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## Legislative Update: New Texas Laws Affecting the Environment or Environmental Regulation

By Anthony Cavender, Amanda G. Halter and Nicholas M. Krohn

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*This Texas legislative session brought several notable environment- and energy-related changes. The major standouts are culled and summarized in this Pillsbury Legislative Update.*

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### **Txdot Authorized to Conduct NEPA Reviews of Transportation Projects**

The Transportation Code was amended to authorize the Texas Department of Transportation (TxDOT) to assume the duties of the U.S. Department of Transportation (USDOT) with respect to Texas transportation projects under the National Environmental Policy Act of 1969 (NEPA). TxDOT is also now authorized to enter into agreements with the USDOT to exclude certain highway projects from environmental assessment and impact statement requirements. TxDOT may adopt rules and standards for implementing these new authorities. Signed by Governor Perry and effective May 18, 2013.

Bill: SB 466

Key legislators: Sen. Juan “Chuy” Hinojosa (D – Dist. 20), McAllen; Sen. Robert Nichols (R – Dist. 3), Jacksonville

### **Audit Privilege Act Immunity Extended to New Property Owners**

The Texas Environmental, Health, and Safety Audit Privilege Act provides that certain documents and information may be privileged when they are collected as part of an environmental self-audit of facilities regulated by the Texas Commission on Environmental Quality (TCEQ). The Act also grants certain immunities from administrative and civil penalties for health and safety violations voluntarily disclosed and timely corrected. The Act currently provides these benefits only to facility owners and operators. This session’s amendment expands the reach to new owners who begin audits in connection with their pre-acquisition investigations. The new owners will also enjoy the Act’s immunities, provided violations are disclosed within the first six months of acquisition. In addition, duration of ownership can now be considered as a mitigating factor in penalty assessments. Signed by Governor Perry May 24, 2013 and effective September 1, 2013.

Bill: SB 1300

Key legislators: Sen. Kevin Eltife (R – Dist. 1), Tyler; Sen. Glenn Hegar (R – Dist. 18), Katy

### **Liability for Recycled Drilling Fluids Limited**

New law limits liability for damage caused by fluids that were 1) used during oil and gas drilling and production, and 2) treated or intended to be treated for reuse in oil and gas drilling and/or production. Generally, liability is now limited to the party in possession of the fluids. However, in an action for personal injury, death or property damage arising from exposure to the fluids, persons who treat such fluids do not benefit from this liability limitation. Signed by Governor Perry May 28, 2013 and effective September 1, 2013.

Bill: HB 2767

Key legislators: Sen. Craig Estes (R – Dist. 30), Wichita Falls; Rep. Phil King (R – Dist. 16), Parker, Wise; Rep. Jim Keffer (R – Dist. 60), Eastland; Tryon Lewis (Dist. 81), Odessa

### **“Conservation Lands” Now Benefit From Limits on Liability for Prescribed Burning**

Chapter 153 of the Natural Resources Code places limitations on owner liability when personal injuries or property losses result from a prescribed burning, if the prescribed burning is conducted under the supervision of a certified and insured “Prescribed burning manager.” This exception will be extended to owners, lessees or occupants of “Conservation land,” land that is set aside for ecological value. Signed by Governor Perry and effective May 25, 2013.

Bill: SB 764

Key legislators: Rep. Tracy O. King (D – Dist. 80), Batesville; Sen. Kirk Watson (D – Dist. 14), Austin

### **Legislature Increases Texas Railroad Commission Maximum Penalties**

The maximum penalty amounts that can be assessed for violation of statutes administered by the Texas Railroad Commission will soon go up, aligning these penalties with the penalties provided by the federal laws and administered by the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration. Penalties currently specified in the Natural Resources Code and the Utilities Code relating to pipelines and pipeline safety will increase substantially. Signed by Governor Perry May 18, 2013 and effective September 1, 2013.

Bill: SB 900

Key legislators: Rep. Gene Wu (D – Dist. 137), Houston; Sen. Troy Fraser (R – Dist. 24), Horseshoe Bay

### **TCEQ to Get Greenhouse Gas Permitting Authority**

A new law would authorize the TCEQ to establish a state Greenhouse Gas permitting program. New Section 382.05102 will be added to the Health and Safety Code, and the TCEQ will be required to adopt rules to implement this new authority, including new permitting fees. Sent to Governor Perry May 22, 2013; if signed, will be effective immediately.

Bill: HB 788

Key legislator: Sen. Juan “Chuy” Hinojosa (D – District 20), McAllen

### **New PACE Bill Would Expand Financing Options for Commercial and Industrial Energy and Water Efficiency Projects**

This bill authorizes counties and municipalities to set up property-assessed clean energy (PACE) programs for commercial and industrial property owners. PACE loans provide financing for qualified energy and water efficiency improvements. Property owners will repay the loans yearly through property tax assessments collected by local taxing authorities. The assessments will constitute a first and prior lien against the property. The programs are expected to ease financing for major retrofit projects. Sent to Governor Perry May 16, 2013; if signed, will be effective immediately.

Bill: SB 385

Key legislators: Sen. John Carona (R – Dist. 16), Dallas; Rep. Jim Keffer (R – Dist. 60), Eastland

### **Property Tax Abatement for Landfill Methane Capture Property**

The Tax Code may be amended to allow a property tax exemption for property near a landfill used to transfer gas generated by the landfill into a pipeline or fueling station. The exemption would apply from January 1, 2014 to December 31, 2015. The bill also prohibits property tax refunds resulting from the appeal of a pollution control exemption denial, unless the landowner is entitled to the refund under existing law or the chief appraiser authorizes the refund pending a final determination by the TCEQ. Sent to Governor Perry on May 27, 2013.

