

1 AN ACT

2 relating to the construction and maintenance of utility, common  
3 carrier, cable operator, and energy transporter facilities along,  
4 over, under, or across a railroad right-of-way.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The purpose of this Act is to:

7 (1) create uniform laws relating to the maintenance,  
8 operation, and upgrade of preexisting utility, common carrier,  
9 cable operator, and energy transporter facilities along, over,  
10 under, or across a railroad right-of-way consistent with  
11 preexisting licenses or agreements;

12 (2) grant utilities, common carriers, cable  
13 operators, and energy transporters certain rights, privileges, and  
14 responsibilities and provide a uniform process for those entities  
15 to obtain easements or other rights to maintain, operate, and  
16 upgrade their preexisting facilities in railroad rights-of-way in  
17 this state consistent with preexisting licenses or agreements; and

18 (3) facilitate the transition from contractual rights  
19 under agreements by granting energy transporters limited eminent  
20 domain authority to obtain easements for preexisting facilities  
21 along, over, under, or across a railroad right-of-way because  
22 transporters provide essential energy supplies to the public.

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

1           SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES

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

3           Sec. 186.051. DEFINITIONS. In this subchapter:

4           (1) "Cable operator" means an entity that owns or  
5 operates a cable system, as that term is defined by 47 U.S.C.  
6 Section 522, as amended.

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

11           (3) "Energy transporter" means a person who gathers or  
12 transports oil, gas, or oil and gas products by pipeline.

13           (4) "Railroad" means an entity that owns, operates, or  
14 controls a railroad or property or assets owned or previously owned  
15 by a railroad in this state, including agents, assignees, or  
16 parties that by contract own, control, or manage railroad  
17 rights-of-way, easements, or other real property rights belonging  
18 to a railroad. The term includes interurban and street railroads  
19 owned by a private entity but excludes a terminal railroad and a  
20 railroad or interurban and street railroad owned by a governmental  
21 entity, including a navigation district or port authority, or a  
22 wharf.

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

27           (6) "Utility" means:

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

4                   (B) an electric cooperative; or

5                   (C) a municipally owned utility.

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

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

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

16           (b) In relation to cable operators, this subchapter applies  
17 only to those lines over which the cable operator is offering or  
18 transporting high-speed Internet or broadband information  
19 services.

20           Sec. 186.054. CONSTRUCTION AND MAINTENANCE OF UTILITY,  
21 COMMON CARRIER, CABLE OPERATOR, AND ENERGY TRANSPORTER FACILITIES.

22           (a) A utility, common carrier, cable operator, or energy  
23 transporter may acquire an easement by eminent domain along, over,  
24 under, or across a railroad or railroad right-of-way as provided by  
25 this subchapter to maintain, operate, or upgrade its facilities  
26 consistent with preexisting licenses or agreements.

27           (b) A utility, common carrier, cable operator, or energy

1 transporter:

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

5 (2) may not unreasonably interfere with railroad  
6 operations.

7 (c) Absent terms to the contrary in an easement acquired by  
8 condemnation under this subchapter, existing license, or  
9 agreement, a railroad may require a utility, common carrier, cable  
10 operator, or energy transporter to relocate any portion of a  
11 facility that is located in the railroad right-of-way that is not in  
12 the public right-of-way if:

13 (1) a reasonable alternate route is available;

14 (2) a reasonable amount of time is provided;

15 (3) substantial interference with the railroad  
16 operations is established; and

17 (4) the railroad reimburses the utility, common  
18 carrier, cable operator, or energy transporter for the reasonable  
19 cost of relocation.

20 Sec. 186.055. DOCUMENTATION OF RIGHTS ACQUIRED. If a  
21 railroad requires a utility, common carrier, cable operator, or  
22 energy transporter to obtain from the railroad a right to use a  
23 railroad right-of-way, the railroad shall produce, if requested in  
24 writing, the readily available documentation from the railroad's  
25 records indicating the extent of the railroad's right, title, or  
26 interest in the property sought to be used by the utility, common  
27 carrier, cable operator, or energy transporter. The utility,

1 common carrier, cable operator, or energy transporter shall  
2 reimburse the railroad for the reasonable cost of producing the  
3 documentation as required by this section. The reimbursable cost,  
4 including internal costs, may not exceed \$500, unless the parties  
5 agree otherwise. A railroad that produces documentation as  
6 provided by this section is not limited or prevented from asserting  
7 a right, title, or interest in real property based on documentation  
8 that has not been produced under this section.

