

ALEC's Impact on the Texas Environment

A legislative attack on protesting pipelines started to sweep across the U.S. in 2017. First, in Oklahoma which set up a 3-tier punishment system culminating in a felony, a fine of up to \$1 million, and up to 10 years in jail. Then in 2018, it was in WY, OH, MN, LA, and IA. In 2019, the bill found its way into 14 states, including Texas, where it was enacted. In most cases, the legislatures have introduced nearly identical bills that sought to criminalize protests and create new crimes that would punish organizations who do not participate in or condone such activities, but are deemed “guilty by association.”

A serious question arose from this: how could legislators from different states introduce essentially the same bill?

The answer: The American Legislative Exchange Council (ALEC).

What is ALEC?

ALEC was founded in 1973 by conservative activists Lou Barnett and Paul Weyrich (who also founded the Heritage Foundation), along with then-State Rep. Henry Hyde (R-Ill.) and other Republican legislators.¹

ALEC’s mission is to: “Increase individual liberty, prosperity and the well-being of all Americans by advancing and promoting the principles of limited government, free markets and federalism... providing both an educational platform for elected officials and an open forum for the free exchange of ideas between policymakers, business leaders and individual citizens...”²

The “free exchange of ideas” should be met with skepticism. ALEC charges membership fees where state legislators can pay \$100 for a two-year membership, while for-profit corporations can join ALEC for a fee ranging \$12,000-\$30,000, with additional opportunities to pay \$5,000-\$20,000 more to join various task forces.³

Twice a year, the task forces, comprised of legislators and private sector members, join together to draft model bills that are eventually voted on by the ALEC Board of Directors for approval, which can then be introduced in the upcoming legislative sessions by state legislators. Task forces that members can join are:

- American City Exchange
- Civil Justice
- Commerce, Insurance, & Economic Development

¹ Weiner, R. (2012, April 24). How ALEC became a political liability. Retrieved from https://www.washingtonpost.com/blogs/the-fix/post/how-alec-became-a-political-liability/2012/04/24/gIQA3QnyeT_blog.html?noredirect=on&utm_term=.9a997a7c1b88

² American Legislative Exchange Council. (n.d.). *2016-2018 Strategic Plan* (Rep.). Retrieved from <https://www.alec.org/app/uploads/2016/06/ALEC-Strat-Plan-Final-051616.pdf>

³ American Legislative Exchange Council. (n.d.). *Membership*. Retrieved from <https://www.alec.org/membership/>

- Communications and Technology
- Criminal Justice
- Education and Workforce Development
- Energy, Environment, and Agriculture
- Federalism and International Relations
- Health and Human Services
- Homeland Security
- Tax and Fiscal Policy

While ALEC boasts that their creation of model policies is a joint conversation,⁴ the *New York Times* reported that draft bills that are preferred by a majority of lawmakers are sometimes killed by corporate members. In addition, they found that ALEC bylaws give corporate members higher task force leadership positions compared to their legislative counterparts.⁵

ALEC also offers multiple events each year to learn about and create specific policy issues. The next one is being hosted in Austin, Texas from Aug 14-19, 2019. Specifically, at this upcoming meeting, the task forces will convene, and private sector members are being offered an opportunity to exhibit for an additional fee.

ALEC and Texas

ALEC TX State Legislators

While ALEC doesn't post its membership list online, the Texas State Chairs are Rep. Tan Parker and Sen. Kelly Hancock.⁶ From a compilation of over 30 pieces of ALEC legislation that have surfaced in the Texas Legislature since 2009, the legislators that sponsored the most bills were Rep. Phil King, Sen. Kel Seliger, Sen. Larry Taylor, and Former Sen. Florence Shapiro. The legislators that co-sponsored the most bills were Rep. Jim Murphy, Rep. Phil King, and Former Rep. Jodie Laubenberg. Here is a full list of [legislators](#) that sponsored and co-sponsored ALEC legislation, and the [full list of legislation](#) that was considered. Here is a [link](#) to see which legislators voted to pass the pieces of legislation.

ALEC and the TX Environment

ALEC's Energy, Environment and Agriculture Task Force develops their model policy in issue areas such as, but not limited to, energy, public lands, air and water quality, environmental health, and waste management. At ALEC's meeting in July 2017, members of this task force included industry

⁴ Hertel-Fernandez, A. (2014). Who Passes Business's "Model Bills"? Policy Capacity and Corporate Influence in U.S. State Politics. *Perspectives on Politics*, 12(3), 582-602. doi:10.1017/s1537592714001601

⁵ Mcintire, M. (2012, April 22). Conservative Nonprofit Acts as a Stealth Business Lobbyist. Retrieved from <https://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html?mtrref=www.google.com&assetType=REGIWALL>

⁶ American Legislative Exchange Council. (n.d.). *State Chairs*. Retrieved from <https://www.alec.org/about/state-chairs/>

members like Chevron, Marathon Petroleum, Duke Energy, and the American Fuel & Petrochemical Manufacturers.⁷

When taking a close look at the model policies created from this task force in 2017, their intent was to increase oil and gas development, preempt plastic legislation, and transfer public lands from the federal government to the states. In Texas specifically, the most recently enacted attacks on the environment that were created in this task force have been through H.B. 3557 (2019), H.B. 40 (2015) & H.B. 3328 (2011).

