

# TEXAS ROYALTY COUNCIL

*85th Legislative Review 2017*

Protecting Texans' mineral rights

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Educating royalty owners

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Advocating for mineral owners



TEXAS  
ROYALTY COUNCIL

**TEXAS ROYALTY COUNCIL**  
**85<sup>TH</sup> Regular Legislative Session**  
**Final Session Report with National Update Addendum**

With more than 6000 bills filed during the 85<sup>th</sup> Legislative Session, it was, to say the least, busy. According to the Texas Legislative Reference Library, a total of 6,631 bills were introduced during the session. Of that total, over 1,200 bills were passed and sent to Governor Abbott. The Governor signed, let bill become law without signature, or vetoed legislation that was passed during the regular session. However, when it came down to bills that directly affected our oil and gas industry, the outcome was positive with no loss of tax incentives or other harmful constraints.

As you know, Governor Abbott announced he is calling for a special session to begin July 18, 2017: "A special session was entirely avoidable, and there was plenty of time for the legislature to forge compromises to avoid the time and taxpayer expense of a special session. As Governor, if I am going to call a special session, I intend to make it count."

Special session agenda items will include:

Sunset legislation, Teacher pay increase of \$1,000, Administrative flexibility in teacher hiring and retention practices, School finance reform commission, School choice for special needs students, Property tax reform, Caps on state and local spending, Preventing cities from regulating what property owners do with trees on private land, Preventing local governments from changing rules midway through construction projects, Speeding up local government permitting process, Municipal annexation reform, Texting while driving preemption, Privacy, Prohibition of taxpayer dollars to collect union dues, Prohibition of taxpayer funding for abortion providers, Pro-life insurance reform, Strengthening abortion reporting requirements when health complications arise, Strengthening patient protections relating to do-not-resuscitate orders, Cracking down on mail-in ballot fraud, Extending maternal mortality task force

A huge thank you goes out to all the trade organizations and individuals that worked very hard this session as well as to all the royalty owners that responded to the request to make calls and send emails. We send a truly special thank you to the Legislators and staff that did so much and worked so hard.

Sincerely,

Tricia Davis, President - Texas Royalty Council - American Royalty Council

## Summary

Below are summaries of bills important to industry, and thus, also to royalty owners that we at TRC worked on and/or testified on.

The bills that passed that are important to us include those that addressed the Texas Railroad Commission Sunset, Petroleum Products Theft, Royalty Check Stubs, Texting and Driving, Drill Cuttings, Change of Open Space Valuation, State Budget, Federal Regulatory Resolution, Texas Emission Reduction Plan, Repeal of County Energy Transportation Reinvestment Zones, ADA Drive By Lawsuits, Hail Litigation, Texnet Program, Prohibition of Unauthorized Drones, Median Cost of High Cost Gas Wells, Penalty on Certain Delinquent Oil and Gas Severance Taxes, Weight Limitations for Natural Gas Motor Vehicles, and Houston Ports Containers.

The bills that we worked on that did not pass include bills that address: Listing of Mineral interests in Ad Valorem Tax Appraisals, Eminent Domain, Unitization and Oil and Gas Waste, Enhanced oil recovery and reinvestment zones, Groundwater Fair Share, Property Tax Reform, Name and governance of the Railroad Commission of Texas, Posting Enforcement Information by the Railroad Commission, Administration of and Funding for the Texas Emissions Reduction Plan, Oil and gas regulation and cleanup fund, Inspection and maintenance requirements for air quality permits for certain oil and gas facilities, Designation of a well as a two-year inactive well or three-year inactive well for purposes of the oil and gas severance tax, Sales tax refund or severance tax credit for sales tax overpayments by certain oil or gas severance taxpayers, Allocating a portion of oil and gas production tax revenue to the counties from which the oil and gas originated, Resolution urging the U.S. Congress and federal executive branch to identify federal regulatory programs that harm the Texas oil and gas industry and delegate relevant regulatory responsibilities to state agencies, Liability for the additional tax imposed on land appraised for ad valorem tax purposes as agricultural land if the use of the land changes as a result of a condemnation; and Study of the fees charged by the Railroad Commission.

## **TRC Priority Bills**

### **Bills that Passed**

**The Railroad Commission of Texas Sunset bill - HB 1818** After four legislative sessions, the RRC Sunset bill finely passes! This bill allows the commission to continue for another 12 years with

oversight for regulation and safety of our important industry and to include funding to meet their needs. The oil and gas industry will have certainty for developing energy that will not only help to support our public schools, build roads and other but to continue to support more than 700,000 Texas residents that receive royalty income. This bill was the most important bill of the session. The bill was signed by Governor Greg Abbott on May 22, 2017. Thank you Chairman Drew Darby, Chairman Larry Gonzales and Vice Chair Senator Van Taylor for this very important success.

