

BILL ANALYSIS

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C.S.H.B. 2006
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Infrastructure Development and Security
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Committee Report (Substituted)

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.

C.S.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 "cable operator," "common carrier," "energy transporter," "railroad," "railroad right-of-way," and "utility."

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

(b) Provides that the inclusion of a common carrier in this subchapter does not subject the carrier to regulation as a utility.

Sec. 186.053. APPLICABILITY. (a) Provides that except as provided by Section 186.058, this subchapter applies only to facilities along, over, under, or across a railroad or railroad right-of-way in place under a license, agreement, or nonperpetual easement.

(b) Provides that in relation to cable operators, this subchapter applies only to those lines over which the cable operator is offering or transporting high-speed Internet or broadband information services.

Sec. 186.054. CONSTRUCTION AND MAINTENANCE OF UTILITY, COMMON CARRIER, CABLE OPERATOR, AND ENERGY TRANSPORTER FACILITIES. (a) Authorizes a utility, common carrier, cable operator, or energy transporter to acquire an easement by eminent domain along, over, under, or across a railroad or railroad right-of-

way as provided by this subchapter to maintain, operate, or upgrade its facilities consistent with preexisting licenses or agreements.

(b) Requires a utility, common carrier, cable operator, or energy transporter to provide reasonable period of any proposed activity relating to the construction, maintenance, or operation of the facilities and prohibits it from unreasonably interfering with railroad operations.

(c) Authorizes a railroad, absent terms to the contrary in an easement acquired by condemnation under this subchapter, existing license, or agreement, to require a utility, common carrier, cable operator, 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. 186.055. DOCUMENTATION OF RIGHTS ACQUIRED. Requires a railroad, if a railroad requires a utility, common carrier, cable operator, or energy transporter to obtain from the railroad a right to use a railroad right-of-way, to produce, if requested in writing, the readily available 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, cable operator, or energy transporter to reimburse the railroad for the reasonable cost of producing the documentation as required by this section. Prohibits the reimbursable cost, including internal costs, from exceeding \$500, unless the parties agree otherwise. Provides that a railroad that produces documentation as provided by this section is not limited or prevented from asserting a right, title, or interest in real property based on documentation that has not been produced under this section.

Sec. 186.056. VALUATION OF RIGHTS ACQUIRED. (a) Authorizes a utility, common carrier, cable operator, or energy transporter, in the absence of an agreement to convey a permanent easement for the continued right to use a preexisting facility located in a railroad right-of-way, to obtain the right to continuously 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 and if a portion of the railroad's right-of-way is taken, damages, if any, to the railroad's remaining property.

(c) Authorizes the railroad to also recover certain reasonable costs and expenses.

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

Sec. 186.057. RIGHT TO MAINTAIN FACILITIES. (a) Prohibits a utility, common carrier, cable operator, or energy transporter from being required to remove an existing facility for 180 days after the date the utility, common carrier, cable operator, or energy transporter receives a written notice from the railroad that an existing facility must be removed from the railroad's right-of-way if certain conditions exist.

(b) Provides that if a utility, common carrier, cable operator, or energy transporter requests documentation under Section 186.055, the 180-day period provided by Subsection (a) is tolled until the utility, common carrier, cable operator, or energy transporter receives a written response to its request from the railroad.

(c) Provides that if a utility, common carrier, cable operator, or energy transporter does not condemn or enter into an agreement regarding the disputed area involving the railroad's right-of-way within the 180-day period provided by

Subsection (a) or any extended period provided by Subsection (b), the license or agreement between the utility, common carrier, cable operator, or energy transporter and the rail road is terminated.

(d) Provides that the possessory right provided by this section is in addition to any possessory right provided by Chapter 21, Property Code.

Sec. 186.058. LICENSE AND RENEWAL. (a) Authorizes a utility, common carrier, cable operator, 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 certain criteria.

(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.

(c) Authorizes the terms of the license or license renewal to provide that the railroad is not later subject to this subchapter, except the railroad continues to be subject to eminent domain authority granted by other law.

Sec. 186.059. RESTRICTIONS ON PAYMENT OF COSTS AWARDED AGAINST RAILROAD IN CONDEMNATION. Requires the costs awarded against the railroad, if the special commissioners or a court awards costs against a railroad under Section 21.047, Property Code, because the award of damages to the railroad is equal to or less than the amount the utility, common carrier, cable operator, or energy transporter exercising the right of eminent domain under this subchapter offered to pay, to be paid by the railroad without reimbursement by or contribution from any agent or representative, including an agent or representative that handled or assisted in the condemnation proceedings.

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 diminution of or substitution for those rights granted by any other state or federal law.

Sec. 186.061. EFFECT ON OTHER LAW. Provides that this subchapter does not affect the elements a condemnor must establish by law to acquire real property.

SECTION 3. Effective date: September 1, 2003.