

ENERGY BILLS PASSED BY THE 87th TEXAS LEGISLATURE

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General

HB 3794 - Relating to oil & gas liens by Chairman Charlie Geren, sponsored by Senator Chuy Hinojosa

Prior to HB 3794, Texas had a non-standard first purchaser statute in the UCC which led to a decision in a recent bankruptcy case (In Re: First River Energy, LLC, 2019 WL 1103294(US Bankr. W.D. Tex., March 7, 2019)) which followed and adopted the reasoning in a prior bankruptcy case (Samson Res. Co. v. SemCrude, L.P. (In re SemCrude, L.P.), 407 B.R. 140 (Bankr.D.Del. 2009)) that Texas producers' security interest are unperfected and subordinated to other creditors under Delaware law. Following the decision in SemCrude, the State of Oklahoma modified its similar statute to avoid a case like First River Energy. Following the First River Energy case, Texas has opted to do the same.

The bill adds Chapter 67 to the Texas Property Code and makes real property interests the basis of the lien retained rather than personal property interests in the oil and gas. Chapter 67 specifies that each owner of an oil and gas interest has a lien which attaches to all hydrocarbons before severance and then continues without lapse following severance and finally attaches to the proceeds from the sale of such hydrocarbons. The lien is not released until the interest owner received the payment to which it is entitled. Similar to the prior UCC first purchaser statute, this lien is perfected automatically without the need for a financing statement. This legislation should provide prioritization for an interest owner's lien over that of other creditors and abrogates the result of First River Energy and SemCrude.

SB 1258 - Relating to the duty of a lessee or other agent in control of certain state land to drill an offset well, pay compensatory royalty, or otherwise protect the land from drainage of oil or gas by a horizontal drainhole well located on certain land by Senator Birdwell; Sponsored by Representative Goldman

Prior to the 87th Texas Legislature, Sections 52.034 and 52.173 of the Texas Property Code provided that a mineral lessee of State or Relinquishment Act/Mineral Classified Lands was required to either drill an offset well or pay a

compensatory royalty if a well was drilled within 1,000 feet of an applicable property or lease line. SB 1258 eliminates this requirement when the offending well is classified as a horizontal drainhole well in an unconventional fracture treated field unless any take point of the offending well is located closer than the greater of (i) the minimum distance established by the applicable lease-line spacing requirement of the Railroad Commission of Texas, or (ii) 330 feet. The purpose of SB 1258 is to acknowledge that the drainage patterns of horizontal drainhole wells in unconventional fracture treated fields is more limited than in traditionally drilled areas and therefore an offset is unnecessary to protect against such drainage from greater distances.

SB 1259 - Relating to causes of action for withholding payments of the proceeds from the sale of oil and gas production by Chairman Brian Birdwell; sponsored by Representative Reggie Smith

Senate Bill 1259 was introduced by Senator Brian Birdwell and sponsored by Representative Reggie Smith. It became effective on September 1, 2021. The bill amended Section 91.402 of the Texas Natural Resources Code by adding Subsection (b-1) to read as follows:

(b-1) A payee does not have a common law cause of action against a payor for withholding payments under Subsection (b) unless, for a dispute concerning the title, the contract requiring payment specifies otherwise.

In other words, the bill provides that a payee of an oil and gas royalty does not have a cause of action for breach of contract against the payor for withholding payments in the event of a title disputes, unless their contract with the producer expressly provides for one. This section, however, would only apply to a cause of action filed on or after September 1, 2021.

Supporters of the bill emphasized this would limit frivolous lawsuits and promote property rights during the course of a title dispute. While the law permits an oil and gas producer to withhold payments from a person under certain circumstances, including title disputes this bill

prevents such person from seeking damages from a producer that is following the law with respect to this issue.

HB 3416 - Relating to disclosures regarding indemnification obligations and insurance coverage in connection with provision of services pertaining to wells or mines by certain subcontractors by Senator Eddie Lucio; Sponsored by Chairman Drew Darby

House Bill 3416 was introduced by Senator Drew Darby and took effect on September 1, 2021. The bill adds a new Chapter 127A to the Texas Civil Practice and Remedies Code requiring a temporary placement service to notify its subcontractors of indemnification and insurance coverage obligations before assigning them to perform well or mine services. The bill further provides for rules regarding the specific content of such disclosure and any other additional disclosures.