**Petroleum Products Theft - SB 1871** amends the Penal Code to create a new jail felony offense-theft of petroleum products, which will directly address the growing issue of oil theft or laundering. While it is already illegal to steal petroleum products and oil and gas equipment, this bill creates a specific, targeted oil and gas theft statute with a steeper penalty ladder, thus providing prosecutors with a better tool to dismantle criminal enterprises. The Energy Security Council (ESC) estimates one (1) to three (3) percent of production is being stolen in the state of Texas. With more than 1 billion barrels of oil and condensate produced in Texas in 2016, the estimated annual loss of 10 to 30 million barrels or a revenue loss of \$450 million to nearly \$1.5 billion at today's prices. That loss is not only to the companies but to the state and to royalty owners alike. The bill was signed by Governor Abbott on May 19, 2017, and will take effect on September 1, 2017. Paula Barnett with BP America was instrumental in the passage of this very important bill. Thank you, Paula.

**Royalty Check Stubs - HB 129** requires a payor of oil and gas royalty payments by a paper check to secure the consent of a royalty interest owner before providing the check stub information in a manner other than paper. The bill was signed by Governor Greg Abbott on May 29, 2017. A special thanks goes to TIPRO for all their work on this bill. Thank you, Speaker Craddick.

**Texting and Driving - HB 62** makes it an offense if a driver uses their phone to read, write, or send a message while the vehicle is moving. The bill also provides an affirmative defense that the driver was using a hands-free device, reporting illegal activity or to call for help, read a message they believe was an emergency, using it to relay information in the course of work. Exemptions are provided for emergency, law enforcement drivers, and FCC drivers operating radio frequency device. The offense is a misdemeanor punishable by a fine of at least \$25 and no more than \$99 unless parties have been found guilty of it before; then violations may be set at \$100 and no more than \$200. The bill was signed by Governor Greg Abbott on June 6, 2017. Thank you, Speaker Craddick, for this important bill that will save lives in Texas.

**Drill Cuttings - SB 1541** adds a definition of "treatment" in the statute relating to the treatment and recycling for the beneficial use of drill cuttings. It allows the Railroad Commission to adopt

criteria for beneficial use defining “beneficial use” to mean; in the construction of oil and gas lease pads or oil and gas lease roads or as part of a legitimate commercial product. The bill was signed by the governor on May 26, 2017. Thank you goes to Chris Hosek with Texas Star Alliance –Energy Solutions for his hard work on this bill.

**Change of use of open space land - HB 3198** (Open-space valuation for land with oil and gas development) establishes that the eligibility of land for appraisal as being devoted principally to agricultural use does not end because an oil and gas lessee begins conducting oil and gas operations over which the Railroad Commission of Texas has jurisdiction on the land as long as the portion of the land which oil and gas operations are not being conducted otherwise continues to qualify. The bill prevents the imposition of additional property taxes on family farmers and ranchers who have small portions of their land used for oil and gas development. Signed by the governor on June 1, 2017. A lot of work went into this bill; It was truly a group effort. Thank you, Chairmen Darby and Estes, for this important bill.

**The state budget - SB 1** appropriates all funds of \$217 billion, including \$107 billion of general revenue for the 2018-2019 fiscal biennium with total monies appropriated from the Rainy Day Fund to be spent only on one time expenditures totaling a little less than \$1.0 billion from the Fund. Of the less than \$1.0 billion from the Fund \$38.2 million will be used by the Railroad Commission for the plugging of orphaned wells. The remaining will be used in many other part of the state, with the majority going to Health & Human Services, \$458.6 million. Senate Bill 1 was sent to the governor on June 1, 2017.

**Federal Regulations Resolution (Federal Regulatory Energy Delegation – FRED)**

**Senate Concurrent Resolution - SCR 26:** The Texas Legislature recognizes that this period in our nation’s history represents an opportunity and urges the federal government to work with Texas to identify overreaching regulations that have been implemented especially those promulgated under the authority of the US Environmental Protection Agency, the US Department of the Interior and US Department of Energy over the past eight years which were largely aimed at negatively impacting the oil and gas industry to determine whether the rules should be revised, delegated to state agencies, or eliminated in order to correct the misuses of federal regulatory power to ease the overly burdensome regulatory patchwork on the oil and gas industry in Texas. “Texas oil and gas fields have provided a pathway toward American energy independence from foreign powers, have afforded financial security to hundreds of thousands of individuals in Texas, and have delivered safe and reliable energy to fuel our nation’s economy...” This is a very important for Texas. Thank you Chairman (s) Darby and Estes also John Tintera and The Texas Alliance of Energy. Senate Concurrent Resolution 26 was sent to the governor on May 26, 2017.

