

**Legislative Issues for the Oil and Gas
Industry
81st Session of the Texas Legislature**

By Bill Stevens
Executive Vice-president
Texas Alliance of Energy Producers

April 22, 2009

Each legislative session has its own personality and driving forces.

The 2009 session has several key components:

- A House divided almost equally (76 R and 74 D).
- A new speaker selected just days prior to the beginning of Session.
- \$9 billion plus rainy day fund combined with stimulus monies pave the way for a balanced budget, but may leave storm clouds on the horizon for years to come.
- No overriding major issues which have united large factions in either chamber.
- A looming battle over the Governor's office in 2010, and the potential shuffling of statewide Republican officeholders and aspiring Democrats.

Components driving energy legislation

- The impact, pro and con, of the high activity level and urban drilling in the Barnett Shale.
- The Barnett Shale.
- The future of CO2 and electric generation
- General disdain for eminent domain.
- Dissatisfaction with the operations of the RRC by members of the Industry and members of the Legislature
- Quest for diversification through renewables, alternatives and energy efficiency.
- The Barnett Shale

The collision of the Industry with the general populous in the metropolitan and suburban areas of the Barnett Shale has created an impassioned resistance to many of the general practices of the Industry and the RRC. This quality of life and private property clash has created scores of legislative initiatives in five general categories.

- *Notification*
- *Disposal well permitting/siting*
- *Surface owner rights/set backs*
- *Eminent domain of pipelines*
- *Expansion of county/municipality ordinance powers*
- *Water use and recycling (desalination)*

The best or worst (depending on perspective) examples of Barnett Shale legislation come from State Representative Lon Burnam of Fort Worth. He introduced three pieces of legislation which have had hearings in the Committee of Energy Resources, chaired by our good friend Jim Keffer (R, Eastland).

- **HB 1533 *Notification*** – compromise passed out of committee. It is bracketed to Tarrant and surrounding counties with a population of 50,000 or more. Requires notification at time of permit application – state senator and representative, county judge, county commissioner and city council member.
- **HB 1535 *Eminent Domain*** – still pending, but would require the development of three alternate routes and extends the protest period.
- **HB 1537 *Pipeline Safety*** - compromise passed out of committee. Again, bracketed to Tarrant County and surrounding counties.

Other Notification Bills – In all there have been a dozen other bills requiring notification of drilling permits, and commercial disposal well permits.

Two that are moving through the process are:

- **SB 540 by Estes** – passed the Senate and is now set for hearing in House Energy Resources. Requires that the commercial disposal well permit applicant to notify the applicable Ground Water District, and restricts the RRC or TCEQ from issuing a permit for 30 days to allow for protest.
- **HB 569 by Miller** – passed the House Energy Resources Committee and is waiting to be set for the House floor debate. Requires that the permit applicant notify the surface owner, adjacent surface owners, the county judge, the Ground Water District and publish in two local newspapers. It also requires the notice of any lessees, tenants or surface tenants under contract.

Disposal Wells

In addition to notification, citizen concern surrounding injection wells and commercial disposal well has escalated for the past decade, particularly in the Fort Worth Basin (Barnett Shale). However, it has caused recent alarm in NE Texas (Haynesville Shale) and in the Conroe area. The concerns run from siting near residential areas to truck traffic congestion to potential pollution.

A myriad of bills have been filed:

- HB 177, HB 178, HB 179 by Crieghton
- SB 254, SB 275, SB 276 by Nichols
- HB 4026, HB 4027, HB 4028 by Christain

Local Control

Citizens are perplexed, particularly, when they do not own the minerals, and realize they have less control than they would think. They become more agitated when they find that their municipality has not enacted adequate ordinances and that the county has little to no power to control oil and gas activity on the surface.

There has been an increasing number of bills seeking more control at the local level in municipal and county governments, and ground water districts.

The following bills have been filed:

- HB 1535, HB 1538 by Burnam
- HB 2254 by Hancock
- HB 3402 by King, Phil
- HB 3644 by Orr
- HB 3781 by Shelton
- HB 4175 by Bolton
- HB 4262 by Rodriquez
- SB 752 by Davis, Wendy
- SB 2402 by Davis, Wendy
- SB 2432 by Davis, Wendy
- SB 2433 by Davis, Wendy

Natural Gas Pipelines, Transmission and Gathering

Legislation governing the relationship between natural gas utilities, pipelines, and producers are also part of this session.

The Alliance supports each of the following three bills.

