

BILL ANALYSIS

Senate Research Center
79R5417 MTB-F

S.B. 949
By: Armbrister
Natural Resources
3/14/2005
As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Gatherers and pipelines are currently regulated by the Utilities Code and, in some types of materials, the Natural Resources Code. There is a class of "non-utility" gatherers that are not subject to the rate jurisdiction of the Texas Railroad Commission (commission) under the Utilities Code. There are two avenues to address any complaints about gatherers or pipelines at the commission. A party can file a formal complaint which is docketed and tried like any administrative law case with full discovery, hearings, proposal for decision, and an order by the commissioners. The formal proceedings are expensive and time consuming litigation. There is also an informal dispute resolution process that is conducted like standard mediation, in which there is no discovery and no hearings, and the mediators can encourage settlement.

As proposed, S.B. 949 creates a statutory process for mediated settlements in contested case proceedings involving gas utilities in the Utilities Code and hazardous liquid pipeline transportation in the Natural Resources Code. This process is faster and less expensive than formal proceedings, but gives the commission more power and involvement than typical mediation. Commission staff is responsible for conducting the mediation process and is required to inform the parties of their recommended position if agreement is not reached. If the case still does not settle, the matter goes to the formal hearing process in a contested case docket.

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 A, Chapter 102, Utilities Code, by adding Section 102.0055, as follows:

Sec. 102.0055. MEDIATION OF CONTESTED PROCEEDINGS. (a) Defines "contested proceeding."

(b) Provides that this section does not apply to certain contested proceedings.

(c) Requires the Texas Railroad Commission (commission) to establish a process for mediating contested proceedings. Requires the commission to require the parties to a contested proceeding to mediate all issues raised in the case before an administrative hearing under Section 102.006 (Administrative Hearings in Contested Cases) is authorized to be conducted. Requires the mediation process to be completed before the 91st day after a proceeding is docketed by the commission unless certain circumstances apply.

(d) Sets forth guidelines for commission staff to conduct limited discovery as a part of the mediation process.

(e) Requires the parties to share equally the cost of the staff's travel expenses in an amount not to exceed the per diem allowance for state employees in accordance with the General Appropriations Act if the parties agree that the mediation be conducted at a location other than the commission offices in Austin, Texas.

(f) Requires the commission, if the mediation results in a settlement, to approve the settlement and dismiss the contested proceeding. Sets forth guidelines for handling a contested proceeding that is not settled.

(g) Requires commission staff to take certain actions to settle a contested proceeding in a settlement conference.

(h) Requires the commission, by order, to approve a settlement and dismiss the contested proceeding if, after holding a settlement conference, a settlement results. Requires the commission staff, if a settlement conference does not end in a settlement, to set the matter for administrative hearing under Section 102.006.

(i) Provides that Section 2009.054 (Confidentiality of Certain Records and Communications), Government Code, applies to information produced or obtained during the mediation process.

SECTION 2. Amends Subchapter G, Chapter 111, Natural Resources Code, by adding Section 111.228, as follows:

Sec. 111.228. MEDIATION OF CONTESTED PROCEEDINGS. (a) Defines "contested proceeding."

(b) Provides that this section does not apply to certain contested proceedings.

(c) Requires the commission to establish a process for mediating contested proceedings. Requires the commission to require the parties to a contested proceeding to mediate all issues raised in the case before an administrative hearing under this chapter or Chapter 117 (Hazardous Liquid or Carbon Dioxide Pipeline Transportation Industry) is authorized to be conducted. Requires the mediation process to be completed before the 91st day after a proceeding is docketed by the railroad commission unless certain circumstances apply.

(d) Sets forth guidelines for commission staff to conduct limited discovery as a part of the mediation process.

(e) Requires the parties to share equally the cost of the staff's travel expenses in an amount not to exceed the per diem allowance for state employees in accordance with the General Appropriations Act if the parties agree that the mediation be conducted at a location other than the commission offices in Austin, Texas.

(f) Requires the commission, if the mediation results in a settlement, to approve the settlement and dismiss the contested proceeding. Sets forth guidelines for handling a contested proceeding that is not settled.

(g) Requires commission staff to take certain actions to settle a contested proceeding in a settlement conference.

(h) Requires the commission, by order, to approve a settlement and dismiss the contested proceeding if, after holding a settlement conference, a settlement results. Requires the commission staff, if a settlement conference does not end in a settlement, to set the matter for administrative hearing under this chapter or Chapter 117.

(i) Provides that Section 2009.054 (Confidentiality of Certain Records and Communications), Government Code, applies to information produced or obtained during the mediation process.

SECTION 3. Effective date: September 1, 2005.