

TRANSPORTATION CODE
CHAPTER 203. MODERNIZATION OF STATE HIGHWAYS; CONTROLLED ACCESS
HIGHWAYS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. DEFINITIONS. In this chapter:

(1) "Controlled access highway" means a designated state highway to or from which access is denied or controlled, in whole or in part, from or to adjoining real property or an intersecting public or private way, without regard to whether the designated state highway is located in or outside a municipality.

(2) "Person" includes an individual, corporation, association, or firm.

(3) "Public or private way" includes a street, road, highway, or alley.

(4) "State agency" includes a department or agency of this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.002. MODERN STATE HIGHWAY SYSTEM. (a) To promote public safety, facilitate the movement of traffic, preserve the public's financial investment in highways, promote the national defense, and accomplish the purposes of this chapter, the commission may:

(1) lay out, construct, maintain, and operate a modern state highway system, with emphasis on the construction of controlled access highways;

(2) plan for future highways; and

(3) convert where necessary an existing street, road, or highway into a controlled access highway in accordance with modern standards of speed and safety.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.003. JURISDICTION. (a) Subject to Section 203.021, the commission may lay out, construct, maintain, and operate a designated state highway, with control of access as necessary to facilitate the flow of traffic and promote the public safety and welfare, in any area of this state, whether in or outside a municipality, including a home-rule municipality.

(b) Subject to Section 203.021, the department and the commission may exercise any power granted by this chapter in a county or municipality without the consent of the county or municipality.

(c) The department's or the commission's exercise of a power under this chapter in a county or municipality removes the county's or municipality's exclusive jurisdiction over the specific public way affected by the exercise of power, to the extent the exercise of power affects the public way and its use.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. PUBLIC HEARINGS AND COMMENT

Sec. 203.021. PUBLIC HEARINGS. (a) For a highway project that bypasses or goes through a county or municipality, including a home-rule municipality, the commission shall hold at least one public hearing in the locality before an authorized representative of the commission.

(b) Notice of the hearing shall be by publication in the locality. The hearing shall be held not less than three or more than 10 days after the date of publication.

(c) At least seven days before the date of the public hearing, the department shall file with the governing body of the county or municipality the design and schematic layout of the project.

(d) A person interested in the development of the project is entitled to attend the hearing and discuss and inspect the design and schematic layout filed with the governing body.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.022. RULES GOVERNING NOTICE AND COMMENT. (a) The department shall by rule provide owners of adjoining property and affected local governments and public officials with notice and an opportunity for comment on a state highway project that involves:

(1) the addition of one or more vehicular lanes to an existing highway; or

(2) the construction of a highway at a new location.

(b) The department shall by rule provide additional notice and opportunity for comment on a project described by Subsection (a) if conditions relating to land use, traffic volumes, and traffic patterns have changed significantly since the project was originally subject to public review and comment.

(c) The department shall by rule provide procedures for informing adjoining property owners and affected local governments and public officials of impending construction.
Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. CONTROL OF ACCESS

Sec. 203.031. CONTROL OF ACCESS. (a) The commission, by order entered in its minutes, may:

(1) designate a state highway of the designated state highway system as a controlled access highway;

(2) deny access to or from a controlled access highway from or to adjoining public or private real property and from or to a public or private way intersecting the highway, except at specific locations designated by the commission;

(3) close a public or private way at or near its intersection with a controlled access highway;

(4) designate locations on a controlled access highway at which access to or from the highway is permitted and determine the type and extent of access permitted at each location;

(5) erect protective devices to preserve the integrity, utility, and use of the controlled access highway; and

(6) repeal an order entered under this section.

(b) This section does not alter the rights of a person under another law of this state to compensation for damages caused by the exercise of the commission's powers.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.032. PRECEDENCE OF COMMISSION ORDER. (a) Except as provided by Subsection (b), an order of the commission under Section 203.031 supersedes a conflicting rule or ordinance of a state agency or subdivision of this state or any county or municipality, including a home-rule municipality.

