



Jackson Walker LLP



Gulf Coast Authority

87th(R) Legislative Recap

2021 Texas Environmental Superconference

August 5, 2021

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The 87th Regular Legislative Session



Session	Total Bills and Resolutions Introduced	HBs and SBs Passed	Percentage Passed	Vetoed
87th (2021)	9999	1073	10.5%	21
86 th (2019)	10877	1429	12.6%	58
81 st (2009)	12238	1459	11.9%	38
76 th (1999)	8921	1487	16.6%	33
72 nd (1991)	7108	960	13.5%	36

The 87th Regular Legislative Session



COVID-19 and Other Priority Legislation



The 87th Regular Legislative Session



How Did COVID-19 Affect This Session?

- Of the approximately 150 bills and resolutions filed related to COVID-19, only about 20 passed.
- **SB 6 (Hancock) – Pandemic Liability Protection Act**
 - Provide retroactive civil liability protections for healthcare providers, first responders, and other businesses, and would extend current immunity to physicians, healthcare providers, and first responders “during a man-made disaster, natural disaster, or a health care emergency.”
- **SB 25 (Kolkhorst) - Right to Designate an “Essential Caregiver”**
- **SB 968 (Kolkhorst) - Prohibited “Vaccine Passports”**
 - Prohibits any business operating in Texas from requiring customers to show proof of their vaccination status or post-infection recovery status in exchange for receiving services.

The 87th Regular Legislative Session



- **Governor Greg Abbott's: (5/7 Priorities Passed)**

- Expansion of rural broadband access (HB 5), preventing local defunding of policy (HB 1900, SB 23), bail reform*, election integrity*, and liability protection from COVID-related lawsuits (SB 6).
 - After the storm, he added ERCOT and PUC reform to the emergency item list (SBs 2, 3, 1580, HB 4492).

- **Lieutenant Governor Dan Patrick's: (23/31 Passed)**

- SBs 1-31 included: 2022-23 State budget (SB 1), ERCOT reform and winterization (SBs 2 and 3), the Star Spangled Banner Protection Act (SB 4), the Heartbeat Bill (SB 8) and banning taxpayer funded lobbying (SB 10), among others.

- **Speaker Dade Phelan (18/35 Passed)**

- Strengthening the electric grid (7 bills),
- "Healthy Families, Healthy Texas," (12 bills)
- "Smarter Justice, Safer Texas" (16 bills).

The 87th Regular Legislative Session



High Profile (but not Emergency/Priority) Bills That Passed:

- **HB 4** (Omnibus telemedicine and telehealth bill that permanently implements the waivers from the pandemic)
- **HB 1024** (Statewide Alcohol-to-Go)
- **HB 1535** (Minimally expanding Medicinal Marijuana)
- **HB 1925** (Statewide Camping Ban)
- **HB 1927** (Permitless carry)
- **HB 3979** (Banning “Critical Race Theory”)