**Texas Emissions Reduction Plan (TERP) SB 26 that was amended onto SB 1731:** now authorizes several portions of the TERP program that would have expired by or before 2019. It creates a light duty vehicle purchase or lease incentive program focused on getting state fleets moved over to natural gas-powered vehicles. Also, expands the New Technology Implementation Grant program to specifically allow new emissions reductions technologies in the upstream and downstream sectors to qualify for grants – including technologies that capture waste heat from flares to generate on-lease electricity. Sent to the governor on May 30, 2017.

**Repeal of County Energy Transportation Reinvestment Zones (CETRZs) SB 1305:** CTERZ was created to help repair county roads in energy sector counties. The grant program monies are expended and the program is widely deemed to be unconstitutional. Therefore, the passage of SB 1305 ends the program. Industry, including TRC, and county advocates worked to provide new funding to the counties for roads through other bills with amended versions, all failed. The bill was signed into law on May 28, 2017.

**ADA Drive-by Lawsuits - HB 1463,** by Representative John Smithee (R-Amarillo) and Senator Kel Seliger (R-Amarillo), deals with so-called “drive-by” lawsuits in which plaintiff’s attorneys demand specified “settlement” amounts from businesses for alleged violations of the Americans With Disabilities Act. These demand letters sometimes allege minor technical violations based on little more than a Google Map search of a business premises and can be directed at any “place of public accommodation,” whether a physical location or online.

The bill requires a claimant to give 60 days’ notice to a business of intent to file a claim under the state version of the Americans With Disabilities Act (ADA). The notice must disclose the name of the individual asserting the claim (no more demand letters from law firms on their own behalf), the nature of each alleged violation, and the time, place, and manner in which the claimant discovered the violation. A notice may not make a demand for damages, request settlement, or offer to settle a claim without a determination of whether the condition stated by the notice is excused by law or may be remedied. The claimant must prove by a preponderance of evidence that the respondent has not remedied an alleged violation, and a respondent can ask the court for an additional 60 days’ abatement of the action to complete corrections already initiated when suit is filed. Finally, the bill allows a respondent to move for dismissal without prejudice or summary judgment if the respondent has corrected violations.

Most claims of this nature are filed under the federal ADA, and the Texas Legislature has no authority to change federal law. Passage of this bill ensures that expected future changes to

federal law will not result in a flood of transfers and filings in state court. Texas law will now provide a procedural framework and an opportunity to make corrections and will discourage abuse and frivolous litigation. Thank you TCJL. HB 1463 was signed by the Governor and will be effective September 1, 2017.

**Hail Litigation - HB 1774** is legislation aimed at ending the mass filing of hailstorm and weather-related property and casualty insurance claims. HB 1774, by Representative Greg Bonnen (R-Galveston) and Senator Kelly Hancock (R-North Richland Hills), originally applied to all first party claims but was narrowed to claims arising from losses caused by a “violent act of nature, including an earthquake or earth tremor, wildfire, flood, tornado, lightning, hurricane, hail, wind, snow, or rain.” Key provisions include: no application to actions arising under policies issued by the Texas Windstorm Insurance Association; lower interest penalty on late payment; required 60-day pre-suit notice with detailed information about the claim and incurred fees; right of inspection by insurer; immunity for an agent if the insurer accepts liability; and a limitation on attorney’s fees. Thank you TCJL. HB1774 was signed by the Governor.

**Texnet Program - HB 2819** added the language that passed in House Bill 2 providing the funding for the TexNet program and advisory committee during the 84th Legislative Session to the Education Code so it is permanently listed in the statute. Further, House Bill 2819 changes the advisory committee makeup to consist of three members appointed by the governor, three appointed by the lieutenant governor, three appointed by the speaker of the House, and one employee of the Railroad Commission appointed by the agency’s executive director. At least one appointment provided by each of the elected officials must be in the oil and gas industry. The bill was sent to the governor on May 30, 2017.

