

SUBJECT: Creating a pilot program for relocation of utility facilities along highways

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Macias, Murphy

0 nays

WITNESSES: For — Bob Digneo, AT&T Texas; Jeff Myerson, CenterPoint Energy and Association of Electric Companies of Texas; (*Registered, but did not testify*: Jose A. Camacho, Windstream Communications; Henry Flores, EMBARQ; Bryan Gonterman, AT&T Texas; James Hines, Verizon; Lyn Kamerman, Texas Telephone Association)

Against — None

On — Amadeo Saenz, Texas Department of Transportation.

BACKGROUND: Transportation Code, sec. 203.092 provides for circumstances and payment amounts for reimbursing utilities that are required to move facilities because of a planned highway project. Relocation costs include the entire amount the utility paid in connection with the relocation minus any increase in the value of the new facility, the salvage value of the old facility, and any other deductions for federal projects.

The state covers the entire amount of the relocation if the planned improvements are for:

- an interstate highway and relocation eligible for federal funding;
- any portion of a state highway that would use land on which the utility has a compensable property interest; or
- an extension of a highway in an urban area.

The 79th Legislature in 2005 approved HB 2702 by Krusee, amending this section to require the state to cover all costs of relocating a utility facility for an improvement of a segment of a state highway designated as a toll road or turnpike prior to September 1, 2005. It also created provisions under which the Texas Department of Transportation (TxDOT) and utility

companies would split relocation costs through September 1, 2007, required for:

- adding a toll lane to a non-tolled highway;
- converting a non-tolled highway to a toll road or turnpike; and
- expanding a toll road or turnpike.

DIGEST:

CSHB 3782 would create a pilot program through which the state and utility companies could reach an agreement to share costs of utility facility relocation if the utility paid a set fee in advance of the relocation. The bill also would amend Transportation Code, sec. 203.092 to extend until September 1, 2013, the eligibility of all projects currently eligible for reimbursement of half the utility's cost of relocation.

Prepayment funding agreement. At the request of a utility, the Texas Transportation Commission (TTC) would, by rule, authorize TxDOT to enter into a prepayment funding agreement with the utility to reimburse it for direct and related indirect costs for relocating utility facilities for any road improvement ineligible for full reimbursement under section 203.092. The contract could provide for termination of the agreement upon the consent of both parties.

The agreement would have to:

- require the utility to prepay an annual fee to TxDOT;
- last at least six years and a multiple of three years thereafter;
- create a method to submit, document, and prove reimbursable costs; and
- create a timely reimbursement process.

Fees. A utility would, during the first three years of the agreement, be required to prepay 75 percent of the average annual direct and related indirect costs incurred during the preceding three years for utility facility relocation on all applicable state highways that were not subject to full reimbursement. In subsequent years, the utility would be required to prepay 75 percent of the average annual amount TxDOT paid or reimbursed the utility for relocation during the previous three years.

The agency would be prohibited from setting a prepayment amount that unreasonably discriminated between utility companies. If federal law

changed to reduce funding available to a utility, any lost money would be considered a cost under this section.

All payments received by TxDOT through this agreement would be deposited to the credit of the State Highway Fund (Fund 6) and would be exempt from provisions appropriating unobligated fund balances to general revenue (Government Code, ch. 316) and using money from dedicated funds to certify the budget (Government Code, sec. 403.095).

Effect, enforcement of contract. Unless contradicted by another law, a judge would be empowered to enforce obligations under the agreement by compelling payment from TTC, TxDOT, and the comptroller. The state's sovereign immunity would be waived under this section. Travis County district courts would have exclusive jurisdiction and venue over any action brought under this section. This remedy would be an addition to any legal and equitable remedies that might be provided for in a prepayment agreement.

Any contractual rights obtained under a prepayment agreement would not subject TxDOT or the utility to any new or additional licensing, certification, or regulatory requirements of the Public Utility Commission, Texas Department of Insurance, or Railroad Commission of Texas. These rights, however, would not supersede or otherwise affect any provision of another law applicable to TxDOT or the utility in regards to the jurisdiction of the aforementioned agencies.

Advisory committee. TTC would be required to appoint an advisory committee solely comprised of representatives of the utility industry. The committee would advise TTC and TxDOT on development of and additions to rules that would govern prepayment agreements. The committee would be exempt from state agency advisory committee rules (Government Code, ch. 2110).

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007. All provisions governing prepayment agreements would expire September 1, 2013.

SUPPORTERS
SAY:

HB 3782 would create a pilot program aimed at both easing the process of relocating utility facilities and expediting the expansion or construction of much-needed highways across the state. This program would allow

utilities to better predict costs and plan accordingly and would reduce needless administrative burdens borne both by the state and utility companies. It is of urgent need because the current system for reimbursing utilities for certain facility relocations is expiring this summer.

When the state seeks to relocate a utility facility located in an area targeted for a new highway or highway lane, it first must work with the utility to hammer out an agreement to move any facilities in the right-of-way. This can be a time-consuming process that has frequently caused the state to delay or modify project plans because the utility has not budgeted the necessary funds for relocation. Additionally, some types of utilities, like large high-tension power lines, can only be moved at certain times of the year when demand is reduced. For utilities, relocation also is a difficult endeavor because they are unsure which segments of road are eligible for reimbursement.

CSHB 3782 would provide utilities and the state with a more workable process that would allow utilities to opt-in to a relocation program by paying money into a fund ahead of time, giving the state an automatic source of funding to relocate utilities as soon as feasible. It would give utilities a better and more consistent way to predict costs associated with utility facility relocation. Utilities that ultimately did not participate in the program would continue to operate under current law.

Although the fiscal impact to the state cannot be calculated based on a number of uncertainties regarding rules governing the program, any increased costs to the state would not likely be exorbitantly higher. Even if the state were paying additional money for utility relocation costs, savings would be realized by completing road projects on a much more timely basis. Because this is a pilot program, the state would be able to assess any problems before moving forward on a permanent plan.

It is imperative that utility representatives comprise the advisory committee because if they do not endorse the final rules of the program and have a role in shaping any changes, they would not likely participate, and the program itself would be pointless. Because the members of the advisory committee would not be eligible to be reimbursed for personal costs incurred, such as traveling to meetings, it makes sense to exempt the committee from other provisions governing advisory committees that heavily focus on reimbursements and cost evaluations. An additional requirement that would automatically abolish the committee after four

years would not allow the utilities to continue to advise the agency on any rules changes beyond that date.

**OPPONENTS
SAY:**

The bill should be amended to apply most of the rules governing state advisory committees to the advisory committee that would be created under this legislation. Although the members would not be eligible for reimbursement and oversight of those expenditures, many other provisions would be important, such as requiring membership of representatives from groups affected by utility relocation.

NOTES:

The committee substitute added to the original version provisions specifying any rights granted through a contract would not supersede existing laws and jurisdictions of applicable agencies and changed the makeup and role of the advisory committee.

The companion bill, SB 1209 by Corona, passed the Senate on the Local and Uncontested Calendar on April 12 and was reported favorably, as substituted, by the House Transportation Committee on April 24, making it eligible to be considered in lieu of HB 3782.