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*Natural Resources, Licensing and Regulation*

## House committee to examine effects of federal environmental rules

*January 6* — The recently formed Texas House Committee on Federal Environmental Regulation will examine this interim how several proposed or finalized U.S. Environmental Protection Agency (EPA) rules could affect jobs, economic development, and energy rates and reliability in Texas.

The committee will review federal rules on air quality, such as carbon dioxide-reduction requirements under the Clean Power Plan, updates to the national ambient air quality standards, and proposed standards for methane emissions from the oil and gas sector. The committee also is charged with exploring the financial implications of the rules for the Texas Emissions Reduction Plan (TERP), which provides incentives to upgrade or replace older vehicles and heavy-duty equipment, and with examining how TERP could help mitigate the effects of the new EPA rules.

### Clean Power Plan

The Clean Power Plan (CPP), which took effect December 22, requires states to develop plans to reduce carbon dioxide emissions from power plants. The finalized CPP gives states individualized emissions goals expressed two ways — rate-based or mass-based — and allows states to use either. Under a rate-based plan, Texas would have until 2030 to reduce carbon emission rates by about 33 percent from a 2012 baseline. Under a mass-based plan, the state would have to reduce annual average carbon emissions by about 21 percent over that period.

States must submit final plans or initial submittals with an extension request by September 6, 2016, and implement them by 2022. Federal plans will be drafted for states that fail to submit an approvable plan. The Texas House committee will compare the implications of a state plan with those of a federal plan resulting

from non-compliance. Texas is part of a 24-state coalition that filed a lawsuit in October against the EPA in response to the CPP, in part on the basis that the federal agency does not have the statutory authority to implement the rule.

Some say the CPP is an overreach by the federal government with little environmental benefit. They say retirement of coal-fired generation capacity could require adding significant energy from natural gas and intermittent solar and wind sources to the state's electric grids, which might raise costs and affect reliability for consumers. Others say Texas should work with the EPA to reduce carbon emissions because the state already is feeling the effects of climate change, including extreme heat and more frequent flooding. They say market forces have been transitioning the state to a clean energy economy, enabling Texas to meet CPP targets.

### Ground-level ozone standards

Recently finalized updates to the EPA's national ambient air quality standards, which took effect December 28, further tighten ground-level ozone limits from 75 to 70 parts per billion. Ground-level ozone forms when certain emissions from factories, power plants, and vehicles undergo chemical reactions in sunlight. In response to the new standards, the Texas Attorney General's Office on Dec. 23 challenged the rule by filing a petition for review with a federal appeals court on behalf of the state and the Texas Commission on Environmental Quality.

Some say the stricter ozone standards are costly and unrealistic, are not supported by scientific data, and will not improve public health. They say cities such as Houston and Dallas were unable to meet the previous limit and that the

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stricter standard could push more cities into non-attainment, forcing more regulations onto businesses in those areas. Others say meeting the EPA's lowered ozone standards will curb cases of asthma and heart and lung disease in the state. Expansion of TERP, a voluntary approach to reducing emissions, and full appropriation of TERP funds by the Legislature would help Texas cities meet these new standards, they say.

### Proposed methane rule

Building on its 2012 standards for volatile organic compound (VOC) emissions for the oil and natural gas industry, the EPA recently proposed rules to reduce by 2025 methane emissions from that sector by 40 to 45 percent from 2012 levels. The proposal would add emissions reduction requirements for sources of methane and VOC pollution not covered in the 2012 rules, including requirements that owners and operators find and repair leaks, capture natural gas from hydraulically fractured oil wells, and limit emissions from certain equipment.

Some have expressed concern that the proposed methane rules could be costly and unnecessary for Texas, as companies already are addressing methane releases. They say stricter proposed requirements would be especially burdensome because they come at the same time that demand for natural gas is expected to increase with CPP requirements.

Those who support working with the EPA to reduce methane emissions, a more potent greenhouse gas than carbon dioxide, from equipment used in oil and gas production say this rule is especially important for Texas, a top producer of oil and gas. They say methane emissions from the state's oil and gas industry must be controlled for public health and environmental reasons. They also say tighter controls are particularly important now because cleaner-burning fuels like natural gas are key compliance options for the CPP and the new standards would ensure safe and responsible production of natural gas.

— by *Blaire D. Parker*

### Public Education

## Study examines Internet connectivity in Texas schools

*January 8* — A legislatively mandated study recently found that 26 percent of public school campuses in Texas responding to a survey met a state-specified target for Internet connectivity speed and 62 percent met the target for network connection speed between the district and each school campus.

The [Public School Network Capabilities Study](#) was published on the Texas Education Agency (TEA) website and sent to the governor and Legislature. Education committees in the House and Senate have received interim charges to examine access to broadband services by public schools.