**Prohibition of unauthorized drones - HB 1643** added feed yards for cattle and oil and gas exploration and production operations including an oil and gas drilling site, a group of tanks to store crude oil, production facilities, oil and gas wellhead and any oil and gas site with active flare. The act carries a criminal offense penalty. Current law restricts that unauthorized and unmanned aircraft (drones) may not be flown over critical infrastructure – petroleum refineries, electric power generation facilities, chemical plants, water treatment and pumping facilities, natural gas compressor stations, natural gas storage, telecommunications, port facilities, above ground petroleum pipelines, steel making facilities. Sent to the governor on May 30, 2017.

**Median Cost of High-Cost Gas Wells - HB 2277** amends the Tax Code to establish that the median drilling and completion cost for all high-cost wells for which an application for a gas production tax reduction was made during the previous state fiscal year is fixed on the date the comptroller of public accounts makes the determination of that cost. The bill prohibits the

required report of drilling and completion costs contained in such an application and used by the comptroller in making the determination from being amended after March 1 of the year following the state fiscal year in which the application was made.

HB 2277 also removes the entitlement of a gas producer to a credit against certain other gas production taxes if gas production tax is paid on gas that otherwise qualifies for the tax reduction before the Railroad Commission of Texas certifies that a well produces high-cost gas or before the comptroller approves an application for the tax reduction. The bill instead entitles the person who remitted such tax to a refund in an amount equal to the difference between the amount of the tax paid on the gas and the amount of tax that would have been paid on the gas if it had received the tax reduction. The bill limits the total allowable refund for taxes paid for reporting periods before the date the application is filed to the total tax paid on the gas that otherwise qualified for the tax reduction and that was produced during the 24 consecutive calendar months immediately preceding the month in which the application for certification that the comptroller approved was filed with the railroad commission and requires the person entitled to the refund to apply to the comptroller to receive a refund not later than the first anniversary after the date the comptroller approves the application for a tax reduction.

HB 2277 repeals certain provisions relating to the temporary gas production tax exemption for high-cost gas produced from oil wells or gas wells within a certain co-production project approved by the railroad commission. It was signed by the governor.

**Penalty on Certain Delinquent Oil and Gas Severance Taxes - HB 3232** amends the Tax Code regarding oil or natural gas production taxes to allow a taxpayer to file an amended natural gas or oil production tax return without incurring a penalty if certain conditions are met. Taxpayers typically wait until the end of the four year statute of limitations to file amendments to their oil and natural gas production tax returns. The bill would encourage taxpayers to file their amendments within 730 days of filing the original return and to resolve all errors identified on the original or amended report within 60 days of filing, in order to be eligible for the automatic penalty waiver. The Comptroller of Public Accounts indicates that no significant fiscal impact is expected. Thanks goes out to James LaBas with TXOGA for his expert work on this bill. HB 3232 was signed by the governor.

**Weight Limitations for Natural Gas Motor Vehicles - HB 2319** - amends the Transportation Code to authorize a vehicle or combination of vehicles powered by an engine fueled primarily by natural gas to exceed any weight limitation under Transportation Code §621.101 by an amount equal to the difference between the weight attributable to the vehicle's natural gas tank and fueling system and the weight of a comparable diesel tank and fueling system,

provided that the gross weight of the vehicle or combination of vehicles does not exceed 82,000 pounds. Sent to the Governor May 30.

**Houston Ports bill - SB 1524 (Companion HB 3854)** The Port of Houston is the only major US port that does not have a transportation corridor for area manufacturers to get fully loaded containers directly to the port. This weak link in the supply chain puts Texas businesses at a competitive disadvantage. The Port of Houston's inability to receive full containers creates a 10 percent premium on supply chain cost for Texas manufacturers shipping products to customers overseas. Manufacturing facilities could be placed out of state. This bill corrects this disadvantage. Texas royalty owners need expanded markets for natural gas to stimulate new drilling. Petrochemical manufacturing is the fastest growing new market for Texas natural gas and they need this shipping corridor. Also, the bill protects Texans by requiring the use of trucks which are safer than those used for transporting containers. Special thanks to Samantha Omev with Exxonmobil for her hard work on this bill as well as to the many House and Senate members involved. The governor signed this bill.

#### **Bills that TRC worked on that did not pass.**

**Listing of Mineral interests in Ad Valorem Tax Appraisals bill - HB 119** would have placed the responsibility for ascertaining the ownership of interests in minerals in place on the chief appraiser. The bill also would have prohibited the listing of an operator designated with the Railroad Commission to provide information regarding the ownership of separate interests as a condition for listing the interest of the operator separately from those other interests. The bill did not receive a hearing.

