

Amend CSHB 2006 by striking all below the enacting clause and substituting the following:

SECTION 1. The purpose of this Act is to:

(1) create uniform laws relating to the construction and maintenance of utility, common carrier, and energy transporter facilities along, over, under, or across a railroad right-of-way;

(2) grant utilities, common carriers, and energy transporters certain rights, privileges, and responsibilities and provide a uniform process for those entities to obtain easements or other rights to construct and maintain their facilities in railroad rights-of-way in this state; and

(3) grant energy transporters limited eminent domain authority to obtain easements under, over, or across a railroad right-of-way because transporters provide essential energy supplies to the public.

SECTION 2. Chapter 186, Utilities Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES

ALONG, OVER, UNDER, OR ACROSS RAILROAD RIGHT-OF-WAY

Sec. 186.051. DEFINITIONS. In this subchapter:

(1) "Common carrier" means a common carrier as described by Section 111.002, Natural Resources Code, or a person who submits to regulation by the state as a common carrier under Article 2.01, Texas Business Corporation Act.

(2) "Energy transporter" means a pipeline used for gathering or transporting oil, gas, or oil and gas products.

(3) "Railroad" means an entity that owns, operates, or controls a railroad or property or assets owned or previously owned by a railroad in this state, including agents, assignees, or parties that by contract own, control, or manage railroad rights-of-way, easements, or other real property rights belonging to a railroad. The term includes interurban and street railroads.

(4) "Railroad right-of-way" means the real property rights owned or controlled by a railroad, including fee and easement interests used or previously used as a railroad operating corridor.

(5) "Utility" means:

(A) a gas, water, electric, or telecommunications entity that is defined as a utility under the laws of this state;

(B) an electric cooperative; or

(C) a municipally owned utility.

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

(b) 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) 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) A utility, common carrier, or energy transporter:

(1) shall:

(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) may not unreasonably interfere with railroad operations.

(c) A railroad may 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 if:

- (1) a reasonable alternate route is available;
- (2) a reasonable amount of time is provided;
- (3) substantial interference with the railroad operations is established; and
- (4) the railroad reimburses the utility, common carrier, or energy transporter for the cost of relocation.

Sec. 186.054. DOCUMENTATION OF RIGHTS ACQUIRED. 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, the railroad shall 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. The utility, common carrier, or energy transporter shall reimburse the railroad for the reasonable cost of producing the documentation as required by this subsection. The cost, including internal costs, may not exceed \$250. 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) In the absence of an agreement for the right to use a railroad right-of-way, a utility, common carrier, or energy transporter may 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) 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. Market value is determined by measuring the value of the property interest immediately before and immediately after the taking.

(c) The property interest may not be valued at more than the valuation of the real property adjacent to the right-of-way.

(d) The railroad may 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) 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. 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 may not be 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) A utility, common carrier, or energy transporter may 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) A fee paid under this section is the only fee payment required. The license remains in effect without the requirement of additional fee payments for renewal of the license.

Sec. 186.058. PROHIBITED ACTS. A railroad may not:

(1) interfere 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) require 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. 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. 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. This Act takes effect September 1, 2003.