

BILL ANALYSIS

Senate Research Center

H.B. 2006
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Infrastructure Development and Security
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Engrossed

DIGEST AND PURPOSE

Many railroads have turned their right-of-way over to outside management companies. Utilities, pipeline and cable companies which need to build facilities that cross the right-of-way or go alongside the right-of-way have to deal with those management companies. A number of disputes have arisen with the management companies and the demands those companies have made with respect to existing facilities as well as proposed new facilities.

H.B. 2006 creates a uniform process for gas companies, electrical companies, telecommunication companies, cable companies and oil and gas pipelines to construct and maintain facilities along, over, under, or across a railroad right-of-way.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides the purpose of this Act.

SECTION 2. Amends Chapter 186, Utilities Code, by adding Subchapter E, as follows:

SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES ALONG, OVER, UNDER, OR ACROSS RAILROAD RIGHT-OF-WAY

Sec. 186.051. DEFINITIONS. Defines "common carrier," "energy transporter," "railroad," "railroad right-of-way," and "utility."

Sec. 186.052. EXEMPTIONS. Provides that the inclusion of an energy transporter in this subchapter does not subject the transporter to regulation as a utility or common carrier. Provides that the inclusion of a common carrier in this subchapter does not subject the carrier to regulation as a utility.

Sec. 186.053. CONSTRUCTION AND MAINTENANCE OF UTILITY, COMMON CARRIER, AND ENERGY TRANSPORTER FACILITIES. (a) Provides that a utility, common carrier, or energy transporter has the right to construct and maintain its facilities over, under, or across a railroad or railroad right-of-way as provided by this subchapter if the facilities:

- (1) as they pass over, under, or across a railroad or railroad right-of-way are not parallel to the railroad or railroad right-of-way; or
- (2) before they pass along a railroad or railroad right-of-way are parallel to the railroad or railroad right-of-way for a distance of not more than 500 feet within any one-mile segment of the railroad or railroad right-of-way.

(b) Provides that a utility, common carrier, or energy transporter:

(1) is required to:

(A) provide notice to the railroad within a reasonable period of any proposed activity relating to the construction, maintenance, or operation of the facilities; and

(B) comply with state and federal safety regulations applicable to construction over, under, or across a railroad or railroad right-of-way; and

(2) is prohibited from unreasonably interfering with railroad operations.

(c) Authorizes a railroad to require a utility, common carrier, or energy transporter to relocate any portion of the facility that is located in the railroad right-of-way that is not in the public right-of-way under certain conditions.

Sec. 186.054. DOCUMENTATION OF RIGHTS ACQUIRED. Requires a railroad, if a railroad requires a utility, common carrier, or energy transporter to obtain from the railroad a right to use a railroad right-of-way, to produce, if requested, the documentation from the railroad's records indicating the extent of the railroad's right, title, or interest in the property sought to be used by the utility, common carrier, or energy transporter. Requires the utility, common carrier, or energy transporter to reimburse the railroad for the reasonable cost of producing the documentation as required by this section. Prohibits the cost, including internal costs, from exceeding \$250. Provides that if the railroad has no demonstrable real property interest in the property sought to be used or no right to grant an easement along, over, under, or across the railroad right-of-way, the utility, common carrier, or energy transporter does not owe the railroad compensation for the use of the property.

Sec. 186.055. VALUATION OF RIGHTS ACQUIRED. (a) Authorizes a utility, common carrier, or energy transporter, in the absence of an agreement for the right to use a railroad right-of-way, to obtain the right to use the right-of-way through the exercise of eminent domain under the procedures provided by Chapter 21, Property Code.

(b) Provides that the award of damages due the railroad under an eminent domain proceeding as provided by Subsection (a) is the market value of the real property interest to be used. Provides that market value is determined by measuring the value of the property interest immediately before and immediately after the taking.

(c) Prohibits the property interest from being valued at more than the valuation of the real property adjacent to the right-of-way.

(d) Authorizes the railroad to also recover:

(1) costs and expenses for interference with railroad operations, including internal costs for providing flagging services; and

(2) the cost to repair any damage to its facilities caused by the construction or maintenance of the utility, common carrier, or energy transporter facilities.

(e) Provides that the payment by the utility, common carrier, or energy transporter determined under this section is the only compensation due to the railroad for the perpetual use of the interest obtained.

Sec. 186.056. RIGHT TO MAINTAIN FACILITIES. Prohibits, during the pendency of the condemnation proceedings or good faith negotiations for the purchase of the right to use a railroad right-of-way, the utility, common carrier, or energy transporter from being required to remove any existing facilities if the facilities were located on the railroad right-of-way under the consent of the railroad.

Sec. 186.057. LICENSE AND RENEWAL. (a) Authorizes a utility, common carrier, or

energy transporter to obtain an original license or renew a license for the right to use a railroad right-of-way for a one-time fee paid based on:

- (1) the agreement of the railroad and the utility, common carrier, or energy transporter; or
- (2) a mutually acceptable third-party determination of market value.

(b) Provides that a fee paid under this section is the only fee payment required. Provides that the license remains in effect without the requirement of additional fee payments for renewal of the license.

Sec. 186.058. PROHIBITED ACTS. Prohibits a railroad from:

- (1) interfering with the right of a utility to cross a railroad right-of-way using a public right-of-way that is not restricted; or
- (2) requiring a utility to pay a fee to cross a railroad right-of-way on a public right-of-way.

Sec. 186.059. PROHIBITED PROVISIONS IN AGREEMENTS. Provides that an agreement between a railroad and a utility, common carrier, or energy transporter relating to the sale, lease, license, or other use of a railroad right-of-way, including a purchase agreement, deed, bill of sale, lease, or license, is void to the extent the agreement requires the utility, common carrier, or energy transporter to purchase insurance providing coverage for the railroad or an employee, agent, or independent contractor of the railroad against any loss, liability, or other damage.

Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. Provides that the rights, privileges, and responsibilities provided by this subchapter are in addition to and not in substitution for those rights granted by any other state or federal law.

SECTION 3. Effective date: September 1, 2003.