

By: West

H.B. No. 2161

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the power of the Railroad Commission of Texas to adopt
3 and enforce safety standards and practices applicable to the
4 transportation by pipeline of certain substances and to certain
5 pipeline facilities; imposing an administrative penalty.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 121.201, Utilities Code, is amended by
8 amending Subsections (a) and (b) and adding Subsection (d) to read
9 as follows:

10 (a) The railroad commission [~~by rule~~] may:

11 (1) by rule prescribe or adopt safety standards for
12 the transportation of gas and for gas pipeline facilities,
13 including safety standards related to the prevention of damage to
14 such a facility resulting from the movement of earth by a person in
15 the vicinity of the facility, other than movement by tillage that
16 does not exceed a depth of 16 inches;

17 (2) require an operator that does not file operator
18 organization information under Section 91.142, Natural Resources
19 Code, to provide the information to the commission in the form of an
20 application;

21 (3) require record maintenance and reports;

22 (4) inspect records and facilities to determine
23 compliance with [~~adopted~~] safety standards prescribed or adopted
24 under Subdivision (1);

1 (5) make certifications and reports from time to time;

2 (6) seek designation by the United States secretary of
3 transportation as an agent to conduct safety inspections of
4 interstate gas pipeline facilities located in this state; and

5 (7) take any other requisite action in accordance with
6 49 U.S.C. Section 60101 et seq., or a succeeding law.

7 (b) The power granted by Subsection (a):

8 (1) does not apply to the transportation of gas or to
9 gas facilities subject to the exclusive control of the United
10 States but applies to the transportation of gas and gas pipeline
11 facilities in this state to the maximum degree permissible under 49
12 U.S.C. Section 60101 et seq., or a succeeding law; and

13 (2) is granted to provide exclusive state control over
14 safety standards and practices applicable to the transportation of
15 gas and gas pipeline facilities within the borders of this state to
16 the maximum degree permissible under that law.

17 (d) In this subsection, "telecommunications service" and
18 "information service" have the meanings assigned by 47 U.S.C.
19 Section 153. Notwithstanding Subsection (a), this title does not
20 grant the railroad commission jurisdiction or right-of-way
21 management authority over a provider of telecommunications service
22 or information service. A provider of telecommunications service
23 or information service shall comply with all applicable safety
24 standards, including those provided by Subchapter G, Chapter 756,
25 Health and Safety Code.

26 SECTION 2. Sections 121.206(a) and (d), Utilities Code, are
27 amended to read as follows:

1 (a) The railroad commission may assess an administrative
2 penalty against a person who violates Section 121.201 [~~or~~
3 ~~Subchapter I~~] or a safety standard or other rule prescribed or
4 ~~[relating to the transportation of gas and gas pipeline facilities]~~
5 adopted under that section [~~those provisions~~].

6 (d) The railroad commission by rule shall adopt guidelines
7 to be used in determining the amount of a penalty under this
8 subchapter. The guidelines shall include a penalty calculation
9 worksheet that specifies the typical penalty for certain
10 violations, circumstances justifying enhancement of a penalty and
11 the amount of the enhancement, and circumstances justifying a
12 reduction in a penalty and the amount of the reduction. The
13 guidelines shall take into account:

14 (1) the person's history of previous violations of
15 Section 121.201 or a safety standard or other rule prescribed or
16 ~~[relating to the transportation of gas and gas pipeline facilities]~~
17 adopted under that section, including the number of previous
18 violations;

19 (2) the seriousness of the violation and of any
20 pollution resulting from the violation;

21 (3) any hazard to the health or safety of the public;

22 (4) the degree of culpability;

23 (5) the demonstrated good faith of the person charged;

24 and

25 (6) any other factor the commission considers
26 relevant.

27 SECTION 3. Section 117.012, Natural Resources Code, is

1 amended by amending Subsection (a) and adding Subsection (n) to
2 read as follows:

3 (a) The commission shall adopt rules that include safety
4 standards for and practices applicable to the intrastate
5 transportation of hazardous liquids or carbon dioxide by pipeline
6 and intrastate hazardous liquid or carbon dioxide pipeline
7 facilities, including safety standards related to the prevention of
8 damage to such a facility resulting from the movement of earth by a
9 person in the vicinity of the facility, other than movement by
10 tillage that does not exceed a depth of 16 inches.

11 (n) In this subsection, "telecommunications service" and
12 "information service" have the meanings assigned by 47 U.S.C.
13 Section 153. Notwithstanding Subsection (a), this title does not
14 grant the commission jurisdiction or right-of-way management
15 authority over a provider of telecommunications service or
16 information service. A provider of telecommunications service or
17 information service shall comply with all applicable safety
18 standards, including those provided by Subchapter G, Chapter 756,
19 Health and Safety Code.

20 SECTION 4. The Railroad Commission of Texas may not adopt
21 safety standards under Section 121.201(a), Utilities Code, or
22 Section 117.012(a), Natural Resources Code, as amended by this Act,
23 until the Pipeline and Hazardous Materials Safety Administration of
24 the United States Department of Transportation adopts the rules
25 published at 69 Fed. Reg. 35279 (2004) (to be codified at 49 C.F.R.
26 Parts 192 and 195) (proposed June 3, 2004) or other rules pertaining
27 to public education programs for hazardous liquid and gas pipeline

1 operators.

2 SECTION 5. (a) The change in law made by this Act to Section
3 121.206, Utilities Code, applies only to a violation committed on
4 or after the effective date of this Act. For purposes of this
5 section, a violation is committed before the effective date of this
6 Act if any element of the violation occurred before that date.

7 (b) A violation committed before the effective date of this
8 Act is covered by the law in effect when the violation was
9 committed, and the former law is continued in effect for that
10 purpose.

11 SECTION 6. This Act takes effect September 1, 2005.