

1-1 By: Carona S.B. No. 1209
1-2 (In the Senate - Filed March 6, 2007; March 14, 2007, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 3, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 3, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1209 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the relocation of utility facilities required by
1-11 improvement of a state highway.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (a-1), (a-2), and (a-3), Section
1-14 203.092, Transportation Code, are amended to read as follows:

1-15 (a-1) Notwithstanding Subsection (a)(3) ~~[(a)]~~, the
1-16 department and the utility shall share equally the cost of the
1-17 relocation of a utility facility that is made before September 1,
1-18 2013 ~~[2007]~~, and required by the improvement of a nontolled highway
1-19 to add one or more tolled lanes. This subsection expires September
1-20 1, 2013 ~~[2007]~~.

1-21 (a-2) Notwithstanding Subsection (a)(3) ~~[(a)]~~, the
1-22 department and the utility shall share equally the cost of the
1-23 relocation of a utility facility that is made before September 1,
1-24 2013 ~~[2007]~~, and required by ~~[for]~~ the improvement of a nontolled
1-25 highway that has been converted to a turnpike project or toll
1-26 project. This subsection expires September 1, 2013 ~~[2007]~~.

1-27 (a-3) Notwithstanding Subsection (a)(3) ~~[(a)]~~, the
1-28 department and the utility shall share equally the cost of the
1-29 relocation of a utility facility that is made before September 1,
1-30 2013 ~~[2007]~~, and required by ~~[for]~~ the construction on a new
1-31 location of a turnpike project or toll project or the expansion of
1-32 such a turnpike project or toll project. This subsection expires
1-33 September 1, 2013 ~~[2007]~~.

1-34 SECTION 2. Subchapter E, Chapter 203, Transportation Code,
1-35 is amended by adding Section 203.0922 to read as follows:

1-36 Sec. 203.0922. PREPAYMENT FUNDING AGREEMENT FOR RELOCATION
1-37 OF UTILITY FACILITIES. (a) On the request of a utility, the
1-38 commission shall by rule authorize the department to enter into a
1-39 prepayment funding agreement with the utility to reimburse the
1-40 utility for the direct and related indirect costs of the relocation
1-41 of a utility facility that is required by the improvement of a
1-42 segment of the state highway system, including a turnpike project
1-43 or toll project, for which the utility is not eligible for
1-44 reimbursement under Section 203.092. The agreement must:

1-45 (1) require the utility to prepay to the department an
1-46 annual amount as provided by Subsection (b) or (c);

1-47 (2) be for a term:

1-48 (A) that is a multiple of three years; and

1-49 (B) of at least six years;

1-50 (3) set forth a methodology for the utility to submit,
1-51 document, and substantiate reimbursable costs under the agreement;
1-52 and

1-53 (4) set forth a methodology for the department to
1-54 reimburse the utility its reimbursable costs under the agreement in
1-55 a timely manner.

1-56 (b) The annual prepayment amount for each year of the
1-57 initial three-year period of a prepayment funding agreement is
1-58 equal to 75 percent of the annual average of the direct and related
1-59 indirect costs incurred for relocation of a utility facility on an
1-60 applicable segment of the state highway system during the preceding
1-61 three years for which the utility is not otherwise eligible for
1-62 reimbursement under Section 203.092.

1-63 (c) The annual prepayment amount for each year of a

2-1 subsequent three-year period of a prepayment funding agreement is
2-2 equal to 75 percent of the annual average of the direct and related
2-3 indirect costs paid by the department or reimbursed to the utility
2-4 under the agreement for relocation of a utility facility on an
2-5 applicable segment of the state highway system during the preceding
2-6 three years for which the utility is not otherwise eligible for
2-7 reimbursement under Section 203.092.

2-8 (d) The department may not establish a prepayment amount
2-9 that unreasonably discriminates among utilities.

2-10 (e) If a change in law causes all or a part of the cost of the
2-11 relocation of a utility facility that was eligible for
2-12 reimbursement under Section 203.092(a)(1) at the time a prepayment
2-13 funding agreement was entered into under this section to cease to be
2-14 eligible for reimbursement, that amount, beginning on the effective
2-15 date of the applicable change in law, is considered to be a cost
2-16 that is not otherwise eligible for reimbursement under Section
2-17 203.092 for purposes of the prepayment funding agreement.

2-18 (f) Notwithstanding any law to the contrary, an obligation
2-19 of the commission or the department to make a payment to a utility
2-20 under a prepayment funding agreement entered into under this
2-21 section may be enforced by mandamus against the commission, the
2-22 department, and the comptroller in a district court of Travis
2-23 County, and the sovereign immunity of the state is waived for that
2-24 purpose. The district courts of Travis County have exclusive
2-25 jurisdiction and venue over any action brought under this
2-26 subsection. The remedy provided by this subsection is in addition
2-27 to any legal and equitable remedies that may be available to a party
2-28 to a prepayment funding agreement.

2-29 (g) This section or a contractual right obtained under an
2-30 agreement under this section does not:

2-31 (1) make the department or a utility subject to new or
2-32 additional licensing, certification, or regulatory jurisdiction of
2-33 the Public Utility Commission of Texas, Texas Department of
2-34 Insurance, or Railroad Commission of Texas; or

2-35 (2) supersede or otherwise affect a provision of
2-36 another law applicable to the department or a utility regarding
2-37 licensing, certification, or regulatory jurisdiction of an agency
2-38 listed in Subdivision (1).

2-39 (h) A payment received by the department under this section
2-40 must be deposited to the credit of the state highway fund and is
2-41 exempt from the application of Subchapter D, Chapter 316,
2-42 Government Code, and Section 403.095, Government Code.

2-43 (i) The commission shall appoint a rules advisory committee
2-44 to advise the department and the commission on development of the
2-45 commission's rules, including initial rules and additions or
2-46 changes to the rules, required by this section. The committee shall
2-47 consist solely of members representing interested utilities.
2-48 Chapter 2110, Government Code, does not apply to the committee.

2-49 (j) An agreement entered into by the department and a
2-50 utility under this section remains in force until its termination
2-51 or expiration.

2-52 (k) This section expires September 1, 2013.

2-53 SECTION 3. This Act takes effect immediately if this Act
2-54 receives a vote of two-thirds of all the members elected to each
2-55 house, as provided by Section 39, Article III, Texas Constitution.
2-56 If this Act does not receive the vote necessary for immediate
2-57 effect, this Act takes effect September 1, 2007.

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