

BILL ANALYSIS

Senate Research Center

H.B. 1777
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Economic Development
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Engrossed

DIGEST

Currently, there is no statutory provision specifying the method and level of compensation that a municipality may collect from a telecommunications provider (provider) for the use of the public rights-of-way and the right to provide services within that municipality. The purpose of this bill is to provide policies and guidelines relating to compensation that a municipality may receive from a provider within the municipality. H.B. 1777 provides for municipalities to be compensated by certificated telecommunications providers through franchise fees.

PURPOSE

As proposed, H.B.1777 provides for municipalities to be compensated by certificated telecommunications providers through franchise fees.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Public Utility Commission of Texas in SECTION 1 (Sections 283.003(b) and 283.006(c), Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 9A, Local Government Code, by adding Chapter 283, as follows:

CHAPTER 283. MANAGEMENT OF PUBLIC RIGHT-OF-WAY USED BY TELECOMMUNICATIONS PROVIDER IN MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 283.001. STATE POLICY; PURPOSE. Sets forth the policy of Texas regarding competition and telecommunication (telecom) services. Sets forth the policy of Texas regarding the authority of an compensation to municipalities. Provides that the purpose of this chapter is to establish a certain uniform method for compensating municipalities for the use of a public right-of-way by certificated telecom providers.

Sec. 283.002. DEFINITIONS. Defines "access line," "certificated telecommunications provider," "commission," "consumer price index," "local exchange telephone service," and "public right-of-way."

Sec. 283.003. COMMISSION REVIEW. Requires the Public Utility Commission of Texas (PUCT) to determine, not later than September 1, 2002, whether certain changes justify a modification in categories of access lines or the adoption of an "access line" definition. Prohibits PUCT from beginning a review before March 1, 2002. Authorizes PUCT, by rule, to modify the "access line" definition and categories to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation. Requires PUCT to make the determination required by this section at least once every three years.

Sec. 283.004. APPLICATION. Provides that this chapter only applies to municipal regulations and fees imposed on and collected from certificated telecom providers.

Sec. 283.005. INFORMATION. Authorizes PUCT to collect and compile certain information necessary to implement this section, and requires the maintenance of this information's

confidentiality. Sets forth provisions for complying confidentiality procedures

Sec. 283.006. FEE REQUIREMENT FOR USE OF RIGHT-OF-WAY. Sets forth provisions to exempt certain certificated telecom providers from paying required fees. Provides that this section does not affect the number of access lines counted and reported to PUCT. Requires PUCT to adopt rules to determine methods of payment and ensure payments are neutral and non-discriminatory

SUBCHAPTER B. RIGHT-OF-WAY FEES

Sec. 283.051. RIGHT-OF-WAY FEE. Sets forth limitations on a fee certain certificated telecom providers are required to pay. Sets forth municipal rights which this section does not affect. Provides that fees imposed under this chapter constitute municipal fees within the meaning of the Utilities Code.

Sec. 283.052. EFFECT OF PAYMENT OF RIGHT-OF-WAY FEES TO MUNICIPALITY. Sets forth authorizations for a certificated telecom provider that complies with this chapter and PUCT orders. Provides that all use of a public right-of-way is nonexclusive and subject to Section 283.056, Local Government Code.

Sec. 283.053. BASE AMOUNT. Sets forth fees and taxes which are not included in a municipality's base amount. Describes the "base amount." Sets forth provisions for the base amount for municipalities, with a maximum population of 25,000. Provides that a litigating municipality, by making certain elections, does not waive any defense it may have to claims by other parties to the litigation. Sets forth conditions which prevent a litigating municipality from waiving certain defenses. Sets forth conditions which require a litigating municipality to be governed by Subsection (b). Sets forth required values of in-kind services or facilities provided to certain municipalities, for the purpose of determining the base amount.

