

1-1 By: Jones of Bexar, McReynolds H.B. No. 2006  
1-2 (Senate Sponsor - Fraser)  
1-3 (In the Senate - Received from the House May 6, 2003;  
1-4 May 8, 2003, read first time and referred to Committee on  
1-5 Infrastructure Development and Security; May 24, 2003, reported  
1-6 adversely, with favorable Committee Substitute by the following  
1-7 vote: Yeas 5, Nays 0; May 24, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 2006 By: Shapleigh

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to the construction and maintenance of utility, common  
1-12 carrier, cable operator, and energy transporter facilities along,  
1-13 over, under, or across a railroad right-of-way.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. The purpose of this Act is to:

1-16 (1) create uniform laws relating to the maintenance,  
1-17 operation, and upgrade of preexisting utility, common carrier,  
1-18 cable operator, and energy transporter facilities along, over,  
1-19 under, or across a railroad right-of-way consistent with  
1-20 preexisting licenses or agreements;

1-21 (2) grant utilities, common carriers, cable  
1-22 operators, and energy transporters certain rights, privileges, and  
1-23 responsibilities and provide a uniform process for those entities  
1-24 to obtain easements or other rights to maintain, operate, and  
1-25 upgrade their preexisting facilities in railroad rights-of-way in  
1-26 this state consistent with preexisting licenses or agreements; and

1-27 (3) facilitate the transition from contractual rights  
1-28 under agreements by granting energy transporters limited eminent  
1-29 domain authority to obtain easements for preexisting facilities  
1-30 along, over, under, or across a railroad right-of-way because  
1-31 transporters provide essential energy supplies to the public.

1-32 SECTION 2. Chapter 186, Utilities Code, is amended by  
1-33 adding Subchapter E to read as follows:

1-34 SUBCHAPTER E. CONSTRUCTION AND MAINTENANCE OF FACILITIES

1-35 ALONG, OVER, UNDER, OR ACROSS RAILROAD RIGHT-OF-WAY

1-36 Sec. 186.051. DEFINITIONS. In this subchapter:

1-37 (1) "Cable operator" means an entity that owns or  
1-38 operates a cable system, as that term is defined by 47 U.S.C.  
1-39 Section 522, as amended.

1-40 (2) "Common carrier" means a common carrier as  
1-41 described by Section 111.002, Natural Resources Code, or a person  
1-42 who submits to regulation by the state as a common carrier under  
1-43 Article 2.01, Texas Business Corporation Act.

1-44 (3) "Energy transporter" means a person who gathers or  
1-45 transports oil, gas, or oil and gas products by pipeline.

1-46 (4) "Railroad" means an entity that owns, operates, or  
1-47 controls a railroad or property or assets owned or previously owned  
1-48 by a railroad in this state, including agents, assignees, or  
1-49 parties that by contract own, control, or manage railroad  
1-50 rights-of-way, easements, or other real property rights belonging  
1-51 to a railroad. The term includes interurban and street railroads  
1-52 owned by a private entity but excludes a terminal railroad and a  
1-53 railroad or interurban and street railroad owned by a governmental  
1-54 entity, including a navigation district or port authority, or a  
1-55 wharf.

1-56 (5) "Railroad right-of-way" means the real property  
1-57 rights owned or controlled by a railroad, including fee and  
1-58 easement interests used or previously used as a railroad operating  
1-59 corridor.

1-60 (6) "Utility" means:

1-61 (A) a gas, water, electric, or  
1-62 telecommunications entity that is defined as a utility under the  
1-63 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 or cable operator in this subchapter does not subject the transporter or operator 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. APPLICABILITY. (a) 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) 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) A utility, common carrier, cable operator, or energy transporter may 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) A utility, common carrier, cable operator, or energy transporter:

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

(2) may not unreasonably interfere with railroad operations.

(c) Absent terms to the contrary in an easement acquired by condemnation under this subchapter, existing license, or agreement, a railroad may require a utility, common carrier, cable operator, or energy transporter to relocate any portion of a 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, cable operator, or energy transporter for the reasonable cost of relocation.

Sec. 186.055. DOCUMENTATION OF RIGHTS ACQUIRED. 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, the railroad shall 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, cable operator, or energy transporter. The utility, common carrier, cable operator, or energy transporter shall reimburse the railroad for the reasonable cost of producing the documentation as required by this section. The reimbursable cost, including internal costs, may not exceed \$500, unless the parties agree otherwise. 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) 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, a utility, common carrier, cable operator, or energy transporter may obtain the right to continuously use the right-of-way through the exercise of eminent domain under Chapter 21, Property Code.

