

BILL ANALYSIS

C.S.S.B. 1087
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During a recent session, the legislature enacted a new regulatory framework for video services providers, all of whom previously had been required to obtain franchises from municipalities to do business in Texas. Since this enactment, all video services providers, other than an incumbent cable operator providing service in a municipal franchise area before September 1, 2005, can seek a state franchise from the Public Utility Commission of Texas to provide video services. As a result, some interested parties contend, the law provides two sets of rules for competitors, which creates more favorable terms and conditions for telephone companies offering video services and nonincumbent operators than for most cable companies that were providing video services under previous law. While Texas was a pioneer in adopting a state-issued franchising regime, the states that have followed Texas in adopting similar legislation have allowed incumbent cable providers to opt-in to the state regime in some form.

Additionally, the fee that video services providers obtaining a state franchise must pay to municipalities to help fund public, educational, and governmental access facilities was intended to help municipalities pay for associated capital costs or to be spent by municipalities as otherwise allowed by federal law. Although there are clear state and federal statutory limitations on the uses of such a fee, methods of ensuring that those funds are being spent only for their intended purpose are inadequate.

C.S.S.B. 1087 seeks to address the need for financial and regulatory certainty and the need for some assurance that audits will take place within a reasonable time by equalizing the treatment of video services providers; allowing all video providers, including incumbent cable operators, to opt-in to state franchising regulations; ending certain municipal franchise obligations; improving existing franchising procedures by limiting audit periods; and ensuring accountability and transparency for a certain fee paid by Texas video customers.

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.S.B. 1087 amends the Utilities Code to authorize a cable service provider or a video service provider that currently has or had previously received a municipal franchise for the provision of cable or video service with respect to a municipality to seek a state-issued certificate of franchise authority to provide cable or video service to the municipality and removes a provision making the cable or video service provider ineligible, with certain exceptions, to seek such a state-issued certificate until the existing municipal franchise expires.

C.S.S.B. 1087 authorizes a cable or video service provider that was not allowed to or did not terminate a municipal franchise, beginning September 1, 2011, to elect to terminate all unexpired municipal franchises and seek a state-issued certificate of franchise authority for each area

served under a terminated franchise by providing written notice to the Public Utility Commission of Texas (PUC) and each affected municipality before January 1, 2012. The bill establishes that a municipal franchise is terminated on the date the PUC issues a state-issued certificate of franchise authority to the provider for the area served under that terminated franchise.

C.S.S.B. 1087 makes a provision regarding a cable service provider's responsibility to remit any accrued but unpaid franchise fees on termination of an existing municipal franchise applicable to any cable service provider by including a provider now authorized to terminate such a municipal franchise under the bill's provision, in addition to a provider that is not the incumbent provider, and by removing the alternate condition that a provider serve fewer than 40 percent of the total cable customers in a municipal franchise area.

C.S.S.B. 1087 provides for the continuation without adverse effect of certain contractual rights, duties, and obligations existing and incurred by a cable or video service provider before the date a franchise expires or the date the provider terminates a municipal franchise and for the continuation without need for renewal, extension, or continuance of all liens, security interests, royalties, and other contracts, rights, and interests in effect on the date a franchise is terminated. The bill limits a municipality's authority to review the business records of a cable or video service provider that holds a state-issued certificate of franchise authority, for the purpose of ensuring correct compensation, to a review only of records that relate to the 48-month period preceding the date of the last franchise fee payment.

C.S.S.B. 1087 requires the holder of a state-issued certificate of franchise authority to include with a fee paid to a municipality for public, educational, and governmental (PEG) access channel capacity, facilities, or financial support (PEG fees) a statement identifying the fee. The bill provides that PEG fees paid to municipalities by a holder of a state-issued certificate of franchise authority before and after the expiration of the incumbent cable service provider's agreement are not chargeable as a credit against the franchise fee payments if the PEG fees are used by a municipality for capital costs incurred under the franchise by the cable operator for PEG access facilities but are chargeable otherwise if the municipality uses the fees for another purpose.