The filed version of the bill applied to all subcontractors; however Representative Darby introduced an amendment on the House floor to narrow such application to what it defines as a "temporary subcontractor". The bill defines a "temporary subcontractor" as an "independent contractor who, in connection with performing well or mine services: (A) is referred to or placed by a temporary placement service with the placement service's client; or (B) has entered into an agreement with a temporary placement service to provide those services to the placement service's client."¹

House Bill 3416 provides that before a temporary placement service refers a temporary subcontractor to a client, the placement service must provide a written disclosure to the subcontractor that: (1) describes the subcontractor's indemnification obligations, if any, to the placement service and to the placement service's client; (2) describes any insurance policy that is provided for the benefit of the subcontractor by the placement service or the placement service's client²; and (3) expressly states whether and to what extent any insurance policy will cover the subcontractor's tort liability and contractual indemnity obligations arising out of the subcontractor's services.³ This disclosure shall be provided to the subcontractor as a separate document from any agreement entered into with the subcontractor by the placement service or the client and the disclosure must be in English and clear and concise to describe contractual indemnity obligations.⁴ If the insurance policy is cancelled, not renewed, or materially changed during the temporary placement, the

¹ Section 127A.001(2) of the Texas Civil Practice and Remedies Code.

² A placement service may satisfy this requirement by providing a certificate of insurance to the temporary subcontractor. (Section 127A.002(d)).

placement service is required to give the temporary subcontractor at least thirty days' notice of such event.⁵ Notably, the bill does not set out any consequences that will ensue if the temporary placement service does not follow these requirements set out in House Bill 3416.

SB 833 - Relating to a sales tax refund for sales tax overpayments by certain oil or gas severance taxpayers by Senator Campbell; Sponsored by Representative Paddie

On May 30, 2021, Texas enacted legislation, S.B. 833, authorizing certain oil and gas producers who file severance tax returns but do not hold sales tax permits to file refund claims directly with the Comptroller for sales and use tax paid to vendors. Under the law prior to SB 833, only purchasers with a sales and use tax permit were allowed to file a refund claim for overpaid sales and use taxes directly with the Comptroller. As a result, producer taxpayers were required to obtain refund assignments from their vendors, which must be executed by a corporate officer for each vendor, before they can file a refund with the Comptroller.

S.B. 833 allows persons who file producers' and first purchasers' reports under Sections 201.203, 201.2035, 202.201, and 202.202 of the Tax Code to claim sales and use tax refunds directly, without obtaining an assignment. Thus, the new legislation will eliminate the need for assignment of refunds for severance tax filers and provides a more efficient process for all parties involved that will result in speedier refunds. Industry supported the bill, which passed both chambers unanimously. This law became effective September 1, 2021. Tax liability that accrued before September 1, 2021, is governed by prior law.

HB 654 - Relating to the rule against perpetuities by Representative Lucio III; Sponsored by Senator Johnson

H.B. 654 alters the rule against perpetuities so that interests in some trusts need not vest for up to 300 years, rather than 21 years. Many states have already extended their Rule Against Perpetuities statutes, and with this new legislation effective September 1, 2021, Texas has joined the group by establishing a fixed number of years (300) for a trust to exist. H.B. 654 continues to exempt charitable trusts from the application of the rule. It then defines the effective date of a trust as the date the trust becomes

³ Section 127A.002(a)

⁴ Section 127A.0002(c)(2).

⁵ Section 127A.004.

irrevocable. Under the bill, interests in trusts with effective dates on or after September 1, 2021, must vest, if at all, "not later than 300 years after the effective date of the trust." The old rule against perpetuities, which requires vesting not later than 21 years after some life in being at the time of the creation of the trust, plus a period of gestation, continues to apply to trusts with effective dates before September 1, 2021. H.B. 654 contains language allowing trusts created between the time the bill was passed and September 1, 2021, to opt into its new provisions.