(b) An order of the commission under Section 203.031(a)(2) or (4) does not supersede a conflicting rule or ordinance of a municipality, including a home-rule municipality, or a conflicting ordinance, resolution, or order of a county with a population of 3.3 million or more or a county adjacent to a county with a population of 3.3 million or more, unless the United States Department of Transportation Federal Highway Administration notifies the department that enforcement of the rule, ordinance, resolution, or order would impair the ability of the state or the department to receive funds for highway construction or maintenance from the federal government.

(c) Subsection (b) does not apply when the department owns the access rights.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 1174, Sec. 1, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 318, Sec. 1, eff. June 17, 2005.

Sec. 203.033. INJUNCTION AGAINST DENIAL OF ACCESS. A court may not grant an injunction to prevent or stay a commission order of denial of previously existing access to a state highway unless an owner or lessee of real property that adjoins the part of the highway to which access is denied under the commission's order:

(1) brings the suit at which the injunction is sought; and

(2) has not released any claim for damages resulting from the denial of access or a condemnation suit has not been commenced to ascertain the damages.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.034. RIGHT TO ACCESS; DAMAGES FOR DENIAL OF ACCESS. (a) An owner of real property adjoining a new controlled access highway location is not entitled to access to the new highway location as a matter of right.

(b) Denial of access to or from a new controlled access highway location is not a ground for special or exemplary damages unless:

(1) in connection with the purchase or condemnation of the real property adjoining the new controlled access highway location and to be used in the new highway location, the commission specifically authorizes access to or from particular real property adjoining the new highway location; and

(2) the commission denies highway access to or from the particular land where the real property adjoins the new highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. ACQUISITION OF PROPERTY

Sec. 203.051. ACQUISITION OF PROPERTY AUTHORIZED. (a) The

commission may acquire by purchase, on terms and conditions the commission considers proper or by the exercise of eminent domain, in the name of the state:

- (1) an interest in real property;
 - (2) any property rights, including:
 - (A) a right of ingress or egress; and
 - (B) a reservation right in real property that restricts or prohibits for not more than seven years the:
 - (i) addition of a new improvement on the real property;
 - (ii) addition to or modification of an existing improvement on the real property; or
 - (iii) subdivision of the real property;
- and

(3) timber, earth, stone, gravel, or other material.

(b) Chapter 21, Property Code, applies to an acquisition by eminent domain.

(c) The department may condemn the fee or a lesser interest in the property.

(d) The department shall, in a statement or petition in condemnation, exclude from the interest to be condemned all the oil, gas, and sulphur that can be removed from beneath the real property. This exclusion shall be made without providing the owner of the oil, gas, or sulphur any right of ingress or egress to or from the surface of the land to explore, develop, drill, or mine the real property.

(e) Subsection (a) does not authorize the commission to condemn property that is used and dedicated for cemetery purposes under Subtitle C, Title 8, Health and Safety Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.052. COMMISSION DETERMINATION REQUIRED. (a) The commission may acquire an interest in real property, a property right, or a material under Section 203.051 only if the commission determines that the acquisition is necessary or convenient to a state highway to be constructed, reconstructed, maintained, widened, straightened, or extended.

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

- (1) protect a state highway;
- (2) drain a state highway;
- (3) divert a stream, river, or other watercourse from the right-of-way of a state highway;
- (4) store materials or equipment for use or used in the construction or maintenance of a state highway;
- (5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;
- (6) lay out, construct, or maintain a roadside park;
- (7) lay out, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;
- (8) mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway;
- (9) subject to Subsection (c), provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, store, hotel, restaurant, or other commercial facility;
- (10) construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project; or
- (11) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway.

(c) The commission may not acquire property for an ancillary facility through the exercise of eminent domain, unless the acquisition of the property is for one of multiple ancillary facilities included in a comprehensive development plan approved by the county commissioners court of each county in which the property is located.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended

by Acts 2005, 79th Leg., ch. 281, Sec. 2.10, eff. June 14, 2005; Acts 2005, 79th Leg., 2nd C.S., ch. 1, Sec. 3, eff. Nov. 18, 2005.

