

- SUBJECT:** RRC hearings to make a common carrier determination
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, Hunter, K. King, Raymond, S. Thompson
- WITNESSES:** For — Rita Beving, Public Citizen; Phil Gamble, Gas Processors Association; James Mann, Texas Pipeline Association; (*Registered, but did not testify*: Marty Allday, Enbridge Energy; George Allen, Texas Apartment Association; Anne Billingsley, ONEOK, Inc.; Jay Brown, Valero Energy Corporation; David Cagnolatti, Phillips66; Thure Cannon, Texas Pipeline Association; Brent Connett, Texas Conservative Coalition; Tricia Davis, Texas Royalty Council; Liza Firmin, Access Midstream Partners; Kinnan Golemon, Shell Oil Company; Hugo Gutierrez, Marathon Oil; Clint Hackney, OneOK, Inc.; Lisa Kaufman, Texas Civil Justice League; Kelly McBeth; Crosstex Energy; Bill Oswald, Koch Companies; Steve Perry, Chevron USA; Cory Pomeroy, Texas Oil and Gas Association; Cyrus Reed, Lone Star Chapter - Sierra Club; Grant Ruckel, Energy Transfer; Tyler Rudd, West Texas Gas; Lindsay Sander, Markwest Energy; Ben Sebree, Enterprise Products, LLC; Justin Stegall, Enbridge Energy; Sara Tays, Exxon Mobil; Julie Williams, Chevron USA; Shayne Woodard)
- Against — Bill Peacock, Texas Public Policy Foundation
- On — Norman Garza, Jr., Texas Farm Bureau; Colin Lineberry, Railroad Commission; Milton Rister, Railroad Commission; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; (*Registered, but did not testify*: Mary (“Polly”) Ross McDonald, Railroad Commission; Bill Stevens, Texas Alliance of Energy Producers)
- BACKGROUND:** Natural Resources Code, sec. 111.002 defines a common carrier, in part, as someone who owns, operates, or manages a pipeline in the state for the transportation of crude petroleum to or for the public for hire.
- DIGEST:** CSHB 2748 would make a permit issued by the Railroad Commission of Texas (RRC) the conclusive determination of common carrier status for judicial proceedings. Permits without the common carrier status would

have to state that the RRC did not make the determination when issuing the permit.

Pipeline operators seeking a determination of common carrier status would have to submit an application to the RRC including the necessary information to determine if the person qualified. The RRC could charge an application fee of up to \$2,500 and would have to notify the applicant that the application had been received and include notice of a proposed hearing date, which would be held between 35 and 56 days after the commission sent the notice.

Once the applicant received the notice, the applicant would publish the application notice in a newspaper in each of the counties through which the pipeline might run for two consecutive weeks, notify the clerk of each potentially affected county, post text of the application online, and file proof of meeting these requirements with the RRC.

The application notice would have to include:

- the proposed time, date, location, and contact for the application hearing;
- the point of origin and destination of the pipeline;
- a list of each county and municipality through which the pipeline could run;
- the Internet address where the application was posted;
- the procedure to protest the application; and
- a statement that the hearing's purpose was to determine whether the applicant was a common carrier.

A protest could be filed with the commission within 21 days of the last required newspaper publication day by:

- a person who owned land in a county through which part of the pipeline could be run;
- a county or municipality through which any part of the pipeline could run; or
- a commission staff member.

The commission would have to designate a hearings examiner to perform administrative reviews and conduct hearings on applications. The examiner could conduct a review without a hearing if the RRC did not

receive a protest within the designated time period, commission staff found that there were no disputed issues of fact or law in the application, and the examiner determined that a hearing was unnecessary.

If a hearing were determined necessary, the examiner would have to hold a hearing as specified in the notice 21 days after the final day of publication and notify each person who filed a protest. The purpose of the hearing would be to determine whether the applicant qualified for common carrier status, not to determine the pipeline route.

The RRC could approve an application and issue a common carrier permit to the applicant if it determined after the hearing or administrative review that the applicant qualified.

For an application reviewed without a hearing, the examiner would have to issue a recommendation no later than 40 days after the final date of notice publication, and the commission would have to approve or deny the application.

For an application for which there was a hearing, the examiner would have to issue a decision proposal with findings of fact and conclusions of law no later than 40 days after the hearing ended, and the commission would have approve or deny the application.

The commission order would have to include a statement of facts found in the hearing and legal conclusions that supported the decision. The commission could adopt or modify the findings.

The commission could extend deadlines for good cause and adopt the rules necessary to implement the common carrier determination process. A person could appeal a commission order under the judicial review process.

CSHB 2748 would take effect September 1, 2013, and would apply to a permit application filed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2748 would improve the determination of pipelines' common carrier status by increasing transparency, providing regulatory consistency and efficiency, protecting landowners, and contributing to the development of the state's natural resources as Texas' network of oil and gas pipelines expands.

The bill would give pipeline operators seeking common carrier status a simpler and more transparent way to get a timely determination. Currently, a pipeline operator seeking common carrier status must go through several hearings in multiple courts. The process set out in CSHB 2748 would give the decision-making authority to the RRC and require a timely response, which ultimately would help operators invest confidently in vital energy infrastructure.

CSHB 2748 would require public notifications that would give interested parties sufficient time to register any protest early in the application process before a determination was made. It also would allow landowners to oppose a pipeline's bid to receive common carrier status without hiring a lawyer, before a newly permitted common carrier could assert eminent domain authority. The RRC has extensive experience supervising similar hearings and would be the proper agency to oversee this critical determination that involves pipeline operators, landowners, and county and municipal governments.

Concerns that the bill would give the RRC's determination too much authority and should have stricter requirements to receive common carrier status should recognize that the RRC's determination would not preempt judicial review that allows an affected party to appeal. In addition, the Natural Resources Code already has specific requirements for common carrier status, which the RRC would be required to factor into its conclusions.

As Texas' oil and gas industry grows, the state must expand its pipelines to keep Texas the number-one energy producing state in the country, and CSHB 2748 would improve the determination process for all parties that would be affected by a pipeline's common carrier status.

**OPPONENTS  
SAY:**

CSHB 2748 would place too much authority with the RRC's conclusive determination, making it more difficult for landowners to appeal the process once common carrier status was affirmed.

The bill should include the clear, measurable standard that a pipeline would have to carry a third-party product to be eligible to receive common carrier status.