**Eminent Domain bills - SB 740:** There were several eminent domain bills. The most comprehensive was SB 740 (Senator Lois Kolkhorst) and HB 3284 (Rep DeWayne Burns). Elements of the comprehensive bill were also included in HB 3687 by Trent Ashby (R-Lufkin); HB 2694 by Kyle Kacal (R-College Station); HB 3170 by Cecil Bell (R-Magnolia); HB 2556 by Justin Holland (R-Rockwall); HB 528 by Mike Schofield (R-Houston); HB 2076 by Leighton Schubert (R-Brenham); SB 626, 627 and 628 by Charles Schwertner (R-Georgetown); and HB 2090 by Gary VanDeaver (R-Bowie).

While TRC understood and agreed with many of the landowner issues, we also know the importance of our critical infrastructure in Texas. The Coalition for Critical Infrastructure was formed as forum to find common ground to address concerns from all stakeholders involved in

eminent domain. The Coalition's role was to balance the various interests recognizing the growing needs in Texas for roads and highways; oil, natural gas and water pipelines; electric transmission and distribution lines; and other important infrastructure. The Coalition included both public and private entities, all with statutory or common law condemnation authority. In letters to senators and in other ways, TRC supported the Coalition's efforts to negotiate a bill but opposed SB 740. The Coalition endeavored to negotiate a bill with the landowner groups in an effort to address the perceived grievance of an unequal playing field between the landowners and the entities with condemnation authority. Nonetheless, negotiations failed to achieve consensus and no bills were passed.

**Statewide Unitization SB 177, Cenozoic Era Reservoirs Unitization HB 1597 and RRC Waste Authority HB 2688:** For over 100 years, Texas has had a voluntary system of field unitization. The system has worked well over the years and has been part of the legal framework that has helped lead Texas to be the top energy producer in the country and a global leader in oil and gas production and innovation. Three bills were introduced related to field unitization and oil waste. TRC has serious concerns surrounding any proposed new ability of a small number of royalty owners or working interest owners to force others into a production arrangement that might not be in the best interest of all or the mineral or royalty owners of a particular field. TRC recognizes that many historic fields are now in serious production decline and that in light of these aging fields, it is time for thoughtful consideration to ensure the maximum amount of recoverable crude oil from these fields, preventing waste and providing income. TRC testified and wrote to senators expressing recognition that modifications to the existing laws regarding mineral interests and waste may be necessary, including modifications to the system of unitization but any modification must still protect correlative rights; the rights of individual royalty owners must still be protected.

SB 177 and HB 1597 would have required the Railroad Commission to determine if a "plan of unitization," including the participation formula for a common source, is fair, reasonable, equitable and necessary as to prevent waste for all interests concerned. The language required that the applicant must have made a good faith effort to voluntarily unitize, and on receipt of an application the commission would be required to determine if:

- the unitization plan is reasonably necessary,
- the incremental recovery value exceeds expenses,
- the productive limits of the common source to establish unitizing is necessary,
- the unit operations will have a material adverse effect on the remainder of the supply,
- the unsigned owners of interests have been given the opportunity to enter into the unit,

- the applicant has obtained approval from at least 70 percent of mineral and working interest owners,
- all expenses of establishing a unit are allocated fairly, and
- working interest owners have a right to review all records pertaining to the unit.

The SB177 failed to receive a vote in the Senate Committee on Natural Resources and HB 1597 did not receive a hearing. HB 2688 was a compromise approach but was left pending in House Energy Resources Committee.

**Enhanced Oil Recovery Reinvestment Zones HB 2621** attempted to create enhanced recovery reinvestment zones, defined as:

- areas that comprise a single field and encompass a Cenozoic Era common source of supply,
- has an applicant that is going to begin tertiary recovery operations,
- the single field is projected to have a positive production response as a result of tertiary recovery,
- the designation of the area will be reasonably likely to encourage redevelopment and improvement of property in the reinvestment zone.

The Railroad Commission by order would have been able to designate an area as an enhanced recovery reinvestment zone. The order would describe the boundaries of the reinvestment zone and contain findings that the zone will likely encourage development and that the area met the eligibility requirements. The legislation also provided a refund of state sales tax two years after the designation of the zone if:

- the taxable item was sold or used by the operator of record in the zone;
- the person claiming the refund is the operator of record;
- the sale or use occurs after the zone designation but prior to the two year anniversary;
- the item was directly used for tertiary recovery; and
- there was positive production as a result of operations.

