offense under that section.

This legislation was filed after several petroleum transporters were fined under TCEQ’s PST Program for making deliveries to petroleum storage tanks that were not in compliance with the program (non-certified tanks).

**House Bill 803**

**Author: Geren**

Relating to the authority of political subdivisions to exercise the power of eminent domain to acquire rights to water and the assessment of damages in condemnation proceedings initiated for that purpose.

**Summary:** This bill amends Subchapter B, Chapter 21, Water Code, to establish a procedure for condemnation of water rights. A political subdivision may not exercise its condemnation authority for the purpose of acquiring rights to groundwater or surface water unless it has prepared a drought contingency plan, developed and implemented a plan to achieve the highest practicable levels of water conservation, made a good-faith effort to obtain the rights to the water voluntarily, and demonstrated a need for the water rights for domestic purposes within the next 10-year period. The bill also provides that when a political subdivision proposes to condemn the fee title of property under this chapter, and the court finds that the real property may be used by the political subdivision to develop the right to use groundwater for a public purpose, the court may assess damages separately for the market value of the real property and the market value of the groundwater.

**House Bill 1150**

**Author: Puente**

Relating to the financing of certain local water, conservation, and open-space projects in accordance with the law governing sports and community venue projects.

**Summary:** HB 1150 amends Section 334, Local Government Code, to allow a municipality to use a sales tax to fund a parks venue project outside the municipality or county. To accomplish this, the bill adds to the definition of "venue" a watershed protection and preservation project, a conservation easement, a recharge, recharge area, or recharge feature protection project, and an open-space preservation project as within the list of projects that are authorized under this statute for this type of funding.

**House Bill 1152**                      **Author: Puente**

Relating to the authority of certain nonprofit water supply corporations and sewer service corporations to establish and enforce customer water conservation measures.

**Summary:** HB 1152 allows water and sewer supply corporations to establish and enforce reasonable conservation practices and prohibit excessive or wasteful use of water by assessing reasonable penalties as provided in its approved tariff. Customers may appeal any such penalties to the TCEQ.

**House Bill 1370**                      **Author: Luna**

Relating to the study and implementation of seawater desalination.

**Summary:** Amends Section 16.060, Water Code, to require the TWDB to undertake desalination studies to further the development of cost-effective water supplies from desalination. The bill also requires the TWDB to issue a biennial report on the implementation of seawater desalination activities in the state.

**House Bill 1378**                      **Author: Geren**

Relating to certain duties and information regarding water planning and development matters in the state.

**Summary:** HB 1378 amends Chapter 9, Water Code, relating to the Texas Water Advisory Council. An additional senator and public member are added to the TWAC, required meetings are reduced to two per year, and powers, duties and procedural requirements are modified. The scheduled analysis of surface water authorities is repealed and replaced with a provision allowing the TWAC to request reports from water districts and authorities.

**House Bill 1534**                      **Author: Cook, Robby**

Relating to certain powers of groundwater conservation districts.

**Summary:** Section 36.105, Water Code, is amended to limit the exercise of eminent domain authority by a groundwater district. HB 1534 provides that a district may only exercise its power of eminent domain to acquire property that is within the boundaries of

the district and necessary for conservation purposes, including recharge and reuse purposes. In addition to existing limitations, eminent domain authority may not be used for production, sale, or distribution of groundwater or surface water, or for acquiring rights to groundwater or surface water.

**House Bill 1541**                      **Author: Callegari**

Relating to the general powers and authority of water districts.

**Summary:** HB 1541 was billed as a “clean-up” bill for water districts, but it includes many substantive changes to Water Code Chapters 49, 53, 54, 57 and 67. The bill also amends the Health and Safety Code, the Local Government Code, and the Transportation Code. Many administrative, procedural and substantive rights of water districts, too numerous to summarize here, are affected by HB 1541.

**House Bill 1979**                      **Author: Puente**

Relating to preventing the discharge of untreated wastewater into waters of the state.

