



April 10, 2015
Number 15

Oil and Gas Bill Set on House Calendar

The House version of the oil and gas drilling bill, H.B. 40 by Rep. Drew Darby, has been placed on the House calendar for consideration on April 14. The [committee substitute version](#) of the bill was agreed to by both the League and the oil and gas industry last week.

The substitute bill improves on the original bill in four significant ways. It would:

1. enshrine in statute a non-inclusive list of items cities can regulate, including fire and emergency response, traffic, lights, noise, notice, and reasonable setbacks. (The inclusion of setbacks is a key component because the original version of the bill likely prevented them.)
2. permit cities to regulate aboveground activity that is “related” to oil and gas operations, as opposed to activities that are “incident” to operations, as in the original version of the bill. The “incident to” language was prohibitively restrictive.
3. include a much better definition of “commercially reasonable,” one of the tests an ordinance must meet to be valid under the bill. The substitute provides that commercially reasonable is based on an objective standard instead of the subjective assessment of a particular oil and gas operator.
4. create a “prima facie” presumption of commercial reasonableness for certain ordinances that have allowed activity for at least five years. This “safe harbor” is a rolling five-year time period that would permit recent or future ordinances to qualify so long as they haven’t prevented operations for a five-year period.

Make no mistake: the League believes the bill is unnecessary. But we have agreed to be “neutral” on the substitute. It isn’t perfect. Some areas of regulation, especially those related to

subsurface activity, would be preempted by the substitute. So would outright city-wide bans on oil and drilling or fracking. But here's the essential point: *better than 80% of what most cities regulate under current ordinances will be protected under the committee substitute.*

The House bill's author, Chairman Drew Darby, has agreed to fight off any detrimental amendments from the perspective of either group – cities or oil and gas. This is a very beneficial deal from the League's perspective. If the deal weren't in place, and given the political makeup of the Texas House and Senate, it's nearly certain that further amendments to the bill would make it worse instead of better (most likely worse than the originally-filed version). Some committee members where the bill and its companion were heard expressed frustration that city authority wasn't completely preempted.

Unlike some special interest groups who would rather “go down with the ship” than reach a compromise, city officials know that their ordinances don't exist in a perfect world, and that losing such ordinances in their entirety would be devastating.

Cities should contact their House members now with the following message: while we prefer that no bill pass, we stand by Chairman Darby's commitment that if a bill must pass it will be the substitute version of H.B. 40 *with no amendments*. City officials who know Chairman Darby personally should contact him to thank him for committing to a middle ground that protects most city authority.

Uber/Lyft Bill Won't Screen Out Criminals

Yesterday, a bill that would strip cities of the authority to regulate “transportation network companies” (e.g., technology-based taxis like Uber and Lyft) was heard by a skeptical House Transportation Committee.

The committee members were critical of provisions of H.B. 2440 by state Rep. Chris Paddie (R – Marshall) that would prevent more effective fingerprint criminal history background checks. (Those checks are required by some city ordinances.) Earlier this week, the *Houston Chronicle* reported that an Uber driver with a felony drug conviction was recently arrested for sexual assault of an Uber customer in Houston.

According to the *Chronicle*, the driver had not submitted to the city's permitting process. Instead, the transportation network companies rely on Internet-based background checks. According to testimony given at the hearing by the Department of Public Safety, those can be much less effective in identifying criminals.

City officials concerned about the ability of cities to protect the health and safety of taxi customers should express their opposition to H.B. 2440.

TML Names Legislators of the Month for March

Representative Chris Turner (D – Arlington) and Senator Kel Seliger (R – Amarillo) are the TML Legislators of the Month for March 2015. Representative Turner represents House District 101, a rapidly growing and diverse area of Tarrant County, which includes major portions of Arlington and Grand Prairie. Senator Seliger’s Senate District 31 currently spans 37 counties from the Panhandle to the Permian Basin and includes Amarillo, Midland, Odessa, and Big Spring.

First elected to the Texas House in 2012, Representative Turner serves on the House Committees on Ways and Means and General Investigation and Ethics. Representative Turner has publicly defended the ability of cities to employ and hire specialists to represent their interests at the Capitol.

Senator Seliger was elected to the Texas Senate in 2004 and serves as the Chairman of the Senate Higher Education Committee. He also serves on the Senate Education Committee, Senate Finance Committee, Senate Committee on Natural Resources and Economic Development, and the Senate Committee on Business and Commerce. Prior to his election to the Texas Senate, he served as mayor in the City of Amarillo. Senator Seliger’s public advocacy in defense of city authority to raise revenue to provide vital services has benefited all cities.

