

By: Carona

S.B. No. 1209

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

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

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

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

3 Sec. 203.0922. PREPAYMENT FUNDING AGREEMENT FOR RELOCATION  
4 OF UTILITY FACILITIES. (a) The commission shall by rule authorize  
5 the department, upon a utility's request, to enter into a  
6 prepayment funding agreement with the utility that provides for the  
7 department to reimburse the utility for the direct and related  
8 indirect costs of the relocation of its utility facilities that is  
9 required by the improvement of any segment of the state highway  
10 system for which the utility is not eligible for reimbursement  
11 under Section 203.092. In addition to other terms and conditions  
12 agreed upon by the department and the utility, the agreement must:

13 (1) require the utility to prepay to the department an  
14 annual amount for each year of a three-year period of the agreement  
15 in accordance with Subsection (b) or (c);

16 (2) be for a term that is a multiple of three years and  
17 is 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.

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

1 preceding three years for which the utility is not otherwise  
2 eligible for reimbursement under Section 203.092.

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

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

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

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

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

5 (g) Neither this section nor a contractual right obtained  
6 under an agreement between the department and a utility renders the  
7 department or utility subject to any new or additional licensing,  
8 certification, or regulatory jurisdiction of the Public Utility  
9 Commission of Texas, the Texas Department of Insurance, or the  
10 Railroad Commission of Texas.

11 (h) All payments received by the department under this  
12 section shall be deposited in the state treasury to the credit of  
13 the state highway fund and are exempt from the application of  
14 Subchapter D, Chapter 316, Government Code, and Section 403.095,  
15 Government Code.

16 (h-1) The commission shall appoint a rules advisory  
17 committee to advise the department and the commission on  
18 development of the commission's initial rules required by this  
19 section. The committee shall consist of members representing  
20 interested utilities. Chapter 2110, Government Code, does not  
21 apply to the committee. This subsection expires on the date the  
22 commission adopts initial rules under this section.

23 (i) An agreement entered into by the department and a  
24 utility under this section shall remain in full force and effect  
25 until its termination or expiration.

26 (j) This section expires September 1, 2013.

27 SECTION 3. This Act takes effect immediately if it receives

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