

1-1 By: Hinojosa, Williams S.B. No. 480  
1-2 (In the Senate - Filed February 11, 2005; February 22, 2005,  
1-3 read first time and referred to Committee on Natural Resources;  
1-4 April 6, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 6, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 480 By: Armbrister

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

1-10 relating to the authority of a city to take certain actions with  
1-11 regard to certain pipelines.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 117.101, Natural  
1-14 Resources Code, is amended to read as follows:

1-15 (a) Except as otherwise provided by this subchapter, this  
1-16 [This] chapter may not be construed to reduce, limit, or impair the  
1-17 authority provided by law to any city.

1-18 SECTION 2. Subchapter D, Chapter 117, Natural Resources  
1-19 Code, is amended by adding Section 117.102 to read as follows:

1-20 Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES.

1-21 (a) Except as otherwise provided by this section, a city may not  
1-22 assess a charge for the placement, construction, maintenance,  
1-23 repair, replacement, operation, use, relocation, or removal of a  
1-24 hazardous liquid or carbon dioxide pipeline facility on, along, or  
1-25 across a public road, highway, street, alley, stream, canal, or  
1-26 other public way.

1-27 (b) A city may:

1-28 (1) assess a reasonable annual charge for the  
1-29 placement, construction, maintenance, repair, replacement,  
1-30 operation, use, relocation, or removal by an owner or operator of a  
1-31 hazardous liquid or carbon dioxide pipeline facility on, along, or  
1-32 across the public roads, highways, streets, alleys, streams,  
1-33 canals, or other public ways located within the city and maintained  
1-34 by the city; and

1-35 (2) recover the reasonable cost of repairing damage to  
1-36 a public road, highway, street, alley, stream, canal, or other  
1-37 public way located within the city and maintained by the city that  
1-38 is caused by the placement, construction, maintenance, repair,  
1-39 replacement, operation, use, relocation, or removal of a hazardous  
1-40 liquid or carbon dioxide pipeline facility if the owner or operator  
1-41 of the facility does not repair the damage in accordance with  
1-42 generally applicable paving standards or other applicable  
1-43 standards in the city.

1-44 (c) A charge authorized by Subsection (b)(1) may not exceed  
1-45 the cost to the city of administering, supervising, inspecting, and  
1-46 otherwise regulating the location of the pipeline facility,  
1-47 including maintaining records and maps of the location of the  
1-48 pipeline facility.

1-49 (d) The owner or operator of a pipeline facility may appeal  
1-50 the assessment of a charge under Subsection (b)(1) to the  
1-51 commission. The commission shall hear the appeal de novo. Unless  
1-52 the city that assessed the charge establishes that the charge is  
1-53 authorized by this section, the commission shall declare the charge  
1-54 invalid or reduce the charge to an amount authorized by this  
1-55 section. The commission has exclusive jurisdiction to determine  
1-56 whether a charge under Subsection (b)(1) is authorized by this  
1-57 section. The owner or operator of the pipeline facility and the  
1-58 city shall share equally the costs incurred by the commission in  
1-59 connection with the appeal.

1-60 (e) A city must file suit to collect a charge authorized by  
1-61 Subsection (b)(1) not later than the fourth anniversary of the date  
1-62 the charge becomes due. The running of the limitations period under  
1-63 this subsection is tolled on the filing of an appeal of the charge

2-1 under Subsection (d) and begins running again on the date the appeal  
2-2 is determined.

2-3 (f) This section may not be construed to prevent a city  
2-4 from:

2-5 (1) recovering the reasonable cost of repairing damage  
2-6 to a city facility, other than a public way, caused by acts of the  
2-7 owner or operator of a pipeline facility; or

2-8 (2) requiring the owner or operator of a pipeline  
2-9 facility to relocate the pipeline facility, at the owner's or  
2-10 operator's expense, to permit the construction, maintenance,  
2-11 modification, or alteration of a city facility.

2-12 (g) Notwithstanding Subsection (f)(2), the city shall pay  
2-13 the cost of relocating a pipeline facility if the pipeline facility  
2-14 is authorized by a property right that has priority over the city's  
2-15 right to use the public way for the city facility.

2-16 SECTION 3. Subsection (b), Section 121.202, Utilities Code,  
2-17 is amended to read as follows:

2-18 (b) Except as provided by Subsection (a) and by Section  
2-19 121.2025, this subchapter does not reduce, limit, or impair:

2-20 (1) a power vested by law in:

2-21 (A) a county in relation to a county road; or

2-22 (B) a municipality; or

2-23 (2) the ability of a municipality to:

2-24 (A) adopt an ordinance that establishes  
2-25 conditions for mapping, inventorying, locating [~~installing~~], or  
2-26 relocating pipelines over, under, along, or across a public street  
2-27 or alley or private residential area in the boundaries of the  
2-28 municipality; or

2-29 (B) establish conditions for mapping or taking an  
2-30 inventory in an area in a municipality's extraterritorial  
2-31 jurisdiction.