An exemption also would be provided from production taxes for the incremental increase in oil production within the zone. This only applied to tertiary recovery. An operator utilizing a tax benefit under this section would have had to use the value received for the development and operation of tertiary recovery projects within the zone. The bill was left pending in the House Committee on Ways and Means.

**Groundwater Fair Share HB 3028** attempted to codify existing groundwater rights in the same manner in which the rights to oil and gas mineral interests currently exist. The bill defined “fair share,” and provided that groundwater ownership rights entitled a landowner to be afforded a

fair share of groundwater under a person's tract of land overlying an aquifer. House Bill 3028 was left pending in a subcommittee of the House Committee on Natural Resources.

**Property Tax Reform SB 2/SB 669:** The Select Committee on Property Tax Reform and Relief held eight hearings in seven cities with almost 50 hours of testimony. The filed version of the bill did the following:

- lowered the rollback tax rate from the current 8 percent to 4 percent
- required automatic tax ratification elections if the taxing unit adopts a tax rate that exceeds the rollback rate
- required tax ratification elections to be held on the same date as the general election
- created a Property Tax Administration Advisory Board in the comptroller's office to oversee the entire property tax process
- statutorily set the deadlines for all property tax protests to be filed in Texas to May 15th
- required all appraisal districts to use the appraisal manuals issued by the comptroller
- established specialized Appraisal Review Boards (ARB) panels in counties with a population of 120,000
- clarified that a majority vote by ARB is binding for decisions, thus eliminating the requirement of some ARB panels for a unanimous vote
- eliminated Sunday ARB hearings and evening hearings that begin after 7 p.m. or before 5 p.m.
- mandated that all members of each Appraisal District Board of Directors must be elected officials within their respective counties
- increased the value of properties that have the option of going to binding arbitration to \$5 million
- raised the exemption from filing income producing business personal from \$500 in value to \$2,500 to cut compliance cost for taxpayers and appraisal districts
- prohibited local governments from being able to challenge the value of an entire class of properties

The bill was amended in the House to:

- require the comptroller to prescribe tax rate calculation forms to be used by taxing entities
- provide individual tax rate notices annually
- specialize appraisal review board panels
- require taxing entities to maintain an Internet website with specific budget, tax rate, tax revenue, and audit information
- create an advisory board for the comptroller and improvements in the appraisal process

Senate Bill 2 did not get a vote by the entire House of Representatives, but a version was amended to Senate Bill 669. Senate Bill 669 passed the House, although the Senate did not concur on the House amendments. A conference committee was named; however, the House did not appoint any House conferees.

**Name and governance of the Railroad Commission of Texas HB 237** would amend the Natural Resources Code and the Election Code to change the name of the Railroad Commission to the Texas Energy Resources Commission. The bill would establish in statute the election and terms of the commissioners. The terms are currently laid out in the Texas Constitution. It was left pending in House Energy Resources.

**Posting Enforcement Information by The Railroad Commission of Texas on RRC Website. HB 247 (Companion SB 568)** would amend the Natural Resources Code to require the Railroad Commission (RRC) to make available on its website a searchable database containing information related to the agency's inspection and enforcement activities, violations, and penalties. The data would be required to be organized by county, by operator, and by well, if applicable, and to be capable of being downloaded in bulk. HB 247 was left pending in House Energy Resources. SB 568 was placed on senate calendar, not heard.

**Administration of and Funding for The Texas Emissions Reduction Plan. HB 2682** would extend the Texas Emissions Reduction Plan (TERP) program, currently set to expire on August 31, 2019, to the August 31, 2025. The Clean School Bus (CSB) program, the New Technology Implementation Grant (NTIG) program, the Texas Clean Fleet (CF) program, and the Texas Natural Gas Vehicle Grant (NGVG) program would each be extended from August 31, 2019 to August 31, 2025. It was left pending in House Environmental Regulation committee.

**Oil and gas regulation and cleanup fund. HB 2715** would dedicate certain penalties and taxes collected by the Railroad Commission to the oil and gas regulation and cleanup fund. TRC and other companies and associations supported this bill. It was referred to Senate Finance and left pending.

