

SUBJECT: Paying to relocate utility facilities due to highway projects

COMMITTEE: Transportation — committee substitute recommended

VOTE: 8 ayes — Alexander, Siebert, Edwards, Finnell, Hawley, Hill, Pickett, Uher
0 nays
1 absent — Hartnett

WITNESSES: For — Kenneth Ruminer, Water Control and Improvement District #50; Patrick Nugent, Association of Texas Natural Gas Pipelines; James McCarley, Dallas Regional Mobility Coalition
Against — None
On — Peter Rieck, City of Austin; Walt Baum, Association of Electric Companies of Texas

BACKGROUND : Utilities that have to relocate facilities because of highway projects are eligible for state reimbursement of relocation costs in certain circumstances. The Texas Department of Transportation (TxDOT) has a policy of reimbursing utilities if they have a “compensable property interest” in the land occupied by the facility.

DIGEST: CSHB 1898 would amend the Transportation Code to provide that utilities with a compensable property interest in the land where their facilities are located would be reimbursed for expenses associated with relocation required by an improvement to a state highway system.

The bill also would authorize TxDOT to require that a facility be relocated at the state's expense, even if that utility were not otherwise eligible for state reimbursement. The reimbursement would have to be paid back within five years.

Reimbursements could occur only if the transportation commission found that relocating the utility was essential to the timely completion of the state highway project; the utility could not afford to pay the cost of the

relocation; paying for the relocation would adversely effect the utility's ability to operate or provide essential services to its customers; and continuous service to utility customers was essential to the public well-being or the local economy.

In addition, the utility and TxDOT would have to reach an agreement that appropriate safeguards were in place to ensure safe relocation work activities, that relocation work would be coordinated to minimize service disruptions, and that the contractor was qualified to perform the work.

The utility also would have to agree to reimburse TxDOT within five years for amounts it expended to relocate the facility. The agreement could provide for reimbursement by lump sum or installments, with interest at six percent per annum and other mutually agreed upon conditions. Funds would be deposited in the State Treasury to the credit of the state highway fund.

Absent any agreement, the utility would be required to reimburse TxDOT the full cost of the relocation within 30 days after the work was completed.

CSHB 1898 would also establish that a political subdivision receiving financial assistance from the Texas Water Development Board (TWDB) for utility facility relocations due to highway projects would not be subject to certain requirements under the Water Code governing construction contracts so long as it allowed TxDOT to contract for the relocation. TxDOT and TWDB would be authorized to enter into a memorandum of understanding to facilitate administration of relocations receiving assistance from the TWDB.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS
SAY:**

CSHB 1898 would allow TxDOT to help small utilities finance relocation of their facilities when a state highway project requires that they move. The bill would benefit TxDOT, utilities and the motoring public. Currently, when highway projects are delayed because utilities cannot pay for relocation, TxDOT can lose as much as \$50,000 a day in costs that can be

claimed by the contractor. Delays in highway projects also inconvenience and endanger Texas motorists.

It also is a good idea to exempt utilities with TWDB loans from compliance with certain requirements governing construction contracts under the Water Code if they allow TxDOT to contract for the construction of a relocation. Such utilities would already have to comply with similar and equally stringent requirements under a contract with TxDOT. Although similar, the two sets of requirements are not identical; utilities find it difficult to have to comply with both, especially when they are in conflict with each other.

Until 1996, TxDOT did not generally reimburse utilities for public utility easements, often granted to cities and counties by subdivision developers, because this type of easement was not considered a property interest compensable under the Texas Constitution. An appellate court ruling that year held that Houston Lighting & Power had a property interest in three public utility easements that was compensable under the Texas Constitution *Houston Lighting and Power Company v. the State of Texas*, 925 S.W.2d 312 (1996). Since then, TxDOT has been reimbursing utilities with public utility easements for relocation costs due to highway projects. The provision in CSHB 1898 establishing that utilities could be reimbursed if they had a compensable property interest would not stop the department from continuing to reimburse utility facilities relocated in public utility easements.

It would be unwise to specify by statute that TxDOT would have to reimburse utilities for relocating utility facilities located on private or public utility easements. This could actually narrow eligibility for reimbursement, eliminating those whose compensable property interest did not fall under the category of public or private easement. Better policy is to statutorily establish, as CSHB 1989 would, that utilities with a compensable property interest must be reimbursed at state expense. If there are arguments over what constitutes a compensable property interest, those could be properly handled by the courts.

Requiring TxDOT to reimburse all utilities forcibly located due to highway projects would be expensive for Texas motorists and shift the tax burden

from local taxpayers to motorists statewide. Payment for relocation should be made by the utility ratepayers in the area who benefit directly from the relocation, rather than by all Texas motorists who pay taxes to the state highway fund. The court ruling in the Houston case is already causing a shift in the burden of relocation costs to state motorists. Requiring TxDOT to reimburse all utilities for relocations would accelerate this process.

OPPONENTS
SAY:

TxDOT is not set up for making grants and loans to various entities, like the TWDB, and it would be unwise to give the department responsibility for overseeing loans to small water supply corporation and other entities who may default on their loans. The Texas Constitution, Art. 3, sec. 50 prohibits lending the credit of the state to persons, associations or corporations; covering the costs of a utility that defaulted on a loan made with highway funds could present a constitutional problem.

OTHER
OPPONENTS
SAY:

It would be unfair to provide that only a utility with a compensable property interest in the land occupied by the facility could be reimbursed due to highway project relocation. This provision could allow TxDOT to continue refusing to reimburse for utility relocations out of public utility easements, requiring utilities to litigate each claim on a case by case basis.

The intent of the appeals court was clear in the Houston case. The bill should remove the broad language referring to a “compensable property interest” and establish that facilities that must be relocated, whether on private land or public utility easements, would be eligible for reimbursements. The bill should be amended to establish that utilities with a compensable property interest would include, but would not be limited to, facilities located on public utility easements and require TxDOT to reimburse all utilities that are forcibly relocated due to highway projects if those facilities are outside of highway right-of-way.

NOTES:

The committee substitute stipulated that a relocation would be at the discretion of TxDOT and required that utilities to pay any amount expended or advanced by TxDOT rather than just the cost of relocation and that funds be deposited in the state highway fund.