

## **BILL ANALYSIS**

S.B. 327  
By: Carona  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties recall that prior legislation made Texas the first state in the nation to adopt a new regulatory framework for video service providers that permitted the providers to forgo a requirement to enter into municipal franchise agreements. Instead, the parties note, the legislation permitted video service providers to apply directly to the Public Utility Commission of Texas for a state-issued certificate of franchise agreement (SICFA) that grants the video service provider the authority to provide cable or video service statewide.

The law was challenged in court on the ground that existing cable providers were required to operate under different rules than their video competitors. The parties explain that under this statute, existing cable providers were required to honor a municipal franchise agreement for its full term before the provider was permitted to apply for an SICFA, thereby providing video service providers, as new market entrants, certain advantages over existing cable service providers. The parties further note that while this case was working its way through the courts, subsequent legislation gave an existing cable provider in a municipality with a population of less than 215,000 the ability to terminate an existing municipal franchise agreement and opt in to SICFAs on a provider-wide basis.

The parties report that the U.S. Court of Appeals for the Fifth Circuit has reversed a district court decision and ruled that unequal video and cable provider treatment is unconstitutional. The parties also note that the Supreme Court has declined to hear an appeal of that decision and that, therefore, the circuit court's opinion is law. S.B. 327 seeks to codify the court ruling into Texas law by providing that any cable or video service provider may enter into an SICFA and terminate a municipal franchise agreement.

### **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**

S.B. 327 amends the Utilities Code to remove a provision authorizing, beginning September 1, 2005, a cable service provider or video service provider that is not the incumbent provider and serves fewer than 40 percent of the total cable customers in a particular municipal franchise area to elect to terminate a municipal franchise and seek a state-issued certificate of franchise authority. The bill repeals a statutory provision prohibiting an incumbent cable service or video service provider from seeking a state-issued certificate of franchise until the expiration date of an existing municipal franchise agreement. The bill repeals statutory provisions authorizing a cable service or video service provider in certain municipalities to elect to terminate, beginning September 1, 2011, and under certain circumstances, a municipal franchise and seek a state-issued certificate of franchise authority.

S.B. 327 repeals Sections 66.004(a), (b-1), (b-2), and (b-3), Utilities Code.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.