**Inspection and maintenance requirements for air quality permits for certain oil and gas facilities. HB 2753** would require TCEQ to examine rules and requirements governing inspection and maintenance programs for oil and gas facilities, specifically, the detection and repair of leaks from all valves, pump seals, flanges, compressor seals, pressure relief valves, open-ended lines, tanks, and other process and operation components of a facility that could result in fugitive emissions; the use of venting and flaring; emissions of volatile organic compounds from storage tanks that have the potential to emit more than one ton of volatile organic compounds

per year; emissions of nitrogen oxides from compressor engines with more than 100 horsepower; maintenance requirements and best practices for compressor stations; and emissions from and maintenance of pneumatic devices and controllers between a wellhead and a natural gas processing plant. Many of these requirements, imposed in some states, are costly and unnecessary for the protection of air quality. The bill would require TCEQ to prepare a report that addresses issues raised concerning the rules or requirements and suggests options for improving safety, preventing air emissions from oil and gas equipment, and reducing emissions from the applicable facilities. The bill was left pending in Calendars.

**Designation of a well as a two-year inactive well or three-year inactive well for purposes of the oil and gas severance tax. HB 3201** amends the Tax Code to reduce from 10 years to five years the duration of the severance tax exemption for oil and gas produced from wells previously inactive and to remove statutory provisions relating to the designation of a well as a three-year inactive well for purposes of that exemption. The bill excludes from the wells designated as two-year inactive wells for purposes of that exemption a well that is part of an enhanced oil recovery project and a well that is drilled but not completed and that does not have a record of hydrocarbon production reported to the Railroad Commission of Texas. The bill removes the prohibition against the railroad commission designating a two-year inactive well for purposes of that exemption after February 28, 2010, and requires an application for two-year inactive well certification to be made to the railroad commission to qualify for the exemption. TRC and other and trade associations supported this bill. It was set on House calendar, not heard by deadline.

**Sales tax refund or severance tax credit for sales tax overpayments by certain oil or gas severance taxpayers. HB 3471** attempted to correct unequal treatment of taxpayers with regard to sales tax refund claims filed by taxpayers, specifically those claims filed by oil and gas operators. The bill would provide for equal treatment of taxpayers in this respect; TRC and other associations supported the bill. It would amend the Tax Code to authorize a person who files an oil or gas production tax first purchaser's or producer's report and who does not hold a permit under the Limited Sales, Excise, and Use Tax Act to obtain a refund for sales and use taxes paid in error to a person who holds such a permit by filing a claim for refund with the comptroller of public accounts within the limitation period specified by applicable law. The bill authorizes the comptroller by rule to provide additional procedures for claiming such a refund. The bill was set on House calendar but not heard by the deadline.

**Allocating a portion of oil and gas production tax revenue to the counties from which the oil and gas originated. HB 4231** seeks to address the issue that counties are not currently receiving their fair share of revenue from the oil and gas production tax by allocating a portion of oil and

gas production tax revenue to the counties from which the oil and gas originated. TRC and other trade associations supported this bill. Set on House calendar, not heard by deadline.

**HCR 84** - Resolution urging the U.S. Congress and federal executive branch to identify federal regulatory programs that harm the Texas oil and gas industry and delegate relevant regulatory responsibilities to state agencies. Left pending in State/Federal Power Responsibility.

**Liability for the additional tax imposed on land appraised for ad valorem tax purposes as agricultural land if the use of the land changes as a result of a condemnation. SB 1979** clarifies that, should land be diverted to a nonagricultural use as a result of eminent domain, the additional taxes and interest imposed by that change are the obligation of the condemning entity, not the previous landowner. A landowner should not be required to pay penalty taxes when they did not have control over the change of the land's use. Referred to/left in House Ways and Means.

**Study of the fees charged by the Railroad Commission of Texas. SB 2100** would provide the Legislature a clear understanding of how fees impact the budget of the Railroad Commission of Texas (railroad commission). Since 2011, the railroad commission has operated primarily as a fee-based agency, but the railroad commission has expressed that the fees and fines assessed fail to fully fund the work of the railroad commission. The railroad commission has also made it clear that the number of fees assessed and the cost to administer programs connected to certain fees has changed in recent years. Therefore, the legislature is making appropriations decisions to close the funding gap for the railroad commission without a complete picture. S.B. 2100 orders a study to be completed by the railroad commission to understand the actual cost to the railroad commission for programs associated with the fees it charges. The study will include recommendations for changes in the fee structure to cover the cost of railroad commission programs associated with fees. Referred to and left in House Energy Resources.

## National Update

On March 28, 2017, President Trump issued the **Presidential Executive Order on Promoting Energy Independence and Economic Growth** that required the “immediate review of all agency actions that potentially burden the safe, efficient development of domestic energy resources. “

The order specifically revoked executive orders, presidential memoranda, and reports issued by President Obama addressing climate change and directed agencies to identify and rescind or revoke anything related to these orders, memoranda, and reports.

