

A Snapshot of Environmental Bills Filed During Texas' 2021 Legislative Session (87R)

April 5, 2021

The 87th Legislative Session's filing deadline of March 12, 2021 has come and gone, giving us an opportunity to survey the full suite of environmental bills – air, water, waste, procedural – that will be considered, debated, and voted upon by state lawmakers by the end of June. Below, we detail the proposed House and Senate budgets for Article VI (Natural Resource) agencies, and discuss some of the most important pieces of legislation under consideration at the Capitol. You can access a list of bill summaries using [this link](#).

Last summer, the palpable concern was that COVID-19 restrictions would wipe out the state budget. In July 2020, [the Comptroller conservatively estimated a shortfall for the current biennium of about \\$4.6 billion, and the Governor's Office directed state agencies to identify five percent budget reductions](#). On January 11, 2021, however, the Comptroller reduced the current biennium's deficit to about \$950 million and noted that the five percent reductions already identified by state agencies came to \$1 billion, which would cover the deficit if applied. This also does not include potential federal relief. [The Comptroller's revenue estimate for the 2022-2023 biennium](#) projected that the Legislature would have \$112.5 billion to spend, about \$440 million less than the estimate he listed in January 2019.

A review of the [House and Senate budgets for Article VI \(Natural Resource\) agencies](#) shows a focus on the Texas Commission on Environmental Quality (TCEQ). Although the agency's overall budget was reduced, this is largely due to the newly created Texas Emissions Reduction Plan (TERP) Trust Fund, which will be housed outside the Treasury when it comes into existence September 1, 2021. Previously, the Legislature funded certain emissions reduction programs, like the Alternative Fueling Facilities Program, with appropriations to the TCEQ from the TERP fund. [House Bill 3745 \(Bell\) \(86R\)](#) established the trust fund, to be administered by the TCEQ. Under the new TERP framework, revenues will go directly to the fund, with a transfer of an unencumbered balance in the fund to the TERP Account at the end of each biennium. Several bills, discussed below, address TERP's future.

In addition, the House budget proposes \$5.8 million for targeted pay raises to high turnover positions, such as investigators, which was one of the agency's exceptional items. That amount is not included in the Senate version. Both versions, however, include \$2 million to support 10 air quality monitors the agency deployed during the current biennium and \$1.3 million to cover expenses for more inspections of aggregate production operations (APOs). Both bills also include \$7.1 million to implement the federal Lead and Copper Drinking Water Rules.

As for environmental bills themselves, it is difficult to predict what may ultimately pass. Questions about APOs and their associated industries (e.g., concrete batch plants) receive attention every session, especially in areas with growing populations and demand. Last session, about 40 bills related to APOs and associated industries were filed, with topics including public participation in

concrete batch plant permitting, land reclamation, and best management practices. While none of those bills became law, this has not stopped lawmakers from re-filing identical or nearly identical versions this session.

Another hot topic from last session and the interim is the TCEQ's evaluation of its compliance history rules. House Bill 3477 (Rose) which would terminate certain corporate privileges for business entities that have failed to resolve significant environmental violations. This subject came to lawmaker's attention in 2019 due a series of industrial explosions and fires in Texas' Gulf Coast region, which houses numerous chemical facilities.

Like APOs, last session witnessed the filing of dozens of bills related to municipal solid waste (MSW) facilities (e.g., landfills). One particularly noteworthy bill filed this session. House Bill 631 (Darby), would limit local government regulation of MSW facilities and would prohibit local governments from adopting rules and ordinances that are inconsistent with the TCEQ's rules. If enacted, this bill could significantly streamline and shorten the MSW permitting process, and prevent local governments from thwarting permit approvals and facility siting in their jurisdictions.

Finally, Senate Bill 1160 appears well on the way to passage. This bill will create an entity to manage the projects identified in the Coastal Texas and Sabine Pass to Galveston Bay studies. These studies, led by the United States Army Corps of Engineers and the Texas General Land Office, offer solutions for the increasing frequency and intensity of storm surge flooding on the Texas Gulf Coast. At present, no entity in Texas has authority to sign a project partnership agreement (PPA) for projects listed in the Coastal Texas Study. In order to sign a PPA with the Army Corps of Engineers, an entity must have the following: the ability to tax, eminent domain, and authority to sign a PPA. A local sponsor is required in order for the state to receive federal funding for these improvements. SB 1160 creates an entity that meets the requirements to be eligible for federal funds.

Only a few of these bills have received a committee hearing, but that will change over the coming weeks. Given the relatively late-start for all but the budget committees, observers can expect the session's pace to accelerate. We will continue to monitor and report on the status of these bills through the remainder of the session.

Aggregates and Associated Industries.

