

SUBJECT: Exempting cable and phone service providers from certain fees

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Phelan, Guerra, Harless, Hunter, P. King, Parker, Raymond, Smithee, Springer

2 nays — Hernandez, E. Rodriguez

2 absent — Deshotel, Holland

WITNESSES: For — Deborah Collier, Council for Citizens Against Government Waste; Thomas Aiello, National Taxpayers Union; James Hines, Texas Association of Business; Walt Baum and James LeBas, Texas Cable Association; Mia McCord, Texas Conservative Coalition; (*Registered, but did not testify*: Donnis Baggett, Texas Press Association; Weldon Gray, Texas Statewide Telephone Cooperative, Inc.)

Against — David Rutledge, City of Bridge City; Rudy Garza, Jr., City of Corpus Christi; Don Knight, City of Dallas; Adam Niolet, City of Hico; Yushan Chang, City of Houston; Gaelan Frazier and Charles Jackson, City of Pearsall; Russell Huff, City of San Antonio; Eddie Daffern, City of Staples; Himesh Gandhi, City of Sugar Land; Dion Miller, City of Tulia; Curtis Seidlits, Texas Municipal League; Snapper Carr, Texas Coalition of Cities for Utility Issues and the Texas Municipal League; (*Registered, but did not testify*: Rebecca Campbell, Austin Film Society; Drusilla Rogers, Bastrop City Council; Rondella Hawkins, City of Austin; Vivianna Hamilton, Lyle Nelson, and Connie Schroeder, City of Bastrop; Guadalupe Cuellar, City of El Paso; Benjamin Brezina, City of Frisco; Sally Bakko, City of Galveston; Jamaal Smith, City of Houston Mayor's Office; Jon Weist, City of Irving; Angela Hale, City of McKinney, Frisco Chamber of Commerce, McKinney Chamber of Commerce; Karen Kennard, City of Missouri City Texas; Brandi Youngkin, City of Plano; Karen Kennard, City of Port Arthur; Jeff Coyle, City of San Antonio; Ricardo Ramirez, City of Sugar Land; Kwame Walker, City of Fort Worth; Julie Acevedo, City of Round Rock; and six individuals)

BACKGROUND: Local Government Code sec. 283.051 requires a certified telecommunications provider that provides services within a city to pay compensation to the city for use of the public rights-of-way. The amount of compensation is determined by the Public Utility Commission under sec. 283.055.

Utilities Code sec. 66.005 requires the holder of a state-issued certificate of franchise authority to pay each city in which it provides cable or video service a franchise fee of 5 percent of gross revenues.

Tax Code sec. 171.0001 defines "affiliated group" as a group of one or more entities in which a controlling interest is owned by a common owner, either corporate or noncorporate, or by one or more of the member entities.

DIGEST: CSHB 3535 would exempt an entity providing telecommunications, cable, and video services from paying cities both the compensation for the use of a public right-of-way and the franchise fee for state-issued cable and video franchise. The entity would pay either the compensation or the franchise fee, whichever was larger.

Exemption from right-of-way compensation. The bill would exempt a certified telecommunications provider from paying compensation to a city for use of the public rights-of-way if the provider determined that the sum of the compensation due for the provider and any member of the provider's affiliated group to all cities was less than the sum of franchise fees due to all cities for state-issued cable and video franchise. "Affiliated group" would have the same meaning as in Tax Code sec. 171.0001.

The bill would not exempt a telecommunications provider from paying compensation to a city if the provider was not required to pay a state or federal cable franchise fee to that city.

Exemption from franchise fee. The holder of a state-issued certificate of franchise authority would not be subject to a cable franchise fee if the

holder determined that the sum of fees due from the holder and any member of the holder's affiliated group to all cities was less than the sum of the compensation for the use of the public rights-of-way due to all cities.

The bill would not exempt a certificate holder from paying franchise fees to a city if the holder was not required to pay compensation for use of a right-of-way to that city.

Basis for determination. A determination under the bill would have to be based on amounts actually paid or amounts that would have been paid during the 12-month period ending June 30 of the preceding year.

Annual notification of exemption. A telecommunications provider or certificate holder would have to file by October 1 an annual notification to each city of the requirement to pay compensation for use of a right-of-way or a cable franchise fee, or exemption from those requirements.

Non-applicability. The bill would not affect the application of certain statutes to any holder of a state-issued certificate of franchise authority, including requirements to provide cities with certain in-kind contributions and access to channels for noncommercial programming.

Prevailing statutes. In the case of a conflict between the provisions of this bill and the determination of fees by the Public Utility Commission under Local Government Code sec. 283.055, the bill would prevail.

Effective date and applicability. The bill would take effect September 1, 2019, and would apply only to a payment made on or after January 1, 2020. A determination of compensation or fees for year 2020 would have to be based on amounts actually paid between July 1, 2018, and June 30, 2019.

SUPPORTERS
SAY:

CSHB 3535 would eliminate a fee that effectively is a double tax on companies that pay fees for cable and phone services, despite transmitting both services over a single line. Current law was established to ensure that

telecommunications companies paid for the use of a city right-of-way for phone services and that cable companies paid a franchise fee. However, this law is now outdated due to the development of technology and the bundling of cable and phone services.

If the bill was passed, telecommunications companies would continue to pay millions of dollars to city budgets through either the compensation for use of right-of-way or cable franchise fee, whichever was larger. The loss of city revenue would only be a small percentage of cities' operating budgets and should not greatly affect their ability to retain staff and services.

By eliminating this burdensome fee, the bill could allow cable and phone providers to save money and pass those savings on to consumers. While residential consumers may only see a savings of a few dollars each month, small businesses could save hundreds of dollars in a year.

Current law also needs to be updated because cities themselves do not experience an additional burden from providers using rights-of-way for both telecommunications and cable services transmitted over the same line. It makes sense to charge only for the use of a right-of-way one time.

The bill would not provide a "gift" to any specific businesses, nor would it allow cities to provide free use of a public right-of-way. The bill simply would ensure that cable and phone providers were not assessed two fees for use of a single public facility.

**OPPONENTS
SAY:**

CSHB 3535 would cost millions of dollars in local revenue for cities, which could result in a loss of services or even jobs. Exempting telecommunications providers from either the cable franchise fee or the compensations for the use of a right-of-way unnecessarily would gift large corporations an amount that ultimately could cost local taxpayers.

The bill could have an adverse impact on city budgets, as described by the bill's fiscal note. By exempting cable and phone providers from paying all appropriate fees, larger cities could lose millions of dollars in revenue and

have to cut certain city services or employment. Small cities could be harmed the most because those that do not impose a property tax have little other means of gaining revenue. Fees paid by phone, cable, and other companies make up a large percentage of certain small city budgets. Any increase in taxes to make up for this would mean that taxpayers effectively would subsidize cable and phone providers.

There is no guarantee the bill would provide savings for consumers of cable and phone services since state law cannot regulate cable rates. Certain companies already have announced in recent months that subscriber charges will be increased.

It is reasonable to charge companies a fee on the service of cable and for phone service, since companies profit from both. The amount assessed increases if a company is providing both services, since that means the right-of-way is more valuable. Thus, the fee is charged in proportion to the use of an in-demand facility. State and federal courts have held that these payments are rent on public facilities, not taxes.

The bill also could conflict with two provisions of the Texas Constitution prohibiting the gift of public property and stating that the Legislature has no power to authorize a city to grant public money or thing of value to any individual or corporation.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated cost of between \$17.1 million and \$27.5 million to Houston, \$9.2 million to Dallas, \$7.9 million to San Antonio, and \$6.3 million to Austin, as well as costs to other cities.