The order required the Council on Environmental Quality to rescind guidance related to greenhouse gas emissions and climate change and required EPA to suspend, revise, replace or rescind regulations restricting greenhouse gas emission from electric generating plants.

The Secretary of the Interior is required take all steps necessary and appropriate to lift any and all moratoria on federal land coal leasing activities. The Secretary must commence federal coal leasing activities consistent with all applicable laws and regulations.

The EPA is required to review the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," 81 Fed. Reg. 35824 (June 3, 2016), and any rules and guidance issued pursuant to it, and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.

The Secretary of the Interior is required to review and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding rules related to oil and gas on federal and Indian lands, and other regulations of non-federal oil and gas rights issued in 2015 and 2016.

### Climate Change

On April 3 and 4, EPA published notices undertaking the actions ordered by the President, specifically withdrawing regulations of greenhouse gas emission from electric generating facilities and reviewing regulations of methane emissions from oil and gas activities. EPA also rescinded a request for information on methane emissions from oil and gas operations.

Following the President’s order, the Department of Interior suspended the BLM Oil and Gas Venting and Flaring Rule and the Fracking Rule.

### **Air Quality Standards and Controls**

In the U.S. House of Representatives, on June 15, 2017, the House Energy and Commerce Subcommittee on the Environment favorably reported the Ozone Standards Implementation Act (H.R. 806) to the full committee. The bill would delay implementation of the 2015 ozone standard until 2025 and increase EPA's review cycle from five to 10 years. The bill also would allow the EPA Administrator to take into account technological feasibility when revising the standards, as well as consider adverse economic effects.

### **Oil and Gas Regulations**

On June 13, the Environmental Protection Agency (EPA) proposed to stay for two years certain requirements that are contained within the Final Rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," published in the Federal Register on June 3, 2016. These standards were costly and burdensome controls on oil and gas operations to reduce emissions of volatile organic compounds as a surrogate for methane emissions.

### **Industry Regulations**

On June 12, Environmental Protection Agency (EPA) signed a final rule to further delay the effective date of EPA's Risk Management Program (RMP) Amendments an additional 20 months to allow the agency to conduct a reconsideration proceeding and to consider other issues that may benefit from additional comment. The new effective date of the rule is February 19, 2019. These rules would impose additional requirements on refineries and chemical plants that are administratively burdensome and costly with marginal or no environmental or safety benefits.

### **EPA Budget**

The proposed Fiscal Year 2018 budget for the U.S. Environmental Protection Agency, announced on May 23, provides \$5.655 billion to help the agency protect human health and the environment. With a 31 percent cut from the FY 2017 Annualized Continuing Resolution, and a 30 percent reduction from the FY 2017 Enacted budget, the President's budget aims to reduce redundancies and inefficiencies and prioritize EPA's core statutory mission of providing Americans with clean air, land, and water.

**Waters of the U.S.**

U.S. Environmental Protection Agency and the U.S. Army sent a letter to governors on May 9 soliciting input from states on a new definition of protected waters that is in-line with a Supreme Court Justice Antonin Scalia's opinion in the 2006 Rapanos v. United States case. Scalia's definition explains that federal oversight should extend to "relatively permanent" waters and wetlands with a "continuous surface connection" to large rivers and streams.

On June 27, the The EPA and US Army Corps of Engineers issued a proposal to repeal the harmful WOTUS.

"This is a great day for our country, all industries, royalty and land owners. We are truly grateful our new leadership has taken the action needed to repeal this dangerously flawed rule. WOTUS created unnecessary fears and concerns for the Texas oil and gas industry, royalty owners and landowners who questioned whether they would be allowed to continue operations like building roads, drilling, farming, or anything that causes contact with surface water due to the threat of an EPA citation. We are truly grateful our new leadership has taken the action needed to repeal this dangerously flawed rule. The current proposal will simply revert back to the pre-Obama version of the rule so that it can be corrected and common sense can be added to this serious regulatory overreach."



## TEXAS ROYALTY COUNCIL

The Texas Royalty Council is a grassroots entity organized to monitor, advocate and educate royalty owners, elected officials and the energy industry on issues affecting royalty owners in Texas. Our primary focus is to promote the production of Texas oil and gas and work to maximize the return on the value of our Texas natural resources.

Your continued financial support will keep TRC working to “Protect Your Check”. If you wish to contribute, please visit our website at [www.texasroyaltycouncil.org](http://www.texasroyaltycouncil.org) or mail your contribution directly to

PO Box 907, Austin, Texas 78767

Contributions are not tax-deductible but can be written off as a business expense.

 Texas Royalty Council

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