

1-1 By: West (Senate Sponsor - Seliger) H.B. No. 2161
1-2 (In the Senate - Received from the House April 28, 2005;
1-3 April 29, 2005, read first time and referred to Committee on
1-4 Natural Resources; May 21, 2005, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2161 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the power of the Railroad Commission of Texas to adopt
1-11 and enforce safety standards and practices applicable to the
1-12 transportation by pipeline of certain substances and to certain
1-13 pipeline facilities; imposing an administrative penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 121.201, Utilities Code, is amended by
1-16 amending Subsections (a) and (b) and adding Subsections (d), (e),
1-17 and (f) to read as follows:

1-18 (a) The railroad commission [~~by rule~~] may:

1-19 (1) by rule prescribe or adopt safety standards for
1-20 the transportation of gas and for gas pipeline facilities,
1-21 including safety standards related to the prevention of damage to
1-22 such a facility resulting from the movement of earth by a person in
1-23 the vicinity of the facility, other than movement by tillage that
1-24 does not exceed a depth of 16 inches;

1-25 (2) by rule require an operator that does not file
1-26 operator organization information under Section 91.142, Natural
1-27 Resources Code, to provide the information to the commission in the
1-28 form of an application;

1-29 (3) by rule require record maintenance and reports;

1-30 (4) inspect records and facilities to determine
1-31 compliance with [~~adopted~~] safety standards prescribed or adopted
1-32 under Subdivision (1);

1-33 (5) make certifications and reports from time to time;

1-34 (6) seek designation by the United States secretary of
1-35 transportation as an agent to conduct safety inspections of
1-36 interstate gas pipeline facilities located in this state; and

1-37 (7) by rule take any other requisite action in
1-38 accordance with 49 U.S.C. Section 60101 et seq., or a succeeding
1-39 law.

1-40 (b) The power granted by Subsection (a):

1-41 (1) does not apply to the transportation of gas or to
1-42 gas facilities subject to the exclusive control of the United
1-43 States but applies to the transportation of gas and gas pipeline
1-44 facilities in this state to the maximum degree permissible under 49
1-45 U.S.C. Section 60101 et seq., or a succeeding law; and

1-46 (2) is granted to provide exclusive state control over
1-47 safety standards and practices applicable to the transportation of
1-48 gas and gas pipeline facilities within the borders of this state to
1-49 the maximum degree permissible under that law.

1-50 (d) In this subsection, "telecommunications service" and
1-51 "information service" have the meanings assigned by 47 U.S.C.
1-52 Section 153. Notwithstanding Subsection (a), this title does not
1-53 grant the railroad commission jurisdiction or right-of-way
1-54 management authority over a provider of telecommunications service
1-55 or information service. A provider of telecommunications service
1-56 or information service shall comply with all applicable safety
1-57 standards, including those provided by Subchapter G, Chapter 756,
1-58 Health and Safety Code.

1-59 (e) The power granted by Subsection (a) does not apply to:

1-60 (1) surface mining operations; or

1-61 (2) other entities or occupations if the railroad
1-62 commission determines in its rulemaking process that exempting
1-63 those entities or occupations from rules adopted under that

2-1 subsection:

2-2 (A) is in the public interest; or
2-3 (B) is not likely to cause harm to the safety and
2-4 welfare of the public.

2-5 (f) The railroad commission may not implement rules adopted
2-6 under Subsection (a) until September 1, 2007. This subsection
2-7 expires September 1, 2008.

2-8 SECTION 2. Sections 121.206(a) and (d), Utilities Code, are
2-9 amended to read as follows:

2-10 (a) The railroad commission may assess an administrative
2-11 penalty against a person who violates Section 121.201 [~~or~~
2-12 ~~Subchapter I~~] or a safety standard or other rule prescribed or
2-13 ~~[relating to the transportation of gas and gas pipeline facilities]~~
2-14 adopted under that section [~~those provisions~~].

