

SUBJECT: Granting common carrier status to carbon gasification pipelines

COMMITTEE: Regulated Industries — favorable, without amendment

VOTE: 5 ayes — P. King, Christian, Hartnett, Straus, Swinford
1 nay — Crabb
3 absent — Turner, Oliveira, Smithee

WITNESSES: For — James Ray, Eastman Chemical Company; Tom "Smitty" Smith, Public Citizen; (*Registered, but did not testify*: Shayne Woodard, Spectra Energy)
Against — None

BACKGROUND: Gasification uses heat, pressure, and steam to convert materials into a gas composed primarily of carbon monoxide and hydrogen. Typical raw materials used are coal, petroleum-based materials, and organic materials. The feedstock is prepared and fed into a sealed reactor chamber called a gasifier, where it is subjected to high heat, pressure, and either an oxygen-rich or oxygen-starved environment.

The three primary products from gasification are hydrocarbon gases (also called syngas); hydrocarbon liquids (oils); and char (carbon black and ash). Syngas can be used as a fuel to generate electricity or steam, or as a basic chemical building block for other uses. When mixed with air, it can be used in gasoline or diesel engines with few modifications to the engine.

Natural Resources Code, sec. 111.002 defines as common carriers those who own, operate, or manage a pipeline and can be hired by the public to transport crude petroleum or coal. Sec. 111.013 subjects common carrier pipelines used for crude petroleum, coal, carbon dioxide and hydrogen to regulation by the Texas Railroad Commission. In 1991, the 72nd Legislature enacted HB 1356, placing pipelines transporting carbon dioxide or hydrogen under common carrier regulation by the Texas Railroad Commission.

Natural Resources Code, sec. 111.019 grants regulated pipeline common carriers the right of eminent domain to condemn land, rights-of-way, easements and other property necessary for the construction, maintenance, or operation of the pipeline.

DIGEST:

HB 1967 would amend Natural Resources Code, sec. 111.002 to allow common carrier status for anyone who owned, operated, or managed a pipeline offered to the public for hire to carry carbon gasification feedstock or products, if that person agreed to accept Texas Railroad Commission regulation. The bill also would amend sec. 111.013 to add pipelines carrying carbon gasification feedstock or products to the list of pipelines under the jurisdiction of the Texas Railroad Commission.

The bill would be effective on September 1, 2007.

**SUPPORTERS
SAY:**

HB 1967 would help spur development of the carbon gasification industry in Texas by clarifying that it had the same rights and obligations as current common carrier pipelines, including regulation by the Texas Railroad Commission. Products of carbon gasification would provide affordable fuels and feedstocks for the chemical, plastics, and agrochemical industries. Carbon gasification is a clean, environmentally friendly technology and recycles waste products. Attracting such facilities to the state would foster economic development.

Support of the carbon gasification industry would demonstrate that Texas takes seriously the need to reduce greenhouse gases. Carbon gasification is different from and more environmentally friendly than simply burning coal. Carbon dioxide produced by gasification can be injected into old oil fields to improve oil recovery. According to a 2006 Lyndon B. Johnson School of Public Affairs report, underground storage of carbon dioxide or geological sequestration can both remove carbon dioxide from the atmosphere and enhance oil recovery. Injecting carbon dioxide is a common technique used in the West Texas Permian Basin oil fields, and using carbon dioxide from gasification plants could result in recovery of millions of barrels of oil from Texas Gulf Coast fields as well.

HB 1967 merely would extend the same rights and obligations to pipelines carrying carbon gasification products that are offered to pipelines transporting commodities such as crude petroleum, coal slurry, carbon dioxide and hydrogen that are used in 20th century technologies. The same authority — including the power of eminent domain — should be granted

to new-millennium technologies such as gasification. Land and rights-of-way for pipelines typically are acquired through purchase and negotiation, and condemnation is rarely needed. Use of existing but abandoned pipelines would reduce some of the cost of acquisition and construction, but the bill would allow completion of the connection between the sources of fuel and the gasification plants.

Common carrier pipelines serve the same function as highways and public roads in allowing the transport of goods. Texas spent millions of dollars developing the farm-to-market roads to allow farmers and ranchers to ship agricultural products to markets. Building that system necessitated taking property from some landowners, but the eminent domain process provided for fair compensation for the land. Those landowners did not receive additional payments for the cattle, sheep, cotton bales and wheat shipped along the farm-to-market roads, and gasification pipelines should not be asked to pay a similar form of "pass-through" royalties.

Well-maintained pipelines pose little danger to the public. Transporting needed commodities through pipelines is more efficient than relying on the thousands of trucks and train cars that would be required to meet the energy needs of Texas cities. No such alternative transport is feasible for gasification feedstock and products. Pipelines already crisscross the state and cause little inconvenience to land use.

HB 1967 would eliminate possible "tripwires" that could hinder Texas' efforts to attract economic development, such as a proposed \$1 billion project by Eastman Chemical Company to build a gasification plant at its Longview facility. The bill also could help the state attract related technologies such as FutureGen, a U.S. Department of Energy initiative to build the world's first integrated sequestration and hydrogen production research power plant.

Carbon gasification plants could help turn petroleum coke or "pet coke" from black gunk into black gold. Currently, this byproduct of oil refining is consigned to landfills or shipped for reprocessing in plants in Eastern Europe. Petroleum coke can be used to produce hydrogen for fuel cells or as a feedstock to manufacture diesel, jet fuels, methanol, ethylene, propylene, or acetic acid.

OPPONENTS
SAY:

Eminent domain authority should not be expanded, even in a limited way for common carrier pipelines. For instance, the U.S. Supreme Court recently held in *Kelo v. City of New London*, 545 U.S. 469 (2005) that governmental entities may condemn land for economic development projects that transfer land to other private owners, but the Texas Legislature and an overwhelming number of Texans have rejected that infringement on property rights. Societal attitudes and circumstances change over time, and what was once considered acceptable may no longer be. Just because the right of eminent domain was extended to pipelines last century does not mean that it needs to be done today.

Condemnation processes never adequately compensate landowners for the loss of their property. It would be fair for landowners to receive a continuing royalty for use of the land, especially if it had been taken for a private use such as a gasification plant pipeline.

Pipelines pose dangers to those living above or near the routes and even to those who may just be hiking and picnicking around the pipelines. Prohibitions on building on the ground above pipelines create problems when the land becomes developed, as in high-growth areas like suburban counties. Land use restrictions that might be feasible when raising sheep become burdensome when platting a subdivision.

NOTES:

SB 1026 by Averitt, the companion bill, is scheduled for a public hearing by the Senate Natural Resources Committee on Tuesday.