Administrative/Regulatory

HB 632 - Relating to the establishment of an advisory committee for the TexNet seismic monitoring program by Chairman Drew Darby; Sponsored by Senator Kel Seliger

In 2015, as a response to ongoing concerns surrounding the possibility of increased seismicity being caused by oil and gas activity - specifically, disposal or injection wells - the Bureau of Economic Geology at the University of Texas at Austin established a seismic monitoring program known as TexNet. The 84th Texas Legislature provided for the funding of TexNet in its appropriations bill as well as the establishment of an advisory committee to oversee and supervise the use of funds for TexNet by the Bureau of Economic Geology with an expiration date of September 1, 2019. The 86th Texas Legislature declined to extend funding for TexNet, and its advisory committee and the program was allowed to lapse. HB 632 re-establishes the funding for TexNet and the advisory committee indefinitely as well as adding a provision requiring that the advisory committee members reside in the State of Texas. HB 632 also requires the advisory committee to generate a report by December 31 of each even-numbered year detailing activities of the committee, the results of the TexNet research, and recommendations for the future of TexNet.

SB 601 - Relating to the creation and activities of the Texas Produced Water Consortium by Senator Perry; Sponsored by Representative Burrows

SB 601 establishes the Texas Produced Water Consortium at Texas Tech University to study the economic, environmental and public health considerations of utilizing produced water instead of disposing of it and the technology required to do so. The Consortium is tasked with producing a report to the Texas Legislature following the study recommending changes to laws, administrative rules, and guidance for permitting and testing standards the Consortium deems necessary to facilitate making use of such produced water. The Consortium will additionally conduct a pilot project for state participation in a facility designed for the recycling of produced water.

The Consortium shall be guided by three separate committees:

- the Agency Advisory Council composed of one representative from each of the Department of Agriculture, the General Land Office, the Parks and Wildlife Department, the Railroad Commission, the State Energy Conservation Office, the Texas Commission on Environmental Quality, the Texas Economic Development and Tourism Office, and the Water Development Board;
- the Stakeholder Advisory Council composed of members chosen by Texas Tech University from the oil and gas industry, agricultural water users, industrial water users, environmental interests, produced water recycling operators, landowners or owners of groundwater rights, public water utilities, commercial water recyclers and midstream water companies, and river authorities; and
- the Technical and Economic Steering Committee composed of members chosen by Texas Tech University to provide technical, economic, and scientific expertise.

The initial Agency Advisory Council was selected following the enactment of SB 601 and consists of:

- Paul Dubois, P.E., Assistant Director for Technical Permitting, Oil & Gas Division Railroad Commission of Texas
- Fred Yebra, MBA, P.E., State Energy Conservation Office
- Laurie Fleet, Technical Specialist, Wastewater Permitting Section, Water Quality Division, Texas Commission on Environmental Quality
- Fisher Reynolds, Texas Economic Development & Tourism Office
- Anne Rogers Harrison, Water Quality Program Leader, Texas Parks & Wildlife Department
- Dan Hunter, Assistant Commissioner for Water and Rural Affairs, Texas Department of Agriculture
- Matt Nelson, Assistant Deputy Executive Administrator, Texas Water Development Board

SB 1260 - Relating to the authority of the Railroad Commission of Texas to contract for the treatment of and sell drill cuttings by Senator Birdwell; Sponsored by Representative Leman

S.B. 1260 amends Section 91.115 of the Natural Resources Code to grant the Railroad Commission a first lien on drill cuttings stored on a site or facility that an operator has failed to clean up after ceasing oil and gas operations

under the Commission's jurisdiction. Prior to the bill, Section 91.115 already granted the Commission a lien on equipment and hydrocarbons stored at the site or facility. In addition to adding drill cuttings to the property subject to the Commission's lien, the bill also authorizes the Commission to contract with third parties to treat the drill cuttings for a beneficial use. The Commission may foreclose its lien and sell the treated drill cuttings in the same way existing law already allows it to foreclose and dispose of hydrocarbons.

HB 3973 - Relating to a study on abandoned oil and gas wells in this state and the use of the oil and gas regulation and cleanup fund by Representative Walle; Sponsored by Senator Nichols

Among its other responsibilities, the Railroad Commission of Texas has under its purview the administration of the oil-field cleanup fund which is utilized to remediate old well sites and plug problematic, abandoned wells. Sites are remediated and wells are plugged based on prioritization related to immediate danger to groundwater. The oil-field cleanup fund was created in 1991 and is partially governed by the Oil-Field Cleanup Fund Advisory Committee, the members of which are selected by the legislative and executive branches of Texas government. In recent years, the oil-field cleanup fund has been more generally utilized by the Commission as a general operating account which was not the original intention.