**Summary:** Chapter 26, Water Code, is amended to require TCEQ to establish criteria for evaluating whether to initiate enforcement actions related to sanitary sewer overflows that occur as the result of blockage due to grease. TCEQ must adopt model standards for operation of a sanitary sewer system so as to prevent blockage due to grease. Adoption and enforcement of these standards by a sanitary sewer system will provide a reasonable defense against related enforcement actions brought by TCEQ.

**House Bill 2031**                      **Author: Puente**

Relating to the regulation of stormwater management by certain counties.

**Summary:** Amends 423.001, Local Government Code, to allow a county with a population of 1.3 million for which the primary source of drinking water is an underground aquifer (Bexar County) to take action necessary to comply with storm water permitting program requirements under the National Discharge Elimination System, including the collection of a fee for this purpose. This authorization was already provided to Harris County in 1999.

**House Bill 2529**                      **Author: Madden**

Relating to enforcement actions against a small water supply, sewer, wastewater treatment, or solid waste disposal service being integrated into a regional service.

**Summary:** Amends Subchapter A, Chapter 7, Water Code, by adding Section 7.0026, to allow the TCEQ to enter into compliance agreements with a water supply, sewer, wastewater treatment, or solid waste disposal facility, operated by or for a municipality or county, and that has been integrated into a regional system of such facilities, in lieu

of taking more aggressive enforcement actions for noncompliance by such facilities prior to such integration.

**House Bill 2660**

**Author: Puente**

Relating to the establishment of minimum levels of water conservation in water conservation plans.

**Summary:** Sections 11.1271, 15.106, 17.277 and 17.857, Water Code are amended. Beginning May 1, 2005, all water conservation plans required under these sections must include quantified 5-year and 10-year targets for water savings. Targets must include goals for water loss programs and goals for municipal use in gallons per capita per day. HB 2660 requires TCEQ and TWDB to develop guidelines for preparing water conservation plans and models for water conservation programs. TCEQ may also require water right holders to submit such implementation reports.

**House Bill 2661**

**Author: Puente**

Relating to the use of graywater

**Summary:** Section 26, Water Code, is amended to encourage the use of graywater, as further defined, in private residences. Criteria are established for the domestic use of up to 400 gallons per day of graywater from a private residence without obtaining a permit from TCEQ. This bill also clarifies that the TCEQ and not the Texas Board of Plumbing Examiners has the authority to draft and enforce rules concerning graywater.

**House Bill 2663**

**Author: Puente**

Relating to the establishment of quantifiable goals for drought contingency plans.

**Summary:** HB 2663 amends Section Chapter 11.1272, Water Code, to require wholesale and retail public water suppliers and irrigation districts to update drought contingency plans to include specific quantified targets for water use reductions to be achieved during periods of water shortage and drought, by May 1, 2005. TCEQ and TWDB are to jointly prepare unenforceable guidelines and best management practices.

**House Bill 3030**

**Author: Van Arsdale**

Relating to public notice of groundwater contamination.

**Summary:** HB 3030 amends Water Code Chapter 26 to require state agencies to notify the TCEQ in the event they become aware of an incident of groundwater contamination, and it requires TCEQ to notify drinking water well owners in the area that may have their drinking water supplies impacted by such contamination.

**House Bill 3338**

**Author: Puente**

Relating to the performance of a water audit by a retail public utility providing potable water.

**Summary:** Chapter 16, Water Code, is amended to require retail public utilities to perform and report to TWDB, every five years, a water audit computing the utilities' most recent annual water loss. TWDB is required to develop appropriate methodologies for a water audit based on system size. Methodologies shall account for various components of water loss, including loss from distribution lines, inaccuracies in meters or accounting practices, and theft. Regional planning groups shall use information in the development of a regional water plan. Political subdivisions which have not completed and filed a water audit with TWDB are ineligible for financial assistance.