Bill: HB 1897

Key legislators: Sen. John Carona (R – Dist. 16), Dallas, TX; Rep. Jim Keffer (R – Dist. 60), Eastland

### **Qualifying Co-Generators May Be Allowed to Sell Electric Power at Retail**

Chapter 37 of the Texas Utilities Code would be amended to allow “qualifying co-generators,” as that term is defined in federal law, to sell electric power at retail to more than one customer without subjecting the co-generator to regulation as a retail electric power provider. Sent to Governor Perry May 26, 2013 with an effective date of September 1, 2013.

Bill: HB 2049

Key legislators: Sen. Tommy Williams (R – Dist. 4), The Woodlands; Rep. Dan Huberty (R – Dist. 127), Kingwood; Rep. Jose Menendez (R – Dist. 124), San Antonio

### **Municipalities May Be Authorized to Bring Civil Actions to Enforce Local Floodplain Ordinances**

The Local Government Code would be amended to authorize municipalities to enforce local floodplain ordinances that regulate developments in designated floodplains through civil actions and civil penalties, which can also result in an abatement of a violation and the assessment of costs by the municipality. Sent to Governor Perry May 22, 2013.

Bill: HB 1554

Key legislators: Sen. Donna Campbell (R – Dist. 25), New Braunfels; Rep. Justin Rodriguez (D – Dist. 125), San Antonio

### **Texas Professional Engineers Would Be Subject to Complete Background Checks**

Section 1000 of the Occupations Code would be amended to require the Board to conduct fingerprint and criminal background information checks through the DPS on applicants for new licenses and license renewal applications, and to review complete federal and state criminal histories. Sent to Governor Perry May 16, 2013.

Bill: SB 204

Key legislators: Rep. Four Price (R – Dist. 87), Amarillo; Sen. Robert Nichols (R – Dist. 3), Jacksonville

### **Expedited Processing of Texas Clean Air Act Permit Applications**

The legislation would amend Chapter 382 of the Health and Safety Code to require the TCEQ to develop a program for the expedited processing of permits, amendments, registrations or variances if the TCEQ determines that the project would benefit the local or state economy. The legislation also authorizes the TCEQ to assess a surcharge to defray expenses, and even to use overtime and contract labor to support this permitting process. Sent to Perry Governor May 25, 2013.

Bill: SB 1756

Key legislators: Rep. Jason Villalba (R – Dist. 114), Dallas; Rep. Jim Keffer (R – Dist. 60), Eastland; Rep. Allan Ritter (R – Dist. 21), Nederland; Rep. Dennis Bonnen (R – Dist. 25), Angleton; Rep. Ryan Guillen (D – Dist. 31), Rio Grande City; Sen. Carlos I. Uresti (D – Dist. 19), San Antonio

### **Natural Resources Code Amended to Address the Operation of Saltwater Pipelines**

Chapter 91 of the Natural Resources Code would be amended to define “saltwater pipelines,” and to allow a saltwater pipeline operator to install, maintain, and operate a saltwater pipeline through, along, under or across a public road if the pipeline facility complies with applicable regulations of the Texas Railroad Commission and the Texas Transportation Commission. Sent to Governor Perry May 26, 2013.

Bill: SB 514

Key legislators: Rep. Gene Wu (D – Dist. 137), Houston; Sen. Wendy Davis (D – Dist. 10), Fort Worth

### **The Texas Emissions Reduction Plan Is Amended**

This legislation will make a number of changes to the Texas Emissions Reduction Plan (TERP) in Chapters 386, 391, and 394 of the Health and Safety Code, and would add existing programs to programs listed in Section 386.051(b). The TERP program is intended to encourage reductions in air emissions in non-attainment areas through the use of financial incentives. TCEQ would, for instance, be directed to place a priority on programs to reduce emissions of nitrogen oxides and particulate matter at port facilities and emissions from drilling equipment and related heavy-duty non-road equipment in oil and gas production fields. Sent to Governor Perry May 28, 2013.

Bill: SB 1727

Key legislators: Rep. Jason Isaac (R – Dist. 45) Dripping Springs; Rep. Ron Reynolds (D – Dist. 27), Missouri City; Rep. Patricia Harless (R – Dist. 126), Spring; Sen. Bob Deuell (R – Dist. 2), Greenville; Sen. Sylvia R. Garcia (D – Dist. 6), Palito Blanco

## Local Government Discretion over Supplemental Environmental Projects (SEPs) Funds Would Be Increased

Section 7.067 of the Water Code would be amended to allow local governments or other specified non-profit tax-exempt organizations receiving money from a respondent implementing a SEP to use a portion of that money, not to exceed ten percent of the direct cost of the project, for the local government's or tax-exempt organization's administrative costs associated with implementing the project. Sent to Governor Perry; if signed, effective immediately.

Bill: HB 2290

Key legislators: Rep. J.M. Lozano, Kingsville (R – Dist. 43), Alice; Rep. Trent Ashby (R – Dist. 18), Lufkin; Sen. Craig Estes (R – Dist. 30), Wichita Falls

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If you have questions, please contact the members of our [Environment, Land Use & Natural Resources](#) and [Public Policy](#) practices listed here.

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