

BILL ANALYSIS

C.S.H.B. 2006
By: Jones, Elizabeth
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many railroads have turned their right-of-way over to outside management companies. Utilities, pipeline and cable companies who 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. Fees for the use of the right-of-way have been sharply increased even for existing facilities. Projects are often delayed for months waiting new agreements from the management companies or the railroads. In many instances, it is not clear that the railroads have an ownership interest in the property. A number of states have already addressed this problem with various types of legislation because of the need to build essential facilities that provide service to the public.

The purpose of this bill is to create a uniform process for gas companies, electrical companies, telecommunication companies, cable companies and oil and gas or products pipelines to build facilities along, across or over the railroad right-of-way in a timely and economical fashion.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

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; and

(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 the railroad rights-of-way in this state;

(3) declare that energy transporters as defined herein have a public use because such entities transport essential energy supplies to the public and should be granted limited eminent domain authority to obtain easements along, over or across a railroad right-of-way.

SECTION 2. Chapter 186, Utilities Code, is amended by adding Subchapter E.

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

Section 186.051. DEFINITIONS.

(1) "Common carrier" is defined as 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” is defined as a pipeline used for gathering or transporting oil, gas, or oil and gas products.

(3) “Railroad” is defined as 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 right-of-way, easements, or other real property rights belonging to the railroad. The term includes inter-urban and street railroads.

(4) “Railroad right-of-way” is defined as the real property rights owned or controlled by a railroad, including fee and easement interests.

(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.

Section 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.

Section 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 along, over, under, or across a railroad or railroad right-of-way pursuant to the provisions of 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 right-of-way:

(3) a utility or common carrier shall provide reasonable notice to the railroad of any proposed activity relating to the construction, maintenance, or operation of the facilities, shall comply with all state and federal safety regulations applicable to construction along, over, under, or across a railroad right-of-way and shall not unreasonably interfere with railroad operations.

(b) A railroad may require a utility, common carrier, or energy transporter to:

(1) provide notice to the railroad within a reasonable period if any activity relating to the construction, maintenance, or operation of the facility will substantially interfere with the operation of the railroad; and

(2) 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:

(A) a reasonable alternate route is available;

(B) a reasonable amount of time is provided;

- (C) substantial interference with the railroad operations is established; and
- (D) the railroad reimburses the utility, common carrier, or energy transporter for the cost of relocation unless provided otherwise in existing agreement.

Section 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 on 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 or common carrier shall reimburse the railroad for reasonable cost of producing such documentation from the railroad's records, not to exceed \$250, including internal costs. 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.

Section 185.055. 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 pursuant to Chapter 21 of the Texas Property Code.

(b) The damages due the railroad under Texas Property Code, or its successor, 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 costs and expenses including internal costs for providing flagging services, for interference with railroad operations and 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.

Section 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 provided such facilities were initially located on railroad right-of-way with agreement of the railroad.

Section 186.057. LICENSE AND RENEWAL.

(a) A utility, common carrier, or energy transporter may obtain an original license or subsequent license for the right to use a railroad right-of-way for a one-time paid fee 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.

Section 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.

Section 186.059. INDEMNITY AGREEMENTS VOID. 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:

(1) claims to indemnify or require the defense of the railroad or an employee, agent, or independent contractor of the railroad against any loss, liability, or other damage that results from the gross negligence of the railroad or an employee, agent, or independent contractor of the railroad; or

(2) requires the utility, common carrier, or energy transporter to purchase insurance providing coverage or other indemnity protection for the railroad or an employee, agent, or independent contractor of the railroad against any loss, liability, or other damage that results from the gross negligence of the railroad or an employee, agent, or independent contractor of the railroad.

(3) the change in law made by Section 186.059, Utilities Code, as added by this Act, applies only to an indemnity agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

Section 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. If any provisions of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provision of this Act are declared to be severable.

SECTION 4. (a) This Act takes effect September 1, 2003.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 2006, Section 1:

-adds subsection (3).

CSHB 2006:

-strikes Section 2, subsection(3), of original bill.

CSHB 2006, Section 2:

-adds subsection (5) by adding (B) and (C).

CSHB 2006, Section 2, Section 186.053:

-adds language on line 19, page 2, "pursuant to the provisions of this subchapter if the facilities:

-adds subsections (1), (2), (3) to “a”.

-adds “b” and subsection (1) and (2).

-adds (A), (B), (C), (D) to subsection (2).

CSHB 2006, Section 2, Section 186.054:

-strikes the phrase “that demonstrates” on page 3, lines 9 and 10, of the original bill, and adds the word “on” to CSHB 2006 on page 3, line 13.

-adds “The utility or common carrier shall reimburse the railroad for the reasonable cost of producing such documentation from the railroad’s records, not to exceed \$250, including internal costs.”, on page 3, lines 14-16, between the words “transporter.” and “If”, on CSHB 2006.

CSHB 2006, Section 2, Section 186.055(a):

-adds “pursuant to Chapter 21 of the Texas Property Code”; on page 3, lines 22-23 of the CSHB 2006.

CSHB 2006, Section 2, 186.055(b):

-strikes the phrase “The compensation due the railroad under an eminent” on page 3, lines 22-23, of the original bill.

-strikes the word “fair” on page 3, line 23, between the words “the” and “market” on page 3, line 23 of the original bill.

-strikes the phrase “The value includes only the value of the property interest owned by the railroad and sought to be used by the utility, common carrier, or energy transporter” on page 3, lines 24-26, of the original bill.

-adds the phrase “The damages due the railroad under Texas Property Code, or its successor” on page 3, line 23 to CSHB 2006.

-adds the phrase, “Market value is determined by measuring the value of the property interest immediately before and immediately after the taking.” on page 3, lines 25-26 of CSHB 2006.

CSHB, 2006, Section 2, Section 186.055(d):

-adds the word “also” before the word “may” and adds the phrase “costs and expenses including internal costs for providing services, for interference with railroad operations and” on page 3, lines 29-30 of CSHB 2006.

CSHB 2006, Section 2, Section 186.056:

-adds the phrase “provided such facilities were initially located on the railroad right-of-way with agreement of the railroad.” on page 4, lines 8-9 of CSHB 2006.

CSHB 2006 adds the following sections:

Section 186.057. LICENSE AND RENEWAL.

(a) A utility, common carrier, or energy transporter may obtain an original license or subsequent license for the right to use a railroad right-of-way for a one-time paid fee 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.

Section 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.

Section 186.059. INDEMNITY AGREEMENTS VOID.

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:

(1) claims to indemnify or require the defense of the railroad or an employee, agent, or independent contractor of the railroad against any loss, liability, or other damage that results from the gross negligence of the railroad or an employee, agent, or independent contractor of the railroad; or

(2) requires the utility, common carrier, or energy transporter to purchase insurance providing coverage or other indemnity protection for the railroad or an employee, agent, or independent contractor of the railroad against any loss, liability, or other damage that results from the gross negligence of the railroad or an employee, agent, or independent contractor of the railroad.

(3) the change in law made by Section 186.059, Utilities Code, as added by this Act, applies only to an indemnity agreement entered into on or after the effective date of this Act. An agreement entered into before the effective date of this Act is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

Section 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. If any provisions of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provision of this Act are declared to be severable.

SECTION 4. (a) This Act takes effect September 1, 2003.