

By: Jones of Bexar

H.B. No. 2006

Substitute the following for H.B. No. 2006:

By: Keffer of Dallas

C.S.H.B. No. 2006

A BILL TO BE ENTITLED

AN ACT

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

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

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 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 to read as follows:

SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES

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

1 Sec. 186.051. DEFINITIONS. In this subchapter:

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

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

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

14 (4) "Railroad right-of-way" means the real property
15 rights owned or controlled by a railroad, including fee and
16 easement interests.

17 (5) "Utility" means:

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

21 (B) an electric cooperative; or

22 (C) a municipally owned utility.

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

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

1 Sec. 186.053. CONSTRUCTION AND MAINTENANCE OF UTILITY,
2 COMMON CARRIER, AND ENERGY TRANSPORTER FACILITIES. (a) A utility,
3 common carrier, or energy transporter has the right to construct
4 and maintain its facilities along, over, under, or across a
5 railroad or railroad right-of-way pursuant to the provisions of
6 this subchapter if the facilities:

7 (1) as they pass over, under, or across a railroad or
8 railroad right-of-way are not parallel to the railroad or railroad
9 right-of-way; or

10 (2) before they pass along a railroad or railroad
11 right-of-way are parallel to the railroad or railroad right-of-way
12 for a distance of not more than 500 feet within any one mile segment
13 of the railroad right-of-way;

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

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

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

27 (2) relocate any portion of the facility that is

1 located in the railroad right-of-way that is not in the public
2 right-of-way if:

3 (A) a reasonable alternate route is available;

4 (B) a reasonable amount of time is provided;

5 (C) substantial interference with the railroad
6 operations is established; and

7 (D) the railroad reimburses the utility, common
8 carrier, or energy transporter for the cost of relocation unless
9 provided otherwise in existing agreement.

10 Sec. 186.054. DOCUMENTATION OF RIGHTS ACQUIRED. If a
11 railroad requires a utility, common carrier, or energy transporter
12 to obtain from the railroad a right to use a railroad right-of-way,
13 the railroad shall produce, if requested, the documentation on the
14 extent of the railroad's right, title, or interest in the property
15 sought to be used by the utility, common carrier, or energy
16 transporter. The utility or common carrier shall reimburse the
17 railroad for the reasonable cost of producing such documentation
18 from the railroad's records, not to exceed \$250, including internal
19 costs. If the railroad has no demonstrable real property interest
20 in the property sought to be used or no right to grant an easement
21 along, over, under, or across the railroad right-of-way, the
22 utility, common carrier, or energy transporter does not owe the
23 railroad compensation for the use of the property.

24 Sec. 186.055. VALUATION OF RIGHTS ACQUIRED. (a) In the
25 absence of an agreement for the right to use a railroad
26 right-of-way, a utility, common carrier, or energy transporter may
27 obtain the right to use the right-of-way through the exercise of

1 eminent domain pursuant to Chapter 21 of the Texas Property Code.

2 (b) The damages due the railroad under Texas Property Code,
3 or its successor, is the market value of the real property interest
4 to be used. Market value is determined by measuring the value of
5 the property interest immediately before and immediately after the
6 taking.

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

9 (d) The railroad may also recover costs and expenses
10 including internal costs for providing flagging services, for
11 interference with railroad operations and the cost to repair any
12 damage to its facilities caused by the construction or maintenance
13 of the utility, common carrier, or energy transporter facilities.

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

17 Sec. 186.056. RIGHT TO MAINTAIN FACILITIES. During the
18 pendency of the condemnation proceedings or good faith negotiations
19 for the purchase of the right to use a railroad right-of-way, the
20 utility, common carrier, or energy transporter may not be required
21 to remove any existing facilities provided such facilities were
22 initially located on the railroad right-of-way with agreement of
23 the railroad.

24 Sec. 186.057. LICENSE AND RENEWAL. (a) A utility, common
25 carrier, or energy transporter may obtain an original license or
26 subsequent license for the right to use a railroad right-of-way for
27 a one-time fee paid based on:

1 (1) the agreement of the railroad and the utility,
2 common carrier, or energy transporter; or

3 (2) a mutually acceptable third-party determination
4 of market value.

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

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

9 (1) interfere with the right of a utility to cross a
10 railroad right-of-way using a public right-of-way that is not
11 restricted; or

12 (2) require a utility to pay a fee to cross a railroad
13 right-of-way on a public right-of-way.

14 Sec. 186.059. INDEMNITY AGREEMENTS VOID. An agreement
15 between a railroad and a utility, common carrier, or energy
16 transporter relating to the sale, lease, license, or other use of a
17 railroad right-of-way, including a purchase agreement, deed, bill
18 of sale, lease, or license, is void to the extent the agreement:

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

24 (2) requires the utility, common carrier, or energy
25 transporter to purchase insurance providing coverage or other
26 indemnity protection for the railroad or an employee, agent, or
27 independent contractor of the railroad against any loss, liability,

1 or other damage that results from the gross negligence of the
2 railroad or an employee, agent, or independent contractor of the
3 railroad.

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

10 Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The
11 rights, privileges, and responsibilities provided by this
12 subchapter are in addition to and not in substitution for those
13 rights granted by any other state or federal law.

14 SECTION 3. If any provisions of this Act or its application
15 to any person or circumstance is held invalid, the invalidity does
16 not affect other provisions or applications of this Act that can be
17 given effect without the invalid provision or application, and to
18 this end the provision of this Act are declared to be severable.

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