

BILL ANALYSIS

Senate Research Center

S.B. 480
By: Hinojosa
Natural Resources
5/26/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Some municipalities have recently enacted ordinances that significantly increased the fees charged to pipeline companies to install, repair, or maintain facilities under, over, or along the public ways in municipalities. One pipeline operator estimates that under the new formula, a municipality would collect over \$100,000 per year from that operator alone.

The ability of a municipality to charge gas, water, and electric distribution companies has already been limited by Section 182.025, Tax Code. S.B. 480 covers other types of pipeline companies. This bill also allows a municipality to recover costs for the repair of any damage to the streets and alleys and allows municipalities an annual fee to recover the cost regulating the location of the pipeline facility, including maintaining records and maps of pipeline locations.

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 Section 117.101(a), Natural Resources Code, to create an exception as otherwise provided by this subchapter, to the rule that this chapter may not be construed to reduce, limit, or impair the authority provided by law to any city.

SECTION 2. 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 certain actions relating to a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public way.

(b)(1) Authorizes a city to assess a reasonable annual charge for certain actions relating to a hazardous liquid or carbon dioxide pipeline facility by an owner or operator of that facility on, along, or across the public ways located within the city and maintained by the city.

(2) Authorizes a city to recover the reasonable cost of repairing damage to a public way located within the city and maintained by the city that is caused by certain actions relating to a hazardous liquid or carbon dioxide pipeline facility if the owner or operator of the facility does not repair the damage in accordance with certain standards.

(c) Prohibits the charge authorized by Subsection (b)(1) from exceeding the cost to the city of 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 (commission). Requires the commission to hear the appeal de novo. Requires the commission to declare the charge invalid or reduce the charge to an

amount authorized by this section, unless the city that assessed the charge establishes that the charge is 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 the city from recovering the reasonable costs of damage to a city facility, other than a public way, caused by the owner or operator of the pipeline facility, or from requiring the owner or operator of the pipeline facility to relocate the pipeline facility, at the owner or operator's expense, to permit construction, maintenance, modification, or alteration of a city facility.

(g) Requires the city 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 3. Amends Section 121.202(b), Utilities Code, to add that except as provided by Section 121.2025, this subchapter does not reduce, limit, or impair certain powers or abilities of counties and municipalities, including the ability of a municipality to adopt an ordinance that establishes conditions for mapping, inventorying, locating, rather than installing, or relocating pipelines over, under, along or across public ways.

SECTION 4. 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, Tax Code, from assessing a charge for certain actions relating to a gas pipeline facility on, along, or across a public way.

(b)(1) Authorizes a municipality to assess a reasonable annual charge for certain actions relating to a gas pipeline facility by an owner or operator of that facility on, along, or across the public ways located within the municipality and maintained by the municipality.

(2) Authorizes a municipality to recover the reasonable cost of repairing damage to a public way located within the municipality and maintained by the municipality that is caused by certain actions relating to a gas pipeline facility if the owner or operator of the facility does not repair the damage in accordance with certain standards.

(c) Prohibits the charge authorized by Subsection (b)(1) from exceeding the cost to the municipality of regulating the location of the gas 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 commission to hear the appeal de novo. Requires the commission to declare the charge invalid or reduce the charge to an amount authorized by this section unless the municipality that assessed the charge establishes that the charge is 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 gas pipeline facility and the municipality to share equally the costs incurred by the 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 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 municipality from recovering the reasonable costs of damage to a municipal facility, other than a public way, caused by the owner or operator of the pipeline facility, or from requiring the owner or operator of the pipeline facility to relocate the pipeline facility, at the owner or operator's expense, to permit construction, maintenance, modification, or alteration of a municipal facility.

(g) Requires the municipality 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.

SECTION 5. Provides that this Act does not affect the validity or enforceability of a contract entered into before the effective date of this Act by a municipality and the owner or operator of a hazardous liquid, carbon dioxide, or gas pipeline or the enforceability of a charge assessed by a municipality before September 1, 2006, under an ordinance adopted on or before September 1, 2004. Provides that this Act applies to a charge assessed by a municipality on or after the effective date of this Act under an ordinance adopted after September 1, 2004, and a charge assessed on or after September 1, 2006, under an ordinance regardless of the date of the adoption of the ordinance.

SECTION 6. Effective date: September 1, 2005.