

## **BILL ANALYSIS**

C.S.H.B. 3782  
By: Krusee  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, utility companies pay for the relocation of utility facilities on most state projects except for toll roads and interstate highways. As a result of H.B. 2702, 79th Legislature, 2005, the Texas Department of Transportation (TxDOT) and the utility companies share the cost of relocation of a utility facility when relocation is required by the development of toll roads or turnpikes through September 1, 2007.

As proposed, C.S.H.B. 3782 extends the applicability of the current provisions requiring TxDOT and a utility company to share the costs of the relocation of a utility facility from 2007 to 2013 for utility companies that choose not to enter into a prepayment plan, as set forth in the bill. The bill authorizes TxDOT to enter into prepayment agreements with utility companies, upon a utility's request, that provide for reimbursement of the costs of relocation and set forth the criteria required for such agreements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to Texas Transportation Commission in SECTION 2 of this bill.

### **ANALYSIS**

SECTION 1. Amends Subsections (a-1), (a-2), and (a-3), Section 203.092 (Reimbursement for Relocation of Utility), Transportation Code, to correct a reference to Subsection (a) to refer to Subsection (a)(3) and to change expiration dates from 2007 to 2013.

SECTION 2. Amends Subchapter E, Chapter 203, Transportation Code, by adding Section 203.0922, as follows:

Sec. 203.0922 (a) Requires the Texas Transportation Commission (TTC) by rule to authorize the Texas Department of Transportation (TxDOT), upon a utility's request, to enter into a prepayment funding agreement with the utility that provides for TxDOT to reimburse the utility for the direct and related indirect costs of the relocation of its utility facilities that is required by the improvement of any segment of the state highway system for which the utility is not eligible for reimbursement under Section 203.092. Requires the agreement, in addition to other terms and conditions agreed upon by TxDOT and the utility, to require the utility to prepay to TxDOT an annual amount for each year of a three-year period of the agreement in accordance with Subsection (b) or (c); be for a term that is a multiple of three years and is at least six years; set forth a methodology for the utility to submit, document, and substantiate reimbursable costs under the agreement; and set forth a methodology for TxDOT to timely reimburse the utility its reimbursable costs under the agreement.

(b) Provides that the annual prepayment amount for each year of the initial three-year period of a prepayment funding agreement is equal to 75 percent of the annual average of the direct and related indirect costs incurred for relocation of the utility's facilities on applicable segments of

the state highway system during the preceding three years for which the utility is not otherwise eligible for reimbursement under Section 203.092.

(c) Provides that the annual prepayment amount for each year of the second or subsequent three-year period of a prepayment funding agreement is equal to 75 percent of the annual average of the direct and related indirect costs paid by TxDOT or reimbursed to the utility under the agreement for relocation of the utility's facilities on applicable segments of the state highway system during the preceding three years for which the utility is not otherwise eligible for reimbursement under Section 203.092.

(d) Prohibits TxDOT from establishing a prepayment amount that discriminates unreasonably among utilities.

(e) Provides that if a change in law causes all or part of the cost of the relocation of a utility's facilities that was eligible for reimbursement under Section 203.092(a)(1) at the time a prepayment funding agreement was entered into under this section to cease to be eligible for reimbursement, that amount, beginning on the effective date of the applicable change in law, is considered to be a cost that is not otherwise eligible for reimbursement under Section 203.092 for purposes of the prepayment funding agreement.

(f) Provides that an obligation of TTC or TxDOT to make payments to a utility under a prepayment funding agreement entered into under this section may be enforced by mandamus against TTC, TxDOT, and the comptroller of public accounts in a district court of Travis County, and that the sovereign immunity of the state is waived for that purpose, notwithstanding any other law. Provides that the district courts of Travis County have exclusive jurisdiction over and exclusive venue for any action brought under this subsection. Provides that the remedy provided in this subsection is in addition to any legal and equitable remedies that may be available to a party to a prepayment funding agreement.

(g) Provides that neither this section nor a contractual right obtained under an agreement between TxDOT and a utility makes TxDOT or the utility subject to any new or additional licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas, the Texas Department of Insurance, or the Railroad Commission of Texas, nor supersedes or otherwise affects other laws applicable to TxDOT or the utility regarding licensing, certification, or regulatory jurisdiction of those three agencies.

(h) Requires payments received by TxDOT under this section to be deposited in the state treasury to the credit of the state highway fund and exempts such payments from the application of Subchapter D (Appropriation of Unobligated Fund Balances to General Revenue Fund), Chapter 316, Government Code, and Section 403.095 (Use of Dedicated Revenue), Government Code.

(i) Requires TTC to appoint a rules advisory committee to advise TxDOT and TTC on development of TTC's initial rules required by this section, as well as future additions and changes. Requires the committee to consist solely of members representing interested utilities. Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the committee.

(j) Requires an agreement entered into by TxDOT and a utility under this section to remain in full force and effect until its termination or expiration.

(k) Provides that this section expires September 1, 2013.

SECTION 3. Effective date: upon passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

**EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

SECTION 1. No substantive change from Original to Substitute.

SECTION 2. Sec. 203.0922 (a). No substantive change from Original to Substitute. The Substitute clarifies that state highway system includes toll projects, and under subsection (4) that the department should reimburse in a timely manner.

(b). Conforming changes.

(c). Conforming changes.

(d). No change from Original to Substitute.

(e). No substantive change from Original to Substitute.

(f). No change from Original to Substitute.

(g). The Substitute adds an additional provision to clarify that this Act does not supersede or otherwise affect a provision of another law applicable to the department or utility regarding licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas, Texas Department of Insurance, or Railroad Commission of Texas.

(h). No substantive change from Original to Substitute.

(i). The Substitute clarifies that the advisory committee consists solely of interested utilities and that it will advise the commission not only on the initial rules but also for future additions or changes.

(j). No substantive change from Original to Substitute.

(k). No change from Original to Substitute.

SECTION 3. No change from Original to Substitute.