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**AIR**

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**Senate Bill 1159**

**Author: Barrientos**

Relating to the Vehicle Emissions Programs in Early Action Compact counties

**Summary:** This bill allows an "Early Action Compact" county whose early action plan for attaining the 8-hour ozone NAAQS provides for a motor vehicle emissions inspection and maintenance ("I&M") program to request that TCEQ adopt I&M program requirements for the county. Allows TCEQ to request that the Public Safety Commission establish I&M program requirements for the participating county, which requirements may include exhaust emissions testing, emissions control devices and systems inspections, or other methods that meet or exceed EPA requirements. TCEQ may assess a fee for inspection. The fee must be in an amount reasonable to recover I&M program costs. A portion of the fee may be retained by the station owner, contractor or operator to recover the cost of performing the inspection and provide for a reasonable profit. Allows the following incentives for participating counties: low-income vehicle repair assistance, retrofit and accelerated vehicle retirement programs; designation as a "Clean Air County"; and, preference in any federal or state clean air grant program.

**Senate Bill 1272**

**Author: Armbrister**

Relating to air quality permit processing for concrete plants.

**Summary:** This bill creates a standard air permit for permanent concrete plants that meet 19 specified criteria. Requires the applicant to publish notice and conduct a public meeting regarding the application within specified timeframes. Requires the ED to approve or deny the application within 35 days after the public meeting is held.

**House Bill 555**

**Author: Chisum**

Relating to air quality public notice for portable facilities.

**Summary:** HB 555 provides that public notice for a New Source Review air permit is not required for the relocation or change of location of a portable facility on a site where a portable facility has been located at any time during the previous two years. The existing statute provides this exemption if no portable facility has been located at the proposed site within the past two years. The bill also provides that measurement of distances to determine compliance with any location or distance restriction in the Texas Clean Air Act must be taken toward structures that are in use as of the date that the application is filed with the Commission.

**House Bill 638**

**Author: Chisum**

Relating to emissions reductions incentives and the emissions reductions incentives account.

**Summary:** HB 638 amends the section of the Texas Clean Air Act's reimbursement program for internal combustion engines associated with pipelines as follows: the bill requires, rather than allows, the TCEQ to develop the program; it provides that NOx emissions rates be expressed in terms of grams per brake horsepower-hour; it requires, rather than allows, the program to include certain NOx reduction incentives; it allows emissions reductions under the program to be determined as a rate of emissions rather than the actual emissions of an engine; and, it provides that the rules adopted to implement this section may not require more stringent emissions reduction criteria than those set forth by the program. HB 638 also changes the definition of "affiliate" in the Emissions Reductions Incentives Account and requires that money in the account only be appropriated for emissions reduction incentives projects; it provides that a person who pays or contributes money to the account is ineligible to receive money from the account under a program developed under the Reimbursement Program previously mentioned. HB 638 allows reciprocating internal combustion engines to be considered permitted if certain criteria are met.

**House Bill 1287**

**Author: Chisum**

Relating to the location/operation of concrete crushing facilities for purposes of air permits.

**Summary:** HB 1287 clarifies that a concrete crushing facility may not be operated within 440 yards of a building in use as a residence, school or place of worship on the date the application is filed, although such a facility can be temporarily located within such a distance. (The prior statute had prohibited both the location and the operation of such facilities within 440 yards of such structures.) The bill provides that certain facilities are exempt from this distance requirement. The distance measurement must be taken from the point on the concrete crushing facility site that is nearest to the

residence, school, or place of worship toward the point on the residence, school, or place of worship.

**House Bill 1365**

**Author: Bonnen**

Relating to the Texas emissions reduction plan.

**Summary:** HB 1365 is the comprehensive Texas Emissions Reduction Program (TERP) cleanup legislation that is part of the state's effort to meet the requirements of the federal Clean Air Act. This bill provides funding for the TERP by raising the certificate of title fees of vehicles from \$13 to \$33 in counties located in non-attainment areas of Texas and increases the fee from \$13 to \$28 in all other counties of the state. HB 1365 also prohibits the TCEQ from using speed limits for meeting Clean Air Act requirements. HB 1365 expressly expands some of the programs established under the TERP to enable more projects and persons to be able to participate in the programs. In addition, HB 1365 creates a small business incentive program and enables the TCEQ and other state agencies to give preferences to or require vendors to meet or exceed state and federal environmental standards such as voluntary air standards. HB 1365 increases the TERP funding of the development of technology which will assist the state in reducing air emissions.

