

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a city to take certain actions with regard to certain pipelines.

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

SECTION 1. Subsection (a), Section 117.101, Natural Resources Code, is amended to read as follows:

(a) Except as otherwise provided by this subchapter, this ~~[This]~~ chapter may not be construed to reduce, limit, or impair the authority provided by law to any city.

SECTION 2. Subchapter D, Chapter 117, Natural Resources Code, is amended by adding Section 117.102 to read as follows:

Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES.

(a) Except as otherwise provided by this section, a city may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A city may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a hazardous liquid or carbon dioxide pipeline facility on, along, or across the public roads, highways, streets, alleys, streams,

1 canals, or other public ways located within the city and maintained  
2 by the city; and

3 (2) recover the reasonable cost of repairing damage to  
4 a public road, highway, street, alley, stream, canal, or other  
5 public way located within the city and maintained by the city that  
6 is caused by the placement, construction, maintenance, repair,  
7 replacement, operation, use, relocation, or removal of a hazardous  
8 liquid or carbon dioxide pipeline facility if the owner or operator  
9 of the facility does not repair the damage in accordance with  
10 generally applicable paving standards or other applicable  
11 standards in the city.

12 (c) A charge authorized by Subsection (b)(1) may not exceed  
13 the cost to the city of administering, supervising, inspecting, and  
14 otherwise regulating the location of the pipeline facility,  
15 including maintaining records and maps of the location of the  
16 pipeline facility.

17 (d) The owner or operator of a pipeline facility may appeal  
18 the assessment of a charge under Subsection (b)(1) to the  
19 commission. The commission shall hear the appeal de novo. Unless  
20 the city that assessed the charge establishes that the charge is  
21 authorized by this section, the commission shall declare the charge  
22 invalid or reduce the charge to an amount authorized by this  
23 section. The commission has exclusive jurisdiction to determine  
24 whether a charge under Subsection (b)(1) is authorized by this  
25 section. The owner or operator of the pipeline facility and the  
26 city shall share equally the costs incurred by the commission in  
27 connection with the appeal.

1       (e) A city must file suit to collect a charge authorized by  
2 Subsection (b)(1) not later than the fourth anniversary of the date  
3 the charge becomes due. The running of the limitations period under  
4 this subsection is tolled on the filing of an appeal of the charge  
5 under Subsection (d) and begins running again on the date the appeal  
6 is determined.

7       (f) This section may not be construed to prevent a city  
8 from:

9           (1) recovering the reasonable cost of repairing damage  
10 to a city facility, other than a public way, caused by acts of the  
11 owner or operator of a pipeline facility; or

12           (2) requiring the owner or operator of a pipeline  
13 facility to relocate the pipeline facility, at the owner's or  
14 operator's expense, to permit the construction, maintenance,  
15 modification, or alteration of a city facility.

16       (g) Notwithstanding Subsection (f)(2), the city shall pay  
17 the cost of relocating a pipeline facility if the pipeline facility  
18 is authorized by a property right that has priority over the city's  
19 right to use the public way for the city facility.

20       SECTION 3. Subsection (b), Section 121.202, Utilities Code,  
21 is amended to read as follows:

22       (b) Except as provided by Subsection (a) and by Section  
23 121.2025, this subchapter does not reduce, limit, or impair:

- 24           (1) a power vested by law in:
- 25                   (A) a county in relation to a county road; or
- 26                   (B) a municipality; or
- 27           (2) the ability of a municipality to:

1 (A) adopt an ordinance that establishes  
2 conditions for mapping, inventorying, locating [~~installing~~], or  
3 relocating pipelines over, under, along, or across a public street  
4 or alley or private residential area in the boundaries of the  
5 municipality; or

6 (B) establish conditions for mapping or taking an  
7 inventory in an area in a municipality's extraterritorial  
8 jurisdiction.

