

BILL ANALYSIS

C.S.H.B. 2748
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent events have provided evidence for the assertion that there is insufficient due process for landowners seeking to determine whether a pipeline holds common carrier status and therefore has the power of eminent domain. It is argued that there should be a process that provides for more rigorous review to ensure that pipeline operators seeking common carrier status satisfy the statutory definition of a common carrier. In order to determine whether a pipeline company meets the statutory definition of a common carrier, C.S.H.B. 2748 seeks to establish procedures for making such a determination that involve notice, hearing or administrative review, and an opportunity to appeal.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2748 amends the Civil Practice and Remedies Code and the Natural Resources Code to establish that a permit to operate in Texas as a common carrier issued under the bill's provisions is a conclusive determination that the permit holder is a common carrier for the purposes of a judicial proceeding, other than an appeal of an order approving or denying an application for such a permit.

C.S.H.B. 2748 amends the Natural Resources Code to establish that a person who owns, operates, or manages a pipeline is not conclusively determined to be a common carrier, as defined by state law, for the purposes of a judicial proceeding unless the person holds a permit issued under the bill's provisions. The bill requires a permit to operate a pipeline issued by the Railroad Commission of Texas that does not comply with the bill's provisions governing a determination of common carrier status to state that the railroad commission has not made a conclusive determination of that status for the permit holder.

C.S.H.B. 2748 requires a person who owns, operates, or manages a pipeline and who seeks a conclusive determination that the person is a common carrier for purposes of a judicial proceeding to submit to the railroad commission an application for the determination on a form specified by the railroad commission that includes evidence required by the railroad commission to show that the applicant qualifies as a common carrier. The bill requires such an application to be accompanied by a reasonable fee established by railroad commission rule to cover the costs of administering the bill's provisions and caps the fee at \$2,500. The bill requires the railroad commission to provide to the applicant notice that the railroad commission has received the application and to include with the notice a proposed location, date, and time for a hearing on the application. The bill requires the proposed hearing date to be not earlier than the 35th day and not later than the 56th day after the date the railroad commission sends the notice.

C.S.H.B. 2748 requires the applicant for a determination of common carrier status, after the

railroad commission provides such notice, to publish notice of the application for two consecutive weeks in a newspaper of general circulation in each county in which a portion of the pipeline may be located, to mail or deliver notice of the application to the county clerk or municipal secretary of each county and municipality in which a portion of the pipeline may be located not later than the last day of the newspaper publication, to provide Internet access to the text of the application if no other entity provides the access not later than the last day of the newspaper publication, and to file with the railroad commission proof of compliance with the newspaper publication requirement and an affidavit attesting that the applicant has complied with the requirements to notify certain county clerks or municipal secretaries and to provide Internet access to the text of the application under certain conditions. The bill requires the notice of application to include the proposed location, date, and time of the hearing on the application, a statement that the proposed location, date, and time are subject to change, and a statement that a person may contact the railroad commission to determine whether the proposed location, date, or time has been changed; a description of the point of origin and point of destination of the pipeline; a list of each county and municipality in which a portion of the pipeline may be located; the Internet address at which the text of the application can be viewed; a description of the procedure for protesting the application, including the protest deadline under the bill's provisions; and a statement that the purpose of the hearing is to determine whether the applicant is a common carrier, as defined by state law, and not to determine the route of the proposed pipeline.

C.S.H.B. 2748 authorizes a person to file a protest with the railroad commission of a submitted application if the person owns land in a county in which a portion of the pipeline may be located, if the person is a county or municipality in which a portion of the pipeline may be located, or if the person is a railroad commission staff member. The bill requires such a protest to be filed not later than the 21st day after the last day of the required newspaper publication of the notice of application.

C.S.H.B. 2748 requires the railroad commission to designate a hearings examiner to review applications without a hearing and to conduct hearings on applications. The bill authorizes the hearings examiner to review an application without a hearing if the railroad commission does not receive a protest of the application before the deadline, if railroad commission staff have reviewed the application and stipulated that there are no disputed issues of fact or law regarding the application, and if the hearings examiner finds that a hearing is unnecessary and that administrative review is warranted. The bill requires the hearings examiner, if such conditions do not apply, to hold a hearing on the application at the proposed location, date, and time specified in the notice provided to the applicant by the railroad commission, unless the applicant publishes the newspaper notice for two consecutive weeks the last day of which falls on a day that is less than 21 days before the proposed hearing date, in which case the hearings examiner is required to hold the hearing on a date that is at least 21 days after the last day of the newspaper publication. The bill requires the railroad commission to provide notice of the hearing location, date, and time to the applicant and each person who filed a protest of the application. The bill establishes that the purpose of the hearing is to determine whether the applicant is a common carrier and not to determine the route of the proposed pipeline.