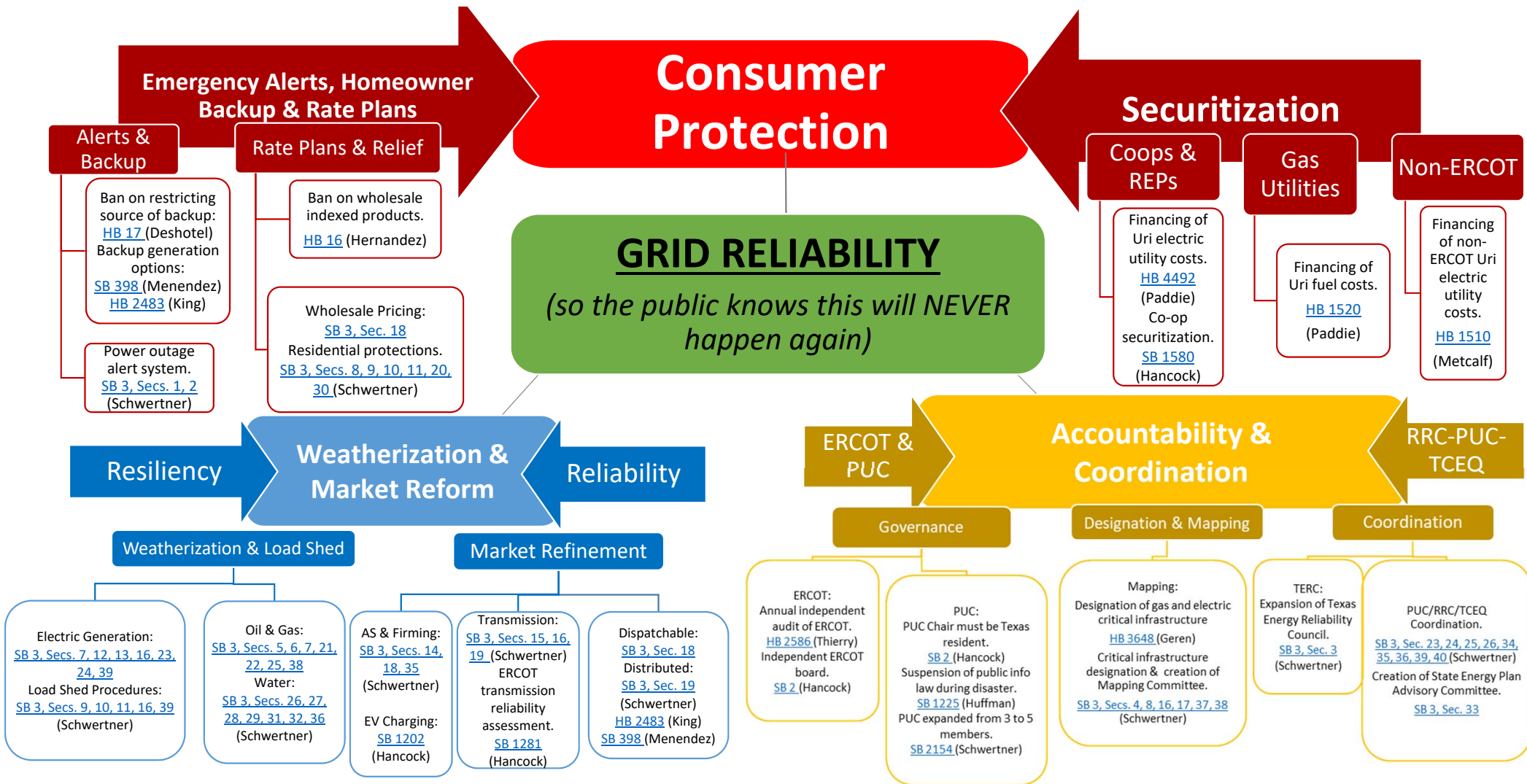
SB 10 – A Ban on Taxpayer Funded Lobbying

- Intended to limit the power of city and county governments from spending funds to hire a lobbyist.
- TPPF/Lieutenant Governor priority that was carried by Chairman Bettencourt in the Senate.
- Passed out of the Senate despite overwhelming testimony against from local government leaders.
- Picked up by Chairman Paddie in the House, where it eventually died after being postponed several times.
- Will likely be back in some iteration.

Winter Storm Uri and the Electric Market Showdown that Followed



ROADMAP THE TEXAS LEGISLATIVE RESPONSE TO THE POWER OUTAGES



The 87th Regular Legislative Session



The Electric Market Showdown:

- **SB 2** – Changes the Governance of ERCOT.
- **SB 3** – Requires Upgrades and Weatherization (beginning in 2022.)
 - Also establishes a Statewide Alert System.
- **SB 1580** - Rural Electric Cooperative Securitization
 - Requires co-op to use securitization to repay “the amount owed” as calculated by ERCOT February protocols (as opposed to, for example, by bankruptcy.)
- **HB 4492** - Financing of Uri Electric Utility Costs.

Governor Abbott's July 6 Letter to the PUC



Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cohen
July 6, 2021
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THE STATE OF TEXAS
GOVERNOR
GREG ABBOTT

July 6, 2021

Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cohen
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

Dear Commissioners:

Maintaining the reliability of the Texas electric grid is essential for all Texans and must remain your top priority as members of the Public Utility Commission. During the recently completed 2021 legislative session, the Texas legislature passed multiple bills that improve electric reliability. These laws substantially reform the Electric Reliability Council of Texas (ERCOT); mandate weatherizing our electric system; bolster the power grid integrity; and impose greater mandates for the Public Utility Commission, among other items.