H.B. 3557 (86th Legislature (2019)) Relating to civil and criminal liability for engaging in certain conduct involving a critical infrastructure facility; creating criminal offenses

Sponsors: Rep. Chris Paddie

Co-Sponsors: Sen. Brian Birdwell & Sen. Pat Fallon

ALEC Model Policy: [Critical Infrastructure Protection Act](#)

The Texas Oil and Gas Association, Texas Pipeline Association, Texas Chemical Council, Shell Oil Company, ExxonMobil, Enbridge and other industry associations used their power and influence over the Texas Legislature to pass H.B. 3557. The bill created a third degree felony for “damaging or destroying” so-called “critical” infrastructure punishable with up to 2 to 10 years in jail. The bill further stifles an individual's right to protest by creating a jailable felony (up to two years in jail) for “impairing” or “interrupting” the operations of critical infrastructure. Advocates peacefully protesting construction of a pipeline by blocking a road for an hour could face up to two years in jail and a felony record, bringing into question future employment, or even the ability to vote. In addition, the bill creates huge fines (up to \$500,000) for organizations found to have been involved in such activities, as well as civil and additional liabilities, such as damage and court costs.

H.B. 40 (84th Legislature (2015)): Relating to the Exclusive Jurisdiction of This State to Regulate Oil and Gas Operations in This State and the Express Preemption of Local Regulation of Those Operations

Sponsors: Rep. Senfronia Thompson, Rep. Drew Darby, Former Rep. Rene Oliveira, Former Rep. James Keffer, Rep. Phil King, Former Sen. Troy Fraser

Co-Sponsors: Former Rep. David Simpson, Rep. Ryan Guillen, Rep. Matt Krause, Rep. Stephanie Klick, Former Rep. Ron Simmons, Rep. Jeff Leach, Former Rep. Matt Rinaldi, Rep. Tony Tinderholt, Rep. Dustin Burrows, [et al.](#)

ALEC Model Policy: [Resolution to Retain State Authority over Hydraulic Fracturing](#)

One final giveaway to the fracking industry courtesy of ALEC policy came in the passage of H.B. 40. Residents of Denton Texas in November 2014, went door to door and passed a ballot initiative to protect their schools, backyards and community from fracking. The initiative simply made the area within their jurisdiction off limits to the fracking industry. The oil and gas industry engaged in the ballot initiative process and outspent the community organizers 10-1⁸, but still lost. The

⁷ Corey, J. (2018, September 06). Revealed: Names of ALEC Lobbyist and Legislator Members. Retrieved from <https://documented.net/2018/03/08/revealed-names-alec-lobbyist-legislator-members/>

⁸ <https://represent.us/action/denton-fracking/>

response was to pass ALEC's model legislation in 2015 that delegated all regulatory authority of the industry to the state and prohibited cities and municipalities from setting any protection for their community.

H.B. 3328 (82nd Legislature (2011)): Relating to the Disclosure of the Composition of Hydraulic Fracturing Fluids Used in Hydraulic Fracturing Treatments

Sponsors: Former Rep. James Keffer, Former Rep. Myra Crownover, Rep. Tan Parker, Former Sen. Troy Fraser, Former Rep. Lon Burnam, & Former Rep. Mark Strama

Co-Sponsors: Former Rep. Dawnna Dukes, Rep. Phil King, Sen. Jane Nelson, Former Rep. Stefani Carter, and Former Rep. Marc Veasey

ALEC Model Policy: [The Disclosure of Hydraulic Fracturing Fluid Composition Act](#)

H.B. 3328 was backed by many industry groups, including, but not limited to: Petrohawk Energy Corporation, Texas Oil and Gas Association, BP America, Shell Oil, Texas Pipeline Association, and the Permian Basin Petroleum Association. H.B. 3328 requires the disclosure of fluid used in the production of natural gas through hydraulic fracturing. Operators are not required to disclose any materials that are considered a "trade secret" or present incidentally in the hydraulic fluid, and limits the ability of individuals to challenge the operator's claim to the trade secret protection. While several legislators not normally associated with ALEC did support the legislation in the hopes it would have been strengthened, the final version that passed ultimately included the trade-secret provisions and other aspects opposed by environmental organizations.

The "trade secret" law will have significant consequences with the passage of H.B. 2771 in 2019. H.B. 2771 requires the Texas Commission on Environmental Quality (TCEQ) to seek delegation authority from EPA to allow oil and gas operators to discharge their "produced water", otherwise known as fracking wastewater, into our rivers, streams, reservoirs, and bays. H.B. 2771 will force TCEQ to come up with a program to allow such permits. With operators being allowed to claim a "trade secret" on materials in the hydraulic fluid, it is unclear how Texas regulators will be able to protect our water when the chemicals and their concentrations fall under the category of being a "Trade Secret."

The primary impact of ALEC's role on the environment in TX has been to protect the oil & gas industry at the cost of the public's right to protect their health, set limits on the industry and to protest when they believe those rights have been violated. Their task forces have created a decision making venue that is shared between corporations and elected officials that are duly elected and supposed to represent their constituents. The end result has been that the Texas legislature has often in the best interest of the oil & gas industry rather than the public and the citizens they represent.