

BILL ANALYSIS

C.S.H.B. 3179
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Regulated Industries
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The policy of the State of Texas should be to encourage investment in networks that provide communications services, including the granting of franchises for cable and video services, by simplifying the process for companies wishing to offer such services in the state. The state's policies should require cooperation among municipalities and service providers with regard to use, management and relocation of facilities in the municipalities' public rights of way and establish a mechanism by which municipalities are compensated for the use and management of rights of way and for the funding of relocations required by major public works projects. This bill would simplify and clarify rights and obligations of companies wishing to offer communications services in the State of Texas, encouraging investment in the state.

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

This bill authorizes the secretary of state to issue a franchise to any person seeking to provide cable or video services in this state. Such a franchise grants authority to provide cable or video services and occupy the public rights-of-way, subject to the continued lawful operation of the cable or video service. A state franchise is fully transferable to any successor in interest. An applicant for a state franchise must affirm that it will comply with applicable federal and state law and provide specific information in its application. A cable service provider may terminate any existing municipal franchise beginning September 1, 2005, provided that it remits any outstanding franchise fees owed to the affected municipality.

The bill requires providers of cable service or video service ("providers") operating under a state franchise to pay each municipality in which they provide service a fee equal to five percent of their gross revenues, and it defines how gross revenues are calculated. Fees are paid to municipalities on a quarterly basis. Providers may recover these fees from their customers.

A provider will continue to offer no less than the number of public, educational, and governmental access (PEG) channels offered under any franchise agreement in the relevant municipality on September 1, 2005. Otherwise, a provider shall offer up to three PEG channels for noncommercial programming, where technically capable, upon request of a municipality with a population of 50,000 or more, and two PEG channels to a municipality with a population of fewer than 50,000. A provider may place PEG channels on any service tier, provided that a municipality may designate up to three PEG channels (two for a municipality with a population of fewer than 50,000) which shall remain on the lowest service tier. The bill provides procedures and timelines for municipalities to request additional PEG channels if they did not already receive the two or three required by the bill. Municipalities are responsible for ensuring the programming of PEG channels is in a form capable of being transmitted by the provider. The bill establishes additional responsibilities of providers and municipalities, including utilization thresholds, with respect to PEG channels.

Providers operating under existing municipal franchises shall continue to provide certain services until the earlier of the expiration date of their franchise or 2008, even if their existing franchises are terminated. These services include institutional network capacity, which shall be provided at cost to the municipality, and cable services to community public buildings and schools, at the same service tier and same drop connections.

The bill requires providers to meet customer service requirements consistent with federal rules until there are three or more providers offering service in an area. Neither the state nor a political subdivision may require a provider to construct facilities except as specifically required by federal law. A provider may not deny access to service to any group of potential customers based on the income of the residents in the local area in which the potential customers reside to the extent specifically prohibited by federal law. A provider may use alternative technologies to meet this requirement.

The bill permits a municipality to require providers to register with the municipality, maintain a point of contact, and submit consumer complaint information (if the provider is subject to customer service standards). A municipality may establish guidelines for the use of PEG channels. The bill prohibits municipalities from requiring monetary compensation, facilities, free service, or any other form of in-kind support in exchange for the right to occupy a right-of-way.

The bill prohibits municipalities from giving preferential advantage to, or discriminating against, any provider, including, with respect to the placement of facilities in a public right-of-way, access to a building, or municipal pole attachment terms. Municipalities may enforce police power-based regulations on providers to the extent necessary to protect the health, safety, and welfare of the public. The bill establishes limits on municipalities' abilities to require the filing of reports and other information, inspection of records, requirements for bonding, administrative handling of providers' applications for permits, approval of emergency responses, and related matters. The bill provides the circumstances under which providers shall indemnify municipalities from claims arising from the providers' use of public rights-of-way.

The bill does not prohibit municipalities or providers from seeking clarification of their rights under federal law.

C.S.H.B. 3179 defines the process by which municipalities propose public improvement projects requiring providers to relocate communications facilities and establishes the timelines and requirements of all parties in such projects. Providers shall continue to bear the cost and expense of relocating communications facilities for the widening or straightening of public roadways; municipalities would be responsible for the costs of relocations caused by other types of projects. The bill establishes a method by which municipalities could recover those costs, based on an annual assessment paid by providers, beginning on January 1, 2006. This assessment is based on the amount of right-of-way a provider occupies, and the assessment may be recovered from providers' customers. In addition, the bill permits a municipality to charge an annual fee to each provider in consideration for the use of the public right-of-way, to compensate the municipality for the value and management of its public right-of-way.

Under the provisions of the bill the Public Utility Commission of Texas is required to conduct a study and file a report with the Legislature regarding compensation paid to cities from communications providers.

The bill repeals a chapter of existing law requiring certain providers to offer video services through a separate affiliate.

EFFECTIVE DATE

This Act takes effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes the assessment on communications services and directs the Public Utility Commission to study sources of compensation flowing to the municipalities and any available alternative funding mechanisms.

While the substitute retains the creation of a statewide franchise for video programming, it distinguishes between cable services and video services as defined under federal law. In the substitute, the secretary of state issues franchises should an applicant comply with all relevant

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provisions. The authority of municipalities to regulate cable and video services is maintained but altered based on the number of providers and the municipalities' use of PEG channels. While the original required providers to pay for all relocations of facilities within public rights-of-way (other than those related solely to beautification projects), the substitute imposes that obligation on providers for relocations of facilities caused by the widening or straightening of public roads. Other relocations shall be funded by a municipality-imposed fee established annually by ordinance.

While the original bill repealed Chapter 283 of the Local Government Code, the substitute does not repeal that chapter.