- **HB 1883 by Farabee/ SB 2143 by Duncan** clarifies the RRC jurisdiction in reviewing the pipeline declaration as a gas utility. The bill was heard in House Energy Resources and remains pending.
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- **HB 4246 by Keffer** requires the first purchaser or transporter to pay severance taxes to the State for 'lost and unaccounted for' gas over 2% . The bill was heard in House Ways & Means and remains pending.
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- **HB 3410 by Chisum** requires a gas utility to reimburse 'reasonable' costs and attorney's fees should a producer, state agency, or municipality prevail in a contested case at the RRC or in court.

Distributed Generation refers to the production of electricity in the field at the lease level for use on the lease or for sale into the grid.

- Most legislation is labeled 'distributive renewable generation' and intended to provide tax incentives or netmetering of wind and solar for residential or small commercial applications of 10kw or less to offset retail electric bills.
- **SB 2349 by Ogden/HB 4579 by Strama** are bills advocated by the Alliance to allow natural gas producers with stranded, waste or uneconomic gas to produce electricity up to 5,000 kw for sale to the electric utilities, electric coops, or retail electric providers. SB 2349 has received a hearing in Senate Business and Commerce and is being redrafted.

HB 2259 by Crownover/ SB by Seliger

The Inactive Well Study Group(IWSG) was created to answer legislative concerns from the last session regarding *inadequate financial assurance from producers and the need for surface cleanup of equipment from inactive wells*. For nearly two years, representatives from each of the five Texas oil and gas associations, royalty owners, mineral and surface owners and large ranches met to craft the following proposal. The resulting legislation creates a set of requirements that an operator must meet in order to receive an extension of a well's inactive status at the RRC.

The legislation effects only inactive wells. All financial assurance, rules governing producing wells and plugging regulations remain
the same.

IWSG Continued

The operator must choose from one of the following options:

- Plug or return to production at least 10% of total inactive wells per year
- Obtain an abeyance of plugging study (good for 5 yrs) by a certified engineer or geoscientist, and pay a fee (\$100/yr)
- Certify the well as part of an EOR project through the Comptroller (no fee)
- Conduct a fluid level or mechanical integrity test (good for 5 years but carries a \$50/yr fee)
- Obtain additional financial assurance for inactive wells based on a cost per foot per year of the RRC annual plugging costs by region.
- Contribute to an escrow account at the RRC of 10% of the costs of plugging.
- Certify as a public company through SEC filings that funds are available to plug, plus execute a UCC1 filing in the favor of the State of Texas or provide
- additional financial assurance with a cap of \$2 million.

IWSG (contd.)

- **In addition to the financial assurance, an operator shall meet the following surface cleanup requirements as applicable.**
- De-energize electric lines at the inactive well site.
- A well inactive for 5 years or more shall empty and purge tanks and specified related lines.
- A well inactive for 10 or more years shall comply with 1) and 2) and remove
- equipment. (There is an exemption for EOR projects)

Oilfield Cleanup Fund and Fees

In the Sunset legislation on the RRC in 2001, fees and taxes on the Industry going into the OFCF were carefully balanced between types of producers, size of producers, and the status of the Fund. To meet changes in the number of wells 'orphaned' in the OFCF, excess funds that could be swept by the legislature, and the need to get more money into the RRC operations, two bills before the legislature will return money to the producers and increase the RRC budget.

SB 2170 by Seliger/HB 2853 by Farabee provide for changes in the fee and tax structure.

- 1) The natural gas and crude oil regulatory tax will be cut in half to 1999 levels, returning \$6 million to producers.
- 2) 50% of drilling permit and expedited fees will now go to General Revenue for RRC operations in the permitting section and field inspectors.

Four bills are moving through the process which will be the basis of a Texas regulatory solution for the treatment of manmade (anthropogenic) CO₂ – its capture, its storage, its transportation, its sequestration and its use in enhanced oil recovery.

- SB 1387 by Seliger/ HB 2669 by Crownover**
- SB 2111 by Averitt/ HB 2811 by Hardcastle**

For the most part, the RRC (with more than 30 years of CO₂ experience) will become the lead agency in this regulatory framework with some jurisdiction to the TCEQ and the GLO. In Texas, we are striving to preserve CO₂ as a commodity.

Extension of GLO Lien

HB 2087 by Homer/ SB 1823 by Seliger

When signing a lease under State lands, it is implicit and contractual that the State has the right to perfect a lien on the property for non-payment of royalties or other amounts due.

To further protect the State, the General Land Office is asking for the authority to extend its lien power to other State leases owned/operated by the lessee.

Workers Comp

Conclusion