**House Bill 1481**

**Author: Allen**

Relating to subaccount for Title IV & V fees.

**Summary:** This bill requires that fees collected pursuant to Title V be deposited in a subaccount in the clean air account, and not be commingled with any other fees. Funds placed in that subaccount can only be used to cover the costs of developing and administering the Title V Operating Permit program or the Title IV Acid Rain Permit program. Any balance left in the subaccount at the end of a fiscal year will be left in the subaccount and used in subsequent fiscal years only for the Title IV and Title V programs.

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**WASTE**

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**House Bill 1567**

**Author: West, George "Buddy"**

Relating to the disposal of low-level radioactive waste; authorizing the exercise of the power of eminent domain.

**Summary:** HB 1567 defines unsuitable sites for the disposal of low-level radioactive waste; provides rules for the application process associated with the disposal of such radioactive waste; requires certain procedures for waste disposal and conveyance; allows TCEQ to issue a license for such a facility to a private entity; and, requires certain levels of financial assurances sufficient to provide for the decommissioning and long term care of such facilities.

**House Bill 1765**

**Author: Smith, Wayne**

Relating to requiring financial assurance as a condition of issuing a permit or registration to haulers of certain solid wastes.

**Summary:** Prior law had required a demonstration of financial assurance by certain transporters of waste materials. For example, used oil transporters and medical waste transporters were required to maintain financial assurance under TCEQ rules. However, grit waste and grease trap waste transporters were not required to maintain such financial assurance. HB 1765 addressed this issue by mandating financial assurance as a condition of issuing a permit or registration for the collection, transportation, or processing of grit trap waste or grease trap waste.

**House Bill 1791**

**Author: Chisum**

Relating to permits for the commercial composting of certain solid wastes.

**Summary:** Prior law had allowed grease collected from commercial grease traps to be applied to compost. HB 1791 requires facilities that are composting grease trap waste to be permitted by the TCEQ.

**House Bill 1823**

**Author: Hamric**

Relating to financial assurance for certain solid waste processing facilities.

**Summary:** HB 1823 directs the TCEQ to adopt rules requiring owners and operators of recycling facilities to post financial assurance.

**HB 2546**

**Author: Bonnen**

Relating to the land application of certain sludge.

**Summary:** Land application of Class B sludge has been of concern across the state. HB 2546 provides for more restrictions and requirements to companies involved in the practice of applying Class B sludge to help ensure safety for citizens, land, and water, including: a more vigorous tracking system; identification of crops grown at the site of application; suggested agronomic application rates; proof of certain types of insurance; proper licensing of supervisors; information related to the date, source, quality, and quantity of sludge applied; establishment of criteria which will prohibit such sludge application sites in certain parts of coastal counties; and, transportation requirements.

**House Bill 2554****Author: Smith, Wayne**

Relating to the application of new requirements for nonhazardous industrial solid waste disposal to be adopted by the Commission on Environmental Quality.

**Summary:** HB 2554 requires the TCEQ to adopt rules to regulate the management and operation of new commercial landfill facilities that propose to accept nonhazardous industrial solid waste for which a permit has not been issued on or before the effective date of the legislation. HB 2554 also directs the TCEQ to suspend the permitting process for any pending application for a permit for a new commercial landfill facility that is scheduled to accept nonhazardous industrial solid waste until the rules are adopted by the agency.

Note that proposed rules had been drafted prior to the legislation being passed. (See rule log number: 2002-052-335-WS.) The draft rules are being revised to be consistent with HB 2554. The draft rules are scheduled to go before the Commissioners for their approval to publish on August 20, 2003 and are scheduled to be adopted by March 4, 2004. The approval deadline may, however, be moved up in response to this bill.

