

BILL ANALYSIS

Senate Research Center
86R12165 JXC-F

S.B. 1152
By: Hancock
Business & Commerce
3/14/2019
As Filed

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.

As proposed, 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 Subsection (d), as follows:

(d) Provides that in this subsection, "affiliated group" has the meaning assigned by Section 171.0001 (General Definitions), Tax Code. Provides that a certificated telecommunications provider is not required to pay any compensation under Subsection (a) (relating to compensation paid to a municipality for use of the public right-of-way) for a given 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 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.

SECTION 2. Amends Section 66.005, Utilities Code, by adding Subsection (d), as follows:

(d) Provides that in this subsection, "affiliated group" has the meaning assigned by Section 171.0001, Tax Code. Provides that a holder of a state-issued certificate of franchise authority is not subject to the fee imposed under Subsection (a) (relating to a franchise fee due to a municipality) for a given 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 Fees), 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 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, Local Government Code, this subsection prevails.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2019.