

BILL ANALYSIS

Senate Research Center

S.B. 1004
By: Hancock
Business & Commerce
6/13/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Rapid innovation of wireless devices and applications has revolutionized the way Texans live, work, and communicate. These sharp increases in use require telecommunications providers to "densify" networks to provide more capacity. Small cell wireless networks constructed in municipal rights-of-way are an efficient method to provide this increased network capacity. However, the Local Government Code provisions covering right-of-way access for telecommunications providers (Chapter 283) is 15 years old and does not account for these new technologies. This uncertainty has led to confusion, disputes, and disparate treatment among cities and telecommunications providers. The purpose of this bill is to provide a uniform framework for right-of-way access so that small cell networks may be deployed efficiently with reasonable municipal oversight and control in conformance with applicable federal law. (Original Author's / Sponsor's Statement of Intent)

S.B. 1004 amends current law relating to the deployment of network nodes in public right-of-way and authorizes fees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 9, Local Government Code, by adding Chapter 284, as follows:

CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 284.001. FINDINGS AND POLICY. (a) Sets forth certain legislative findings.

(b) Provides that, in order to safeguard the health, safety, and welfare of the public, it is the policy of this state to promote the adoption of and encourage competition in the provision of wireless services by reducing the barriers to entry for providers of services so that the number and types of services offered by providers continue to increase through competition.

(c) Provides that it is the policy of this state, subject to state law and strictly within the requirements and limitations prescribed by this chapter, that municipalities:

(1) retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and

(2) receive from network providers fair and reasonable compensation for use of the public right-of-way and for collocation on poles.

Sec. 284.002. DEFINITIONS. Defines “antenna,” “applicable codes,” “collocate” and “collocation,” “decorative pole,” “design district,” “historic district,” “law,” “macro tower,” “micro network node,” “municipally owned utility pole,” “municipal park,” “network node,” “network provider,” “node support pole,” “permit,” “pole,” “private easement,” “public right-of-way,” “public right-of-way management ordinance,” “public right-of-way rate,” “service pole,” “transport facility,” “utility pole,” “wireless service,” and “wireless service provider.”

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Requires that a network node to which this chapter applies, except as provided by Section 284.109, conform to certain conditions relating to size limitations on certain equipment related to network nodes.

(b) Provides that certain types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a).

(c) Prohibits equipment attached to node support poles from protruding from the outer edge of the node support pole by more than two feet.

(d) Requires that equipment attached to a utility pole be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner’s construction standards.

SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

Sec. 284.051. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to activities related to transport facilities for network nodes, activities of a network provider collocating network nodes in the public right-of-way or installing, constructing, operating, modifying, replacing, and maintaining node support poles in a public right-of-way, and municipal authority in relation to those activities.

Sec. 284.052. EXCLUSIVE USE PROHIBITED. Prohibits a municipality from entering into an exclusive arrangement with any person for use of the public right-of-way for the construction, operation, marketing, or maintenance of network nodes or node support poles.

Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) Prohibits a public right-of-way rate for use of the public right-of-way from exceeding an annual amount equal to \$250 multiplied by the number of network nodes installed in the public right-of-way in the municipality’s corporate boundaries.

(b) Authorizes the municipality, at the municipality’s discretion, to charge a network provider a lower rate or fee if the lower rate or fee is nondiscriminatory, related to the use of the public right-of-way, and not a prohibited gift of public property.

Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) Defines “consumer price index.”

(b) Authorizes a municipality to adjust the amount of the public right-of-way rate not more often than annually by an amount equal to one-half the annual change, if any, in the consumer price index. Requires the municipality to provide written notice to each network provider of the new rate and requires that the rate apply to the first payment due to the municipality on or after the 60th day following that notice.

Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE RATE. (a) Authorizes a network provider that wants to connect a network node to the network using a public right-of-way to install its own transport facilities subject to Subsection (b) or

obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than \$28 per node per month.

(b) Prohibits a network provider from installing its own transport facilities unless the provider fulfills certain criteria.

(c) Provides that a public right-of-way rate required by Subsection (b) is in addition to any public right-of-way rate required by Section 284.053.

Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE POLES. Requires a municipality, subject to an agreement with the municipality that does not conflict with this chapter, to allow collocation of network nodes on service poles on nondiscriminatory terms and conditions and at a rate not greater than \$20 per year per service pole.