**House Bill 3152****Author: Bonnen**

Relating to the potability of and requirements for removing contaminants from groundwater.

**Summary:** HB 3152 was passed with the stated purpose of eliminating unnecessary groundwater investigations/response actions for certain properties with contaminated groundwater. HB 3152 authorizes the TCEQ to approve municipal setting designations ("MSDs") so long as certain affected local governments evidence their support for the designation by way of an ordinance or resolution. The property subject to a proposed MSD must be subject to a municipal ordinance or restrictive covenant that is enforceable by the municipality that prohibits the use of groundwater for potable purposes or certain other uses. HB 3152 authorizes an individual or municipality to apply to the TCEQ for an MSD for certain eligible properties that rely on protected community water systems to supply drinking water. If groundwater use is restricted to non-potable uses and public water is or will be made available (and subject to certain eligibility and notification requirements), the TCEQ could certify the area as an MSD. If the designation is made by the TCEQ, the agency is limited (compared to prior law) in what it can require of the responsible party in terms of investigation and remediation.

A site is eligible for an MSD if the property or properties are located within a city of at least 20,000 residents, public drinking water is provided or is capable of being provided, and the property is ultimately subject to an appropriate ordinance or restrictive covenant restricting the use of designated groundwater. The MSD may not be issued if it would negatively impact the current or future regional water resource needs or obligations of the area or surrounding area where the MSD is sought.

# What Did Not Pass:

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## GENERAL

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### **Senate Bill 326**

**Author: Shapleigh**

Relating to the regulation of certain sales of water through pipelines.

*Last Action:* 02-06-03 Referred to Natural Resources Committee

**Summary:** This bill would have given the TCEQ the authority to regulate the price of water transported at least 50 miles or between water basins, for the stated purpose of ensuring that “purchases are protected while allowing private businesses to get a fair rate of return on their investment.” SB 326 would have made many water pipelines common carriers for purposes of their use and regulation.

### **Senate Bill 397**

**Author: Shapleigh**

Relating to the requirement of a public hearing for certain applicants seeking the issuance, amendment, or renewal of air quality permits.

*Last Action:* 02-12-03 Referred to Natural Resources Committee

**Summary:** This bill would have required the TCEQ to hold a public hearing on the issuance, renewal, or amendment of an application for an air quality permit if the EPA named the applicant as a potentially responsible party for environmental contamination.

### **Senate Bill 1048**

**Author: Ellis, Rodney**

Relating to the abolition of the Public Utility Commission of Texas and the Railroad Commission of Texas, and the creation of the Texas Energy and Communications Commission.

*Last Action:* 05-16-03 No action taken in committee.

**Summary:** This bill would have created the Texas Energy and Communications Commission and would have transferred the powers and duties of the PUC and the RCT to the new commission and other state agencies.

### **Senate Bill 1363**

**Author: Staples**

Relating to the repeal of the authority of the Commission on Environmental Quality to initiate an enforcement action using information provided by a private individual.

*Last Action:* 03-19-03 S Introduced and referred to committee on Senate Natural Resources

**Summary:** This bill would have completely repealed current law that allows an agency enforcement actions to be initiated based on information provided by a private individual.

**House Bill 2**

**Author: Swinford**

Relating to the reorganization of, efficiency in, and other reform measures applying to state government.

*Last Action:* 05-13-03 Placed on major state calendar.

**Summary:** HB2 was a comprehensive bill that, among other things, revised the public participation opportunities in TCEQ's permitting process by adding a "nonadjudicative hearing" to the permitting process for certain permits proposed to be issued under Chapters 26 (water quality permitting) and 27 (injection well permitting) of the Water Code, and Chapters 361 (solid waste permitting) and 382 (air quality permitting) of the Health & Safety Code. The nonadjudicative hearing was designed to address protestants' concerns with a particular project without the need for a contested case hearing.