2-32 SECTION 4. Subchapter E, Chapter 121, Utilities Code, is  
2-33 amended by adding Section 121.2025 to read as follows:

2-34 Sec. 121.2025. AUTHORITY OF MUNICIPALITY TO ASSESS CHARGES.

2-35 (a) Except as otherwise provided by this section or Section  
2-36 182.025, Tax Code, a municipality may not assess a charge for the  
2-37 placement, construction, maintenance, repair, replacement,  
2-38 operation, use, relocation, or removal of a gas pipeline facility  
2-39 on, along, or across a public road, highway, street, alley, stream,  
2-40 canal, or other public way.

2-41 (b) A municipality may:

2-42 (1) assess a reasonable annual charge for the  
2-43 placement, construction, maintenance, repair, replacement,  
2-44 operation, use, relocation, or removal by an owner or operator of a  
2-45 gas pipeline facility on, along, or across the public roads,  
2-46 highways, streets, alleys, streams, canals, or other public ways  
2-47 located within the municipality and maintained by the municipality;  
2-48 and

2-49 (2) recover the reasonable cost of repairing damage to  
2-50 a public road, highway, street, alley, stream, canal, or other  
2-51 public way located within the municipality and maintained by the  
2-52 municipality that is caused by the placement, construction,  
2-53 maintenance, repair, replacement, operation, use, relocation, or  
2-54 removal of a gas pipeline facility if the owner or operator of the  
2-55 facility does not repair the damage in accordance with generally  
2-56 applicable paving standards or other applicable standards in the  
2-57 municipality.

2-58 (c) A charge authorized by Subsection (b)(1) may not exceed  
2-59 the cost to the municipality of administering, supervising,  
2-60 inspecting, and otherwise regulating the location of the gas  
2-61 pipeline facility, including maintaining records and maps of the  
2-62 location of the pipeline facility.

2-63 (d) The owner or operator of a gas pipeline facility may  
2-64 appeal the assessment of a charge under Subsection (b)(1) to the  
2-65 railroad commission. The railroad commission shall hear the appeal  
2-66 de novo. Unless the municipality that assessed the charge  
2-67 establishes that the charge is authorized by this section, the  
2-68 railroad commission shall declare the charge invalid or reduce the  
2-69 charge to an amount authorized by this section. The railroad

3-1 commission has exclusive jurisdiction to determine whether a charge  
3-2 under Subsection (b)(1) is authorized by this section. The owner or  
3-3 operator of the gas pipeline facility and the municipality shall  
3-4 share equally the costs incurred by the railroad commission in  
3-5 connection with the appeal.

3-6 (e) A municipality must file suit to collect a charge  
3-7 authorized by Subsection (b)(1) not later than the fourth  
3-8 anniversary of the date the charge becomes due. The running of the  
3-9 limitations period under this subsection is tolled on the filing of  
3-10 an appeal of the charge under Subsection (d) and begins running  
3-11 again on the date the appeal is determined.

3-12 (f) This section may not be construed to prevent a  
3-13 municipality from:

3-14 (1) recovering the reasonable cost of repairing damage  
3-15 to a municipal facility, other than a public way, caused by acts of  
3-16 the owner or operator of a gas pipeline facility; or

3-17 (2) requiring the owner or operator of a gas pipeline  
3-18 facility to relocate the pipeline facility, at the owner's or  
3-19 operator's expense, to permit the construction, maintenance,  
3-20 modification, or alteration of a municipal facility.

3-21 (g) Notwithstanding Subsection (f)(2), the municipality  
3-22 shall pay the cost of relocating a gas pipeline facility if the  
3-23 pipeline facility is authorized by a property right that has  
3-24 priority over the municipality's right to use the public way for the  
3-25 municipal facility.

3-26 SECTION 5. (a) This Act does not affect:

3-27 (1) the validity or enforceability of a contract  
3-28 entered into before the effective date of this Act by a municipality  
3-29 and the owner or operator of a hazardous liquid, carbon dioxide, or  
3-30 gas pipeline; or

3-31 (2) the enforceability of a charge assessed by a  
3-32 municipality before September 1, 2006, under an ordinance adopted  
3-33 on or before September 1, 2004.

3-34 (b) This Act applies to a charge assessed by a municipality  
3-35 on or after:

3-36 (1) the effective date of this Act under an ordinance  
3-37 adopted after September 1, 2004; and

3-38 (2) September 1, 2006, under an ordinance regardless  
3-39 of the date of adoption of the ordinance.

3-40 SECTION 6. This Act takes effect September 1, 2005.

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