Sec. 203.0521. ACQUISITION OF REMAINDER. (a) If a proposed acquisition of a tract of real property under Section 203.052 would leave the owner of the property a remainder of the tract, the department may negotiate for and purchase the remainder or any part of a severed real property if the department and the owner agree on terms for the purchase. The department shall offer, except as provided by Subsection (f), to purchase a remainder if the department determines that:

(1) the remainder has little or no value or utility to the owner; or

(2) the entire tract could be acquired for substantially the same compensation as the partial tract.

(b) In acquiring real property under Section 203.051, if the acquisition severs an owner's real property, the department shall pay:

(1) the value of the property acquired; and

(2) the damages to the remainder of the owner's property caused by the severance, including damages caused by the inaccessibility of one tract from the other.

(b-1) If a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and that is outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 25,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

(c) Instead of a single fixed payment for real property purchased under Subsection (a) for a toll project, the department may agree to a payment to the owner in the form of:

(1) an intangible legal right to receive a percentage of identified revenue attributable to the applicable segment of the toll project; or

(2) a right to use, without charge, a segment or part of the toll project.

(d) A right to receive revenue under Subsection (c)(1) is subject to any pledge of the revenue under the terms of a trust agreement securing bonds issued for the applicable segment of the toll project.

(e) The department and its designated agents may enter the real property to conduct an appraisal, survey, or environmental investigation to determine whether the department will offer to acquire the real property.

(f) The department is not required under Subsection (a) to make an offer on a remainder if an appraisal or environmental investigation indicates the presence of hazardous materials or substances.

Added by Acts 1997, 75th Leg., ch. 224, Sec. 1, eff. May 23, 1997. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.11, eff. June 14, 2005.

Sec. 203.053. LOCATION OF PROPERTY ACQUIRED; PUBLIC PROPERTY. (a) The authorization under this subchapter to purchase or exercise the power of eminent domain is not affected by the location of the real property, the location of the real property right, or the location of the material. This subsection applies without regard to whether the location is in or outside a municipality.

(b) Under this subchapter, the commission may purchase or condemn real property, property rights, and materials that belong to the public, whether under the jurisdiction of the state, a state agency, a county, a municipality, including a home-rule municipality, or an entity or subdivision of a county or municipality.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.054. ATTORNEY GENERAL SHALL BRING SUIT. (a) Except as provided by Subsection (b), the attorney general, at the request of the commission, shall bring and prosecute a condemnation suit of the commission under this subchapter.

(b) At the request of the attorney general, the appropriate county or district attorney or criminal district attorney shall prosecute the suit.

(c) The suit shall be brought in the name of this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.055. ACQUISITION OF RIGHTS IN PUBLIC REAL PROPERTY. (a) The governing body of a political subdivision or public agency that owns or is in charge of public real property may consent to the use of the property for highway purposes.

(b) The governing body of a political subdivision or public agency may, without advertisement, convey the title to or rights or easements in real property that the department needs for highway purposes.

(c) Notwithstanding any law to the contrary, at the request of the department, a political subdivision or a state agency may lease, lend, grant, or convey to the department real property, including a highway or real property currently devoted to public use, that may be necessary or appropriate to accomplish the department's purposes. The political subdivision or state agency may lease, lend, grant, or convey the property:

(1) on terms the subdivision or agency determines reasonable and fair; and

(2) without advertisement, court order, or other action or formality other than the regular and formal action of the subdivision or agency concerned.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.12, eff. June 14, 2005.

Sec. 203.056. CONSENT TO USE OF STATE PROPERTY. (a) The commission may use real property owned by the state, including submerged real property, that the commission could acquire under this subchapter for highway purposes.

(b) This section does not deprive the School Land Board of authority to execute a lease authorized by law for the development of oil, gas, or another mineral on state-owned real property adjoining a state highway or in a tidewater limit and for that purpose a lease executed by the School Land Board may provide for directional drilling from real property adjoining a state highway or from a tidewater area.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.057. COOPERATION OF STATE AGENCY. (a) The commission shall advise and make arrangements with the state agency that has jurisdiction over the state-owned real property to accomplish the purpose of Section 203.056.

