

Suspending limitations on conference committee
jurisdiction, S.B. No. 1087 (Carona/Hilderbran)

By: Hilderbran

H.R. No. 2518

R E S O L U T I O N

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, 82nd Legislature, Regular Session, 2011, That House Rule 13,
3 Section 9(a), be suspended in part as provided by House Rule 13,
4 Section 9(f), to enable the conference committee appointed to
5 resolve the differences on Senate Bill 1087 (state-issued
6 certificates of franchise authority to provide cable service and
7 video service) to consider and take action on the following
8 matters:

9 (1) House Rule 13, Sections 9(a)(1) and (2), are suspended
10 to permit the committee to change and omit text not in disagreement
11 in proposed SECTION 2 of the bill, in amended Section 66.004(a),
12 Utilities Code, to read as follows:

13 (a) A cable service provider or a video service provider
14 that currently has or had previously received a franchise to
15 provide cable service or video service with respect to such
16 municipalities is not eligible to seek a state-issued certificate
17 of franchise authority under this chapter as to those
18 municipalities until the expiration date of the existing franchise
19 agreement, except as provided by Subsections (b), (b-1), (b-2),
20 (b-3), and (c).

21 Explanation: This change is necessary to clarify that a cable
22 service provider or video service provider that received a
23 franchise to provide cable service or video service to a
24 municipality is not eligible to seek a state-issued certificate of

1 franchise authority before the expiration of the franchise except
2 as provided by Section 66.004, Utilities Code.

3 (2) House Rule 13, Sections 9(a)(1) and (4), are suspended
4 to permit the committee to change text which is not in disagreement
5 and to add text on a matter which is not included in either the house
6 or senate version of the bill in proposed SECTION 2 of the bill, in
7 added Sections 66.004(b-1), (b-2), and (b-3), Utilities Code, to
8 read as follows:

9 (b-1) Beginning September 1, 2011, a cable service provider
10 or video service provider in a municipality with a population of
11 less than 215,000 that was not allowed to or did not terminate a
12 municipal franchise under Subsection (b) may elect to terminate not
13 less than all unexpired franchises in municipalities with a
14 population of less than 215,000 and seek a state-issued certificate
15 of franchise authority for each area served under a terminated
16 municipal franchise by providing written notice to the commission
17 and each affected municipality before January 1, 2012. A municipal
18 franchise is terminated on the date the commission issues a
19 state-issued certificate of franchise authority to the provider for
20 the area served under that terminated franchise.

21 (b-2) A cable service provider or video service provider in
22 a municipality with a population of at least 215,000 may terminate a
23 municipal franchise in that municipality in the manner described by
24 Subsection (b-1) if:

25 (1) the cable service provider or video service
26 provider is not the incumbent cable service provider in that
27 municipality; and

1 (2) the incumbent cable service provider received a
2 state-issued certificate of franchise authority from the
3 commission before September 1, 2011.

4 (b-3) A municipality with a population of at least 215,000
5 may enter into an agreement with any cable service provider in the
6 municipality to terminate a municipal cable franchise before the
7 expiration of the franchise. To the extent that the mutually agreed
8 on terms and conditions for early termination of the unexpired
9 municipal cable franchise conflict with a provision of this
10 chapter, the agreed on terms and conditions control.

11 Explanation: This change is necessary to differentiate
12 between termination of franchises by service providers in
13 municipalities with populations of less than 215,000 and by service
14 providers in municipalities with populations of at least 215,000.

15 (3) House Rule 13, Section 9(a)(1), is suspended to permit
16 the committee to change text not in disagreement in proposed
17 SECTION 2 of the bill, in amended Sections 66.004(c) and (f),
18 Utilities Code, to read as follows:

19 (c) A cable service provider [~~that serves fewer than 40~~
20 ~~percent of the total cable customers in a municipal franchise area~~
21 ~~and~~] that elects under Subsection (b), (b-1), or (b-2) to terminate
22 an existing municipal franchise is responsible for remitting to the
23 affected municipality before the 91st day after the date the
24 municipal franchise is terminated any accrued but unpaid franchise
25 fees due under the terminated franchise. If the cable service
26 provider has credit remaining from prepaid franchise fees, the
27 provider may deduct the amount of the remaining credit from any

1 future fees or taxes it must pay to the municipality, either
2 directly or through the comptroller.

3 (f) Except as provided in this chapter, nothing in this
4 chapter is intended to abrogate, nullify, or adversely affect in
5 any way the contractual rights, duties, and obligations existing
6 and incurred by a cable service provider or a video service provider
7 before the date a franchise expires or the date a provider
8 terminates a franchise under Subsection (b-1) or (b-2), as
9 applicable, [~~enactment of this chapter,~~] and owed or owing to any
10 private person, firm, partnership, corporation, or other entity
11 including without limitation those obligations measured by and
12 related to the gross revenue hereafter received by the holder of a
13 state-issued certificate of franchise authority for services
14 provided in the geographic area to which such prior franchise or
15 permit applies. All liens, security interests, royalties, and
16 other contracts, rights, and interests in effect on September 1,
17 2005, or the date a franchise is terminated under Subsection (b-1)
18 or (b-2) shall continue in full force and effect, without the
19 necessity for renewal, extension, or continuance, and shall be paid
20 and performed by the holder of a state-issued certificate of
21 franchise authority, and shall apply as though the revenue
22 generated by the holder of a state-issued certificate of franchise
23 authority continued to be generated pursuant to the permit or
24 franchise issued by the prior local franchising authority or
25 municipality within the geographic area to which the prior permit
26 or franchise applies. It shall be a condition to the issuance and
27 continuance of a state-issued certificate of franchise authority