- **House Bill 1627 (Thompson) (companion SB 1350 (Miles))** (left pending in House Environmental Regulation Committee on March 29): would require the Texas Commission on Environmental Quality (TCEQ) to send copies of permit applications received by the agency for a concrete plant in locations identified in the bill to certain municipality or county governing bodies and would prohibit the TCEQ from issuing a permit application for a concrete plant in circumstances without approval of the governing body; would grant municipalities and counties the right to request a contested case hearing regarding a concrete batch plant permit application.
- **House Bill 3603 (Leach)** (left pending in House Environmental Regulation Committee on March 29): would prohibit an applicant for a standard permit for a concrete batch plant that withdraws an application to submit another such application for the same plant earlier than 1 year after the date of the original application.
- **House Bill 3412 (King)** (referred to House Environmental Regulation Committee on March 22): would authorize operation of a concrete crushing facility within 440 yards of a building in use as a single multifamily residence, school, or place of worship, if the facility is located within

a county with a population of less than 50,000 and operates for not more than 90 days and only between the hours of 8 a.m. and 6 p.m.

- **House Bill 4341 (Biedermann)** (referred to House Environmental Regulation Committee on March 29): would create an aggregate production operation program at the Texas Railroad Commission, thereby transferring certain duties from the TCEQ; if passed into law, the act would take effect upon the date the U.S. Environmental Protection Agency delegates permitting authority to the Railroad Commission.
- **House Bill 4478 (Huberty)**: would require aggregate production operations located within 1500 feet of the San Jacinto River to develop restoration and reclamation plans; establishes an aggregate production operation and reclamation fund account in the general revenue fund, which may be appropriated exclusively to the TCEQ for reclamation and restoration.
- **House Bill 1912 (Wilson) (companion Senate Bill 1209 (Schwertner))** (referred to House Environmental Regulation Committee on March 15): would expand requirements for public hearings and meetings regarding the issuance of standard air permits for aggregate production operations and concrete batch plants to include other jurisdictional entities (e.g., TxDOT, groundwater conservation districts, and municipalities and counties); would require permits for noise, light, vibration, and air quality monitors; would require regulated facilities to provide the TCEQ with a post-operation closure plan and financial assurance.
- **House Bill 291 (Murr)** (referred to House Environmental Regulation Committee on February 25): would impose reclamation requirements and reclamation bonds for registered aggregate production operations that occupy sites at least 10 acres and are located inside the boundaries or extraterritorial jurisdiction of a municipality; would provide an opportunity for a municipality to waive reclamation requirements if the reclamation activities required by the reclamation plan conflict with a potential reasonable future use of the operation upon cessation of activities.
- **House Bill 289 (Collier)** (referred to House Environmental Regulation Committee on February 25): would expand the classes of persons who may request a public hearing from the TCEQ regarding the construction of a concrete batch plant to include a representative of a school, place of worship, licensed day-care center, hospital, or medical facility or a person residing within 880 yards of the proposed plant.

Climate Change

- **Senate Bill 1261 (Birdwell)** (left pending in Senate Natural Resources & Economic Development Committee on March 25): would provide that, to the extent not preempted by federal law, the state has exclusive jurisdiction over the regulation of greenhouse gas emissions in the state of Texas; would clarify that a municipality or other political subdivision may not enact or enforce an ordinance or other measure that directly or indirectly regulates greenhouse gas emissions.

Enforcement

- **House Bill 3477 (Rose)** (referred to House Environmental Regulation Committee on March 22): would authorize the Secretary of State to terminate corporate privileges for certain business entities under enforcement action for a violation of environmental laws; allows for the reinstatement of corporate privileges if an entity presents evidence that it has met the remediation requirements contained in a termination order.

Environmental Justice

- **Senate Bill 1294 (Eckhardt) (companion House Bill 1191 (Goodwin))** (referred to Natural Resources & Economic Development Committee on March 18): would establish an Office of Environmental Justice that would provide recommendations to the TCEQ in determining whether to issue a permit for a facility located within three miles of an “environmental justice community.”
- **Senate Bill 365 (Miles)** (referred to Natural Resources & Economic Development Committee on March 9): would require permit applicants for a facility located in an “environmental justice community” to file certain reports and certifications with the TCEQ related to environmental justice issues and facilitate public participation in the permitting process.
- **Senate Bill 1304 (Blanco) (companion House Bill 3858 (Ordaz))** (referred to Natural Resources & Economic Development Committee on March 18): would create a duty for the TCEQ to respond to any inquiry in the language in which it was received and expand the types of notices subject to alternative language requirements, but would require the *applicant* to pay all costs associated with translation of the notices.

Emissions Events

- **House Bill 2369 (Morales Shaw)** (referred to House Environmental Regulation Committee on March 15): would require the TCEQ to adopt rules for staggered shutdowns of regulated entities in advance of a potential weather-related disaster.
- **Senate Bill 684 (Blanco)** (referred to Senate Natural Resources & Economic Development Committee on March 11): would eliminate affirmative defenses for excessive emissions events.

