

BILL ANALYSIS

Senate Research Center
79R15764 AJA-D

H.B. 951
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Natural Resources
5/6/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current law states that anyone who wishes to build a structure on a pipeline right-of-way must notify the pipeline operator and give that operator a chance to determine if the construction will cause a safety hazard. However, at this time there is no penalty for violating the statute in the Health and Safety Code or any defined right to prevent construction that can cause a safety hazard.

H.B. 951 provides that the constructor who violates the statute is liable for any damage his actions cause and gives the county attorney, the attorney general, or the pipeline operator the right to seek an injunction to prevent the construction.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter G, Chapter 756, Health and Safety Code, as added by Chapter 1082, Acts of the 78th Legislature, Regular Session, 2003, by amending Section 756.103 and adding Sections 756.104 and 756.105, as follows:

Sec. 756.103. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. Prohibits a person from building, repairing, replacing, or maintaining a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given to the operator of the pipeline and if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the reasonable, necessary, and documented cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the public or pipeline facility from that risk before proceeding with the construction.

Sec. 756.104. CIVIL LIABILITY. Provides that a constructor who violates this subchapter is liable to the owner or operator of a pipeline facility for damages to the facility proximately caused by the violation, including any liability the owner or operator of the pipeline facility incurs as a result of the violation. Provides that this section does not affect the right of a surface owner to recover for any damages to the owner's property.

Sec. 756.105. INJUNCTIVE RELIEF. (a) Authorizes a suit for injunctive relief to prevent or abate the violation of this subchapter to be brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) Authorizes the court in which the suit is brought to grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. Authorizes the court to grant the relief without requiring a bond or other undertaking.

SECTION 2. Amends Subchapter H, Chapter 756, Health and Safety Code, by amending Section 756.123 and adding Sections 756.124 and 756.125, as follows:

Sec. 756.123. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. Makes a conforming change.

Sec. 756.124. CIVIL LIABILITY. Provides that a constructor who violates this subchapter is liable to the owner or operator of a pipeline facility for damages to the facility proximately caused by the violation, including any liability the owner or operator of the pipeline facility incurs as a result of the violation. Provides that this section does not affect the right of a surface owner to recover for any damages to the owner's property.

Sec. 756.125. INJUNCTIVE RELIEF. (a) Authorizes a suit for injunctive relief to prevent or abate the violation of this subchapter to be brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) Authorizes the court in which the suit is brought to grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. Authorizes the court to grant the relief without requiring a bond or other undertaking.

SECTION 3. Makes the application of Section 1 of this Act contingent upon the Act relating to nonsubstantive additions to and corrections in enacted codes not becoming law.

SECTION 4. Makes application of Section 2 of this Act contingent upon the passage of the Act relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Provides that, to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7. Effective date: upon passage or September 1, 2005.

COMMITTEE AMENDMENTS

(1) Insert the following appropriately numbered SECTIONS and renumber SECTIONS of the bill appropriately

SECTION __. Amends Section 117.101(a), Natural Resources Code, to create an exception to this chapter (Miscellaneous Hazard Conditions) as provided by this subchapter.

SECTION __. Amends Subchapter D, Chapter 117, Natural Resources Code, by adding Section 117.102, as follows:

Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES. (a) Prohibits a city, except as otherwise provided by this section, from assessing a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) Authorizes a city to take certain actions relating to assessing and recovering certain costs.

(c) Prohibits a charge authorized by Subsection (b)(1) from exceeding the cost to the city of administering, supervising, inspecting, and otherwise regulating the location of the pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) Authorizes the owner or operator of a pipeline facility to appeal the assessment of a charge under Subsection (b)(1) to the commission. Requires the

Texas Commission of Licensing and Regulation (commission) to hear the appeal de novo. Requires the commission, unless the city that assessed the charge establishes that the charge is authorized by this section, to declare the charge invalid or reduce the charge to an amount authorized by this section. Provides that the commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. Requires the owner or operator of the pipeline facility and the city to share equally the costs incurred by the commission in connection with the appeal.

(e) Requires a city to file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. Provides that the running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) Prohibits this section from being construed to prevent a city from taking certain actions relating to pipeline facilities.

(g) Requires the city, notwithstanding Subsection (f)(2), to pay the cost of relocating a pipeline facility if the pipeline facility is authorized by a property right that has priority over the city's right to use the public way for the city facility.

SECTION __. Amends Section 121.202(b), Utilities Code, to make conforming changes.

SECTION __. Amends Subchapter E, Chapter 121, Utilities Code, by adding Section 121.2025, as follows:

Sec. 121.2025. **AUTHORITY OF MUNICIPALITY TO ASSESS CHARGES.** (a) Prohibits a municipality, except as otherwise provided by this section or Section 182.025 (Charges by a City), Tax Code, from assessing a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a gas pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) Authorizes a municipality to take certain actions relating to assessing and recovering certain costs.

(c) Prohibits a charge authorized by Subsection (b)(1) from exceeding the cost to the municipality of administering, supervising, inspecting, and otherwise regulating the location of the pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) Authorizes the owner or operator of a pipeline facility to appeal the assessment of a charge under Subsection (b)(1) to the Railroad Commission of Texas. Requires the railroad commission to hear the appeal de novo. Requires the railroad commission, unless the municipality that assessed the charge establishes that the charge is authorized by this section, to declare the charge invalid or reduce the charge to an amount authorized by this section. Provides that the railroad commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. Requires the owner or operator of the pipeline facility and the city to share equally the costs incurred by the railroad commission in connection with the appeal.

(e) Requires a municipality to file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. Provides that the running of the limitation period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) Prohibits this section from being construed to prevent a municipality from taking certain actions relating to pipeline facilities.

(g) Requires the municipality, notwithstanding Subsection (f)(2), to pay the cost of relocating a pipeline facility if the pipeline facility is authorized by a property right that has priority over the municipality's right to use the public way for the municipal facility.

(2) Strike SECTION 5 of the bill (page 4, line 24, through page 5, line 1) and substitute the following:

SECTION 5. (a) Makes application of this Act prospective.

(b) Provides that Section 117.102, Natural Resources Code, and Section 121.2025, Utilities Code, as added by this Act, do not affect the enforceability or validity of certain contracts and charges described in this section.

(c) Provides that Section 117.102, Natural Resources Code, and Section 121.2025, Utilities Code, as added by this Act, apply to a charge assessed by a municipality on or after a certain date.