



Express Preemption of Regulation of Oil and Gas Operations

*Testimony in Support of HB 40 and SB 1165 before The Texas Legislature
Energy Committee of the House of Representatives*

by Leigh Thompson, Policy Analyst

Chairman and Members of the Committee:

My name is Leigh Thompson and I am a policy analyst in the Armstrong Center for Energy and Environment at the Texas Public Policy Foundation, a non-profit, non-partisan free market think tank based here in Austin. Thank you for the opportunity to speak today in support of HB 40 and SB 1165.

Legal Implications

Clarifying the legal limits of municipalities and other political subdivisions does not undermine or erode the importance of local control. HB 40 and SB 1165 reinforce the local ability to protect public health and safety through regulation of surface activity related to oil and gas operations. Requiring that any such regulation, not subject to state or federal preemption, be commercially reasonable does not divest municipalities and political subdivisions of all authority—it defines the authority already enjoyed.

Under current law, nine separate state and federal regulatory bodies govern oil and gas operations. Texas Commission for Environmental Quality and the Railroad Commission play the largest role in regulatory oversight but the, Environmental Protection Agency, Department of the Interior, Federal Energy Regulatory Commission, as well as, the Department of Energy also participate. Prohibiting a patchwork of municipal bans does not unfetter oil and gas operators, but rather, it keeps 1,200 new regulating bodies from springing up and unduly restricting the rights and freedoms of Texans.

Acknowledging the comprehensive and pervasive field occupation of statewide oil and gas regulation is a clear and straightforward way to protect and manage Texas' interest in the state's continued growth, prosperity, and economically healthy communities.

Environmental Impact

While HB 40 affects all oil and gas operations, hydraulic fracturing, commonly known as fracking, is the technique drawing the most municipal ire. The environmental concerns surrounding fracking have been largely, if not entirely, driven by flawed science.

- *Groundwater Contamination:* The U.S. Department of Energy, UT Arlington, and Ohio State University as well as other academic institutions have found no link between fracking and groundwater contamination. The reports showed that fracking fluids did not migrate upwards into water wells but stayed thousands of feet below.
- *Emissions:* Methane emissions from fracking declined by over 70 percent from 2011—2013 due to capture techniques voluntarily employed by well operators. Further, studies by TCEQ show that ground level ozone emissions emanating from oil and gas operations in shale areas are far smaller than mobile sources. In 2012, the Barnett Shale mobile nitrous oxide (NO_x) emissions were 15 percent larger than those of oil and gas emissions and volatile organic compounds (VOCs) emitted were half that of their mobile counterparts.

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TCEQ predicts that by 2018 all ground level ozone emissions emanating from the entire Eagle Ford shale area will make up 3 percent of the total from the San Antonio-New Braunfels metropolitan area.

- *Earthquakes:* There is no definitive link between fracking, or the associated wastewater disposal wells, and earthquakes. A mid-2014 USGS study shows that earthquakes have increased globally and randomly. Large magnitude quakes are occurring more frequently overseas, where no fracking takes place. Earthquakes are typically originating three miles beneath the surface, while the majority of disposal wells

are dug to depths of 10,000 feet. This leaves a mile between the bottom of the well and the epicenter of the earthquake.

Conclusion

This bill does nothing to impair legitimate uses of zoning and health and safety regulations by municipalities and political subdivisions. It does, however, restrict baseless and unnecessary regulation in area already occupied by the state through clear and straightforward language. For these reasons TPPF supports the passage of HB 40 and SB 1165. ★

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