2-15 (d) The railroad commission by rule shall adopt guidelines
2-16 to be used in determining the amount of a penalty under this
2-17 subchapter. The guidelines shall include a penalty calculation
2-18 worksheet that specifies the typical penalty for certain
2-19 violations, circumstances justifying enhancement of a penalty and
2-20 the amount of the enhancement, and circumstances justifying a
2-21 reduction in a penalty and the amount of the reduction. The
2-22 guidelines shall take into account:

2-23 (1) the person's history of previous violations of
2-24 Section 121.201 or a safety standard or other rule prescribed or
2-25 ~~[relating to the transportation of gas and gas pipeline facilities]~~
2-26 adopted under that section, including the number of previous
2-27 violations;

2-28 (2) the seriousness of the violation and of any
2-29 pollution resulting from the violation;

2-30 (3) any hazard to the health or safety of the public;

2-31 (4) the degree of culpability;

2-32 (5) the demonstrated good faith of the person charged;

2-33 and
2-34 (6) any other factor the commission considers
2-35 relevant.

2-36 SECTION 3. Section 117.012, Natural Resources Code, is
2-37 amended by amending Subsection (a) and adding Subsections (n), (o),
2-38 and (p) to read as follows:

2-39 (a) The commission shall adopt rules that include safety
2-40 standards for and practices applicable to the intrastate
2-41 transportation of hazardous liquids or carbon dioxide by pipeline
2-42 and intrastate hazardous liquid or carbon dioxide pipeline
2-43 facilities, including safety standards related to the prevention of
2-44 damage to such a facility resulting from the movement of earth by a
2-45 person in the vicinity of the facility, other than movement by
2-46 tillage that does not exceed a depth of 16 inches.

2-47 (n) In this subsection, "telecommunications service" and
2-48 "information service" have the meanings assigned by 47 U.S.C.
2-49 Section 153. Notwithstanding Subsection (a), this title does not
2-50 grant the commission jurisdiction or right-of-way management
2-51 authority over a provider of telecommunications service or
2-52 information service. A provider of telecommunications service or
2-53 information service shall comply with all applicable safety
2-54 standards, including those provided by Subchapter G, Chapter 756,
2-55 Health and Safety Code.

2-56 (o) The power granted by Subsection (a) does not apply to:

2-57 (1) surface mining operations; or

2-58 (2) other entities or occupations if the commission
2-59 determines in its rulemaking process that exempting those entities
2-60 or occupations from rules adopted under that subsection:

2-61 (A) is in the public interest; or

2-62 (B) is not likely to cause harm to the safety and
2-63 welfare of the public.

2-64 (p) The commission may not implement rules adopted under
2-65 Subsection (a) regulating the movement of earth by a person in the
2-66 vicinity of a facility until September 1, 2007. This subsection
2-67 expires September 1, 2008.

2-68 SECTION 4. The Railroad Commission of Texas may not adopt
2-69 safety standards under Section 121.201(a), Utilities Code, or

3-1 Section 117.012(a), Natural Resources Code, as amended by this Act,
3-2 until the Pipeline and Hazardous Materials Safety Administration of
3-3 the United States Department of Transportation adopts the rules
3-4 published at 69 Fed. Reg. 35279 (2004) (to be codified at 49 C.F.R.
3-5 Parts 192 and 195) (proposed June 3, 2004) or other rules pertaining
3-6 to public education programs for hazardous liquid and gas pipeline
3-7 operators.

3-8 SECTION 5. (a) The change in law made by this Act to Section
3-9 121.206, Utilities Code, applies only to a violation committed on
3-10 or after the effective date of this Act. For purposes of this
3-11 section, a violation is committed before the effective date of this
3-12 Act if any element of the violation occurred before that date.

3-13 (b) A violation committed before the effective date of this
3-14 Act is covered by the law in effect when the violation was
3-15 committed, and the former law is continued in effect for that
3-16 purpose.

3-17 SECTION 6. This Act takes effect September 1, 2005.

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