

TEXAS HOUSE OF REPRESENTATIVES

CAPITOL OFFICE:
P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0740

DISTRICT OFFICE:
1067 W. MAGNOLIA
FORT WORTH, TEXAS 76104
817-924-1997

EMAIL: LON.BURNAM@HOUSE.STATE.TX.US



TARRANT COUNTY DELEGATION, CO-CHAIR
MEXICAN-AMERICAN LEGISLATIVE CAUCUS
LEGISLATIVE STUDY GROUP, VICE CHAIR
ENVIRONMENTAL LEGISLATIVE CAUCUS
WOMEN'S HEALTH CAUCUS

LON BURNAM
DISTRICT 90 • FORT WORTH

To the Members of the Sunset Advisory Commission,

Good day, and thank you for taking comments on the Commission Staff Report on the Texas Commission on Environmental Quality.

Generally, I support increasing the TCEQ's flexibility and authority. It will better enable the agency to focus on the quality of life and health of Texas citizens and the State's economic well-being, but the increased authority and flexibility must be specific to ensure that the Commission uses those tools for the good of the people and the environment.

I commend the Sunset Staff for their recommendations regarding better communication and coordination both within and among our agencies. Achieving efficiency through the best allocation of resources and the least duplication of effort is the sort of advancement our state government needs to streamline the process. The report's recommendations concerning reorganization of duties of the On-Site Wastewater Treatment Research Council, the Railroad Commission, and the Public Utility Commission appear to be an efficient and effective measure.

I oppose the decrease in authority in the Office of Public Interest Counsel. The Staff Report cites that OPIC has limited resources, potential conflicts, and a lack of guidance on what the public interest is. Shifting OPIC's authority to the Executive Director solves none of these problems. The Office of Public Interest Council has historically been more ready than the Executive Director to oppose permits that may not be protective of the public health; the public interest can best be represented in this office, independent of the Executive Director. There should be no diminishment of the already limited autonomy of the OPIC.

I support the recommendation to rewrite the compliance history rule. However, the agency must be given specific direction on what to consider in formulating a rule. For example, the TCEQ has expressed a desire to eliminate corrective action orders from the formula. This takes any teeth out of corrective action orders. While perhaps they ought not carry the same weight as administrative penalties, they should be included in the compliance history -- they are the result of noncompliance. The authority to create an effective formula must be given with specific direction.

I support the recommendations that the Commission formally and publicly adopt an enforcement policy by rule and that the administrative penalty caps be increased. The Commission's approach

to enforcement must be clear and cohesive. The ability to assess, update, and adopt enforcement and penalty policies maintains the flexibility to keep enforcement practice current with evolving industry practice. Doubling the maximum administrative penalties is a necessary tool for agency enforcement. Bad actors in industry can too often rationalize avoiding required protective measures because the penalty is cheaper than avoiding the crime.

I support increased authority in administering the Supplemental Environmental Projects program. But allowing the program to be used to correct the very problem a regulated business created takes the "supplemental" part out of the picture. The report recommends that TCEQ be responsible for preventing systematic abuse by regulated industry, giving the agency unsettlingly broad discretion. However, I support the intention to increase the flexibility of this innovative program. The Commission's authority should be expanded, but needs to include a check on the possibility that programs will be abused.

I support the recommendations regarding the Executive Director's increased authority over water issues, particularly with regards to drought contingency plans. As long as the current legislative mood and executive agenda continue to ignore climate change adaptation and mitigation measures, drought conditions in the region will become more and more frequent, severe, and long-lasting. Increased regulatory authority may be the way to manage the inevitable crisis.

In short, I support increasing the Commission's enforcement authority as long as the Commission is expressly directed to protect public health and the environment in employing that discretion. Provide authority, but provide direction, too.

There are also areas of great import to the State and its citizens that the Staff Report fails to address or addresses insufficiently.

The Sunset Staff Report gives a concise summary of the strained relationship between TCEQ and EPA, but the report declines to make recommendations. TCEQ's mandate regarding implementation of federal environmental law is unquestionable: Every state must comply with federal environmental law. EPA is the authority on whether a State Implementation Plan complies with the federal Clean Air Act, and they say much of our SIP does not. From a policy perspective, TCEQ and EPA must work together, not push back and forth, arguing whether the SIP complies or doesn't. From a legal perspective, TCEQ must comply with and properly implement federal environmental law. I recommend expressly mandating in statute that TCEQ permits must comply with federal law.

TCEQ needs broader and more explicit authority over permits. The statute needs to grant express authority to deny permits. The Commission should have express authority to grant contested case hearings for permit renewals even when the renewals make no express change. Ten year old permits should not be blindly reapproved merely because they do not request an increase in emissions. The permitting and permit renewal procedures need to reflect the changing needs of the environment and the public health.

Furthermore, the TCEQ needs to have clear and express air permitting authority over every part of oil and gas drilling. The agency is responding to the novel issues changes in the industry have

brought up. As TCEQ and the Railroad Commission develop the proper processes and communication their overlapping authority requires, it is imperative that all stages of oil and gas production with the potential to emit harmful pollutants be subject to air permitting.

Again, thank you for taking comments on this matter. I wish you insight and foresight in crafting your recommendations.

Sincerely,

A handwritten signature in black ink that reads "Lon Burnam". The signature is written in a cursive style with a large initial "L".

Lon Burnam