HB 3973 was originally intended to be an overhaul of the statutory system governing then oil-field cleanup fund and the funding of the Commission generally; however, the original bill was replaced with the final version which commissions a study conducted by a joint committee of Texas House and Senate members the current usage of the fund and potential modifications to consider in the next legislative session. More specifically, the joint committee is instructed to:

- (1) study matters related to abandoned oil and gas wells in this state, including the costs associated with plugging abandoned wells and bonding requirements imposed on owners or operators of oil and gas wells;
- (2) identify potential solutions to reduce the need for general revenue spending to plug abandoned wells;
- (3) conduct a review of the oil and gas regulation and cleanup fund, including:

(A) revenue sources of the fund;

(B) projected revenue for the fund through fiscal year 2025 based on the fund's existing fee and fine structure; and

(C) an assessment of the rules and statutory limits that determine the amount of the fees and fines that contribute to the fund; and

(4) evaluate and identify other sources of potential revenue, including federal funds and other existing taxes and fees paid to the benefit of the state which could be utilized to meet the goals of the committee.

Under the enrolled bill, the Railroad Commission is required to provide necessary information to the joint committee in order for the committee to adequately study the issues outlined above and report recommendations and results to the Texas legislature.

SB 367- Relating to the requirements for an application for a permit to drill an oil or gas well at a site adjacent to a well blowout site by Senator Borris Miles; sponsored by Representative Ron Reynolds (failed to pass when allocation amendment added)

The intent of the author of SB 367 was to require an operator who applies for a permit to drill a well adjacent to a location where a blowout occurred to disclose whether or not they were the operator who was operating the well which suffered the blowout. This would only apply to counties with more than 750,000 in population.

SB 367 was hijacked in the Texas House by Representative Tom Craddick via an amendment which deleted the population requirement and added the following language to Section 85.046 of the Natural Resources Code:

Unless expressly prohibited by a lease, deed, or other contract, an operator or lessee with the right to drill an oil or gas well on or produce or develop oil or gas from each tract independently may, under a permit issued by the commission, drill, operate, and produce oil or gas from an oil or gas well, whether or not adjacent to a well blowout site described by Section 91.118, that traverses multiple tracts in order to prevent waste, promote conservation, or protect correlative rights.

The intent of Representative Craddick's new language was to formally legalize the permitting of horizontal wells which cross lease lines without creating a pooled unit. Currently, the Railroad Commission issues permits for such wells - commonly referred to as allocation wells - without any specific rules regarding such wells. This

amendment was added to SB 367 following a decision in the 250th District Court by Judge Crump in which she determined the Commission had not followed the proper rulemaking procedures under the Administrative Procedure Act to have the ability to permit allocation wells. Rather than subjecting itself to our administrative process intended to protect the rights of private citizens, the oil and gas industry, through Representative Craddick, attempted to avoid such due process with this amendment.

Combining tracts, and dividing production amongst combined tracts, has long been a common tool of operators in Texas through the creation of pooled units. To create a pooled unit, however, pooling authority must be specifically granted by a mineral owner. The right to grant authority to pool has been jealously protected under Texas statute and case law and is an important feature of an oil and gas lease negotiation. Representative Craddick's language seeks to avoid the necessity of negotiating pooling authority in an oil and gas lease to combine tracts and production under a different name - allocation. As a result, SB 367 died after being sent back to the Texas Senate with the poison pill amendment. Alas, despite its attempt to force a whitewashing 'fix' of the allocation problem through the legislative process, the industry will need to work through the court system and, possibly, should the ruling stand following appeal, the rulemaking process under the Administrative Procedures Act.

SB 13 - Relating to state contracts with and investments in certain companies that boycott energy companies by Senator Birdwell; Sponsored by Representative King (Phil)

S.B. 13 prohibits Texas state agencies that invest funds from investing in financial companies that boycott energy companies. Specifically, it requires the Comptroller of Public Accounts of the State of Texas to prepare and maintain a list of all financial companies that refuse to deal with, terminate business activities with, or otherwise take any action that is, solely or primarily, intended to penalize, inflict economic harm on, or limit commercial relations with a financial company because the company engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.