Sec. 284.057. PROHIBITION ON OTHER COMPENSATION. Prohibits a municipality from requiring a network provider to pay any compensation other than the compensation authorized by this chapter for the right to use a public right-of-way for network nodes, node support poles, or transport facilities for network nodes.

SUBCHAPTER C. ACCESS AND APPROVALS

Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY. (a) Authorizes a network provider, except as specifically provided by this chapter and subject to the requirements of this chapter and the approval of a permit application, if required, without need for a special use permit or similar zoning review, to take certain actions in the public right-of-way as a permitted use and not subject to further land use approval.

(b) Provides that a network provider taking an action authorized by Subsection (a) is subject to applicable codes, including applicable public right-of-way management ordinances.

Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS. Requires a network provider to construct and maintain network nodes and node support poles described by Section 284.101 in a manner that does not violate certain requirements or laws.

Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. Requires a network provider to ensure that each new, modified, or replacement utility pole or node support pole installed in a public right-of-way in relation to which the network provider received approval of a permit application does not exceed the lesser of certain measurements.

Sec. 284.104. INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS. (a) Prohibits a network provider from installing a new node support pole in a public right-of-way without the municipality's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a municipal park or is adjacent to certain streets or thoroughfares.

(b) Requires a network provider installing a network node or node support pole in a public right-of-way, in addition to the requirement prescribed by Subsection (a), to comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Sec. 284.105. INSTALLATION IN HISTORIC OR DESIGN DISTRICTS. (a) Requires a network provider to obtain advance approval from a municipality before collocating new network nodes or installing new node support poles in an area of the municipality zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. Authorizes a municipality, as a condition for approval of new network nodes or new node support poles in a historic district or a design district with decorative

poles, to require reasonable design or concealment measures for the new network nodes or new node support poles. Authorizes a municipality to request that a network provider comply with the design and aesthetic standards of the historic or design district and explore the feasibility of using certain camouflage measures to improve the aesthetics of certain equipment to minimize the impact to the aesthetics in a historic district or on a design district's decorative poles.

(b) Prohibits this section from being construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under certain laws and the regulations adopted to implement those laws.

Sec. 284.106. EQUIPMENT CABINETS. Requires a network provider to ensure that the vertical height of an equipment cabinet installed as part of a network node does not exceed the height limitation prescribed by Section 284.003, subject to approval of the pole's owner if applicable.

Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT. (a) Requires a network provider, in relation to installation for which the municipality approved a permit application, to comply with nondiscriminatory undergrounding requirements, including certain public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

(b) Prohibits a requirement or restriction described by Subsection (a) from being interpreted to prohibit a network provider from replacing an existing structure.

Sec. 284.108. DESIGN MANUAL. (a) Authorizes a municipality to adopt a design manual for the installation and construction of network nodes and new node support poles in the public right-of-way that includes additional installation and construction details that do not conflict with this chapter. Authorizes the design manual to include certain requirements.

(b) Requires a network provider to comply with a design manual, if any, in place on the date a permit application is filed in relation to work for which the municipality approved the permit application. Prohibits a municipality's obligations under Section 284.154 from being tolled or extended pending the adoption or modification of a design manual.

Sec. 284.109. EXCEPTIONS. Authorizes a network provider, subject to Subchapter D, to construct, modify, or maintain in a public right-of-way a network node or node support pole that exceeds the height or distance limitations prescribed by this chapter only if the municipality approves the construction, modification, or maintenance subject to all applicable zoning or land use regulations and applicable codes.

Sec. 284.110. DISCRIMINATION PROHIBITED. Requires a municipality, in the exercise of the municipality's administrative and regulatory authority related to the management of and access to the public right-of-way, to be competitively neutral with regard to other users of the public right-of-way.

SUBCHAPTER D. APPLICATIONS AND PERMITS

Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS. (a) Prohibits a municipality, except as otherwise provided by this chapter, from prohibiting, regulating, or charging for the installation or collocation of network nodes in a public right-of-way.

(b) Prohibits a municipality from directly or indirectly requiring, as a condition for issuing a required permit, that the applicant perform services unrelated to the installation or collocation for which the permit is sought, including certain in-kind contributions.

(c) Prohibits a municipality from instituting a moratorium, in whole or in part, express or de facto, on filing, receiving, or processing applications or on issuing permits or other approvals, if any, for the installation of network nodes or node support poles.