C.S.H.B. 2748 authorizes the railroad commission to approve an application and issue a permit to the applicant to operate in Texas as a common carrier if the railroad commission finds after administrative review or a hearing that the applicant is a common carrier, as defined by state law. The bill requires the hearings examiner to issue to the railroad commission a recommended order or proposal for decision, as applicable, containing findings of fact and conclusions of law and requires the railroad commission to issue an order approving or denying the application. For an application reviewed without a hearing under the bill's provisions, the bill establishes a deadline of not later than the 40th day after the last day of the newspaper publication required by the bill's provisions by which the hearings examiner is required to issue the recommended order to the railroad commission and by which the railroad commission is required to issue an order approving or denying the application. For an application for which a hearing is held under the

bill's provisions, the bill establishes a deadline of not later than the 40th day after the last day of the hearing by which the hearings examiner is required to issue the proposal for decision to the railroad commission and by which the railroad commission is required to issue an order approving or denying the application. The bill requires the commission order to include a statement of findings of fact that includes the substance of the evidence presented at a hearing and conclusions of law that support the decision. The bill authorizes the railroad commission to adopt, wholly or partly, or modify the findings of fact and conclusions of law in the proposal for decision. The bill authorizes a person to appeal a railroad commission order approving or denying an application that is reviewed without a hearing in the manner provided for judicial review of contested cases under the Administrative Procedure Act.

C.S.H.B. 2748 authorizes the railroad commission to extend certain deadlines prescribed by the bill's provisions for good cause and to adopt rules as necessary to implement the bill's provisions.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2748 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 7, Civil Practices and Remedies Code, is amended by adding new Chapter 174 as follows:

Section 174.001 DESIGNATION OF COMMON CARRIER. (a) A determination by the commission that an entity is a common carrier, as defined under Section 111.002 of the Natural Resources Code, is not conclusive on that issue in a proceeding in district, statutory county court, and county courts, unless the commission has made that determination after notice, a hearing, and the opportunity to appeal.

No equivalent provision.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 135 to read as follows:

CHAPTER 135. COMMON CARRIER DETERMINATION

Sec. 135.001. COMMON CARRIER DETERMINATION. (a) A permit granted under Subchapter B-1, Chapter 111, Natural Resources Code, is a conclusive determination for the purposes of a judicial proceeding that the permit holder is a common carrier, as defined by the laws of this state.

(See added Secs. 111.043, 111.047, and 111.048(f), Natural Resources Code below.)

(b) This section does not apply to an appeal described by Section 111.048(f), Natural Resources Code.

SECTION 2. Chapter 111, Natural Resources Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. COMMON CARRIER DETERMINATION

Sec. 111.041. COMMON CARRIER

STATUS. (a) A person who owns, operates, or manages a pipeline is not conclusively determined to be a common carrier, as defined by the laws of this state, for the purposes of a judicial proceeding unless the person holds a permit issued under this subchapter. A permit issued under this subchapter is a conclusive determination for the purposes of a judicial proceeding, other than a judicial proceeding described by Section 111.048(f), that the permit holder is a common carrier, as defined by the laws of this state.

(b) A permit to operate a pipeline issued by the commission that does not comply with this subchapter must state that the commission has not made a conclusive determination that the permit holder is a common carrier, as defined by the laws of this state.

No equivalent provision.

Sec. 111.042. STATUS APPLICATION.

(a) A person who owns, operates, or manages a pipeline and who seeks a conclusive determination under this subchapter that the person is a common carrier must submit to the commission an application for the determination on a form specified by the commission that includes evidence required by the commission to show that the applicant qualifies as a common carrier.

(b) The application must be accompanied by a reasonable fee established by commission rule to cover the costs of administering this subchapter but not to exceed \$2,500.

(c) The commission shall provide to the applicant notice that the commission has received the application and shall include with the notice a proposed location, date, and time for a hearing on the application. The proposed hearing date must be not earlier than the 35th day and not later than the 56th day after the date the commission sends the notice.

(See added Sec. 174.001(a), Civil Practices and Remedies Code above.)

Sec. 111.043. NOTICE. (a) After the commission provides notice under Section 111.042(c), the applicant shall:

(1) publish notice of the application for two consecutive weeks in a newspaper of general circulation in each county in which a portion of the pipeline may be

located;

(2) mail or deliver notice of the application to the county clerk or municipal secretary of each county and municipality in which a portion of the pipeline may be located not later than the last day of the newspaper publication required by Subdivision (1);

(3) provide Internet access to the text of the application if no other entity provides the access not later than the last day of the newspaper publication required by Subdivision (1); and

(4) file with the commission proof of compliance with the publication requirement of Subdivision (1) and an affidavit attesting that the applicant has complied with the notice requirements of Subdivisions (2) and (3).