1 that the private contractual rights and obligations herein
2 described continue to be honored, paid, or performed to the same
3 extent as though the cable service provider continued to operate
4 under its prior franchise or permit, for the duration of such
5 state-issued certificate of franchise authority and any renewals or
6 extensions thereof, and that the applicant so agrees. Any person,
7 firm, partnership, corporation, or other entity holding or claiming
8 rights herein reserved may enforce same by an action brought in a
9 court of competent jurisdiction.

10 Explanation: These changes are necessary to add
11 cross-references to Section 66.004(b-2), Utilities Code.

12 (4) House Rule 13, Sections 9(a)(1), (2), and (4), are
13 suspended to permit the committee to change text not in
14 disagreement, omit text not in disagreement, and add text on a
15 matter which is not included in either the house or senate version
16 of the bill, in proposed SECTION 4 of the bill, in amended Section
17 66.006(c) and added Section 66.006(c-2), Utilities Code, to read as
18 follows:

19 (c) All fees paid to municipalities under this section are
20 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
21 may be used by the municipality as allowed by federal law; further,
22 these payments are not chargeable as a credit against the franchise
23 fee payments authorized under this chapter.

24 (c-2) A municipality that receives fees under this section:

25 (1) shall maintain revenue from the fees in a separate
26 account established for that purpose;

27 (2) may not commingle revenue from the fees with any

1 other money;

2 (3) shall maintain a record of each deposit to and
3 disbursement from the separate account, including a record of the
4 payee and purpose of each disbursement; and

5 (4) may not spend revenue from the fees except
6 directly from the separate account.

7 Explanation: This change is necessary to clarify that all
8 fees paid to municipalities under Section 66.006, Utilities Code,
9 are not chargeable as a credit against franchise fee payments
10 authorized under Chapter 66, Utilities Code, and that
11 municipalities may not spend revenue from fees received under
12 Section 66.006 except by spending the revenue directly from a
13 separate account, to remove language requiring a detailed
14 accounting of deposits, and to reletter Subsection (c-3) as
15 Subsection (c-2).

16 (5) House Rule 13, Sections 9(a)(1) and (2), are suspended
17 to permit the committee to change and omit text not in disagreement
18 in proposed SECTION 4 of the bill, in amended Section 66.006(d),
19 Utilities Code, to read as follows:

20 (d) The following services shall continue to be provided by
21 the cable provider that was furnishing services pursuant to its
22 municipal cable franchise [~~until January 1, 2008, or~~] until the
23 expiration or termination [~~term~~] of the franchise [~~was to expire,~~
24 ~~whichever is later,~~] and thereafter as provided in Subdivisions (1)
25 and (2) below:

26 (1) institutional network capacity, however defined
27 or referred to in the municipal cable franchise but generally

1 referring to a private line data network capacity for use by the
2 municipality for noncommercial purposes, shall continue to be
3 provided at the same capacity as was provided to the municipality
4 prior to the date of expiration or ~~[the]~~ termination, provided that
5 the municipality will compensate the provider for the actual
6 incremental cost of the capacity; and

7 (2) cable services to community public buildings, such
8 as municipal buildings and public schools, shall continue to be
9 provided to the same extent provided immediately prior to the date
10 of the termination. On ~~[Beginning on January 1, 2008, or]~~ the
11 expiration or termination of the franchise agreement, ~~[whichever is~~
12 ~~later,~~] a provider that provides the services may deduct from the
13 franchise fee to be paid to the municipality an amount equal to the
14 actual incremental cost of the services if the municipality
15 requires the services after that date. Such cable service
16 generally refers to the existing cable drop connections to such
17 facilities and the tier of cable service provided pursuant to the
18 franchise at the time of the expiration or termination.

19 Explanation: This change is necessary to clarify that
20 institutional network capacity and cable services to community
21 public buildings shall continue to be provided in all
22 municipalities as they were provided before the expiration or
23 termination of a franchise.

24 (6) House Rule 13, Section 9(a)(1), is suspended to permit
25 the committee to change text not in disagreement in proposed
26 SECTION 6 of the bill, to read as follows:

27 SECTION 6. (a) A municipality that received fees described

1 by Section 66.006(c), Utilities Code, before September 1, 2011,
2 shall, on September 1, 2011, transfer any fees that have not been
3 disbursed to a separate account as required by Section 66.006(c-2),
4 Utilities Code, as added by this Act.

5 (b) The change in law made by this Act in adding Section
6 66.006(c-2)(3), Utilities Code, applies only to transfers,
7 deposits, and disbursements made on or after the effective date of
8 this Act. A transfer, deposit, or disbursement made before the
9 effective date of this Act is governed by the law in effect on the
10 date the transfer, deposit, or disbursement was made, and the
11 former law is continued in effect for that purpose.

12 Explanation: These changes are necessary to correct
13 cross-references.