HB2 also affected the TCEQ's compliance history rules. It repealed the existing Water Code sections regarding compliance history. In its place, HB2 proposed more general compliance history provisions. For example, it provided that the TCEQ can consider any adjudicated decision or compliance proceeding addressing past performance and compliance when considering an application, and it allowed the agency to deny or suspend a permit if the history "contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations."

**House Bill 168**

**Author: Christian**

Relating to enforcement actions initiated by the TCEQ based on information received from a private individual.

*Last Action:* 02-06-03 Introduced and referred to committee on House Natural Resources

**Summary:** This bill changed the "citizen collected evidence" laws adopted in the 77<sup>th</sup> legislative session by allowing enforcement actions to be based on citizen collection evidence only if the TCEQ had conducted an investigation that indicated an enforcement action was warranted.

**House Bill 223**

**Author: Bailey**

**Companion: SB 1801**

Relating to the authority of certain counties to enact noise regulations.

*Last Action:* 03-26-03 Committee action pending House County Affairs

**Summary:** This bill allowed the commissioners court of a county to regulate sound levels (including sound levels produced by off-road diesel equipment) to promote the public health, safety, or welfare.

**House Bill 877**

**Author: Rodriguez**

Relating to the relationship between the amount of an administrative penalty imposed by the Commission on Environmental Quality and the economic benefit of the violation to the alleged violator.

*Last Action:* 02-18-03 Introduced and referred to committee on House Environmental Regulation

**Summary:** This bill would have tied the amount of an administrative penalty to the economic benefit of the violation to the alleged violator.

**House Bill 1005**

**Author: Fraser**

Relating to emergency orders and penalties for rock crushers and concrete plants.

*Last Action:* 05-29-03 Postponed in Senate.

**Summary:** This bill would have provided the commission with greater discretion in setting the penalty for unpermitted rock crushers and concrete plants. Automatic shutdown and a \$10,000 penalty would no longer be mandatory.

**House Bill 1063**

**Author: Smith, Wayne**

**Companion: SB 455**

Relating to compliance histories for and incentives to reward compliance performance by entities regulated by the Commission on Environmental Quality.

**Summary:** This bill would have clarified last session's legislation regarding compliance history in several ways favorable to industry (e.g. shortened the time period from five years to three years and required the agency to give entities an opportunity to review and correct their information before it is posted on the internet).

**House Bill 1219**

**Author: Haggerty**

Relating to the location and operation of concrete crushing facilities.

*Last Action:* 03-11-03 Left pending in committee.

**Summary:** This bill would have allowed for concrete crushing facilities to be located on the site of the demolition of a structure so that the materials being crushed could be used at that location.

**House Bill 1792**

**Author: Chisum**

Relating to the authority of the Office of Public Interest Counsel under the Commission on Environmental Quality.

*Last Action:* 04-09-03 H Reported from committee as substituted House State Affairs

**Summary:** This bill would have granted the OPIC the right to challenge TCEQ rules in district court.

**House Bill 2664**

**Author: Puente**

Relating to the office of public interest counsel.

*Last Action:* 04-15-03 Reported favorably from committee on House Natural Resources

**Summary:** This bill would have provided OPIC a budget separate from the TCEQ's budget.

**House Bill 2877**

**Author: Bonnen**

**Companion: SB 1263**

Relating to the permitting procedures of the Commission on Environmental Quality.

*Last Action:* 05-30-03 Point of order sustained in the House under Rule 11

**Summary:** This was another comprehensive bill which, among other things, would have revised the "House Bill 801 process" to close some loopholes that favored protestants. For example, the current rules require would-be protestants to file comments and hearing requests in a timely fashion if they want to request that the Commissioners designate them as parties, but the rules allow the ALJ to add additional parties that did not follow any of the procedural requirements.

# FIRST CALLED

## Special Session Filings:

### Senate Bill 19

Author: Ellis

Relating to the reorganization of, efficiency in, and other reform measures applying to state government.

