

BILL ANALYSIS

Senate Research Center

S.B. 1637
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, the Texas Supreme Court held that under current law there is insufficient due process for landowners seeking to determine whether a pipeline holds common carrier status and therefore has the power of eminent domain. To determine whether a pipeline company meets the statutory definition of a common carrier, S.B. 1637 seeks to establish procedures for making such a determination that involve notice, hearing or administrative review, and an opportunity to appeal.

As proposed, S.B. 1637 amends current law relating to the authority of the Railroad Commission of Texas to determine 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 1 (Section 111.448, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 111, Natural Resources Code, by adding Subchapter K, as follows:

SUBCHAPTER K. COMMON CARRIER DETERMINATION

Sec. 111.441. COMMON CARRIER. (a) Provides that no pipeline or gathering system is authorized to be represented to be a common carrier under Section 111.002 (Common Carriers Under Chapter) without a permit issued by the Railroad Commission of Texas (railroad commission) under this subchapter.

(b) Provides that the railroad commission has exclusive jurisdiction to determine whether a person is a common carrier under Section 111.002.

Sec. 111.442. APPLICATION. (a) Requires a party wanting to obtain a permit under this subchapter to submit an application to the railroad commission.

(b) Requires that the application be made on a form specified by the railroad commission and include evidence required by the railroad commission to show that the applicant qualifies as a common carrier under Section 111.002.

Sec. 111.443. NOTICE. (a) Requires the applicant, for permits requested under this subchapter, to give notice by:

(1) publishing notice of the application and a map of the proposed route of the pipeline on the Internet;

(2) publishing notice of the application for two consecutive weeks in a newspaper having general circulation in each county containing territory affected by the proposed pipeline;

(3) mailing notice of the application to all landowners along the proposed route of the pipeline; and

(4) mailing or delivering notice of the application to each affected county and municipality along the proposed route of the pipeline.

(b) Requires that proof of publication and affidavits attesting to the notice requirements be filed with the railroad commission.

(c) Requires that, at a minimum, the notice include:

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

(2) a list of the counties and municipalities in which the pipeline is proposed to be located;

(3) the Internet address required under Subsection (a); and

(4) a description of the procedure for protesting the request, including the deadline provided under Section 111.444.

Sec. 111.444. PROTESTS. (a) Authorizes a landowner, county, municipality, or railroad commission staff to file a protest with the railroad commission.

(b) Requires that all protests be filed not later than the 20th day after the date of notice under Section 111.443.

Sec. 111.445. HEARING. (a) Requires the railroad commission to set a date, time, and place for a hearing not later than the seventh day after the protest deadline date provided under Section 111.444.

(b) Requires that the hearing be held not earlier than the 30th day and not later than the 45th day after the protest deadline date.

(c) Requires the railroad commission to serve notice of the hearing date, time, and place to the applicant and to all parties filing protests.

Sec. 111.446. ADMINISTRATIVE REVIEW. Authorizes an application under this subchapter to be approved by a hearings examiner without a hearing under the following conditions:

(1) at least 30 days have passed since the completion of all notice requirements;

(2) no party has filed a protest with the railroad commission;

(3) the railroad commission staff has reviewed the application and has stipulated that there are no disputed issues of fact or law; and

(4) the hearings examiner finds that no hearing is necessary and that administrative review is warranted.

Sec. 111.447. PROPOSAL FOR DECISION; COMMISSION ORDER. (a) Requires the hearings examiner, not later than the 20th day after the date of the hearing conducted under Section 111.445 or a determination of administrative review under Section 111.446, to issue a proposal for decision containing findings of fact and conclusions of law. Requires that the proposal for decision be served on each commissioner and all parties.

(b) Requires the railroad commission to issue an order on the application not later than the 30th day after receipt of the proposal for decision. Requires that the order include a statement of findings of fact that includes the substance of the evidence presented at the hearing and the conclusions of law that support the determination.

(c) Authorizes the railroad commission to approve an application and grant a permit only if the railroad commission finds that the applicant qualifies as a common carrier under Section 111.002.

(d) Authorizes the railroad commission to adopt, in whole or in part, or modify the findings of fact and conclusions of law contained in the proposal for decision. Authorizes the railroad commission to also remand the application for hearing or additional proceedings.

(e) Provides that motions for rehearing and judicial review of a railroad commission order issued under this subchapter are governed by Subchapters F (Contested Cases: Final Decisions and Orders; Motions for Rehearing) and G (Contested Cases: Judicial Review), Chapter 2001, Government Code.

Sec. 111.448. RULES. Authorizes the railroad commission to adopt rules as necessary to implement this subchapter.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2013.