(b) The notice of the application must include:

(1) the proposed location, date, and time of the hearing on the application, a statement that the proposed location, date, and time are subject to change, and a statement that a person may contact the commission to determine whether the proposed location, date, or time has been changed;

(2) a description of the point of origin and point of destination of the pipeline;

(3) a list of each county and municipality in which a portion of the pipeline may be located;

(4) the Internet address at which the text of the application can be viewed;

(5) a description of the procedure for protesting the application, including the protest deadline provided under Section 111.044; and

(6) a statement that the purpose of the hearing is to determine whether the applicant is a common carrier, as defined by the laws of this state, and not to determine the route of the proposed pipeline.

No equivalent provision.

Sec. 111.044. PROTESTS. (a) A person may file a protest with the commission of an application submitted under this subchapter if the person:

(1) owns land in a county in which a portion of the pipeline may be located;

(2) is a county or municipality in which a portion of the pipeline may be located;

or

(3) is a commission staff member.

(b) A protest must be filed not later than the 21st day after the last day of the newspaper publication required by Section 111.043(a)(1).

No equivalent provision.

Sec. 111.045. HEARINGS EXAMINER. The commission shall designate a hearings examiner to:

(1) review applications without a hearing under Section 111.046; and

(2) conduct hearings on applications under Section 111.047.

No equivalent provision.

Sec. 111.046. ADMINISTRATIVE REVIEW. The hearings examiner may review an application without a hearing if:

(1) the commission does not receive a protest of the application under Section 111.044 before the deadline provided by Subsection (b) of that section;

(2) commission staff has reviewed the application and stipulated that there are no disputed issues of fact or law regarding the application; and

(3) the hearings examiner finds that a hearing is unnecessary and that administrative review is warranted.

(See added Sec. 174.001(a), Civil Practices and Remedies Code above.)

Sec. 111.047. HEARING. (a) Except as provided by Subsection (b), if Section 111.046 does not apply, the hearings examiner shall hold a hearing on the application at the proposed location, date, and time specified in the notice provided under Section 111.042(c).

(b) If the applicant publishes the newspaper notice required by Section 111.043(a)(1) for two consecutive weeks the last day of which falls on a day that is less than 21 days before the proposed hearing date specified in the notice provided under Section 111.042(c), the hearings examiner shall hold the hearing on a date that is at least 21 days after the last day of the newspaper publication.

(c) The commission shall provide notice of the hearing location, date, and time to the applicant and each person who filed a protest under Section 111.044.

(d) The purpose of the hearing is to determine whether the applicant is a

common carrier, as defined by the laws of this state, and not to determine the route of the proposed pipeline.

No equivalent provision.

Sec. 111.048. PERMIT; PROPOSAL FOR DECISION; COMMISSION ORDER.

(a) The commission may approve an application and issue a permit to the applicant to operate in this state as a common carrier if the commission finds after administrative review or a hearing that the applicant is a common carrier, as defined by the laws of this state.

(b) For an application reviewed by a hearings examiner without a hearing as authorized by Section 111.046, not later than the 40th day after the last day of the newspaper publication required by Section 111.043(a)(1):

(1) the hearings examiner shall issue to the commission a recommended order containing findings of fact and conclusions of law; and

(2) the commission shall issue an order approving or denying the application.

(c) For an application for which a hearings examiner holds a hearing under Section 111.047, not later than the 40th day after the last day of the hearing:

(1) the hearings examiner shall issue to the commission a proposal for decision containing findings of fact and conclusions of law; and

(2) the commission shall issue an order approving or denying the application.

(d) A commission order issued under this section must include:

(1) a statement of findings of fact that includes the substance of the evidence presented at the hearing, if a hearing was held; and

(2) conclusions of law that support the decision.

(e) The commission may adopt, wholly or partly, or modify the findings of fact and conclusions of law in the proposal for decision.

(f) A person may appeal a commission order issued under Subsection (b)(2) of this section in the manner provided by Subchapter G, Chapter 2001, Government Code.

(b) A commission decision made pursuant to this Section may be appealed pursuant to Government Code Section 2001.171. (See also added Sec. 174.001(b), Civil Practices and Remedies Code above.)

No equivalent provision.

Sec. 111.049. COMMISSION

AUTHORITY TO EXTEND DEADLINES. The commission may extend a deadline prescribed by Section 111.044, 111.046, 111.047, or 111.048 for good cause.

(c) The commission shall adopt rules necessary to effectuate the provisions of this chapter.

Sec. 111.050. RULES. The commission may adopt rules as necessary to implement this subchapter.

No equivalent provision.

SECTION 3. The changes in law made by this Act relating to a permit to operate a pipeline apply only to a permit the application for which is filed with the Railroad Commission of Texas on or after the effective date of this Act. A permit the application for which was filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.