

BILL ANALYSIS

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S.B. 1625
By: Davis
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Constitution safeguards private property rights by firmly stating that eminent domain can only be implemented for public use. Even when state statute grants eminent domain authority to certain private entities, it is strictly construed to protect landowners.

The Natural Resources Code grants a pipeline operated as a "common carrier" the right and power of eminent domain. The Railroad Commission of Texas (railroad commission) currently oversees the administrative process for granting permits to operate a pipeline in Texas. The railroad commission's one-page permit application, known as Form T-4, includes two boxes for the applicant to indicate whether the pipeline will be operated as a "common carrier" or "a private line." There is currently no process by statute or rule for the railroad commission to determine whether an applicant is, in fact, a "common carrier" other than by the applicant's own admission per Form T-4. No notice is given to affected landowners, no hearing is held, no evidence is presented, and no investigation is conducted.

In a landmark ruling last fall by the Supreme Court of Texas (supreme court), a rice farmer won his case against a pipeline company, which had used eminent domain to route a pipeline across his land. The farmer argued that the pipeline was not in the public interest, as it was a private pipeline that would only be used by one company and its affiliates. While lower courts agreed with the pipeline operator that the operator acquired the right to condemn private property through the receipt of a T-4 permit from the railroad commission as a "common carrier" and that a landowner could not challenge in court whether the proposed pipeline will actually be public rather than private, the supreme court strongly disagreed. In its ruling the supreme court stated that, "Unadorned assertions of public use are constitutionally insufficient. Merely registering as a common carrier does not conclusively convey the extraordinary power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements. Nothing in Texas law leaves landowners so vulnerable to unconstitutional private takings." The supreme court further stated that, "private property cannot be imperiled with such nonchalance, via an irrefutable presumption created by checking a certain box on a one-page government form. Our Constitution demands far more."

S.B. 1625 requires the railroad commission to implement a thorough and transparent process to both ensure and validate that entities declaring "common-carrier status" as a part of a pipeline application have a demonstrated intent and do subsequently operate the pipelines as a "common carrier" to or for the public for hire. The bill also establishes a process for land owners to protest a determination by the railroad commission that an applicant is a "common carrier."

As proposed, S.B. 1625 amends current law relating to standards and procedures for determining whether a person who owns, operates, or manages a pipeline is a common carrier.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 4 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 111.002, Natural Resources Code, as follows:

Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. (a) Provides that a person, except as provided by Subsection (b), is a common carrier subject to the provisions of this chapter if it meets certain criteria.

(b) Provides that a person is not a common carrier subject to the provisions of this chapter unless the person owns, operates, or manages a pipeline for hire by another person who is not an affiliate of the person who owns, operates, or manages the pipeline.

(c) Defines "affiliate" for the purposes of this section.

(d) Authorizes the Railroad Commission of Texas (railroad commission) to determine that a person is an affiliate for purposes of this section if the railroad commission after notice and hearing finds that the person:

(1) actually exercises substantial influence or control over the policies and actions of a person who owns, operates, or manages a pipeline;

(2) is a person over whom a person who owns, operates, or manages a pipeline exercises the control described by Subdivision (1);

(3) is under common control with a person who owns, operates, or manages a pipeline; or

(4) actually exercises substantial influence over the policies and actions of a person who owns, operates, or manages a pipeline in conjunction with one or more persons with whom the person is related by ownership or blood relationship, or by action in concert, that together they are affiliated with the person who owns, operates, or manages the pipeline within the meaning of this section even though neither person may qualify as an affiliate individually.

(e) Defines "common control with a person who owns, operates, or manages a pipeline" for purposes of Subsection (d)(3).

SECTION 2. Amends Subchapter B, Chapter 111, Natural Resources Code, by adding Sections 111.0121, 111.0122, 111.0123, and 111.0124, as follows:

Sec. 111.0121. COMMON CARRIER PERMIT AUTHORITY. Prohibits the railroad commission from issuing a permit to operate a pipeline as a common carrier to a person unless:

(1) the railroad commission determines under Section 111.0122 that the person is a common carrier under Section 111.002; and

(2) the railroad commission does not receive a protest under Section 111.0123 or the State Office of Administrative Hearings (SOAH) determines following a hearing on a protest under that section that the person is a common carrier under Section 111.002.

Sec. 111.0122. COMMON CARRIER APPLICATION AND DETERMINATION. (a) Requires that an application to operate a pipeline as a common carrier be submitted in a manner satisfactory to the railroad commission and requires that it include:

(1) a description of the point of origin and point of destination of the pipeline;

(2) the names of any customers of the applicant who intend to use the applicant's pipeline and an indication of whether each customer is an affiliate as defined by Section 111.002(c);

(3) the names of the substances the applicant plans to transport in the pipeline for each customer named in the application;

(4) the volume of the substances the applicant plans to transport in the pipeline for each customer named in the application;

(5) the intended destination of the substances; and

(6) an affidavit signed by an officer of the applicant affirming that the information in the application is accurate.

(b) Requires the railroad commission to notify the applicant in writing of its determination of whether the applicant is a common carrier under Section 111.002.

(c) Requires the railroad commission to make available to the public any information submitted to the railroad commission under this section that is not specifically identified as confidential by the applicant.

Sec. 111.0123. NOTICE OF AND HEARING ON DETERMINATION. (a) Requires the railroad commission, not later than the 30th day after the date the railroad commission notifies an applicant for a permit to operate a pipeline as a common carrier that the railroad commission has determined under Section 111.0122 that the applicant is a common carrier under Section 111.002, to send written notice to each owner of land proposed to be crossed by the pipeline of the railroad commission's determination.

(b) Requires that the notice include:

(1) a statement that a determination that the person is a common carrier confers the power of eminent domain on the person;

(2) a description of the point of origin and point of destination of the proposed pipeline; and

(3) a description of the procedure for protesting the determination.

(c) Authorizes a person who receives notice under this section to file a written protest of a determination with the railroad commission not later than the 30th day after the date the person receives the notice. Requires the railroad commission, if the railroad commission receives a protest under this subsection, to refer the protest to SOAH for a hearing. Provides that a protest under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

(d) Requires SOAH, not later than the 30th day after the date the railroad commission refers a protest to SOAH, to:

(1) conduct a hearing on the protest;

(2) make a final determination of the protest following the hearing; and

(3) notify the railroad commission of SOAH's determination.

Sec. 111.0124. COMMON CARRIER REPORT. (a) Requires a person, not later than the last day of the 18th month after the date the person receives a permit to operate a

pipeline as a common carrier, to submit to the railroad commission a report on the pipeline. Requires that the report include:

- (1) a description of the person's efforts to offer the pipeline for hire;
- (2) the names of any customers of the person who paid for the use of the pipeline after the date the person received the permit, and an indication of whether each customer is an affiliate as defined by Section 111.002(c);
- (3) the names of the substances transported in the pipeline;
- (4) the volume of the substances transported in the pipeline for each customer named in the report; and
- (5) the destination of the substances transported in the pipeline.

(b) Authorizes the railroad commission to revoke a permit issued to a person who submits a report under this section if the railroad commission determines that the report indicates that the person is not a common carrier under Section 111.002.

(c) Requires the railroad commission to make available to the public any information submitted to the railroad commission under this section that is not specifically identified as confidential by the permit holder.

SECTION 3. Makes application of the changes in law made by this Act prospective.

SECTION 4. Requires the railroad commission, not later than January 1, 2014, to adopt rules to implement the changes in law made by this Act to Chapter 111 (Common Carriers, Public Utilities, and Common Purchasers), Natural Resources Code.

SECTION 5. Effective: September 1, 2013.