The Legislature in 2013 enacted HB 1926 by K. King, which expanded electronic course options in public schools. As part of that bill, Education Code, [sec. 32.005](#) required TEA to assess the network capabilities of school districts and open-enrollment charter schools to determine whether each met the following target capacities:

- an external Internet connection featuring a bandwidth capable of a broadband speed of at least 100 megabits per second for every 1,000 students and staff members; and
- an internal wide area network (WAN) connection between the district and each of the school campuses featuring a bandwidth capable of a broadband speed of at least one gigabit per second for every 1,000 students and staff.

To conduct the study, TEA sent a 12-question survey to 1,223 districts and charter schools and received an 89.8 percent response rate. TEA used the Internet and WAN connection speeds self-reported by districts for each of their campuses to determine whether a campus met the specified targets.

Campuses were asked to report up to two barriers that prevent them from meeting the Internet speed target. The most frequently mentioned barrier identified by campuses that did not meet the target was a lack of necessary funds in the district/campus budget. The second most cited barrier differed depending on locale. Campuses in city and suburban areas said current hardware or software did not support higher speeds, while those in town and rural areas said higher-speed connections were available only at premium rates.

Among campuses that met the Internet speed target, many reported that a shared connection with other campuses prevented them from using the full speed of the connection.

The report also includes information on what some other states are doing to address broadband connectivity for schools.

— by *Janet Elliott*

## Public Education

**TEA seeks guidance on property of closed charter schools**

*January 29* — In the wake of recent charter school closings, questions have been raised about the legal status and disposition of property purchased by a charter school that is no longer in operation. The Senate Education Committee in December heard testimony on these issues, and the Texas Education Agency (TEA) has [requested](#) an opinion from the Texas attorney general, expected in June. The status of charter school property also was the subject of legislation considered by the 84th Legislature in 2015.

Charter schools are not subject to all of the laws that govern traditional public schools, and they do not receive state funding for facilities or have access to tax-revenue bonds. Some charter schools fund facilities through bank loans and bond financing. When a charter school ceases operations, outstanding debt can complicate the disposition of property, according to TEA officials and charter school advocates.

TEA has been handling more charter school revocations since the enactment of [SB 2](#) by Patrick in 2013, which requires revocation of a charter when a school has three consecutive years of unsatisfactory academic or financial ratings. Since 2014, there have been 17 charter revocations, compared to 16 in the previous 15 years, and three charters expired in 2015.

Education Code, [sec. 12.128\(a\)](#) states that property purchased or leased with state funds received by a charter holder after September 1, 2001, is considered state property held in trust by the charter holder for the benefit of the school's students. Sec. 12.128(c) requires the education commissioner to take possession and assume control of such property of a charter school that ceases to operate and supervise the disposition of the property in accordance with law. Under the law, these provisions do not affect a security interest in or lien on property established by a creditor in connection with the sale or lease of the property to the charter holder.

TEA's opinion request notes that the Education Code does not provide a specific process for the commissioner to take possession and dispose of the property. The request says it is "unclear whether the mandate that the commissioner supervise the disposition of the real property that is returned to the state under that section grants the Commissioner authority to sell that

property independent of the legislature's general right to control state real property." The request poses six questions related to provisions in the Education Code, the Natural Resources Code, the Texas Constitution, and the fiscal 2016-17 general appropriations act that could relate to the legal status and disposition of affected properties.

The 84th Legislature last year considered legislation to establish a process for disposing of assets of a former charter. One of those bills, [HB 3347](#) by Aycock, was reported favorably by the House Public Education Committee but not scheduled for consideration by the full House. It would have created a 90-day period from the effective date of the revocation or surrender of a charter for a former charter holder to dispose of property and other assets in various ways. Options would have included remitting property and title to the state, re-titling the property to another charter holder or a school district, or returning the property to a valid lien holder or security interest with a written agreement by the creditor to remit to the state all excess proceeds after satisfaction of the secured debt.

Supporters of the bill said it would provide a clear mechanism for dealing with charter school assets, including those purchased through bank or bond financing, and in some cases could help ensure that public money followed students to a new school from a closed charter school.

Critics said the bill needed stronger protections for creditors who helped finance charter school facilities, such as allowing secured lenders to be reimbursed before any decisions were made about transferring property. Otherwise, it could become difficult for charters to obtain financing for new facilities needed to meet growing demand by families for charter school slots, critics said.

The Senate Education Committee in December heard testimony on issues surrounding the disposition of state property when charters cease to operate. TEA's general counsel said at the hearing that both the agency and the charter school community could benefit from legislative direction on issues related to leased or purchased property, unexpended funds, and costs for storing student records from former charters.

— by Janet Elliott