C.S.S.B. 1087 requires a municipality that receives PEG fees to maintain revenue from those fees in a separate account established for that purpose and prohibits the commingling of that revenue with any other money. The bill requires the municipality to maintain a record of each deposit to and disbursement from that separate account and requires a record of disbursement from the account to include the payee and purpose of each disbursement. The bill requires a municipality, not later than January 31 of each year, to provide to each certificate holder that pays PEG fees to the municipality, on the certificate holder's request, a detailed accounting of the deposits to and disbursements from the separate account made in the preceding calendar year.

C.S.S.B. 1087 requires the continuation of cable services to community public buildings, such as municipal buildings and public schools, by the cable provider that was furnishing services under its municipal cable franchise until the franchise expires or is terminated, rather than requiring the continuation of such services until January 1, 2008, or until the term of the franchise was to expire, whichever is later. The bill requires, for a municipality of more than one million, rather than for municipalities generally, institutional network capacity to continue to be provided at the same capacity as was provided by the cable provider that was furnishing services pursuant to its municipal cable franchise until the expiration or termination of the franchise agreement, whichever is later, rather than until January 1, 2008, or until the term of the franchise was to expire, whichever is later.

C.S.S.B. 1087 expands a requirement that a provider furnish PEG access channels to a municipality that did not have PEG channels as of September 1, 2005, to require a provider, at the municipality's request, to furnish additional PEG access channels to a municipality that did not have the maximum number of PEG channels as of September 1, 2005, based on the municipality's population on that date. The bill extends the requirement for the holder of a state-

issued certificate of franchise authority and an incumbent cable service provider to use reasonable efforts to interconnect their cable or video systems for the purpose of providing PEG programming to make the requirement applicable to the holder of a state-issued certificate of franchise authority that is not an incumbent cable provider and to an incumbent cable service provider that holds such a state-issued certificate.

C.S.S.B. 1087 requires, on September 1, 2011, a municipality that received PEG fees from the holder of a state-issued certificate of authority and has not maintained revenue from those fees in a separate account to transfer to a separate account the amount of revenue from the collection of such fees that have not yet been disbursed. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1087 differs from the original by authorizing a cable service provider or video service provider that was not allowed to or did not terminate a municipal franchise to elect to terminate all unexpired municipal franchises and seek a state-issued certificate of franchise authority for each area served under a terminated franchise beginning September 1, 2011, whereas the original authorizes such a provider to do so beginning October 1, 2011.

C.S.S.B. 1087 omits provisions included in the original prohibiting a cable or video service provider subject to a municipal franchise in effect on September 30, 2011, in a municipality that requires the provider to bury a new or existing component or facility from terminating the municipal franchise except under certain conditions; prohibiting the Public Utility Commission of Texas from issuing a state-issued certificate of franchise authority to a provider unless the provider provides proof that the provider has agreed to comply with this provision; and authorizing a person to enforce a right reserved by an action brought in a court of competent jurisdiction.

C.S.S.B. 1087 omits a provision included in the original establishing that a franchise fee paid by the holder of a state-issued certificate of franchise authority shall not be deemed a state or local tax.

C.S.S.B. 1087 differs from the original, in a provision imposing certain requirements on a municipality that receives PEG fees, by requiring the municipality to provide to each certificate holder that pays such a fee to the municipality a detailed accounting of the deposits to and disbursements from the separate account made in the preceding calendar year on the certificate holder's request, whereas the original requires the municipality to provide that detailed accounting without the condition that a certificate holder make such a request.

C.S.S.B. 1087 differs from the original by requiring that institutional network capacity to continue to be provided at a certain level of capacity for a municipality of more than one million, whereas the original requires the continuation of that institutional network capacity for municipalities with a population greater than one million as of January 1, 2012.

C.S.S.B. 1087 omits a provision included in the original making the bill's effect contingent on the passage of another act of the 82nd Legislature, Regular Session, 2011, that imposes an assessment on providers of subscription video services; allows such providers to claim a credit against the assessment for certain fees paid to municipalities; and provides for the distribution of a portion of the revenue generated by the assessment to municipalities and counties.

C.S.S.B. 1087 differs from the original by providing an effective date of September 1, 2011, and

requiring a municipality that received certain fees before September 1, 2011, to transfer on that date any fees that have not been disbursed to a separate account as required under the bill's provisions, whereas the original provides an effective date of October 1, 2011, and requires the transfer of municipal fees to a separate account on that date.