Sec. 284.152. **AUTHORITY TO REQUIRE PERMIT.** (a) Authorizes a municipality, except as otherwise provided by this chapter, to require a network provider to obtain one or more permits to install a network node, node support pole, or transport facility in a public right-of-way if the permit is of general applicability to users of the public right-of-way, does not apply exclusively to network nodes, and is processed on nondiscriminatory terms and conditions regardless of the type of entity submitting the application for the permit.

(b) Provides that a network provider that wants to install or collocate multiple network nodes inside the territorial jurisdiction of a single municipality is entitled to file a consolidated permit application with the municipality for not more than 30 network nodes and receive permits for the installation or collocation of those network nodes.

Sec. 284.153. **GENERAL PROCESS RELATING TO PERMIT APPLICATION.** (a) Prohibits a municipality, except as otherwise provided by this section, from requiring an applicant to provide more information to obtain the permit than a telecommunications utility that is not a network provider is required to provide unless the information directly relates to the requirements of this chapter.

(b) Authorizes a municipality, as part of the standard form for a permit application, to require the applicant to include applicable construction and engineering drawings and information to confirm that the applicant will comply with the municipality's publicly disclosed public right-of-way design specifications and applicable codes.

(c) Authorizes a municipality to require an applicant to provide certain information.

Sec. 284.154. **MUNICIPAL REVIEW PROCESS.** (a) Requires a municipality to process each permit application on a nondiscriminatory basis.

(b) Requires the municipality, not later than certain dates depending on the permit sought, to determine whether the application is complete and notify the applicant of that determination. Requires the municipality, if the municipality determines that the application is not complete, to specifically identify the missing information.

(c) Requires a municipality to approve an application that does not require zoning or land use approval under this chapter unless the application or the corresponding work to be performed under the permit does not comply with the municipality's applicable codes or other municipal rules, regulations, or other law that is consistent with this chapter.

(d) Requires a municipality to approve or deny an application for a node support pole not later than the 150th day after the date the municipality receives the complete application. Requires a municipality to approve or deny an application for a network node not later than a certain date and to approve or deny an application for a transport facility not later than a certain other date. Requires that an application for a permit for a node support pole, network node, or transport facility be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed by this subsection.

(e) Requires a municipality that denies a complete application to document the basis for the denial, including the specific applicable code provisions or other municipal rules, regulations, or other law on which the denial was based. Requires the municipality to send the documentation by electronic mail to the applicant on or before the date the municipality denies the application.

(f) Authorizes the applicant, not later than the 30th day after the date the municipality denies the application, to cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee, other than a fee for actual costs incurred by the municipality. Requires the municipality, notwithstanding Subsection (d), to approve or deny the revised completed application after a denial not later than the 90th day after the date the municipality receives the completed revised application. Provides that the municipality's review of the revised application is limited to the deficiencies cited in the denial documentation.

Sec. 284.155. TIME OF INSTALLATION. (a) Requires a network provider to begin the installation for which a permit is granted not later than six months after final approval and requires the network provider to diligently pursue the installation to completion.

(b) Authorizes the municipality, notwithstanding Subsection (a), to place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.

Sec. 284.156. APPLICATION FEES. (a) Authorizes a municipality to charge an application fee for a permit only if the municipality requires the payment of the fee for similar types of commercial development inside the municipality's territorial jurisdiction other than a type for which application or permit fees are not allowed by law.

(b) Prohibits the amount of an application fee charged by a municipality from exceeding the lesser of certain amounts.

(c) Prohibits the municipality, in determining for purposes of Subsection (b)(1) (relating to prohibiting an application fee from exceeding certain costs incurred in granting or processing an application) the amount of the actual, direct, and reasonable costs, from including costs incurred by the municipality in relation to third-party legal or engineering review of an application, or directing payments or reimbursement of third-party public right-of-way rates or fees charged on a contingency basis or under a result-based arrangement.

Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Prohibits a municipality, notwithstanding any other provision of this chapter, from requiring a network provider to submit an application, obtain a permit, or pay a rate for certain routine maintenance, for certain replacements or upgrades of a network node or pole, or for the installation, placement, maintenance, operation, or replacement of certain micro network nodes.

(b) Provides that, for purposes of Subsection (a)(2) (relating to certain replacements or upgrades of a network node or pole), a network node or pole is considered to be "substantially similar" if the network node or pole meets certain conditions.

(c) Provides that the determination of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the municipality.

(d) Authorizes a municipality, notwithstanding Subsection (a), to require advance notice of work described by that subsection. Authorizes a network provider, notwithstanding Subsection (a), to replace or upgrade a pole only with the approval of the pole's owner. Prohibits the size limitations, notwithstanding Subsection (a), from in any event exceeding the parameters prescribed by Section

284.003 without the municipality's approval in accordance with Section 284.109 with the municipality acting on behalf of this state as the fiduciary trustee of public property.

SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES. (a) Requires the governing body of a municipally owned utility to allow collocation of network nodes on municipally owned utility poles on nondiscriminatory terms and conditions and pursuant to a negotiated pole attachment agreement, including any applicable permitting requirements of the municipally owned utility.

(b) Requires that the annual pole attachment rate for the collocation of a network node supported by or installed on a municipally owned utility pole be based on a pole attachment rate consistent with Section 54.204 (Discrimination by Municipality Prohibited), Utilities Code, applied on a per-foot basis.

(c) Provides that the requirements of Subchapters B, C, and D applicable to the installation of a network node supported by or installed on a pole do not apply to a network node supported by or installed on a municipally owned utility pole.

SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

Sec. 284.251. DEFINITIONS. Defines "cable service" and "video service," "electric cooperative," "electric utility," "telecommunications provider," and "telephone cooperative."

Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES, ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS. Requires that nothing in this chapter govern attachment of network nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. Provides that this chapter does not confer on municipalities any new authority over those utilities, cooperatives, or providers.

Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR VIDEO SERVICES. (a) Prohibits an approval for the installation, placement, maintenance, or operation of a network node or transport facility under this chapter from being construed to confer authorization to provide certain services.

(b) Prohibits a municipality, except as provided by this chapter, from adopting or enforcing any regulations or requirements that would require a wireless service provider, or its affiliate, that holds a cable or video franchise under Chapter 66 (State-Issued Cable and Video Franchise), Utilities Code, to obtain any additional authorization or to pay any fees based on the provider's provision of wireless service over its network nodes.

SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Authorizes a municipality, subject to this chapter and applicable federal and state law, to continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) Authorizes a municipality to exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) Authorizes a municipality to impose police-power-based regulations in the management of the activities of network providers in the public right-of-way only

to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

Sec. 284.302. INDEMNIFICATION. Provides that the indemnification provisions of Sections 283.057(a) (relating to requiring certificated telecommunications providers to indemnify and hold the municipality harmless against certain actions) and (b) (relating to requiring a certificated telecommunications provider or municipality to promptly advise the other in writing of certain claims or demands) apply to a network provider accessing a public right-of-way under this chapter.

Sec. 284.303. RELOCATION. Requires a network provider, except as provided in existing state and federal law, to relocate or adjust network nodes in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

Sec. 284.304. INTERFERENCE. (a) Requires a network provider to operate all network nodes in accordance with all applicable laws, including regulations adopted by the Federal Communications Commission (FCC).

(b) Requires a network provider to ensure that the operation of a network node does not cause any harmful radio frequency interference to an FCC-authorized mobile telecommunications operation of the municipality operating at the time the network node was initially installed or constructed. Requires a network provider, on written notice, to take all steps reasonably necessary to remedy any harmful interference.

SECTION 2. (a) Defines “collocation,” “network node,” “network provider,” and “public right-of-way.”

(b) Provides that public/private agreements between a municipality and a network provider for the deployment of network nodes in the public right-of-way on fair and reasonable terms as provided by Chapter 284, Local Government Code, as added by this Act, and corresponding ordinances governing that deployment, are necessary to protect the health, safety, and welfare of the public by facilitating robust and dependable wireless networks. Requires that, accordingly, those agreements and ordinances be conformed as provided by this section.

(c) Requires that the rates, terms, and conditions of agreements and ordinances entered into or enacted before the effective date of this Act, subject to Subsection (d), apply to all network nodes installed and operational before the effective date of this Act.

(d) Provides that for all network nodes installed and operational on or after the effective date of this Act:

(1) the municipality is required to amend the agreement or ordinance to comply with the requirements of Chapter 284, Local Government Code, as added by this Act, if a rate, term, or condition of an agreement or ordinance related to the construction, collocation, operation, modification, or maintenance of network nodes does not comply with the requirements of Chapter 284, Local Government Code, as added by this Act, and requires that the amended rates, terms, or conditions take effect for those network nodes on the six-month anniversary of the effective date of this Act.

(2) the rates, terms, and conditions of each agreement executed, and each ordinance enacted, on or after the effective date of this Act are required to comply with the requirements of Chapter 284, Local Government Code, as added by this Act.

SECTION 3. Effective date: September 1, 2017.