

## **BILL ANALYSIS**

C.S.H.B. 3547  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have raised concerns regarding the recent court decision to strike down Texas' method for determining whether a pipeline is a common carrier. The parties, some of which represent pipeline companies and some of which represent landowners, have stated that the decision is having a negative economic impact on the state. The decision has resulted in lawsuits to confirm that pipelines are meeting the standards, which in turn are slowing the building of pipelines and are costly to landowners. C.S.H.B. 3547 seeks to address these concerns by establishing a statutory framework of standards and procedures for determining whether a person who owns, operates, or manages a pipeline is a common carrier.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Railroad Commission of Texas in SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

C.S.H.B. 3547 amends the Natural Resources Code to establish that a pipeline owner, operator, or manager is not an oil and gas common carrier unless at least 33 percent of the pipeline's capacity is used or is reasonably likely to be used to transport one or more substances for one or more persons who are not corporate parents or subsidiaries of the owner, operator, or manager or are not under common control with the owner, operator, or manager.

C.S.H.B. 3547 prohibits a person who owns, operates, or manages a pipeline from exercising the power of eminent domain granted to common carriers to construct a pipeline unless the State Office of Administrative Hearings (SOAH) determines that the person is a common carrier following one or more common carrier determination hearings. The bill authorizes a person who owns, operates, or manages a pipeline to submit a request to the Railroad Commission of Texas for a determination of whether the person is a common carrier and, if a person who has been determined to be a common carrier with regard to a pipeline transfers the permit to operate the pipeline to another person, prohibits the person to whom the permit is transferred from owning, operating, or managing the pipeline as a common carrier unless the person is determined to be a common carrier.

C.S.H.B. 3547 requires the railroad commission, not later than the fifth day after the date the commission receives a request submitted for a common carrier determination, to review the request for administrative completeness and, if the request is complete, to forward the request to SOAH. The bill requires the railroad commission to charge a person who submits a complete request a fee for making a common carrier determination. The bill requires the railroad commission by rule to establish the amount of the fee and sets out provisions relating to a fee schedule, the fee amount, and depositing the collected fees in the general revenue fund to the credit of the railroad commission.

C.S.H.B. 3547 requires SOAH, not later than the 10th day after the date the office receives a

request for a common carrier determination from the railroad commission, to provide to the person who submitted the request notice that the office has received the request and include with the notice a proposed location, date, and time for a hearing or hearings on the request. The bill requires the proposed hearing date or dates to be not earlier than the 15th day and not later than the 50th day after the date the office sends the notice. The bill requires SOAH to conduct a hearing on the request to determine whether the person who submitted the request is a common carrier. The bill establishes that the hearing is a contested case hearing under the Administrative Procedure Act and prohibits SOAH from conducting a hearing on a request until the person who submitted the request pays the required determination fee. The bill requires SOAH to hold at least one public hearing on the request in a county in which the pipeline is or will be located before issuing a final decision and requires SOAH to determine whether a public hearing in more than one county is necessary based on the location and length of the proposed pipeline.

C.S.H.B. 3547 requires the person who submitted the request for a common carrier determination, after SOAH provides the required notice upon receiving the request, to publish notice of the request for two consecutive weeks before the date of the first hearing in a newspaper of general circulation in each county in which a portion of the pipeline may be located and in a manner that provides a reasonable amount of time for receipt of the notice before the date of the first hearing, mail or deliver notice of the request to each owner of property over which an easement or other property interest may be required for the pipeline and each owner of a house or other habitable structure located within 300 feet of the centerline of the route of the pipeline. The bill sets out the required content of the notice and authorizes the railroad commission by rule to require that a person who submits a request to demonstrate to the railroad commission or SOAH that the person has substantially complied with these notice requirements.

C.S.H.B. 3547 requires SOAH, not later than the 15th day after the date the hearing or hearings are concluded, to issue a final decision as to whether the person who submitted the request is a common carrier. The bill establishes that the final decision is subject to judicial review under the Administrative Procedure Act. The bill limits the appeal to a determination of whether there is a reasonable probability that the person who submitted the request that is the subject of the decision is a common carrier and prohibits the appeal from including a review of the requestor's compliance with the procedural requirements of a common carrier determination.