Eminent Domain

HB 2730 - Relating to the acquisition of real property by an entity with eminent domain authority and the regulation of easement or right-of-way agents by Representative Deshotel; Sponsored by Senator Kolkhorst

H.B. 2730 goes into effect on January 1, 2022 and amends several sections of the Texas Government Code and Texas Property Code concerning the rights of landowners and obligations of condemning authorities seeking to use statutory eminent domain powers. Discussed below, the bill includes significant changes that impact all condemning authorities.

Landowner's Bill of Rights

- Inform landowners regarding the landowner's right to file a written complaint with the Texas Real Estate Commission (TREC) against an agent of a condemning entity;
- An addendum containing the terms of the property conveyance instrument, including which terms are negotiable; and
- Regular review (every two years) by the Texas Attorney General for compliance by condemning authorities.

Initial Offer to Landowner

- A statement, in bold print and larger font than the other portions of the offer, indicating whether the offered compensation includes damages to the remainder of the property, OR a formal appraisal which identifies any damages to the remainder of the property; and
- Contact information (name and telephone) for a representative of the condemning entity.

Condemnation lawsuits

- Notice of the condemnation lawsuit petition to the landowner via certified mail, return receipt requested, AND first class mail;
- Judges must appoint two alternate special commissioners in addition to the three statutory special commissioners required; and
- Parties have the later of 10 days after the special commissioners are appointed, or 20 days after the petition is filed, to strike a special commissioner.

Thus, H.B. 2730 requires the landowner to receive an easement agreement with standard terms that protect property rights, as well as improves the landowner bill of rights landowners receive with or before the initial offer. The legislation also creates a penalty for land agents that act unethically and make lowball offers to landowners.

HB 4107 - Relating to the notice of entry for the purpose of exercising the power of eminent domain by a common carrier pipeline by Representative Burrows; Sponsored by Senator Kolkhorst

H.B. 4107 requires a common carrier pipeline entity exercising eminent domain power to provide the property owner with written notice of the entity's intent to enter the property and an indemnification for the property owner in

the event the entity's survey damages the property prior to entering the subject property to survey the property. The notification and indemnification must be provided to the property owner two days before the entity enters the property, include contact information in the event the property owner has questions or objections regarding the survey, and must be served pursuant to the Texas Rules of Civil Procedure (e.g., first class mail, e-mail, personal delivery, etc.). H.B. 4107 took effect on September 1, 2021.

SB 721 - Relating to the disclosure of appraisal reports in connection with the use of eminent domain authority by Senator Schwertner; Sponsored by Representative Leman

S.B. 721 requires an entity with eminent domain power to disclose to the property owner "any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value." Prior to S.B. 721, this statute required the entity seeking to acquire the property to disclose to the property owner all appraisals from the ten years preceding the date of its initial offer and the property owner had to disclose to the acquiring entity any appraisals that would be used in determining the owner's opinion of value. S.B. 721 took effect on September 1, 2021.

SB 726 - Relating to establishing actual progress for the purposes of determining the right to repurchase real property from a condemning entity by Senator Schwertner; Sponsored by Representative Leman

S.B. 726 revises "actual progress" for the purposes of determining whether a property owner can repurchase their property when an entity with eminent domain authority has not put it to public use. Prior to S.B. 726, "actual progress" was defined as the completion of two or more of the following actions: 1) performance of a significant amount of labor on the project, 2) provision of a significant amount of materials, 3) significant work from a retained architect, engineer, or surveyor, 4) application for government funds to develop the property, 5) application for a government permit to develop the property, 6) acquisition of an adjacent tract, and 7) for a governmental use of eminent domain, adoption by the governmental entity of a development plan that required a longer timeline than ten years. The new law requires that condemning entities now complete at least three actions listed above to demonstrate "actual progress." Further, S.B. 726 eliminates action number six and further restricts action number seven to being used by navigation districts, port authorities, and water districts implementing a project included in the State Water Plan.

Utility/Winter Storm Response

HB 17 - Relating to a restriction on the regulation of utility services and infrastructure based on the energy source to be used or delivered by Representative Deshotel; Sponsored by Senator Birdwell

House Bill 17 was introduced by Representative Joe Deshotel and became effective after it was signed by Governor Abbott on May 18, 2021. The bill was a response to a trend in California where cities have passed energy efficiency plans that prohibit new subdivisions from offering natural gas heating to reduce emissions. The bill essentially prohibits Texas municipalities from banning natural gas as a fuel source for utility services and new construction.