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

(1) the market value of the real property interest to

3-1 be used; and

3-2 (2) if a portion of the railroad's right-of-way is  
 3-3 taken, damages, if any, to the railroad's remaining property.

3-4 (c) The railroad may also recover:

3-5 (1) reasonable costs and expenses for interference  
 3-6 with railroad operations, including internal costs for providing  
 3-7 flagging services; and

3-8 (2) reasonable costs and expenses to repair any damage  
 3-9 to its facilities caused by the maintenance, operation, or upgrade  
 3-10 of the preexisting utility, common carrier, cable operator, or  
 3-11 energy transporter facilities.

3-12 (d) The payment by the utility, common carrier, cable  
 3-13 operator, or energy transporter determined under this section is  
 3-14 the only compensation due to the railroad for the perpetual use of  
 3-15 the interest obtained.

3-16 Sec. 186.057. RIGHT TO MAINTAIN FACILITIES. (a) A utility,  
 3-17 common carrier, cable operator, or energy transporter may not be  
 3-18 required to remove an existing facility for 180 days after the date  
 3-19 the utility, common carrier, cable operator, or energy transporter  
 3-20 receives a written notice from the railroad that an existing  
 3-21 facility must be removed from the railroad's right-of-way if:

3-22 (1) the facility was located along, under, over, or  
 3-23 across the railroad right-of-way with the written consent of the  
 3-24 railroad; and

3-25 (2) the utility, common carrier, cable operator, or  
 3-26 energy transporter is not in default under an agreement with the  
 3-27 railroad.

3-28 (b) If a utility, common carrier, cable operator, or energy  
 3-29 transporter requests documentation under Section 186.055, the  
 3-30 180-day period provided by Subsection (a) is tolled until the  
 3-31 utility, common carrier, cable operator, or energy transporter  
 3-32 receives a written response to its request from the railroad.

3-33 (c) If a utility, common carrier, cable operator, or energy  
 3-34 transporter does not condemn or enter into an agreement regarding  
 3-35 the disputed area involving the railroad's right-of-way within the  
 3-36 180-day period provided by Subsection (a) or any extended period  
 3-37 provided by Subsection (b), the license or agreement between the  
 3-38 utility, common carrier, cable operator, or energy transporter and  
 3-39 the railroad is terminated.

3-40 (d) The possessory right provided by this section is in  
 3-41 addition to any possessory right provided by Chapter 21, Property  
 3-42 Code.

3-43 Sec. 186.058. LICENSE AND RENEWAL. (a) A utility, common  
 3-44 carrier, cable operator, or energy transporter may obtain an  
 3-45 original license or renew a license for the right to use a railroad  
 3-46 right-of-way for a one-time fee paid based on:

3-47 (1) the agreement of the railroad and the utility,  
 3-48 common carrier, cable operator, or energy transporter; or

3-49 (2) a mutually acceptable third-party determination  
 3-50 of market value.

3-51 (b) A fee paid under this section is the only fee payment  
 3-52 required. The license remains in effect without the requirement of  
 3-53 additional fee payments for renewal of the license.

3-54 (c) The terms of the license or license renewal may provide  
 3-55 that the railroad is not later subject to this subchapter, except  
 3-56 the railroad continues to be subject to eminent domain authority  
 3-57 granted by other law.

3-58 Sec. 186.059. RESTRICTIONS ON PAYMENT OF COSTS AWARDED  
 3-59 AGAINST RAILROAD IN CONDEMNATION. If the special commissioners or  
 3-60 a court awards costs against a railroad under Section 21.047,  
 3-61 Property Code, because the award of damages to the railroad is equal  
 3-62 to or less than the amount the utility, common carrier, cable  
 3-63 operator, or energy transporter exercising the right of eminent  
 3-64 domain under this subchapter offered to pay, the costs awarded  
 3-65 against the railroad must be paid by the railroad without  
 3-66 reimbursement by or contribution from any agent or representative,  
 3-67 including an agent or representative that handled or assisted in  
 3-68 the condemnation proceedings.

3-69 Sec. 186.060. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The

4-1 rights, privileges, and responsibilities provided by this  
4-2 subchapter are in addition to and not in diminution of or  
4-3 substitution for those rights granted by any other state or federal  
4-4 law.

4-5 Sec. 186.061. EFFECT ON OTHER LAW. This subchapter does not  
4-6 affect the elements a condemnor must establish by law to acquire  
4-7 real property.

4-8 SECTION 3. This Act takes effect September 1, 2003.

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