

Texas Lawmaker Aims To Block City Fracking Bans

Jess Davis, Law360.com, 12-19-14

Texas Rep. Phil King, R-Weatherford, introduced two bills Thursday aimed at blocking cities from limiting oil and gas drilling, including a measure that would require the state attorney general's approval before cities could allow local votes on fracking bans.

King's HB 539 would impose hefty financial burdens on cities that regulate oil and gas drilling by requiring a city to pay back the state for five years of lost revenue resulting from a potential decline in drilling activity. And his HB 540 would allow the attorney general to block a local proposal for a fracking ban — like the one Denton approved in November — from ever hitting voters' ballots if the attorney general determined a new ordinance violated Texas or federal law, or constituted a governmental taking of private property.

King's first proposal would require cities to shoulder the burden of lost oil and gas revenue to the state, applying to cities that adopt ordinances regulating, limiting or prohibiting the production, storage or transportation of oil or natural gas.

The bill would require cities to pay for the Legislative Budget Board to prepare a fiscal note detailing the projected tax revenue, fee and licensing revenue and royalty income the state and local governments would lose if the regulation is enacted, over a five-year period. Cities would also be on the hook for projected losses that school districts would incur from reduced property tax values attributed to the regulation.

And cities would have to hold public hearings, publicly announce the total losses and include information about the money it owes the state in any ballot measure including an oil and gas regulation. The bill would also require cities to lay out for voters how the city would pay for the state's losses, including detailing any tax hikes the city might impose to raise the money.

HB 540 would only apply to cities that, like Denton, allow residents to propose ballot measures to enact or repeal city ordinances through a petition process.

Denton activists in February launched a citizens campaign that easily secured enough signatures to get their proposal to ban fracking on the city council's agenda and onto ballots in November after city leaders voted it down.

The city voted by a wide margin to ban fracking, and though the Texas Oil & Gas Association and the state's General Land Office sued to enjoin the ban, it took effect Dec. 2.

The bill would kick in before voters ever got a chance to weigh in, setting up a requirement for the city to submit any measures proposed by petition for review by the attorney general's office.

The attorney general would then have 90 days to determine whether any portion of the proposed measure would violate the Texas or federal constitution, a state statute or regulation, and whether the ordinance “would cause a governmental taking of private property for which the Texas or federal constitution would require compensation to be paid to the property owner.”

If the attorney general's office determined any portion of the proposal would violate state or federal laws

or cause a taking, the city couldn't hold an election on the measure.

King did not immediately respond to requests for comment Thursday.