

By: Carona

S.B. No. 1209

Substitute the following for S.B. No. 1209:

By: Phillips

C.S.S.B. No. 1209

A BILL TO BE ENTITLED

AN ACT

1 relating to the relocation of utility facilities required by  
2 improvement of a state highway.

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

4 SECTION 1. Sections 203.092(a-1), (a-2), and (a-3),  
5 Transportation Code, are amended to read as follows:

6 (a-1) Notwithstanding Subsection (a)(3) [~~(a)~~], the  
7 department and the utility shall share equally the cost of the  
8 relocation of a utility facility that is made before September 1,  
9 2013 [~~2007~~], and required by the improvement of a nontolled highway  
10 to add one or more tolled lanes. This subsection expires September  
11 1, 2013 [~~2007~~].

12 (a-2) Notwithstanding Subsection (a)(3) [~~(a)~~], the  
13 department and the utility shall share equally the cost of the  
14 relocation of a utility facility that is made before September 1,  
15 2013 [~~2007~~], and required by [~~for~~] the improvement of a nontolled  
16 highway that has been converted to a turnpike project or toll  
17 project. This subsection expires September 1, 2013 [~~2007~~].

18 (a-3) Notwithstanding Subsection (a)(3) [~~(a)~~], the  
19 department and the utility shall share equally the cost of the  
20 relocation of a utility facility that is made before September 1,  
21 2013 [~~2007~~], and required by [~~for~~] the construction on a new  
22 location of a turnpike project or toll project or the expansion of  
23 such a turnpike project or toll project. This subsection expires  
24

1 September 1, 2013 [~~2007~~].

2 SECTION 2. Subchapter E, Chapter 203, Transportation Code,  
3 is amended by adding Section 203.0922 to read as follows:

4 Sec. 203.0922. PREPAYMENT FUNDING AGREEMENT FOR RELOCATION  
5 OF UTILITY FACILITIES. (a) On the request of a utility, the  
6 commission shall by rule authorize the department to enter into a  
7 prepayment funding agreement with the utility to reimburse the  
8 utility for the direct and related indirect costs of the relocation  
9 of a utility facility that is required by the improvement of a  
10 segment of the state highway system, including a turnpike project  
11 or toll project, for which the utility is not eligible for  
12 reimbursement under Section 203.092. The agreement must:

13 (1) require the utility to prepay to the department an  
14 annual amount as provided by Subsection (b) or (c);

15 (2) be for a term:

16 (A) that is a multiple of three years; and

17 (B) of at least six years;

18 (3) set forth a methodology for the utility to submit,  
19 document, and substantiate reimbursable costs under the agreement;  
20 and

21 (4) set forth a methodology for the department to  
22 reimburse the utility its reimbursable costs under the agreement in  
23 a timely manner.

24 (b) The annual prepayment amount for each year of the  
25 initial three-year period of a prepayment funding agreement is  
26 equal to 75 percent of the annual average of the direct and related  
27 indirect costs incurred for relocation of the utility's facilities

1 on applicable segments of the state highway system during the  
2 preceding three years for which the utility is not otherwise  
3 eligible for reimbursement under Section 203.092.

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

12 (d) The department may not establish a prepayment amount  
13 that unreasonably discriminates among utilities.

14 (e) If a change in law causes all or a part of the cost of the  
15 relocation of a utility facility that was eligible for  
16 reimbursement under Section 203.092(a)(1) at the time a prepayment  
17 funding agreement was entered into under this section to cease to be  
18 eligible for reimbursement, that amount, beginning on the effective  
19 date of the applicable change in law, is considered to be a cost  
20 that is not otherwise eligible for reimbursement under Section  
21 203.092 for purposes of the prepayment funding agreement.

22 (f) Notwithstanding any law to the contrary, an obligation  
23 of the commission or the department to make a payment to a utility  
24 under a prepayment funding agreement entered into under this  
25 section may be enforced by mandamus against the commission, the  
26 department, and the comptroller in a district court of Travis  
27 County, and the sovereign immunity of the state is waived for that

1 purpose. The district courts of Travis County have exclusive  
2 jurisdiction and venue over any action brought under this  
3 subsection. The remedy provided by this subsection is in addition  
4 to any legal and equitable remedies that may be available to a party  
5 to a prepayment funding agreement.

6 (g) This section or a contractual right obtained under an  
7 agreement under this section does not:

8 (1) make the department or a utility subject to new or  
9 additional licensing, certification, or regulatory jurisdiction of  
10 the Public Utility Commission of Texas, Texas Department of  
11 Insurance, or Railroad Commission of Texas; or

12 (2) supersede or otherwise affect a provision of  
13 another law applicable to the department or a utility regarding  
14 licensing, certification, or regulatory jurisdiction of an agency  
15 listed in Subdivision (1).

16 (h) A payment received by the department under this section  
17 must be deposited to the credit of the state highway fund and is  
18 exempt from the application of Subchapter D, Chapter 316,  
19 Government Code, and Section 403.095, Government Code.

20 (i) The commission shall appoint a rules advisory committee  
21 to advise the department and the commission on development of the  
22 commission's rules, including initial rules and additions or  
23 changes to the rules, required by this section. The committee shall  
24 consist solely of members representing interested utilities.  
25 Chapter 2110, Government Code, does not apply to the committee.

26 (j) An agreement entered into by the department and a  
27 utility under this section remains in force until its termination

1 or expiration.

2 (k) This section expires September 1, 2013.

3 SECTION 3. This Act takes effect immediately if this Act  
4 receives a vote of two-thirds of all the members elected to each  
5 house, as provided by Section 39, Article III, Texas Constitution.  
6 If this Act does not receive the vote necessary for immediate  
7 effect, this Act takes effect September 1, 2007.