Prior to the passing of this bill, Subchapter Z of Chapter 181 of the Texas Utilities Code authorized general law cities to implement legislation protecting utilities from interference and waste of the services they supply. This bill adds a new Section 181.903 and its main provision is as follows:

No regulatory authority, planning authority, or political subdivision of the state may adopt or enforce an ordinance, resolution, regulation, code, order, policy, or other measure that has the purpose, intent, or effect of directly or indirectly banning, limiting, restricting, discriminating against, or prohibiting the connection or reconnection of a utility service or the construction, maintenance, or installation of residential, commercial, or other public or private infrastructure for a utility service based on the type or source of energy to be delivered to the end-use customer.

Similar bills have been filed in other states including Kansas, Mississippi, Oklahoma, and Utah. In addition to the trend in California, this bill was promoted as a response to the power outages resulting from the winter storm in February 2021. Legislators emphasized the ability of natural gas suppliers to largely continue providing gas to Texas homes during the winter storm allowing some residents to use gas fireplaces and stoves. The bill was opposed by city governments and environmental interest groups but was supported by builders and the oil and gas industry.

SB 1582 - Relating to examinations for applicants for or holders of licenses or registrations to perform certain activities pertaining to compressed natural gas or liquefied natural gas by Senator Hughes; Sponsored by Representative White

Senate Bill 1582 was sponsored by Senator Bryan Hughes, faced no opposition and became effective on September 1, 2021. The bill makes minor changes to Section 113.087 of the Texas Natural Resources Code which regulates the administration of examinations to obtain a liquefied petroleum gas (LP-gas) license. The bill amended this section of the Code to allow the Railroad Commission to contract with a proctoring service to prepare, administer, and grade or review the examination. The bill furthermore amends this section of the Code by removing the ability of these testing services to collect examination fees on behalf of the Railroad Commission.

HB 3648 - Relating to the provision of natural gas and electric services in this state by Representative Geren; Sponsored by Senator Morales (Eddie)

House Bill 3468 was introduced by Representative Charlie Geren, and it became effective June 18, 2021. The bill requires the Public Utility Commission and the Railroad Commission to adopt rules to designate gas production facilities that supply electric generators as critical facilities during an emergency. This bill was drafted in response to the winter storm in February 2021.

Prior to this bill, the law allowed facilities that produced and transported natural gas the option to voluntarily designate themselves as critical natural gas facilities, however no other mechanism encouraged electrical utilities to avoid disconnecting electrical service to facilities and other wells that had not filed their voluntary designations. Consequently, many transportation facilities and wells lost power during February's winter storm causing devastating shortages of natural gas across Texas.

The bill amends Subchapter C of Chapter 81 of the Texas Natural Resources Code by adding Section 81.073. This new section requires the Railroad Commission to collaborate with the Public Utility Commission to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas as critical customers or critical gas suppliers during energy emergencies. These rules must (1) establish criteria for designating persons who own or operate facilities or engage in activities that make them critical gas suppliers and (2) consider essential operational elements when defining critical customer designations and critical gas supply information.

The bill also amends Subchapter D of Chapter 38 of the Texas Utilities Code by adding a Section 38.074. Section 38.074 directs the Public Utility Commission to collaborate with the Railroad Commission to adopt rules to establish a process to designate these facilities and entities as critical customers during energy emergencies.

The Public Utility Commission is required to adopt the rules required by this bill no later than December 1, 2021. Additionally, the bill instructs the Public Utility Commission to provide a report to the legislature regarding the implementation of these rules no later than January 1, 2022.

SB 3 - Relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties by Senator Schwertner; Sponsored by Representative Paddie

Senate Bill 3 was the Legislature's key response to the winter storm in February 2021. The bill is fifty pages long and it provides for the preparation for, prevention of, and response to extreme weather emergencies and extended power outages. The bill establishes related requirements for ERCOT, the Public Utility Commission, the Texas Commission on Environmental Quality, the Railroad Commission, and the Texas Division of Energy Management. This paper provides a high-level summary of Senate Bill 3.