While these laws significantly reform Texas' energy and electric power market, more can be done to increase power generation capacity and to ensure the reliability of the Texas power grid. To achieve those goals, I am directing the Public Utility Commission of Texas (PUC) to immediately take the following actions:

- Streamline incentives within the ERCOT market to foster the development and maintenance of adequate and reliable sources of power, like natural gas, coal, and nuclear power. The PUC has the ability to redesign segments of the market to incentivize and maintain the reliable electric generating plants our state needs. Those incentives must be directed toward the types of electric generators we need for reliability purposes. The goal of this strategy is to ensure that Texas has additional and more reliable power generation capacity.
- Allocate reliability costs to generation resources that cannot guarantee their own availability, such as wind or solar power. Electric generators are expected to provide enough power to meet the needs of all Texans. When they fail to do so, those generators should shoulder the costs of that failure. Failing to do so creates an uneven playing field between non-renewable and renewable energy generators and creates uncertainty of

First Class Mail 12428 Austin, Texas 78711 (512) 403-2000 (Voice) Fax: 7-1-1 for Relay Service

- Streamline incentives within the ERCOT market.
- Allocate reliability costs to generation resources that cannot guarantee their own availability.
- Instruct ERCOT to establish a maintenance schedule.
- Order ERCOT to accelerate the development of transmission projects.

Beyond the Storm

Other Energy/Environmental Legislation of Note



INFRASTRUCTURE/SITING

Broadband

HB 5 (Ashby)
HB 1505 (Paddie)
HB 2667 (Smithee)
HB 3853 (Anderson)
SB 507 (Nichols)
SB 632 (Buckingham)

Eminent Domain

HB 2730 (Deshotel)
HB 4107 (Burrows)
SB 157 (Perry)
SB 721 (Zaffarini)

**BEYOND THE
STORM**
(OTHER ENERGY/
ENVIRONMENTAL
LEGISLATION OF NOTE)

FINANCE / TAX

Governance

SB 13 (Birdwell)

Chapter 313 Expiration

SB 1258

ENVIRONMENTAL

Air

HB 2361
(Landgraf/
Reynolds)

Water

HB 837 (Lucio III)
HB 3479 (Schofield)
HB 3689 (Cortez)
SB 997 (Nichols)

Land Reclamation & Waste

HB 1284 (Paddie)
HB 1544 (Guillen/
Pacheco)
SB 900 (Alvarado)

OIL & GAS

Governance

HB 3973 (Walle)

Regulations

SB 1258 (Birdwell)

Property Code

HB 3794 (Geren)

Environmental Bills of Note That Passed



SB 900 (Alvarado) – “Aboveground Storage Tanks”

- This bill came about after the Intercontinental Terminals Company’s facility in Houston’s chemical tank fire in March 2019 burnt for three days and caused millions of gallons of hazardous waste spilled on the ground and leaked into the water.
- SB 900 will create new standards on the type of tanks, including enhanced safety measures such as remote shut off valves, overfill prevention, and fire suppression.
- Senator Alvarado negotiated the bill with industry groups (including TXOGA, Texas Chemical Council, Texas Pipeline Association) for almost two years.
- The bill ended up passing unanimously in both chambers and became effective immediately. The agency must establish the rules by September 2023

Environmental Bills of Note That Passed



HB 4472 (Landgraf) – TERP Reform

- Made changes to the Texas Emissions Reduction Program (TERP).
- The bill allows the Texas Commission on Environmental Quality (TCEQ) more flexibility to administer the program.
- It also:
 - provides for additional funding and programs to achieve maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan,
 - prevent areas of the state from being in violation of national ambient air quality standards, and
 - achieves cost-saving and multiple benefits by reducing emissions advancing new technologies that reduce oxides of nitrogen and other emissions.