(b) The state agency shall cooperate with the department in connection with the use of real property under Section 203.056. If the agency is not expressly authorized to act through a designated representative, the agency may do whatever act is necessary under Section 203.056 by and through the presiding officer of its board, or its department head or executive director, as appropriate.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.058. COMPENSATION FOR STATE AGENCY. (a) If the acquisition of real property, property rights, or material by the department from a state agency under this subchapter will deprive the agency of a thing of value to the agency in the exercise of its functions, adequate compensation for the real property, property rights, or material shall be made.

(b) The compensation shall be paid on vouchers drawn for this purpose payable to the state agency providing the real property, property rights, or material.

(c) A payment made to an agency furnishing real property, property rights, or material shall be credited to the appropriation item or account for that agency from which expenditures of that character were originally made.

(d) If an appropriation item or account as described by Subsection (c) does not exist, the payment shall be credited to the appropriate account of the state agency, as determined by the comptroller.

(e) If the department and the state agency are unable to agree on adequate compensation, the General Land Office shall determine the fair, equitable, and realistic compensation to be paid.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.059. PURCHASE OF LEASE RIGHTS. (a) Before acquiring property under this subchapter, the department may purchase the right to lease the property to a third party.

(b) The department may make a purchase under Subsection (a) only if the department first determines that the owner is unable to lease or rent the property because of the impending acquisition by the department.

(c) The consideration for the purchase of a lease right under this section may not exceed the fair market rental value of the property as determined by the department and shall be credited against the total compensation due the owner when the department acquires the property.

(d) Payment under this section may be made in periodic increments until the property is acquired by the department. The aggregate total of payments before acquisition may not exceed the department's approved appraised value of the property.

(e) The department shall adopt rules to implement this section.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.060. PAYMENT PROCEDURE. The comptroller may issue a warrant on the appropriate account to pay for real property or an interest in real property when presented with a properly executed deed for the real property or interest.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.061. PAYMENT PROCEDURE IF OWNER FAILS TO DELIVER EXECUTED DEED; ESCROW. (a) If the owner of property acquired by the department under this subchapter fails to deliver an executed deed before payment of consideration, the comptroller may issue a warrant on the appropriate account in payment of the consideration. The consideration shall be placed in escrow with a national or state bank that is:

- (1) authorized to do business in this state; and
- (2) located in the county of the residence of the owner or the county in which the real property is located.

(b) If there is not a bank that satisfies the requirements of Subsection (a)(2), the consideration shall be placed in a national or state bank authorized to do business in this state in an adjoining county or the nearest available banking facility.

(c) Consideration placed in escrow under this section shall be delivered to the owner on receipt of the properly executed deed.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.062. PAYMENT FOR REAL PROPERTY ACQUIRED BY EMINENT DOMAIN. (a) If the department acquires real property through the exercise of the power of eminent domain, the comptroller may issue a warrant as required by the judgment of the court.

(b) The comptroller may also issue a warrant to be deposited into the court as required by law to entitle the department to take possession of the property.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.063. PAYMENT PROCEDURES IN ADDITION TO OTHER PROCEDURES AUTHORIZED BY LAW. The payment procedures specified by Sections 203.060, 203.061, and 203.062 are in addition to any other procedure or method authorized for the issuance of a warrant by the comptroller on request of the department.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.064. ACQUISITION OF FREEWAY BY GIFT OR DEVISE. (a) The commission may acquire by gift or devise a property necessary to lay out, construct, maintain, or operate a section of a state highway as a freeway.

(b) In this section, "freeway" means a state highway for which the right of access to or from adjoining real property has been acquired in whole or in part from the owners of the adjoining property by the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.065. ACQUISITION OF FREEWAY BY COUNTY COMMISSIONERS COURT. (a) A county commissioners court may acquire by gift, devise, purchase, or condemnation a property necessary to lay out, construct, maintain, or operate a section of a state highway as a freeway.