We hope city leaders across Texas, and particularly those in Representative Turner’s and Senator Seliger’s districts, will express their appreciation to these outstanding leaders.

TML Affiliate “Shout-Out”: Building Officials Association of Texas

The various professional disciplines in city government are represented in the League through its 21 “affiliate organizations.” When the League needs information and action on legislation, nothing is more helpful than the quick response of our affiliates. Affiliate officers have an expertise that is second to none in their respective fields, and one affiliate that consistently goes above-and-beyond the call of duty is the Building Officials Association of Texas (BOAT).

BOAT is dedicated to enhancing the professionalism of its members, advancing the standards of the building industry, and leading in the resolution of public policy issues. The organization did that this week with its quick responses and willingness to testify on this session’s energy code legislation, H.B. 1736 by Rep. Jason Villalba. Due to BOAT’s efforts, a compromise was reached that protects municipal authority where it is needed most.

The League extends its thanks to all of the affiliate officers and members who work with us to protect city interests. In addition, a special “shout out” this month goes to BOAT.

Big Government Index: Austin Politicians Decide For You

To assist those city officials who have had enough of efforts to consolidate big government in Austin, the League has prepared the “Big Government Index.” The index is a list of every bill that would increase state government’s control over your city. A surprisingly large number of overreaching bills have been filed: 72 at last count. Click [here](#) to see all the ways Austin wants to decide for you.

City Officials Testify

When the legislature is in session, nothing compares to the effectiveness of city officials testifying at the Capitol. City officials who take their time to travel to Austin to speak out on important city issues should be applauded by us all. The League extends its thanks to all those who have vigilantly represented cities during the legislative session.

- Alfredo Saldana, Councilmember, Pecos
- Brian England, Deputy City Attorney, Garland
- Cortney Niland, Councilmember, El Paso
- Derrek Ferrell, Assistant to City Manager, McKinney
- Jonathan Fuentes, Finance Director, Pecos
- Julie Masters, Mayor, Dickinson
- Julie Robinson, City Administrator, Dickinson
- Larry Carlton, Mayor Pro Tem, Cibolo
- Michael Carpenter, Mayor, Schertz
- Patrick Walsh, Planning Director, Houston
- Peter Davidson, Marina Director, Corpus Christi
- Robert Looney, Management Officer, San Antonio
- Ron Jensen, Mayor, Grand Prairie
- Sonny Estrada, Councilmember, Poteet
- Susan Alanis, Assistant City Manager, Fort Worth
- Thomas Lawrence, Assistant Police Chief, Dallas
- Tom Tagliabue, Intergovernmental Relations Director, Corpus Christi

Significant Floor Actions

H.B. 1 (Otto), this is the state budget. Passed the House.

S.B. 267 (Perry), relating to the regulation by a municipality or county of the rental or leasing of housing accommodations. Passed the Senate.

S.B. 394 (Perry), relating to the use of supplemental environmental projects by a local government to come into compliance with environmental laws or remediate environmental harm caused by the local governments. Passed the Senate.

S.B. 474 (Kolkhorst), relating to the recovery of costs and fees in connection with certain eminent domain proceedings. Passed the Senate. **As reported, the bill would provide that, if the amount of damages awarded by the special commissioners is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began or if the commissioners' award is appealed and a court awards damages in an amount that is at least 20 percent greater than the amount the condemnor offered to pay before the proceedings began, the condemnor shall pay: (1) all court costs; and (2) any reasonable attorney's fees and other professional fees incurred by the property owner in connection with the eminent domain proceeding.** (City officials concerned about the effect of this bill should contact their House members now.)

S.B. 505 (Perry), relating to painting and marking requirements for certain towers. Passed the Senate.

S.B. 582 (Kolkhorst), relating to education and training programs for food handlers. Passed the Senate.

S.B. 1264 (Eltife), relating to the regulation of certain industrialized housing and industrialized buildings. Passed the Senate.

Significant Committee Actions

H.B. 40 (Darby), relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state. Reported from the House Committee on Energy Resources. (Note: See article on H.B. 40 elsewhere in this edition.)

H.B. 992 (D. Bonnen), relating to the exemption from ad valorem taxation of the total appraised value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran. Reported from the House Committee on Ways and Means.