The bill specifically provides for the following:

- the requirement of "weather emergency preparedness" for electric, natural gas, and water service entities;
- mapping of the state's electricity supply chain and the creation of the Texas Electricity Supply Chain Security and Mapping Committee;
- requirement of electric utilities to provide information to customers about how it might conduct involuntary load shedding;
- allows for the use of landfill methane gas to provide backup or supplemental electricity in areas with populations greater than 1 million;
- includes regulatory language for the continued provision of water during emergency operations;
- the establishment of the Texas Energy Disaster Reliability Council and the State Energy Plan Advisory Committee;
- creation of a power outage alert system;
- the Public Utility Commission must require reports of retail electric providers, municipal utilities, generation utilities;
- a review of ancillary services to determine if the services meet the needs of the ERCOT power region; and
- certain civil and administrative penalties for failure to adopt rules set out in the bill.

Senate Bill 3 was filed by Senator Charles Schwertner, passed both chambers unanimously, and became effective on June 8, 2021.

SB 1668 - Relating to certification and examination requirements for persons engaged in liquefied petroleum gas activities by Senator Hughes; Sponsored by Representative Raney

Senate Bill 1668 was sponsored by Senator Bryan Hughes, faced no opposition, and became effective on September 1, 2021. The bill states that the Railroad Commission shall waive the ordinary examination and training requirements set out in Section 113.087 for applicants for a certificate for LP-gas cylinder filling so long as such applicant: (1) has completed training consistent with the Propane Education & Research Council, (2) submits proof of completion of such training, (3) submits an application, (4) pays the applicable fee, and (5) passes the examination.

O&G Waste

HB 1284 - Relating to the regulation of the injection and geologic storage of carbon dioxide in this state by Representative Paddie; Sponsored by Senator Hancock

Traditionally, the Texas Commission on Environmental Quality has had jurisdiction over onshore and offshore carbon dioxide injection wells and storage projects on Texas lands and waters because of their connection with clean coal projects. Since the Railroad Commission of Texas controls the permitting process for injection wells, this made seeking primacy from the Environmental Protection Agency in this arena difficult. To facilitate seeking and receiving primacy from the Environmental Protection Agency, HB 1284 moves jurisdiction over carbon dioxide wells and storage projects from the Texas Commission on Environmental Quality to the Railroad Commission and requires the Railroad Commission to seek such primacy from the Environmental Protection Agency.

The only exception to the Railroad Commission's jurisdiction and control over the permitting and managing of a carbon dioxide sequestration project is that an application for a permit to inject and store anthropogenic carbon dioxide the Texas Commission on Environmental Quality must include a letter from the Texas Commission on Environmental Quality stating that the facility will not impact or interfere with any previous or existing Class I injection wells or any other injection wells. As such, even with the passage of HB 1284, the Texas Commission on

Environmental Quality still has a role in the carbon dioxide sequestration permitting process.

HB 2201 - Relating to the location of pits used in the production of oil and gas by Representative Ashby; Sponsored by Senator Nichols

The Railroad Commission of Texas has under its purview the responsibility of reviewing locations of proposed pits used by commercial oil and gas disposal facilities. Historically, the Commission has considered a given property's flooding history as well as whether the property is located within the 100-year floodplain. HB 2201 codifies this historical precedent by requiring the Commission to consider the flooding history of a given property over the preceding 10 years prior to issuing a permit for a pit even if the given property is outside of the 100-year floodplain.

HB 3516 - Relating to the regulation of the recycling of fluid oil and gas waste by Representative King (Tracy); Sponsored by Senator Perry

As the technology required for the recycling and use of produced water (fluid oil and gas waste) advances, the State of Texas has taken a more active role in promoting, governing, and permitting such recycling and use. HB 3516 requires the Railroad Commission to engage in a rulemaking process to (i) encourage fluid oil and gas waste recycling for beneficial purposes, and (ii) establish standards for the issuance of permits for commercial recycling of fluid oil and gas waste. These new rules must establish (i) minimum siting standards for fluid recycling pits, (ii) uniform technical, construction and placement standards, (iii) uniform standards for estimating closure costs, (iv) minimum and maximum bonding and financial security amounts based on factors determined by the Railroad Commission, and (v) standards for sampling and analysis of fluid oil and gas waste. Unless a protest is filed against a given application, the Railroad Commission is required to issue a permit within 90 days of the submission of a completed application.

This new rulemaking complements existing Railroad Commission rules which govern the permitting process for off-lease and stationary commercial recycling facilities. The new rules are intended to be more detailed standards for on-lease recycling operations which are currently very broad and non-specific.