C.S.H.B. 3547 requires the railroad commission and SOAH to enter into an interagency contract to pay the costs incurred by SOAH in conducting hearings on common carrier determination. The bill requires the railroad commission, not later than the 30th day after the bill's effective date, to adopt rules to implement the bill's provisions

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3547 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 111.002, Natural Resources Code, is amended to read as follows:

Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. (a) Except as

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 111.002, Natural Resources Code, is amended to read as follows:

Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. (a) Except as

provided by Subsection (b), a [A] person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state;

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form;

(6) owns, operates, or manages, wholly or partially, pipelines for the transportation of carbon dioxide or hydrogen in whatever form to or for the public for hire, but only if such person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter; or

(7) owns, operates, or manages a pipeline

provided by Subsection (b), a [A] person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state;

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form;

(6) owns, operates, or manages, wholly or partially, pipelines for the transportation of carbon dioxide or hydrogen in whatever form to or for the public for hire, but only if such person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter; or

(7) owns, operates, or manages a pipeline

or any part of a pipeline in the State of Texas for the transportation of feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification, in whatever form, to or for the public for hire, but only if the person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

(b) A pipeline owner, operator, or manager is not a common carrier subject to the provisions of this chapter unless at least 10 percent of the pipeline's capacity is used or is reasonably likely to be used to transport one or more substances for one or more persons who are not:

- (1) corporate parents of the owner, operator, or manager;
- (2) subsidiaries of the owner, operator, or manager; or
- (3) under common control with the owner, operator, or manager.

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

SUBCHAPTER B-1. COMMON CARRIER DETERMINATION HEARINGS

Sec. 111.041. COMMON CARRIER DETERMINATION. (a) A person who owns, operates, or manages a pipeline may not exercise the power of eminent domain granted by Section 111.019 to construct a pipeline unless the State Office of Administrative Hearings determines that the person is a common carrier as defined by Section 111.002 following one or more hearings conducted under this subchapter.

(b) A person who owns, operates, or manages a pipeline may submit a request to the commission for a determination of whether the person is a common carrier.

or any part of a pipeline in the State of Texas for the transportation of feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification, in whatever form, to or for the public for hire, but only if the person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

(b) A pipeline owner, operator, or manager is not a common carrier subject to the provisions of this chapter unless at least 33 percent of the pipeline's capacity is used or is reasonably likely to be used to transport one or more substances for one or more persons who are not:

- (1) corporate parents of the owner, operator, or manager;
- (2) subsidiaries of the owner, operator, or manager; or
- (3) under common control with the owner, operator, or manager.

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SUBCHAPTER B-1. COMMON CARRIER DETERMINATION HEARINGS

Sec. 111.041. COMMON CARRIER DETERMINATION. (a) A person who owns, operates, or manages a pipeline may not exercise the power of eminent domain granted by Section 111.019 to construct a pipeline unless the State Office of Administrative Hearings determines that the person is a common carrier as defined by Section 111.002 following one or more hearings conducted under this subchapter.

(b) A person who owns, operates, or manages a pipeline may submit a request to the commission for a determination of whether the person is a common carrier.

(c) If a person who has been determined to be a common carrier as defined by Section 111.002 with regard to a pipeline transfers the permit to operate the pipeline to another person, the person to whom the permit is transferred may not own, operate, or manage the pipeline as a common carrier as defined by that section unless the person is

determined to be a common carrier as defined by that section.

Sec. 111.042. DUTIES OF COMMISSION.

(a) The commission shall:

(1) review a request submitted under Section 111.041 for administrative completeness; and

(2) forward a complete request submitted under Section 111.041 to the State Office of Administrative Hearings.

(b) The commission shall charge a person who submits a complete request under Section 111.041 a fee for making a common carrier determination.

(c) The commission by rule shall establish the amount of the fee to be charged under this section. The commission may establish a fee schedule listing different amounts the commission may charge for making a common carrier determination according to the location and length of the pipeline at issue.

(d) The fee must be in an amount that covers the costs incurred by the commission and the State Office of Administrative Hearings in determining whether the person is a common carrier. The commission shall consult with the State Office of Administrative Hearings to determine the costs that the commission and the office will incur in making determinations under this subchapter.

(e) Money collected by the commission under this section shall be deposited in the general revenue fund to the credit of the commission.

Sec. 111.043. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (PART)

Sec. 111.042. DUTIES AND POWERS OF COMMISSION. (a) The commission shall, not later than the fifth day after the date the commission receives a request submitted under Section 111.041:

(1) review the request for administrative completeness; and

(2) if the request is complete, forward the request to the State Office of Administrative Hearings.

(b) The commission shall charge a person who submits a complete request under Section 111.041 a fee for making a common carrier determination.

(c) The commission by rule shall establish the amount of the fee to be charged under this section. The commission may establish a fee schedule listing different amounts the commission may charge for making a common carrier determination according to the location and length of the pipeline at issue.

