

By: Oliveira

H.B. No. 3547

A BILL TO BE ENTITLED

1 AN ACT
2 relating to standards and procedures for determining whether a
3 person who owns, operates, or manages a pipeline is a common
4 carrier; authorizing a fee.

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

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

8 Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. (a) Except as
9 provided by Subsection (b), a [A] person is a common carrier subject
10 to the provisions of this chapter if it:

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

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

21 (3) owns, operates, or manages a pipeline or any part
22 of a pipeline in the State of Texas for the transportation of crude
23 petroleum to or for the public for hire which is or may be
24 constructed, operated, or maintained across, on, along, over, or

1 under the right-of-way of a railroad, corporation, or other common
2 carrier required by law to transport crude petroleum as a common
3 carrier;

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

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

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

22 (7) owns, operates, or manages a pipeline or any part
23 of a pipeline in the State of Texas for the transportation of
24 feedstock for carbon gasification, the products of carbon
25 gasification, or the derivative products of carbon gasification, in
26 whatever form, to or for the public for hire, but only if the person
27 files with the commission a written acceptance of the provisions of

1 this chapter expressly agreeing that, in consideration of the
2 rights acquired, it becomes a common carrier subject to the duties
3 and obligations conferred or imposed by this chapter.

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

9 (1) corporate parents of the owner, operator, or
10 manager;

11 (2) subsidiaries of the owner, operator, or manager;
12 or

13 (3) under common control with the owner, operator, or
14 manager.

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

17 SUBCHAPTER B-1. COMMON CARRIER DETERMINATION HEARINGS

18 Sec. 111.041. COMMON CARRIER DETERMINATION. (a) A person
19 who owns, operates, or manages a pipeline may not exercise the power
20 of eminent domain granted by Section 111.019 to construct a
21 pipeline unless the State Office of Administrative Hearings
22 determines that the person is a common carrier as defined by Section
23 111.002 following one or more hearings conducted under this
24 subchapter.

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

1 Sec. 111.042. DUTIES OF COMMISSION. (a) The commission
2 shall:

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

5 (2) forward a complete request submitted under Section
6 111.041 to the State Office of Administrative Hearings.

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

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

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

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

24 Sec. 111.043. DUTIES OF STATE OFFICE OF ADMINISTRATIVE
25 HEARINGS. (a) The State Office of Administrative Hearings shall
26 conduct a hearing on a request received by the office from the
27 commission under Section 111.042 to determine whether the person

1 who submitted the request is a common carrier as defined by Section
2 111.002. A hearing conducted under this subsection is a contested
3 case hearing under Chapter 2001, Government Code.

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

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

13 (d) As soon as practicable after the hearing or hearings on
14 a request are concluded, the State Office of Administrative
15 Hearings shall issue a final determination as to whether the person
16 who submitted the request is a common carrier as defined by Section
17 111.002.

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

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

26 SECTION 4. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 3547

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2013.