Sec. 283.054. EXISTING FRANCHISE AGREEMENTS AND ORDINANCES. Provides that this chapter does not affect the validity of certain franchise agreements or ordinances executed before January 12, 1999. Authorizes a municipality to continue to enforce agreements or ordinances and collect fees and other charges until a certain time. Sets forth provisions requiring a provider to be governed by this chapter. Provides that a termination under this subsection does not affect the calculation of the municipality's base amount. Sets forth notification requirements. Sets forth provisions regarding expired or terminated franchise agreements or obligations. Sets forth conditions under which certain certificated telecom providers are required to pay certain right-of-way fees, and makes a provision for the payment. Prohibits the municipality from requiring a telecom provider to provide services or facilities without compensation. Sets forth conditions which require PUCT to convert certain compensation to a fee per access line on a competitively neutral or nondiscriminatory basis. Authorizes a certificated telecom provider to elect to pay the municipality in a certain manner.

Sec. 283.055. DETERMINATION OF FEES BY COMMISSION. Requires PUCT to establish, no later than November 1, 1999, a maximum of three categories of access lines for statewide use. Requires PUCT to establish by March 1, 2000 certain rates per access line. Requires the rates when applied to the total number of access lines by category to be equal to the base amount. Sets forth notification requirements. Requires PUCT to establish an allocation of the base amount over the categories of access lines, under certain conditions. Authorizes a municipality to request certain modifications. Sets forth requirements regarding a municipality's allocation. Prohibits certain rates from unduly impairing competition, and requires them to be non-discriminatory and to comply with state and federal law. Requires PUCT to determine certain rates. Sets forth required payments from certificated telecom providers to the municipality. Requires the providers to make the quarterly payments within a certain deadline. Sets forth timelines for PUCT regarding rate adjustments, and requires PUCT to provide certain entities with the adjusted rates. Authorizes an affected municipality to provide notice to PUCT to decline certain rate increases. Sets forth limitations for payments made by a certificated telecom provider. Requires certificated telecom providers to file a certain report with PUCT. Requires the report to specifically identify certain access lines. Requires the report to be provided to the affected municipalities under certain conditions. Authorizes PUCT to use a certain report to verify the number of access lines that serve premises within the municipality. Sets forth conditions which

satisfy the payment attributable to the provider required by this chapter. Prohibits a municipality from demanding or requiring certain goods without compensation or at below-market rates. Requires a certificated telecom provider to implement PUCT established access line rates by a certain deadline.

Sec. 283.056. MUNICIPAL AUTHORIZATIONS; PROHIBITION ON OTHER FEES AND CHARGES. Prohibits a municipality from requiring certain actions of a certificated telecom provider. Authorizes a municipality to require the issuance of a free construction permit to certain entities. Requires the terms of the permit to be consistent with construction permits issued to other persons excavating in a public right-of-way. Sets forth provisions for a municipality to exercise police power-based regulations. Prohibits a municipality from imposing regulations on certain certificated telecom providers that are not authorized by this chapter. Requires a municipality to take certain actions in the process of application review, and to make every effort to not delay or unduly burden the provider in the timely conduct of its business. Sets forth provisions regarding an emergency which necessitates response work or repair. Sets forth provisions regarding compensation. Prohibits this chapter from being construed to affect certain ad valorem taxation.

Sec. 283.057. INDEMNITY. Requires certificated telecom providers to indemnify and hold certain entities harmless against certain issues. Provides that the indemnity provided by this subsection does not apply to certain liability issues. Sets forth provisions for joint liability. Provides that this section is solely for the benefit of municipalities and certificated telecom providers, and does not create or grant any rights to any other person or entity. Sets forth notification requirements regarding certain claims or demands. Sets forth authorizations for certain municipalities with franchise agreements or ordinances. Subjects certain certificated telecom providers to the indemnity provided by this section.

Sec. 283.058. ADDITIONAL COMMISSION JURISDICTION. Requires PUCT to have certain jurisdiction to enforce this chapter and ensure that certain requirements are enforced in a certain manner.

SECTION 2. Requires PUCT to determine the access line rates by category for a municipality, within a certain timeframe.

SECTION 3. Sets forth provisions regarding the preempting of certain regulations, ordinances, resolutions, or charter provisions. Authorizes the re-adoption of a city charter provision, under certain circumstances.

SECTION 4. Effective date: September 1, 1999.

SECTION 5. Emergency clause.