9 Sec. 186.056. VALUATION OF RIGHTS ACQUIRED. (a) In the  
10 absence of an agreement to convey a permanent easement for the  
11 continued right to use a preexisting facility located in a railroad  
12 right-of-way, a utility, common carrier, cable operator, or energy  
13 transporter may obtain the right to continuously use the  
14 right-of-way through the exercise of eminent domain under Chapter  
15 21, Property Code.

16 (b) The award of damages due the railroad under an eminent  
17 domain proceeding as provided by Subsection (a) is:

18 (1) the market value of the real property interest to  
19 be used; and

20 (2) if a portion of the railroad's right-of-way is  
21 taken, damages, if any, to the railroad's remaining property.

22 (c) The railroad may also recover:

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

26 (2) reasonable costs and expenses to repair any damage  
27 to its facilities caused by the maintenance, operation, or upgrade

1 of the preexisting utility, common carrier, cable operator, or  
2 energy transporter facilities.

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

7 Sec. 186.057. RIGHT TO MAINTAIN FACILITIES. (a) A utility,  
8 common carrier, cable operator, or energy transporter may not be  
9 required to remove an existing facility for 180 days after the date  
10 the utility, common carrier, cable operator, or energy transporter  
11 receives a written notice from the railroad that an existing  
12 facility must be removed from the railroad's right-of-way if:

13 (1) the facility was located along, under, over, or  
14 across the railroad right-of-way with the written consent of the  
15 railroad; and

16 (2) the utility, common carrier, cable operator, or  
17 energy transporter is not in default under an agreement with the  
18 railroad.

19 (b) If a utility, common carrier, cable operator, or energy  
20 transporter requests documentation under Section 186.055, the  
21 180-day period provided by Subsection (a) is tolled until the  
22 utility, common carrier, cable operator, or energy transporter  
23 receives a written response to its request from the railroad.

24 (c) If a utility, common carrier, cable operator, or energy  
25 transporter does not condemn or enter into an agreement regarding  
26 the disputed area involving the railroad's right-of-way within the  
27 180-day period provided by Subsection (a) or any extended period

1 provided by Subsection (b), the license or agreement between the  
2 utility, common carrier, cable operator, or energy transporter and  
3 the railroad is terminated.

4 (d) The possessory right provided by this section is in  
5 addition to any possessory right provided by Chapter 21, Property  
6 Code.

7 Sec. 186.058. LICENSE AND RENEWAL. (a) A utility, common  
8 carrier, cable operator, or energy transporter may obtain an  
9 original license or renew a license for the right to use a railroad  
10 right-of-way for a one-time fee paid based on:

11 (1) the agreement of the railroad and the utility,  
12 common carrier, cable operator, or energy transporter; or

13 (2) a mutually acceptable third-party determination  
14 of market value.

15 (b) A fee paid under this section is the only fee payment  
16 required. The license remains in effect without the requirement of  
17 additional fee payments for renewal of the license.

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

22 Sec. 186.059. RESTRICTIONS ON PAYMENT OF COSTS AWARDED  
23 AGAINST RAILROAD IN CONDEMNATION. If the special commissioners or  
24 a court awards costs against a railroad under Section 21.047,  
25 Property Code, because the award of damages to the railroad is equal  
26 to or less than the amount the utility, common carrier, cable  
27 operator, or energy transporter exercising the right of eminent

1 domain under this subchapter offered to pay, the costs awarded  
2 against the railroad must be paid by the railroad without  
3 reimbursement by or contribution from any agent or representative,  
4 including an agent or representative that handled or assisted in  
5 the condemnation proceedings.

6 Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The  
7 rights, privileges, and responsibilities provided by this  
8 subchapter are in addition to and not in diminution of or  
9 substitution for those rights granted by any other state or federal  
10 law.

11 Sec. 186.061. EFFECT ON OTHER LAW. This subchapter does not  
12 affect the elements a condemnor must establish by law to acquire  
13 real property.

14 SECTION 3. This Act takes effect September 1, 2003.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 2006 was passed by the House on May 5, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2006 on May 30, 2003, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 2006 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor