

BILL ANALYSIS

Senate Research Center

S.B. 1209
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Transportation & Homeland Security
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, utility companies pay for the relocation of a utility facility 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 a utility company shares the cost of relocation of a utility facility when relocation is required by the development of toll roads or turnpikes.

S.B. 1209 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 a utility company that chooses not to enter into a prepayment plan, as set forth in the bill. The bill authorizes TxDOT to enter into prepayment agreements with a utility company, upon a utility's request, that provide for reimbursement of the costs of relocation and sets forth the criteria required for such agreements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Transportation Commission in SECTION 2 (Section 203.0922, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 203.092(a-1), (a-2), and (a-3) (Reimbursement for Relocation of Utility), Transportation Code, to update references to Subsection (a) to refer to Subsection (a)(3) and to change references to 2007 to 2013.

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

Sec. 203.0922. PREPAYMENT FUNDING AGREEMENT FOR RELOCATION OF UTILITY FACILITIES. (a) Requires the Texas Transportation Commission (TTC) by rule, on the request of a utility, to authorize the Texas Department of Transportation (TxDOT) to enter into a prepayment funding agreement with the utility to reimburse the utility for the direct and related indirect costs of the relocation of a utility facility that is required by the improvement of a segment of the state highway system, including a turnpike project or toll project, for which the utility is not eligible for reimbursement under Section 203.092. Requires the agreement to require the utility to prepay to TxDOT an annual amount as provided by Subsection (b) or (c), to be for a term that is a multiple of three years and of at least six years, to set forth a methodology for the utility to submit, document, and substantiate reimbursable costs under the agreement, and to set forth a methodology for TxDOT to reimburse the utility its reimbursable costs under the agreement in a timely manner.

(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 a 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 unreasonably discriminates among utilities.

(e) Provides that if a change in law causes all or part of the cost of the relocation of a utility facility 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 all purposes of the prepayment funding agreement.

(f) Provides that an obligation of TTC or TxDOT to make a payment 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 and venue over 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 this section or a contractual right obtained under an agreement under this section does not make TxDOT or a utility subject to 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, or supersede or otherwise affect a provision of another law applicable to TxDOT or a utility regarding licensing, certification, or regulatory jurisdiction of an agency listed above.

(h) Requires a payment received by TxDOT under this section to be deposited to the credit of the state highway fund and to be exempt 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 rules, including initial rules and additions or changes to the rules, required by this section. 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) Provides that an agreement entered into by TxDOT and a utility under this section remains in force until its termination or expiration.

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

SECTION 3. Effective date: upon passage or September 1, 2007.