

Allowing natural gas pipelines in state highway rights-of-way in the Barnett Shale area

SB 686 by Davis (Orr)

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DIGEST: SB 686 would have allowed a gas utility to lay, maintain, and operate a natural gas pipeline through, across, under, or along a state highway if:

- the pipeline was subject to the jurisdiction of the Texas Railroad Commission and associated safety standards;
- the pipeline complied with all applicable state rules and federal regulations; and
- the highway and associated facilities were promptly restored to their former condition after installation.

The bill would have applied only to a natural gas pipeline located or proposed to be located in a county that contained part of the Barnett Shale natural gas field, in a county located in the boundaries of a metropolitan planning organization, within the corporate limits of a municipality.

The Texas Department of Transportation (TxDOT) would have been able to require a gas utility to relocate a pipeline at a cost to the utility to accommodate construction or expansion of the highway or other public facility unless the utility had a property interest in land occupied by the facility to be relocated. The bill would not have limited a gas utility's authority to use a public right-of-way or affect the authority of a municipality to regulate the use of a public right-of-way by a gas utility or require payment.

A county would have been required to allow subsurface access to a county road right-of-way for the installation of a temporary water line that did not interfere with existing utilities located in the right-of-way.

GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 686 would authorize natural gas pipelines to be located in state rights of way in certain designated areas of the state. While I agree that this would provide a benefit to communities and reduce the impact on private property owners, the bill conflicts with House Bill No. 2572, which was signed on June 19, 2009, and which accomplishes the same objectives statewide while ensuring that pipelines are installed using the highest safety standards.”

RESPONSE:

Sen. Wendy Davis, the bill's author, said, “The governor vetoed an important tool that would have assured protection of private property rights, a tool that had been sought by municipalities throughout the Barnett Shale. This is a regrettable outcome for the people of Texas. The governor's veto of SB 686 is a failure to understand what the bill would accomplish. This important legislation was agreed upon by

all interested parties, including municipalities, oil and gas pipeline operators, and representatives from TxDOT.

“This bill was drafted as a response to citizens seeking to protect their private property rights and would have protected property owners from the exercise of eminent domain to place pipeline facilities on private property.

“Governor Perry believes that HB 2572, which was signed into law, grants the same protections and benefits to private property owners that SB 686 would have accomplished. Unfortunately, HB 2572 does not overcome the legal basis for which TxDOT has been excluding pipelines from controlled access highways (freeways). For years, gas utilities have had the right to install their facilities in public roads pursuant to a provision in the Utilities Code.

“The Utilities Code provision has failed to protect private property owners who are affected by the placement of gas pipelines in two significant ways. First, the Utilities Code only provides this right in public roads to gas utilities, and has not been defined to include the gas gathering and transmission lines that are used by the natural gas drilling industry to carry gas from the well site to the market. Second, a provision in the Transportation Code has been interpreted to mean that ‘public roads,’ as that term is used in the Transportation Code, does not include controlled access highways (i.e., TxDOT highway rights-of-way).

“SB 686 eliminates a provision in the Transportation Code, which allows TxDOT to deny access to controlled access highway specifically. SB 686 also specifically provided the right to place gas gathering and transmission lines in TxDOT rights-of-way, while current law provides that ability only to ‘gas utilities.’ Importantly, SB 686 addressed both of these issues within the Transportation Code itself, and any claim superseding authority over the Utilities Code that TxDOT previously argued. HB 2572 solved neither of the problems that exist under current law. Instead, it simply added ‘gas corporation’ to the protections already in existence in the Utilities Code. It did not address the ability to place lines in controlled access highways, nor did it specifically authorize the placement of gathering and transmission lines, as SB 686 would have done.

“HB 2572 does not prevent TxDOT from continuing to stand on the argument it currently asserts. Instead, TxDOT will continue to assert that the Transportation Code provides them the ability to deny access to gas pipeline companies in their rights-of-way, just as they have used the Transportation Code to deny such access to gas utilities under the same provision.

“On April 21, 2009, the Senate engrossed version of SB 686, subsection (e) read:
'(e) This section may not be construed to limit the authority of a gas utility to use a public right-of-way.'

“Subsection (e) of SB 686, in its final form, reads:

'(e) This section may not be construed to:

(1) limit the authority of a gas utility to use a public right-of-way under any other law or...'

“Subsection (e) does not grant any additional rights to gas utilities. The subsection only preserves rights that exist under current law. Contrary to TxDOT’s assertions, subsection (e) does not add any rights to gas utilities under either the Transportation Code or Utilities Code as those rights exist today.

“SB 686 sought to solve an existing problem and would have provided an alternative to the use of eminent domain for the placement of gas pipelines on private property. The governor’s veto denies Texans an important tool to protect their private property rights, a tool that had been sought by municipalities throughout the Barnett Shale. This is a regrettable outcome for the people of Texas.”

Rep. Rob Orr, the House sponsor, said, “I wholeheartedly concur with the statement and sentiments of Senator Davis concerning the governor’s veto of SB 686. The governor believes that another bill (HB 2572) passed by the 81st Legislature will accomplish everything that SB 686 was designed to accomplish. I hope that proves correct though I have my doubts. If the Department of Transportation chooses to continue to limit access to certain state rights-of-way, I would like to see Governor Perry leading the charge personally and through his appointed transportation commissioners to ensure that the agency does begin allowing the safe placement of pipelines in the right of way of controlled access highways. If we see the current situation continue, then we all will know that more work remains to be done.”

NOTES:

The HRO analysis of SB 686 appeared in the May 19 *Daily Floor Report*.