9 SECTION 4. Subchapter E, Chapter 121, Utilities Code, is  
10 amended by adding Section 121.2025 to read as follows:

11 Sec. 121.2025. AUTHORITY OF MUNICIPALITY TO ASSESS CHARGES.

12 (a) Except as otherwise provided by this section or Section  
13 182.025, Tax Code, a municipality may not assess a charge for the  
14 placement, construction, maintenance, repair, replacement,  
15 operation, use, relocation, or removal of a gas pipeline facility  
16 on, along, or across a public road, highway, street, alley, stream,  
17 canal, or other public way.

18 (b) A municipality may:

19 (1) assess a reasonable annual charge for the  
20 placement, construction, maintenance, repair, replacement,  
21 operation, use, relocation, or removal by an owner or operator of a  
22 gas pipeline facility on, along, or across the public roads,  
23 highways, streets, alleys, streams, canals, or other public ways  
24 located within the municipality and maintained by the municipality;  
25 and

26 (2) recover the reasonable cost of repairing damage to  
27 a public road, highway, street, alley, stream, canal, or other

1 public way located within the municipality and maintained by the  
2 municipality that is caused by the placement, construction,  
3 maintenance, repair, replacement, operation, use, relocation, or  
4 removal of a gas pipeline facility if the owner or operator of the  
5 facility does not repair the damage in accordance with generally  
6 applicable paving standards or other applicable standards in the  
7 municipality.

8 (c) A charge authorized by Subsection (b)(1) may not exceed  
9 the cost to the municipality of administering, supervising,  
10 inspecting, and otherwise regulating the location of the gas  
11 pipeline facility, including maintaining records and maps of the  
12 location of the pipeline facility.

13 (d) The owner or operator of a gas pipeline facility may  
14 appeal the assessment of a charge under Subsection (b)(1) to the  
15 railroad commission. The railroad commission shall hear the appeal  
16 de novo. Unless the municipality that assessed the charge  
17 establishes that the charge is authorized by this section, the  
18 railroad commission shall declare the charge invalid or reduce the  
19 charge to an amount authorized by this section. The railroad  
20 commission has exclusive jurisdiction to determine whether a charge  
21 under Subsection (b)(1) is authorized by this section. The owner or  
22 operator of the gas pipeline facility and the municipality shall  
23 share equally the costs incurred by the railroad commission in  
24 connection with the appeal.

25 (e) A municipality must file suit to collect a charge  
26 authorized by Subsection (b)(1) not later than the fourth  
27 anniversary of the date the charge becomes due. The running of the

1 limitations period under this subsection is tolled on the filing of  
2 an appeal of the charge under Subsection (d) and begins running  
3 again on the date the appeal is determined.

4 (f) This section may not be construed to prevent a  
5 municipality from:

6 (1) recovering the reasonable cost of repairing damage  
7 to a municipal facility, other than a public way, caused by acts of  
8 the owner or operator of a gas pipeline facility; or

9 (2) requiring the owner or operator of a gas pipeline  
10 facility to relocate the pipeline facility, at the owner's or  
11 operator's expense, to permit the construction, maintenance,  
12 modification, or alteration of a municipal facility.

13 (g) Notwithstanding Subsection (f)(2), the municipality  
14 shall pay the cost of relocating a gas pipeline facility if the  
15 pipeline facility is authorized by a property right that has  
16 priority over the municipality's right to use the public way for the  
17 municipal facility.

18 SECTION 5. (a) This Act does not affect:

19 (1) the validity or enforceability of a contract  
20 entered into before the effective date of this Act by a municipality  
21 and the owner or operator of a hazardous liquid, carbon dioxide, or  
22 gas pipeline; or

23 (2) the enforceability of a charge assessed by a  
24 municipality before September 1, 2006, under an ordinance adopted  
25 on or before September 1, 2004.

26 (b) This Act applies to a charge assessed by a municipality  
27 on or after:

1                   (1) the effective date of this Act under an ordinance  
2 adopted after September 1, 2004; and

3                   (2) September 1, 2006, under an ordinance regardless  
4 of the date of adoption of the ordinance.

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