(d) The fee must be in an amount that covers the costs incurred by the commission and the State Office of Administrative Hearings in determining whether the person is a common carrier. The commission shall consult with the State Office of Administrative Hearings to determine the costs that the commission and the office will incur in making determinations under this subchapter.

(e) Money collected by the commission under this section shall be deposited in the general revenue fund to the credit of the commission.

(f) The commission by rule may require that a person who submits a request demonstrate to the commission or the State Office of Administrative Hearings that the person has substantially complied with the notice requirements of Section 111.044.

Sec. 111.043. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a)

Not later than the 10th day after the date the State Office of Administrative Hearings receives a request from the commission under Section 111.042, the office shall provide to the person who submitted the request notice that the office has received the request and shall

(a) The State Office of Administrative Hearings shall conduct a hearing on a request received by the office from the commission under Section 111.042 to determine whether the person who submitted the request is a common carrier as defined by Section 111.002. A hearing conducted under this subsection is a contested case hearing under Chapter 2001, Government Code.

(b) The State Office of Administrative Hearings may not conduct a hearing on a request until the person who submitted the request pays the fee required by Section 111.042.

(c) Before issuing a final decision on a request, the State Office of Administrative Hearings shall hold at least one public hearing on the request in a county in which the pipeline is or will be located. The office shall determine whether a public hearing in more than one county is necessary based on the location and length of the proposed pipeline.

No equivalent provision.

include with the notice a proposed location, date, and time for a hearing or hearings on the request. The proposed hearing date or dates must be not earlier than the 15th day and not later than the 50th day after the date the office sends the notice.

(b) The State Office of Administrative Hearings shall conduct a hearing on the request to determine whether the person who submitted the request is a common carrier as defined by Section 111.002. A hearing conducted under this subsection is a contested case hearing under Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings may not conduct a hearing on a request until the person who submitted the request pays the fee required by Section 111.042.

(d) Before issuing a final decision on a request, the State Office of Administrative Hearings shall hold at least one public hearing on the request in a county in which the pipeline is or will be located. The office shall determine whether a public hearing in more than one county is necessary based on the location and length of the proposed pipeline.

Sec. 111.044. NOTICE. (a) After the State Office of Administrative Hearings provides notice under Section 111.043, the person who submitted the request shall:

(1) publish notice of the request for two consecutive weeks before the date of the first hearing in a newspaper of general circulation in each county in which a portion of the pipeline may be located; and

(2) in a manner that provides a reasonable amount of time for receipt of the notice before the date of the first hearing, mail or deliver notice of the request to:

(A) each owner of property over which an easement or other property interest may be required for the pipeline; and

(B) each owner of a house or other habitable structure located within 300 feet of the centerline of the route of the pipeline.

(b) The notice of the request must include:

(1) a statement that the person has filed a request for a determination that could provide eminent domain authority for a pipeline and that the determination may

affect property located on or near the route of the pipeline;

(2) the proposed location, date, and time of each hearing that the State Office of Administrative Hearings will hold on the request;

(3) a statement that the purpose of each hearing is to determine whether the person who submitted the request is a common carrier, as defined by the laws of this state, and not to determine the route of the pipeline; and

(4) a statement that a person may attend each hearing and offer testimony on whether the person who submitted the request is a common carrier as defined by the laws of this state.

Sec. 111.043. (PART)

(d) As soon as practicable after the hearing or hearings on a request are concluded, the State Office of Administrative Hearings shall issue a final determination as to whether the person who submitted the request is a common carrier as defined by Section 111.002.

Sec. 111.045. DECISION; JUDICIAL REVIEW. (a) Not later than the 15th day after the date the hearing or hearings on a request are concluded, the State Office of Administrative Hearings shall issue a final decision as to whether the person who submitted the request is a common carrier as defined by Section 111.002.

(b) A final decision of the State Office of Administrative Hearings under this section is subject to judicial review under Chapter 2001, Government Code. The appeal is limited to a determination of whether there is a reasonable probability that the person who submitted the request under Section 111.041 that is the subject of the decision is a common carrier as defined by Section 111.002 and may not include a review of the requestor's compliance with the procedural requirements of this subchapter.

Sec. 111.044. INTERAGENCY CONTRACT. The commission and the State Office of Administrative Hearings shall enter into an interagency contract to pay the costs incurred by the office in implementing this section.

Sec. 111.046. INTERAGENCY CONTRACT. The commission and the State Office of Administrative Hearings shall enter into an interagency contract to pay the costs incurred by the office in implementing this subchapter.

SECTION 3. Not later than the 30th day after the effective date of this Act, the Railroad Commission of Texas shall adopt rules to implement the changes in law made by this Act to Chapter 111, Natural Resources Code.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.