**Summary:** SB 19 is similar to HB 2, the government reorganization and efficiency bill considered during the regular session. Like that bill, SB 19 includes a broad array of provisions generally designed to enhance the efficiency of state government, enhance the ability of the Governor to manage state agencies, and to save the state money. SB 19 also directs a 7-member study committee to conduct an in-depth evaluation of TCEQ's permitting processes, with input from stakeholders, in order to define appropriate changes to the agency's permitting processes through legislation in the next session.

### House Bill 21

Author: Chisum

Relating to efficiency in certain procedures and hearings of the Texas Commission on Environmental Quality.

**Summary:** HB 21 is largely the same as the "environmental efficiency" components of HB 2, as that bill was considered in the regular session. Like HB2, HB 21 seeks to repeal to the existing code sections regarding compliance history, which would presumably result in the complicated TCEQ rules also being repealed. HB 21 proposes more general compliance history provisions.

Also, like HB 2 during the regular session, HB 21 proposes a "nonadjudicative hearing" process for certain types of air, waste and water permits. For example, it provides that certain air quality permits (certain specified existing facilities, electric generating facilities, pipeline facilities, and permits for voluntary emissions reductions) are to be noticed for a non-adjudicative hearing. Significantly, it also provides that certain air quality permits to be issued pursuant to Health & Safety Code Chapter 382.056, and which represent amendments, modifications, or renewals that would not result in an increase in allowable emissions, are not to be subject to contested case hearings. The bill also includes a whole list of other facilities that are made subject to the exemption from contested case hearings, including rock crushers, concrete batch plants, and hot mix asphalt plants. Notwithstanding this apparent outright exemption from the contested case hearing processes, there is an exception to this "exemption" if the facility seeking the amendment, modification, or renewal does not have a good compliance history. Similarly, with regard to water quality permitting, the bill allows a permit renewal or amendment which does not seek to increase loadings, and that is

made by a permittee with a good compliance history, to be issued by the agency without a contested case hearing.

**House Bill 73**

**Author: Bonnen**

Relating to the permitting procedures of the Texas Commission on Environmental Quality.

**Summary:** This bill is very similar to HB 2877, which was considered during the regular session. HB 73 clarifies the content of requests for contested case hearings by requiring that any hearing requests must be related to issues raised in the public comment period by that specific requestor (as opposed to issues raised by anyone), it eliminates a hearing notice requirement to the public in the event the commissioners grant specific hearing requests (i.e. those who had had their requests for hearing granted will get notice, but notice to the general public of such a hearing will no longer be required, and it provides that an ALJ at SOAH cannot expand the list of protestant-parties to include persons other than those whose hearing requests were granted by the commissioners and whose issues were referred to SOAH for hearing.

## **THIRD CALLED Special Session Charges:**

In addition to congressional redistricting, the Governor placed eight items on the call:

- To consider legislation relating to state fiscal management, including adjustments to certain school district fiscal matters made necessary by recent changes in state fiscal management; making related appropriations.
- To consider legislation relating to the dates of certain elections, the procedures for canvassing the ballots for an election, and the counting of certain ballots voted by mail.
- To consider legislation modifying the filing period and related election dates for the primary elections in Texas.
- To consider legislation relating to the financing, construction, improvement, maintenance, and operation of toll facilities by the Texas Department of Transportation and the disposition of money generated by the driver responsibility program, fines imposed for certain traffic offenses, and certain fees collected by the Department of Public Safety of the State of Texas; making an appropriation.
- To consider legislation relating to the reorganization of, efficiency in, and other reform measures applying to state government.

- To consider legislation appropriating fees established by legislation from the 78<sup>th</sup> Regular Session of the Texas Legislature that remain unappropriated. This matter shall be strictly construed to only include fees that were established during that session of the legislature.
- Legislation relating to making an appropriation for the purpose of returning to a fund outside of the state treasury cash that was transferred from the fund to the general revenue fund.

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