(b) In this section, "freeway" has the meaning assigned by Section 203.064(b).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.066. DECLARATION OF TAKING FOR TOLL PROJECT. (a) This section and Section 203.067 apply only to a taking for a toll project.

(b) The department may file a declaration of taking with the clerk of the court:

(1) in which the department files a condemnation petition under Chapter 21, Property Code; or

(2) to which the case is assigned.

(c) The department may file the declaration of taking concurrently with or subsequent to the petition but may not file the

declaration after the special commissioners have made an award in the condemnation proceeding.

(d) The department may not file a declaration of taking before the completion of:

(1) all environmental documentation, including a final environmental impact statement or a record of decision, that is required by federal or state law;

(2) all public hearings and meetings, including those held in connection with the environmental process and under Sections 201.604 and 203.021, that are required by federal or state law;

(3) all notifications required by Section 203.022; and

(4) if the property contains a business, farm, or ranch, a written notification to the property owner that the occupants:

(A) will not be required to move before the 90th day after the date of the notice; and

(B) will receive, not later than the 30th day before the date by which the property must be vacated, a written notice specifying the date by which the property must be vacated.

(e) The declaration of taking must include:

(1) a specific reference to the legislative authority for the condemnation;

(2) a description and plot plan of the real property to be condemned, including the following information if applicable:

(A) the municipality in which the property is located;

(B) the street address of the property; and

(C) the lot and block number of the property;

(3) a statement of the property interest to be condemned;

(4) the name and address of each property owner that the department can obtain after reasonable investigation and a description of the owner's interest in the property; and

(5) a statement that immediate possession of all or part of the property to be condemned is necessary for the timely construction of a toll project.

(f) A deposit to the registry of the court of an amount equal to the appraised value, as determined by the department, of the property to be condemned must accompany the declaration of taking.

(g) The date on which the declaration is filed is the date of taking for the purpose of assessing damages to which a property owner is entitled.

(h) The filing of a declaration of taking does not affect the special commissioners' hearing or any other proceeding under Chapter 21, Property Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 920, Sec. 9, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 312, Sec. 18, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.18, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.02, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.137 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.13, eff. June 14, 2005.

Sec. 203.067. POSSESSION OF PROPERTY FOR TOLL PROJECT. (a) Immediately on the filing of a declaration of taking under Section 203.066, the department shall serve a copy of the declaration on each person possessing an interest in the condemned property by a method prescribed by Section 21.016(d), Property Code. The department shall file evidence of the service with the clerk of the court. On filing of that evidence, the department may take possession of the property pending the litigation.

(b) If the condemned property is a homestead or a portion of a homestead as defined by Section 41.002, Property Code, the department may not take possession sooner than the 91st day after the date of service under Subsection (a).

(c) A property owner or tenant who refuses to vacate the property or yield possession is subject to forcible entry and detainer under Chapter 24, Property Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 19, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.19, eff. June 21, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 1.03, eff. Jan. 11, 2004. Renumbered from V.T.C.A., Transportation Code Sec. 361.138 and

amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.13, eff. June 14, 2005.

Sec. 203.068. RIGHT OF ENTRY FOR TOLL PROJECT. (a) The department and its authorized agents may enter any real property, water, or premises in this state to make a survey, sounding, drilling, or examination it determines necessary or appropriate for the purposes of the development of a toll project.

(b) An entry under this section is not:

(1) a trespass; or

(2) an entry under a pending condemnation proceeding.

(c) The department shall make reimbursement for any actual damages to real property, water, or premises that result from an activity described by Subsection (a).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 43, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.41, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.233 and amended by Acts 2005, 79th Leg., ch. 281, Sec. 2.13, eff. June 14, 2005.

Sec. 203.069. COVENANTS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS. Covenants, conditions, restrictions, or limitations affecting property acquired in any manner by the department are not binding against the department and do not impair the department's ability to use the property for a purpose authorized by this chapter. The beneficiaries of the covenants, conditions, restrictions, or limitations are not entitled to enjoin the department from using the property for a purpose authorized under this chapter, but this section does not affect the right of a person to seek damages to the person's property under Section 17, Article I, Texas Constitution.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 7.13, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 312, Sec. 21, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 15.21, eff. June 21, 2003. Renumbered from V.T.C.A., Transportation Code Sec. 361.142 by Acts 2005, 79th Leg., ch. 281, Sec. 2.13, eff. June 14, 2005.