Environmental Bills of Note That Passed



- SB 13 (Birdwell)** - The “Energy Ban” Ban – AKA “You Ban Us & We’ll Ban You”
- This bill prohibits contracts & investments with companies boycotting fossil fuels.
 - The rationale is that the state should not fund or facilitate companies that deploy agendas that work against the state’s values and economic lifeline.
 - Modeled after laws passed to push back on anti-Israel “BDS” movement.
 - Directly impacts nearly \$300 billion under management in state-supervised public pensions and billions in state accounts and contracts.
 - Preserves “prudent investor” standard & does NOT prohibit investment in/by funds with boycotting companies – just ensures that returns are prioritized over agendas.
 - Will become effective on 9/1/2021.

Environmental Bills of Note That Died



HB 2692 (Landgraf) – Radioactive Nuclear Waste

- According to the bill author, this would have banned the storage and disposal of high-level nuclear waste away from civilian nuclear power plants or university research reactors in Texas.
- Critics alleged this was a vendor bill and a guise because the decision as to whether Texas is a viable storage site for high level radioactive waste is reserved to the federal government.
 - Ultimately, the bill was killed in dramatic fashion by Former-Speaker Craddick on a well-taken point of order.
 - There have been rumors that this will be added to at least one of the special session calls. This issue is not dead yet.

Environmental Bills of Note That Died



- **HB 1820 (Zweiner)** – As filed, this bill would have amended the Health and Safety and Water Codes concerning the TCEQ's assessment of penalties.
- **HB 3477 (Rose)** – This bill sought to revoke a corporate privilege or charter for a business that is responsible for “an environmental disaster” in order to prevent the business from continuing to operate without remedying the disaster.
- **HB 1912 (Wilson)** – This bill would have expanded requirements for public hearings and meetings regarding the issuance of standard air permits for aggregate production operations and concrete batch plants to include other jurisdictional entities (e.g., TxDOT, groundwater conservation districts, and municipalities and counties).

Environmental Bills of Note That Died



- **HB 2974 (Morales)** – would have required maintenance on heating and air conditioning systems at public school instructional facilities and created strict liability of certain facilities handling hazardous substances for damages caused to public.
- **HB 2716 (Tracy King)** – would have required intervention by the Parks and Wildlife Department in matters regarding certain permits.
- **HB 968 (Dutton)** - would have required the executive director of the TCEQ to file a response to each public comment on a preliminary decision, rather than only “relevant and material” comments.

87th Legislature was
NOT a Water Session



Water Bills That Passed



- **SB 997 (Nichols)/HB 3079 (Larson)** - Relating to procedural requirements for the review of a contractual rate charged for the furnishing of raw or treated water or water or sewer service.
- **SB 600 (Perry)** - relating to an inventory of dams controlled by river authorities.
- **SB 905 (Perry)** – Relating to guidance on the regulations applicable to the potable reuse of wastewater.

Water Bills That Passed



- **SB 601 (Perry)/HB 3096 (Burrows)** - Relating to the creation and activities of the Texas Produced Water Consortium.
 - SB 601 is Perry's extension of **HB 2771** (Lozano) – Allows TCEQ to issue discharge permits for produced water under TPDES program with existing permitting remaining under RRC.
- **SB 1160 (Taylor)/HB 3029 (Paul)** - relating to the creation of the Gulf Coast Protection District.
 - This bill adds Chapter 9502 to Special District Laws. Creates Gulf Coast Protection District. Area is in gulf-coast counties, including Harris and Galveston. District has the power to build/operate infrastructure to improve coastal barriers or storm surge gates, ecosystem restoration, recreational facilities, and environmental mitigation facilities. **Outlines terms of district governance, finances (taxes and bonds), and other operating rules/procedures.** This district could be part of the largest army corps of engineer project of all time. Help get federal dollars down to fund army corps engineering project.

