

BILL ANALYSIS

C.S.H.B. 3535
By: Phelan
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been asserted that state law unfairly requires a telecommunications provider that sends telephone calls and cable television or video signal over the same line in a municipality's right-of-way to pay twice for the same line in the same right-of-way. C.S.H.B. 3535 seeks to remove the burden of double payment and require such a provider to pay the municipality only the greater of the two sums due for use of the right-of-way.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3535 amends the Local Government Code to exempt a certificated telecommunications provider from the requirement to pay any compensation to a municipality for use of the municipality's public rights-of-way for a given calendar year if the provider determines that the sum of the compensation due from the provider and any member of the provider's affiliated group, as defined by the bill, to all municipalities in Texas from those fees is less than the sum of the fees due from the provider and any member of the provider's affiliated group to all municipalities in Texas from the franchise fee for state-issued cable and video franchise. The bill sets out provisions related to that determination. These provisions prevail in the case of a conflict with statutory provisions relating to determination of right-of-way fees by the Public Utility Commission of Texas (PUC) and expressly do not exempt a provider from paying compensation to a municipality if the provider is not required under state or federal law to pay a franchise fee for state-issued cable and video franchise to that municipality. That clarification applies only to such a municipality and does not limit the application of the exemption to any other municipality.

C.S.H.B. 3535 requires a provider to file, not later than October 1 of each year, an annual written notification with each municipality in which the provider provides telecommunications services of the provider's requirement to pay compensation to the given municipality or exemption from that requirement for the following calendar year.

C.S.H.B. 3535 amends the Utilities Code to exempt the holder of a state-issued certificate of franchise authority from the franchise fee imposed for state-issued cable and video franchise for a given calendar year if the holder determines that the sum of fees due from the holder and any member of the holder's affiliated group to all municipalities in Texas from that fee is less than the sum of the compensation due from the holder and any member of the holder's affiliated

group to all municipalities in Texas from right-of-way fees. The bill sets out provisions related to that determination. These provisions prevail in the case of a conflict with Local Government Code provisions relating to determination of right-of-way fees by the PUC and expressly do not exempt a certificate holder from paying the franchise fee to a municipality if the holder is not required to pay compensation to a municipality for use of the municipality's public rights-of-way to that municipality. That clarification applies only to such a municipality and does not limit the application of the exemption to any other municipality. These provisions expressly do not affect the application to any holder of a state-issued certificate of franchise authority of statutory provisions relating to in-kind contributions to a municipality and public, education, and governmental access channels.

C.S.H.B. 3535 requires a holder to file, not later than October 1 of each year, an annual written notification with each municipality in which the holder provides cable or video services of the holder's requirement to pay the franchise fee to the given municipality or exemption from that requirement for the following calendar year.

The changes to law made by C.S.H.B. 3535 apply only to a payment made on or after January 1, 2020. The bill requires a determination of compensation or fees under the bill's provisions for the year 2020 to be based on amounts actually paid between July 1, 2018, and June 30, 2019.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3535 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute clarifies that the exemptions apply with respect to a given calendar year and specifies that the determinations of compensation or fees due for a year are based on applicable figures from the 12-month period ending June 30 of the immediately preceding calendar year.

The substitute includes provisions clarifying the applicability of the exemptions and provisions subjecting certificated telecommunications providers and holders of state-issued certificates of franchise authority, respectively, to applicable annual notification requirements, and providing for the applicability of statutory provisions relating to in-kind contributions to a municipality and public, educational, and governmental access channels.

The substitute includes a transition provision providing for the determination of compensation or fees for the year 2020.

The substitute changes the applicability of the bill's provisions from a payment made on or after the bill's effective date to a payment made on or after January 1, 2020.