SUBCHAPTER E. RELOCATION OF UTILITY FACILITIES

Sec. 203.091. DEFINITION. In this subchapter, "utility" includes a publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.092. REIMBURSEMENT FOR RELOCATION OF UTILITY FACILITIES. (a) A utility shall make a relocation of a utility facility at the expense of this state if relocation of the utility facility is required by improvement of:

(1) a highway in this state established by appropriate authority as part of the National System of Interstate and Defense Highways and the relocation is eligible for federal participation;

(2) any segment of the state highway system and the utility has a compensable property interest in the land occupied by the facility to be relocated; or

(3) a segment of the state highway system that was designated by the commission as a turnpike project or toll project before September 1, 2005.

Text of subsec. (a-1) effective until September 1, 2007

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

Text of subsec. (a-2) effective until September 1, 2007

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

Text of subsec. (a-3) effective until September 1, 2007

(a-3) Notwithstanding Subsection (a), the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2007, and required 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, 2007.

(b) By agreement with the utility the department may relocate the utility facility in accordance with this section.

(c) Subsection (a) includes a relocation for an extension of a highway in an urban area.

(d) The cost of relocation includes the entire amount paid by the utility properly attributable to the relocation less:

- (1) any increase in the value of the new facility;
- (2) the salvage value derived from the old facility;

and

(3) any other deduction established by regulations for federal cost participation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 876, Sec. 1, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 281, Sec. 2.14, eff. June 14, 2005.

Sec. 203.0921. DEPARTMENT RELOCATION OF UTILITY FACILITIES FOR ESSENTIAL HIGHWAY IMPROVEMENT. (a) At the discretion of the department, the department may cause a utility to relocate a utility facility, or make a relocation of a utility facility, not eligible for reimbursement under Section 203.092 at the expense of the state upon a finding of the commission that:

(1) relocation of the utility facility is essential to the timely completion of a state highway improvement project;

(2) continuous service to utility customers is essential to the public well-being or the local economy;

(3) a short-term financial condition would prevent a utility from being able to pay the cost of relocation in full or in part at the time of relocation or, if paid at that time, would adversely affect the utility's ability to operate or provide essential services to its customers; and

(4) the affected utility has been contacted by the department and such utility and the department have reached an agreement that:

(A) appropriate safeguards are in place to ensure that relocation work activities are conducted safely in full compliance with applicable law and utility construction standards;

(B) relocation work can be coordinated between the department and the utility in a manner that will ensure that any disruption of utility service is minimized;

(C) the contractor, and any subcontractors, selected for relocation work activities are qualified to perform such work activities; and

(D) there exists a factual basis for the commission findings required under Subdivision (3).

(b) A utility whose facilities are relocated under Subsection (a) shall reimburse the department for any amount expended or advanced by the department for the relocation. The utility shall enter into an agreement with the department providing for reimbursement. The agreement shall:

(1) require reimbursement of the amount expended plus interest to the department within five years from the date of completion of the work;

(2) provide for reimbursement by a lump-sum payment or by installments;

(3) require payment of interest at a rate of six percent per annum from the date of completion through the date of final payment; and

(4) contain other terms and conditions as may be mutually agreed upon by the department and the utility.

(c) In the absence of an agreement required by Subsection (b), a utility shall reimburse the department the full cost of relocation within 30 days of the date of completion of the work.

(d) All funds received by the department under this section shall be deposited in the state treasury to the credit of the state highway fund.

Added by Acts 1997, 75th Leg., ch. 876, Sec. 2, eff. Sept. 1, 1997.

Sec. 203.093. REIMBURSEMENT FROM STATE HIGHWAY FUND. (a) Reimbursement of the cost of relocation of the utility facility, as required by Section 203.092, may be made from the state highway fund to the utility owning the facility.

