

By: Lewis, Crownover, King of Zavala,  
Raymond, Darby, et al.

H.B. No. 2748

Substitute the following for H.B. No. 2748:

By: Thompson of Harris

C.S.H.B. No. 2748

A BILL TO BE ENTITLED

AN ACT

relating to judicial proceedings and Railroad Commission of Texas  
hearings to determine whether a person who owns, operates, or  
manages a pipeline is a common carrier; authorizing a fee.

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

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.

(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

1 judicial proceeding, other than a judicial proceeding described by  
2 Section 111.048(f), that the permit holder is a common carrier, as  
3 defined by the laws of this state.

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

8 Sec. 111.042. STATUS APPLICATION. (a) A person who owns,  
9 operates, or manages a pipeline and who seeks a conclusive  
10 determination under this subchapter that the person is a common  
11 carrier must submit to the commission an application for the  
12 determination on a form specified by the commission that includes  
13 evidence required by the commission to show that the applicant  
14 qualifies as a common carrier.

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

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

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

26 (1) publish notice of the application for two  
27 consecutive weeks in a newspaper of general circulation in each

1 county in which a portion of the pipeline may be located;

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

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

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

14 (b) The notice of the application must include:

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

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

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

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

26 (5) a description of the procedure for protesting the  
27 application, including the protest deadline provided under Section

1 111.044; and

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

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

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

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

13 (3) is a commission staff member.

14 (b) A protest must be filed not later than the 21st day after  
15 the last day of the newspaper publication required by Section  
16 111.043(a)(1).

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

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

21 (2) conduct hearings on applications under Section  
22 111.047.

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

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

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

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

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

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

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

21           (d) The purpose of the hearing is to determine whether the  
22 applicant is a common carrier, as defined by the laws of this state,  
23 and not to determine the route of the proposed pipeline.

24           Sec. 111.048. PERMIT; PROPOSAL FOR DECISION; COMMISSION  
25 ORDER. (a) The commission may approve an application and issue a  
26 permit to the applicant to operate in this state as a common carrier  
27 if the commission finds after administrative review or a hearing

1 that the applicant is a common carrier, as defined by the laws of  
2 this state.

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

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

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

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

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

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

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

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

25 (2) conclusions of law that support the decision.

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

1 decision.

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

5 Sec. 111.049. COMMISSION AUTHORITY TO EXTEND DEADLINES.  
6 The commission may extend a deadline prescribed by Section 111.044,  
7 111.046, 111.047, or 111.048 for good cause.

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

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

17 SECTION 4. This Act takes effect September 1, 2013.