Hazardous Chemical Reporting

- **House Bill 2811 (Murphy) (companion Senate Bill 2110 (Taylor))** (left pending in House Environmental Regulation Committee on March 29): would specify the confidentiality of Tier II forms required under Section 312 of the Emergency Planning and Community Right to Know Act of 1986. The purpose of this form is to provide state, local officials, and the public with specific information on potential hazards (i.e., the locations, as well as the amount, of hazardous chemicals present at a facility during the previous calendar year; would makes Tier Two forms that are in the possession of a political subdivision confidential information under the Texas Government Code; would specify when these forms may be released to the public; and would allow a political subdivision to release a tier two form to the public only if the applicable information has been made publicly available by the TCEQ.

Gulf Coast Restoration

- **Senate Bill 1160 (Taylor) (companion House Bill 3029 (Paul))** (reported favorably as substituted by the Senate Committee on Water, Agriculture, & Rural Affairs): would create an entity to manage the projects identified in the Coastal Texas and Sabine Pass to Galveston Bay studies led by the U.S. Army Corps of Engineers and the Texas General Land Office that would address the increasing frequency and intensity of storm surge flooding along the Gulf Coast (e.g., coastal barriers, seawalls, and storm surge gates). [On March 25, the TCEQ published comments on the bill](#), pursuant to state constitutional requirements that require the agency to

submit to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives recommendations on specific legislation affecting water districts.

Municipal and Solid Waste

- **House Bill 631 (Darby)** (left pending in House Environmental Regulation Committee on March 15): would limit local government regulation of municipal solid waste (MSW) facilities and prohibits local governments from adopting rules and ordinances that are inconsistent with the TCEQ's rules for MSW and hazardous waste facilities.
- **House Bill 753 (Cain)** (left pending in House Environmental Regulation Committee on March 22): would limit the amount a municipality could charge solid waste management service operators to two percent of the gross receipts of the franchisee for the sale of services in the municipality; would prohibit a municipality from restricting the right of an entity to contract with a person other than the municipality or an exclusive franchisee of the municipality to provide solid waste management services.
- **House Bill 4333 (Landgraf) (companion Senate Bill (Zaffirini))** (referred to House Environmental Regulation Committee on March 29): would create a defense to "arranger liability" under the Texas Solid Waste Disposal Act for persons engaged in certain scrap metal recycling transactions, akin to the defense under the federal Superfund Recycling Equity Act of 1999.
- **House Bill 176 (Zweiner)** (referred to House Environmental Regulation Committee on February 25): would repeal a statutory prohibition on local government regulation of the use of small-use plastic containers and packages, thereby overruling the Texas Supreme Court's decision in *City of Laredo v. Laredo Merchants Association*, 550 S.W.3d 586 (Tex. 2018).

Procedural

- **House Bill 860 (Collier)** (referred to House Environmental Regulation Committee on March 1): would prevent a permit applicant from requesting a change to the application after the 31st day before the date scheduled for the preliminary hearing on the application; requires the applicant to withdraw the application if he chooses not to proceed with the preliminary hearing on or before the 31st day before the date scheduled for the hearing.
- **House Bill 968 (Dutton)** (referred to House Environmental Regulation Committee on March 1): would require the executive director of the TCEQ to file a response to each public comment on a preliminary decision, rather than only "relevant and material" comments.

The Texas Emissions Reduction Plan

- **Senate Joint Resolution 52 (Birdwell)** (referred to Natural Resources & Economic Development Committee on March 18): proposes a constitutional amendment to fully implement the Texas Emissions Reduction Plan (TERP) Trust Fund, which was established last session to provide a stable source of revenue for TERP based on surcharges and the direct transfer of state highway funds starting September 1, 2021.
- **House Bill 2136 (Thompson)** (left pending in House Environmental Regulation Committee on March 29): would permit the TCEQ to remove exemptions of marine vessels from the criteria that allows other Diesel Emission Reduction Incentive project types to commit to a total

percentage of annual use between 55 percent and 75 percent in the designated non-attainment areas and affected counties; would set a minimum requirement of 25 percent of use in a designated area for the five years immediately following a grant award for a marine vessel or engine; expands the definition of an eligible area to include waters of the Gulf of Mexico within 15 miles of the coast of the state.

- **House Bill 2468 (Thompson)** (left pending in House Environmental Regulation Committee on March 29): would make the maintenance, upgrade, and operation of air monitoring equipment as an allowable grant for TERP and would specify that not more than \$10.0 million may be used by the TCEQ for these grants; would increase the amount of TERP funding that can be offered in grants to support air quality research from \$750,000 to \$1.0 million each fiscal year and the amount that may be used to conduct research and other activities necessary for demonstrations to the United State Environmental Protection Agency from \$2.5 million to \$5.0 million each fiscal year.

Water Quality

- **House Bill 242 (Zweiner)** (referred to House Environmental Regulation Committee on February 25): would authorize the Railroad Commission to require the owner or operator of a facility used in connection with the exploration, development, or production of oil, gas, or geothermal resources to submit a water pollution abatement plan to the commission if the facility is located in the Edwards Aquifer recharge zone.