

By: Fraser

S.B. No. 914

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the construction and maintenance of utility, common
3 carrier, and energy transporter facilities along, over, under, or
4 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 construction
8 and maintenance of utility, common carrier, and energy transporter
9 facilities along, over, under, or across a railroad right-of-way;
10 and

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

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

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

20 Sec. 186.051. DEFINITIONS. In this subchapter:

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

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

3 (3) "Fair market value" means the difference in value
4 of the railroad right-of-way before and after the condemnation by
5 the utility, common carrier, or energy transporter. If only part of
6 the railroad right-of-way is taken by the utility, common carrier,
7 or energy transporter, the compensation for the partial taking
8 includes any decrease in value of the remainder. The valuation of
9 the land adjacent to the railroad right-of-way is used in
10 determining the fair market value of the real property interest
11 taken.

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

18 (5) "Railroad right-of-way" means the real property
19 rights owned or controlled by a railroad, including fee and
20 easement interests.

21 (6) "Utility" means a gas, water, electric, or
22 telecommunications entity that is defined as a utility under the
23 laws of this state.

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

27 (b) The inclusion of a common carrier in this subchapter

1 does not subject the carrier to regulation as a utility.

2 Sec. 186.053. CONSTRUCTION AND MAINTENANCE OF UTILITY AND
3 COMMON CARRIER FACILITIES. A utility, common carrier, or energy
4 transporter has the right to construct and maintain its facilities
5 along, over, under, or across a railroad or railroad right-of-way.

6 Sec. 186.054. DOCUMENTATION OF RIGHTS ACQUIRED. If a
7 railroad requires a utility, common carrier, or energy transporter
8 to obtain from the railroad a right to use a railroad right-of-way,
9 the railroad shall produce, if requested, the documentation that
10 demonstrates the extent of the railroad's right, title, or interest
11 in the property sought to be used by the utility, common carrier, or
12 energy transporter. If the railroad has no demonstrable real
13 property interest in the property sought to be used or no right to
14 grant an easement along, over, under, or across the railroad
15 right-of-way, the utility, common carrier, or energy transporter
16 does not owe the railroad compensation for the use of the property.

17 Sec. 186.055. VALUATION OF RIGHTS ACQUIRED. (a) In the
18 absence of an agreement for the right to use a railroad
19 right-of-way, a utility, common carrier, or energy transporter may
20 obtain the right to use the right-of-way through the exercise of
21 eminent domain.

22 (b) The compensation due the railroad under an eminent
23 domain proceeding is the fair market value of the real property
24 interest to be used. The value includes only the value of the
25 property interest owned by the railroad and sought to be used by the
26 utility, common carrier, or energy transporter.

27 (c) The property interest may not be valued at more than the

1 valuation of the real property adjacent to the right-of-way.

2 (d) The railroad may recover the cost to repair any damage
3 to its facilities caused by the construction or maintenance of the
4 utility, common carrier, or energy transporter facilities.

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

8 Sec. 186.056. RIGHT TO MAINTAIN FACILITIES. During the
9 pendency of the condemnation proceedings or negotiations for the
10 purchase of the right to use a railroad right-of-way, the utility,
11 common carrier, or energy transporter may not be required to remove
12 any existing facilities.

13 Sec. 186.057. CUMULATIVE RIGHTS AND RESPONSIBILITIES. The
14 rights, privileges, and responsibilities provided by this
15 subchapter are in addition to and not in substitution for those
16 rights granted by any other law of this state.

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