

BILL ANALYSIS

Senate Research Center

S.B. 1152
By: Hancock
Business & Commerce
6/6/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A telecommunications provider that installs lines in a city's right-of-way pays the city for the right to occupy that right-of-way. If that provider provides telephone and cable over the same line, that provider must pay twice for the same line in a single right-of-way because the fees are duplicated in separate codes. Chapter 283 of the Local Government Code sets out the rules for paying cities for the use of their rights-of-way for telecommunications lines. Chapter 66 of the Utilities Code also sets out franchise fees for cable providers to compensate cities for the use of rights-of-way for cable services. The value of the city's right-of-way has not changed because a single line in the right-of-way sends both telephone and cable signals, though currently the provider must pay the two different taxes on a single line.

S.B. 1152 would require the provider to pay the city the larger of the two fees, but not both.

The bill would set out an exemption on the telecommunications fee in Section 283.051 of the Local Government Code, and the cable franchise fee in Section 66.005 of the Utilities Code. This results in the requirement that a provider pay the larger of the two fees, but would exempt the provider from the smaller of the two.

The determination of which tax is less for a particular provider would be made on an annual, statewide basis. In some cases, a provider may provide telecommunications services under one affiliate and cable services under another affiliate. The bill would provide for the exemption to apply to the provider's affiliate group as that term has long been defined in the Tax Code.

There is a technical provision in Section 283.051(a) of the Local Government Code that requires the telecommunications tax to be governed by Section 283.055, and an additional provision to incorporate this exemption in 283.055. (Original Author's/Sponsor's Statement of Intent)

S.B. 1152 amends current law relating to the payment of certain fees to municipalities by entities that provide telecommunications and cable or video services.

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 Section 283.051, Local Government Code, by adding Subsections (d), (e), and (f), as follows:

(d) Defines "affiliated group." Provides that a certificated telecommunications provider is not required to pay any compensation under Subsection (a) (relating to requiring a certificated telecommunications provider to pay a right-of-way fee to a municipality) for a given calendar year if the provider determines that the sum of the compensation due from the provider and any member of the provider's affiliated group to all municipalities in this state under Subsection (a) is less than the sum of the fees due from the provider and any member of the provider's affiliated group to all municipalities in this state under Section 66.005 (Franchise Fee), Utilities Code. Requires the determination under this

subsection for a given year to be based on amounts actually paid, or amounts that would have been paid notwithstanding this subsection, during the 12-month period ending June 30 of the immediately preceding calendar year by the provider and any member of the provider's affiliated group. Provides that, in the case of a conflict between this subsection and Section 283.055 (Determination of Fees by Commission), this subsection prevails.

(e) Provides that, notwithstanding the aggregate amount of compensation or fees paid in this state calculated under Subsection (d), Subsection (d) does not exempt a certificated telecommunications provider from paying compensation under Subsection (a) to a municipality if the provider is not required to pay a fee authorized by Section 66.005, Utilities Code, or another fee described in 47 U.S.C. Section 542(g), to that municipality. Provides that this subsection applies only to a municipality described in this subsection and does not limit the application of Subsection (d) to any other municipality.

(f) Requires a certificated telecommunications provider to file, not later than October 1 of each year, an annual written notification with each municipality in which the provider provides telecommunications services of the provider's requirement to pay compensation under Subsection (a) or exemption from the requirement to pay compensation under Subsection (d) for the following calendar year.

SECTION 2. Amends Section 66.005, Utilities Code, by adding Subsections (d), (e), and (f), as follows:

(d) Defines "affiliated group." Provides that a holder of a state-issued certificate of franchise authority is not subject to the fee imposed under Subsection (a) (relating to requiring a holder of a state-issued certificate of franchise to pay a franchise fee of five percent to a municipality in which it provides cable or video service) for a given calendar year if the holder determines that the sum of fees due from the holder and any member of the holder's affiliated group to all municipalities in this state under Subsection (a) is less than the sum of the compensation due from the holder and any member of the holder's affiliated group to all municipalities in this state under Section 283.051 (Right-of-Way Fee), Local Government Code. Requires the determination under this subsection for a given year to be based on amounts actually paid, or amounts that would have been paid notwithstanding this subsection, during the 12-month period ending June 30 of the immediately preceding calendar year by the holder and any member of the holder's affiliated group. Provides that, in the case of a conflict between this subsection and Section 283.055, Local Government Code, this subsection prevails.

(e) Provides that, notwithstanding the aggregate amount of compensation or fees paid in this state calculated under Subsection (d), Subsection (d) does not exempt a holder of a state-issued certificate of franchise authority from paying the fee imposed under Subsection (a) to a municipality if the holder is not required to pay compensation under Section 283.051, Local Government Code, to that municipality. Provides that this subsection applies only to a municipality described in this subsection and does not limit the application of Subsection (d) to any other municipality. Provides that nothing in this subsection affects the application of Section 66.006 (In-Kind Contributions to Municipality) or 66.009 (Public, Educational, and Governmental Access Channels) to any holder of a state-issued certificate of franchise authority.

(f) Requires a holder of a state-issued certificate of franchise authority to file, not later than October 1 of each year, an annual written notification with each municipality in which the holder provides cable or video services of the holder's requirement to pay the fee under Subsection (a) or exemption from the requirement to pay the fee under Subsection (d) for the following calendar year.

SECTION 3. (a) Makes application of this Act prospective to January 1, 2020.

(b) Requires a determination of compensation or fees described by Section 283.051(d), Local Government Code, as added by this Act, or Section 66.005(d), Utilities Code, as

added by this Act, for the year 2020 to be based on amounts actually paid between July 1, 2018, and June 30, 2019.

SECTION 4. Effective date: September 1, 2019.