

Senate passes measure banning cities' anti-fracking ordinances Abbott expected to sign bill seen as a victory for oil, gas interests **MARISSA BARNETT** Publication Date: **May 5,**

2015 Page: **A01** Section: **NEWS** Zone: **STATE** Edition: **1**

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AUSTIN — Senators delivered a sweeping victory Monday to oil and gas operators in a fight that has roiled North Texas and pitted a key state industry against communities' desire to restrict fracking.

The Senate gave final approval to a measure to pre-empt cities from banning fracking and enacting a variety of other oil and gas-related ordinances, sending the bill to Gov. Greg Abbott on a 24-7 vote. He is expected to sign it.

The bill emerged as legislative backlash to a hydraulic fracturing ban passed by Denton voters in November. That ordinance bars oil and gas operators from fracking within city limits and has been challenged in court by the Texas Oil and Gas Association and the state's General Land Office.

While those lawsuits are still pending, the bill approved Monday will probably make Denton's fracking ban impossible to enforce.

The legislation also prevents cities from passing ordinances addressing underground activity, including disposal wells, which have been linked to earthquakes, and pre-empt any ordinance deemed not "commercially reasonable."

Supporters argued that the legislation is needed to address a patchwork of regulations across the state that could hurt the oil and gas industry. Sen. Troy Fraser, R-Horseshoe Bay, said after

the vote that the bill is a “carefully crafted compromise” between municipalities and the energy industry.

“Oil and gas is very valuable to the state for job development, but we have to find a way to coexist with the political subdivisions,” he said.

The Senate had virtually no debate, nor were there attempts to amend the bill, a contrast with the House, which debated the measure for hours last month before passing it.

Litigation expected

But opponents predicted the measure would backfire.

“What you’re about to see is a lot of litigation between cities and state government,” said Sen. Royce West, D-Dallas.

Denton Mayor Chris Watts said it does nothing to address the problem in state law that triggered the citizen initiative against fracking.

Another city could find itself in the spot Denton did, Watts said, if a company lodges a “vested rights” claim based on an old permit to challenge a requirement on how far a well must be from a neighborhood or other structures, known as a setback rule.

It was Denton’s inability to enforce its setbacks with EagleRidge Energy that ultimately led to the ban vote.

“We’re right back where we started,” Watts said.

The language of the bill resulted from negotiations between Rep. Drew Darby, R- San Angelo, the Texas Oil and Gas Association and the Texas Municipal League, which had initially accused the oil industry of going “nuclear against homeowners.” The group was neutral, though, on the rewritten bill.

Opposing views

Todd Staples, the former state agriculture commissioner who now heads the oil and gas group, heralded the passage of what he called “balanced legislation to continue the 100-year history of cooperation between Texans, their communities and oil and natural gas operators.”

But environmentalists offered a sharp critique.

“Oil and gas companies donated \$5.5 million to the campaigns of legislators in the last elections, and clearly they got their money’s worth,” said Luke Metzger, executive director of Environment Texas, a group opposed to the bill.

The shale drilling revolution in the U.S. in the last decade has reaped economic

benefits, but it’s also brought drilling closer to homes and schools and given rise to concerns over public safety. In no place is that more evident than the Barnett Shale, where oil and gas production sits amid a rapidly growing metro area.

Under the bill, municipal ordinances must be related to surface activity, must be “commercially reasonable,” must not effectively prevent an oil and gas operation from occurring, and must not be pre-empted by another state or federal law.

For example, cities would be able to regulate above-ground activity, including lights, noise and drilling setbacks. Still, such ordinances would need to be “commercially reasonable” — a standard that critics say could lead to excessive litigation.

Dallas setback

Cities would also be barred from enacting ordinances that effectively ban oil and gas production, a standard that could bring

into question a 1,500-foot drilling setback approved by the Dallas City Council in 2013.

Likewise, cities would be pre-empted from approving new ordinances regulating underground activity, including waste disposal wells, which were recently tied to a swarm of earthquakes in the Azle area.

There's a "safe harbor" in the bill that allows regulations that have been in place for five years and have allowed for production are said to be deemed "commercially reasonable." But legal experts have said those too could face problems if challenged in court.