

SUBJECT: Deadlines for city collection of utility right-of-way fees

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Craddick, Ramsay, Heflin, Oliveira, Stiles, Telford, Thompson
1 nay — Horn
1 present, not voting — Holzheuser
2 absent — Grusendorf, Williamson

WITNESSES: None

BACKGROUND : Under the Tax Code, incorporated cities or towns can charge public utilities for using streets, alleys or public ways for their business. The charge may not exceed two percent of the public utility's gross receipts for gas, electric and water service. If the public utility pays a special tax or charge under a contract or franchise executed before May 1, 1941, the city must credit that payment against the amount the utility owes.

DIGEST: CSHB 1515 would prohibit a city from collecting fees from public utilities more than two years after the fees were due, unless the city filed suit before the two-year deadline.

The bill would also prohibit a city from collecting rights-of-way fees negotiated in an agreement, contract or franchise with a public utility or an interurban pipeline more than four years after the fees were due, unless the city filed suit to collect the fees before the four-year deadline. This prohibition would not apply to interurban pipelines conveying natural gas sold in the city.

An interurban pipeline would defined as a line of pipe that conveys petroleum products, chemical products, crude oil, hazardous liquids, or natural gas on, along, under, over, or across a public right-of-way passing through a city.

The bill would take effect September 1, 1997, and would apply only to a cause of action filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1515 would prevent cities from allowing utility charges to build up over many years and then billing utility companies and pipeline companies for the entire accumulated amount. This retroactive billing method is burdensome for utility and pipeline companies because it is difficult to account and plan for these unexpected charges. CSHB 1515 would allow cities ample time to charge the fees or file suit to collect them.

**OPPONENTS
SAY:**

HB 1515 would impose significant financial costs on cities by requiring them to conduct annual audits of utilities in order to meet the time lines specified in the bill. Many cities, including Austin, do not currently conduct annual audits of utilities, and instead bill utilities for several years of right-of-way charges when an audit is conducted. According to the fiscal note, right-of-way fees are the third largest revenue source for cities, so the bill could have a significant fiscal impact on local governments.

Cities often bill utilities for back fees when they discover that a company has been using right-of-ways without permission, sometimes for as many as 20 years. HB 1515 should allow for such situations by specifying that the bill would not apply when a utility was using a right-of-way without permission. Alternatively, the deadline should be based on the date the city discovers it is owed money.

The bill contradicts the Texas Constitution by relieving public utilities and other entities from the obligation to compensate cities for use of rights-of-way. Cities should be allowed to charge utility companies at any time for right-of-way use. The utilities know they are subject to this charge; they should include the charge in their planned expenses, and set it aside for payment of the bill whenever it arrives.

HB 1515 would unfairly relieve individuals and corporations of legitimate responsibility for debts and reward individuals and corporations that, for two years, can elude detection of illegal use of right-of-ways.

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NOTES: The committee substitute added provisions pertaining to collections under contracts between cities and utilities.