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'Denton Fracking Bill' Headed To Abbott's Desk After Texas Senate Approval

By JIM MALEWITZ TEXAS TRIBUNE • MAY 5, 2015

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Fracking in Fort Worth in September 2013.

MARK GRAHAM / TEXAS TRIBUNE

The so-called Denton fracking bill is headed to Gov. Greg Abbott (<http://www.texastribune.org/directory/greg-abbott/>)'s desk.

The Senate on Monday approved House Bill 40 (<http://txlege.texastribune.org/84/bills/HB40/>), which would pre-empt local efforts to regulate a wide variety of oil and gas activities and has stirred concerns in some towns that have sought to blunt the effects of drilling close to homes, schools and businesses.

The proposal already sailed through the House, and Monday's passage – with no amendments tacked on – means that it needs only Abbott's signature to become law.

Intended to clarify where local control ends and Texas law begins, HB 40 is the most prominent of the flurry of measures (<http://txlege.texastribune.org/topics/energy/combating-local-drilling-ordinances/>) filed in response to Denton's vote to ban hydraulic fracturing (<http://www.texastribune.org/2014/12/15/dissecting-denton-how-texas-city-banned-fracking/>) within city limits. And it comes as oil and gas companies face increased pushback (<http://www.texastribune.org/2013/10/18/dallas-debate-shows-city-power-limit-drilling/>) in other cities where the industry's footprint has spread – particularly in North Texas' 5,000-square-mile Barnett Shale. In some cases, neighborhoods are expanding closer to longtime drilling sites.

The Senate's 24-7 vote came after virtually no debate in the chamber, though the proposal has stirred plenty of controversy throughout the legislative session. The proceedings on the Senate floor contrasted with what happened in the House last month, where the bill's few critics forced a three-hour debate before a vote.

Energy companies and industry groups support the bill, whose preamble states that the act “expressly pre-empts regulation of oil and gas operations by municipalities and other political subdivisions.”

Environmentalists and some cities worry that the legislation will add to confusion about what municipalities can regulate and erode authority cities have long tapped to ensure local health and safety. That's partly because of the bill's broad definition of “oil and gas operations.”

Sen. Troy Fraser (<http://www.texastribune.org/directory/troy-fraser/>), who took up the proposal in the Senate, called it a “carefully crafted compromise” between representatives of cities and energy interests.

“Oil and gas is very valuable for the state for job development, but we have to find a way to coexist with municipal subdivisions,” the Republican from Horseshoe Bay told reporters.

The Texas Municipal League, which counts 1,145 Texas cities among its members, was initially among the bill's fiercest critics – saying it could invalidate local drilling ordinances across Texas.

The league softened that message after House lawmakers – led by Rep. Drew Darby (<http://www.texastribune.org/directory/drew-darby/>), R-San Angelo – added language listing areas cities could still regulate, including fire and emergency response, traffic, lights and noise – but only if such rules are “commercially reasonable.” The language also allows cities to enforce reasonable setbacks between drilling sites and certain buildings.

Darby also added what he calls a “safe harbor” provision, protecting cities from legal challenges if their ordinances have not triggered litigation in the past five years – another change that the Municipal League found more palatable.

In April, Darby brokered a deal between the Municipal League and the Texas Oil and Gas Association in which both groups agreed to “support or be neutral to” the bill as written. That agreement helped keep the bill free of amendments in both chambers.

Despite the agreement, many city officials remain upset.

In a letter to Darby and Fraser last week, 15 local elected officials called the proposal a “fundamentally flawed” effort that would jeopardize public health and safety in drilling communities.

“In addition to the growing body of evidence around the wide range of health impacts from fracking, this form of oil and gas drilling imposes infrastructure burdens on local communities, from strained services to ruined roads,” the letter

(http://s3.amazonaws.com/static.texastribune.org/media/documents/TX_local_control_letter.pdf) said.

“Other local impacts such as water and soil contamination and reduced property values are likely to persist long after the boom is gone, and we will be the ones left to pick up the pieces.”

Disclosure: The Texas Municipal League is a corporate sponsor of The Texas Tribune. A complete list of Tribune donors and sponsors can be viewed here (<http://www.texastribune.org/support-us/donors-and-members/>).

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