Water Bills That Died



- **HB 242 (Zwiener)** – Relating to the authority of the TCEQ to require water pollution abatement plans from certain facilities regulated by the Railroad Commission of Texas.
- **HB 271 (Murr)** – Relating to the procedure by which a state agency may issue an opinion that a watercourse is navigable.
- **HB 1143 (Ramos)** – Relating to the publication of pathogen-related freshwater data by the TCEQ.
- **HB 2368 (Morales Shaw)** – Relating to the participation by local governments in water quality control measures.
- **HB 242 (Zwiener)** – Relating to the authority of the TCEQ to require water pollution abatement plans from certain facilities regulated by the Railroad Commission of Texas.

Water Bills That Died



- **HB 2350 (Zwiener)** – Relating to financial assistance provided to political subdivisions by the Texas Water Development Board for nature-based water quality enhancement projects.
- **HB 2426 (Murr)** – Relating to water quality protection areas.
- **HB 3814/SB 2097 (Hunter/Zaffarini)** – Relating to the regulation by the TCEQ of the discharge of preproduction plastic from point and nonpoint sources to ensure zero discharge or release of plastic.
- **HB 2148 (Stephenson)** – Relating to notice of contamination of a public water supply to certain water providers by the TCEQ.
- **HB 2717 (Landgraf)** – Relating to certain requirements for water systems.

Water Bills That Died



- **HB 303 (Collier)** – Relating to testing for lead contamination in public school drinking water.
- **HB 605 (Garvin-Hawkins)** – Relating to the adoption of healthy and safe school water plan by public schools.
- **HB 2038 (Talarico)** – Relating to lead in drinking water at schools and childcare facilities.
- **HB 1873 (Gates)** - Relating to late payment fees charged by a municipally owned water utility.
- **HB 2224/SB 784 (Bell, Creighton)** – Relating to rates established by municipalities for water and sewer services.

Water Bills That Died



- **HB 2227 (Wilson)** - Relating to an interim study regarding the composition of the boards of directors of certain river authorities.
- **HB 2268 (Paul)** – Relating to disconnection notices.
- **HB 152 (Harris)** – Relating to a study by the TWDB of groundwater conditions in certain counties.
- **HB 666 (Harris)** – Relating to regulation of groundwater conservation districts.
- **HB 668 (Harris) SB 152 (Perry)** – Relating to regulation of groundwater conservation districts.
- **HB 966 (Burns)** – Relating to the award of attorney's fees and other costs in certain suits involving a groundwater conservation district.

Water Bills That Died



- **HB 2652 (Larson)** - Relating to establishing an advisory board to study surface water and groundwater interaction.
- **HB 2095 (Wilson)** – Relating to water research conducted by the University of Texas Bureau of Economic Geology.
- **HB 2652 (Larson)** - Relating to establishing an advisory board to study surface water and groundwater interaction.
- **HB 2710 (Bowers)** – Relating to an exemption to the cancellation of a water right for nonuse.
- **HB 186 (Zwiener)** – Relating to the exemption from ad valorem taxation of the portion of the appraised value of a person's property that is attributable to the installation in or on the property of certain water conservation systems.

Water Bills That Died



- **HB 186 (Zwiener)** – Relating to the exemption from ad valorem taxation of the portion of the appraised value of a person's property that is attributable to the installation in or on the property of certain water conservation systems.
- **SB 905 (Perry)** – Relating to guidance on the regulations applicable to the potable reuse of wastewater.
- **HB 4066 (Lucio III)** – Relating to the adoption by the RRC of a permit by rule for beneficial reuse of domestic wastewater and mobile drinking water treatment system.

The 87th Special Session (1)



Special Session(s):

- Governor Abbott called First Special Session on July 8th to discuss agenda items including election integrity, bail reform, abortion-inducing pills, Critical Race Theory, and the line-item veto of the legislative budget (among others.)
- On July 12th, after one marathon weekend of 24-hour hearings before Texas House Democrats flew to D.C. to try to influence Federal voter legislation.
- On August 20th the clock will expire for legislative budget reinstatement.



Stay tuned!

The 87th Special Session (2,3,4...)



Special Session(s):

- Unaddressed business from Special Session (1).
- Redistricting...(?)
- Allocation of Federal Funds...(?)
 - Special Note on Texas Comptroller Glenn Hegar Projections for 87th Session and Special Session (1): We owe a great debt to Texas Comptroller for accurate and accountable projects!

Questions?

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