H.B. 1378 (Flynn), relating to annual financial reporting of debt information. Reported from the House Committee on Investments and Financial Services. As reported, the bill would: (1) require every political subdivision to prepare an annual financial report that contains financial information for each city fund, as well as a various types of information relating to the city's debt obligations; (2) provide that an alternative to preparing a report under (1), above, would be for the political subdivision to provide all fund and debt information to the comptroller and have the comptroller post the information on the comptroller's official website; (3) require every political

subdivision to maintain an internet website to post the financial report required by (1), above, except that a city or county with a population of 2,000 or less could post the report on a social media or other website in which the political subdivision controls the content of the posting; and (4) provide that, except in a case of a public calamity, a case in which the issuer needs to act to protect the health of the residents, a case of unforeseen damage to public equipment or property, or to comply with a state or federal regulation, a city may not issue a certificate of obligation (CO) if the voters voted down a bond proposition for the same purpose within the preceding three years.

H.B. 1418 (Bell), relating to the annexation of certain territory by general law municipalities. Reported from the House Committee on Land and Resource Management.

H.B. 1425 (Fletcher), relating to the amount of the fee paid by a defendant for a peace officer's services in executing or processing an arrest warrant, capias, or capias pro fine. Reported from the House Committee on Homeland Security and Public Safety.

H.B. 1665 (D. Bonnen), relating to notice of water level fluctuations to purchasers of real property adjoining an impoundment of water. Reported from the House Committee on Natural Resources.

H.B. 1794 (Geren), relating to maximum penalties for certain environmental violations. Reported from the House Committee on Environmental Regulation. As report, the bill would provide that: (1) the maximum amount of the civil penalty sought by a city or county is \$4.3 million; (2) the state can always pursue any amount of civil penalties; (3) in determining the amount of an administrative penalty sought by a city or county, the trier of fact (a judge or jury) shall consider factors that TCEQ must consider under current law; and (4) a suit for a civil penalty that is brought by a city or county must be brought not later than the fifth anniversary of the earlier of the date the person who committed the violation: (1) notifies the Texas Commission on Environmental Quality in writing of the violation; or (2) receives a notice of enforcement from the commission with respect to the alleged violation.

H.B. 2439 (W. Smith), relating to inspections and other activities conducted by engineers in connection with the issuance of certain windstorm and hail insurance. Reported from the House Committee on Licensing and Administrative Procedures.

H.J.R. 61 (Ashby), relating to the right to hunt, fish and harvest wildlife. Reported from the House Committee on Culture, Recreation, and Tourism. As reported, this bill would amend the Texas Constitution to provide that the people have the right to hunt, fish, and harvest wildlife, including by the use of traditional methods, subject to laws or regulations to conserve and manage wildlife and preserve the future of hunting and fishing. The bill would clearly protect the authority of cities to regulate the discharge of weapons.

S.B. 336 (V. Taylor), relating to the right of municipal officers to obtain information, documents, and records. Reported from the Senate Business and Commerce Committee.

S.B. 503 (Perry), relating to financial assistance to local governmental entities affected by the realignment of defense jobs or facilities. Reported from the Senate Veterans Affairs/Military Installations Committee.

S.B. 521 (Fraser), relating to the period for which the Texas Commission on Environmental Quality may grant or renew an emergency authorization relating to the use of state water. Reported from the Senate Agriculture, Water and Rural Affairs Committee.

S.B. 709 (Fraser), relating to environmental permitting procedures for applications filed with the Texas Commission on Environmental Quality. Reported from the Senate Natural Resources and Economic Development Committee.

S.B. 788 (Eltife), relating to requiring direct access to 9-1-1 service from certain telephone systems and Internet Protocol services. Reported from the Senate Business and Commerce Committee.

S.B. 912 (Eltife), relating to a volume-based exemption from reporting requirements for certain accidental discharges or spills from wastewater facilities. Reported from the Senate Agriculture, Water and Rural Affairs Committee.

S.B. 918 (Nichols), relating to the procedure for claiming an exemption from ad valorem taxation of the property of a veteran's organization. Reported from the Senate Finance Committee.

S.B. 1173 (Nichols), relating to commercial driver's licenses and commercial learner's permits and the operation of commercial motor vehicles. Reported from the Senate Transportation Committee.

City-Related Bills Filed This Week

Each week, League staff summarizes in this section the city-related bills filed during the previous week. For a cumulative list of all city-related bills filed to date, click [here](#).

There were no additional city-related bills filed this week.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.