(b) This section applies notwithstanding anything to the contrary contained in another law or in a permit, agreement, or franchise issued or entered into by a department, commission, or political subdivision of this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 876, Sec. 3, eff. Sept. 1, 1997.

Sec. 203.0935. TIMELY AGREEMENT. (a) If the department determines that a facility of a utility must be relocated to accommodate an improvement to the state highway system, the utility and the department shall negotiate in good faith to establish reasonable terms and conditions concerning the responsibilities of the parties with regard to sharing of information about the highway improvement project and the planning and implementation of any necessary relocation of utility facilities.

(b) The department shall use its best efforts to provide an affected utility with plans and drawings of the highway improvement project that are sufficient to enable the utility to develop plans for, and determine the cost of, the necessary relocation of the facility of the utility. If the department and the affected utility enter into an agreement after negotiations under Subsection (a), the terms and conditions of the agreement shall govern the relocation of the utility's facility covered by the agreement.

(c) If the department and an affected utility do not enter into an agreement under Subsection (a), the department shall provide to the affected utility:

(1) written notice of the department's determination that the utility facility must be removed;

(2) a final plan for relocation of the facility; and

(3) reasonable terms and conditions for an agreement with the utility for the relocation of the facility.

(d) Not later than the 90th day after the date that a utility receives the notice from the department, including the plan and agreement terms and conditions under Subsection (c), the utility shall enter into an agreement with the department that provides for the relocation.

(e) If the utility fails to enter into an agreement within the 90-day period under Subsection (d), the department may relocate the facility at the sole cost and expense of the utility less any reimbursement of costs that would have been payable to the utility under Section 203.092. A relocation by the department under this subsection shall be conducted in full compliance with applicable law, using standard equipment and construction practices compatible with the utility's existing facilities, and in a manner that minimizes disruption of utility service.

(f) The 90-day period under Subsection (d) may be extended:

(1) by mutual agreement between the department and the utility; or

(2) for any period of time during which the utility is negotiating in good faith with the department to relocate its facility.

Added by Acts 2003, 78th Leg., ch. 845, Sec. 1, eff. June 20, 2003.

Sec. 203.094. TIMELY RELOCATION. (a) A utility that is eligible for reimbursement under Section 203.092 or that is eligible for reimbursement under applicable law and the policies of the department for the cost of relocating facilities required by improvement of a segment of the state highway system not subject to Section 203.092 shall accomplish the relocation of the facility in a timely manner as specified in its relocation agreement with the department.

(b) The department may reduce the reimbursement to the utility by 10 percent for each 30-day period or portion of a 30-day period by which the relocation exceeds the limit specified in the relocation agreement. If the department determines that a delay in relocation is the result of circumstances beyond the control of the utility, full reimbursement shall be paid.

(c) The time limit specified in the relocation agreement may not be less than 90 days.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 203.0941. UTILITY RELOCATION ELIGIBLE FOR FINANCIAL ASSISTANCE FROM WATER DEVELOPMENT BOARD. (a) The relocation of a utility facility required by improvement of any segment of the state highway system, for which a political subdivision receives financial assistance made available from either Subchapter D, F, G, or K, Chapter 17, Water Code, is not subject to the requirements of Sections 17.183(1)-(6), Water Code, if the political subdivision has agreed to allow the department to contract for the construction of the utility facility relocation.

(b) The department and the Texas Water Development Board may enter into a memorandum of understanding to facilitate administration of utility facility relocation that is required by state highway system improvement and that receives financial

assistance from the Texas Water Development Board.

Added by Acts 1997, 75th Leg., ch. 876, Sec. 4, eff. Sept. 1, 1997.

Sec. 203.095. RULES. The department shall adopt rules to implement this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. LEASE OF CERTAIN PROPERTY

Sec. 203.111. LEASE FOR PARKING PURPOSES. (a) The commission may lease for parking purposes real property beneath an elevated section of a freeway located on real property for which the commission holds the title and property rights.

(b) Revenue from a lease under this section shall be used for general governmental purposes.

(c) In this section, "freeway" has the meaning assigned by Section 203.064.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.