

BILL ANALYSIS

Senate Research Center
85R6449 CBH-F

S.B. 1004
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Business & Commerce
3/17/2017
As Filed

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.

As proposed, S.B. 1004 amends current law relating to the deployment of network nodes in public rights-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 RIGHTS-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

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

(b) Provides that it is the policy of this state to promote the adoption of and encourage competition in the provision of telecommunications services, including 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 that municipalities retain the authority to manage the public rights-of-way to ensure the health, safety, and welfare of the public, and receive from telecommunications providers, including network providers, fair and reasonable compensation for use of the public rights-of-way.

Sec. 284.002. DEFINITIONS. Defines “antenna,” “applicable codes,” “collocate,” and “collocation,” “fee,” “law,” “municipal pole,” “municipally owned utility pole,” “network node,” “network provider,” “node support pole,” “permit,” “pole,” “public right-of-way,” “public right-of-way rate,” and “utility pole.”

Sec. 284.003. **LIMITATION ON SIZE OF NETWORK NODES.** (a) Requires a network node to which this chapter applies, except as provided by Section 284.108, to 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 circumference of the node support pole by more than three feet.

(d) Requires equipment attached to a utility pole to be installed in accordance with the National Electric Safety Code and the utility pole owner's construction standards.

SUBCHAPTER B. USE OF PUBLIC RIGHTS-OF-WAY

Sec. 284.051. **APPLICABILITY OF SUBCHAPTER.** (a) Provides that this chapter applies only to activities of a network provider constructing, operating, and maintaining a network node in a public right-of-way and municipal authority in relation to those activities.

(b) Provides that use of a public right-of-way for other telecommunications facilities installed by a network provider is governed by Chapter 283 (Management of Public Right-of-Way Used by Telecommunications Provider in Municipality).

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

Sec. 284.053. **PUBLIC RIGHT-OF-WAY RATE OR FEE FOR USE OF PUBLIC RIGHTS-OF-WAY.** (a) Prohibits a public right-of-way rate or fee for use of the public rights-of-way from exceeding a certain amount.

(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 rights-of-way, and not a prohibited gift of public property.

Sec. 284.054. **PUBLIC RIGHT-OF-WAY RATE OR FEE ADJUSTMENT.** Requires a municipality to adjust the amount of the public right-of-way rate or fee annually to reflect the previous year's annual rate of inflation as determined by the Public Utility Commission of Texas (PUC). Provides that the new rate or fee takes effect for the first payment due to the municipality on or after the 60th day after the date PUC makes the determination.

Sec. 284.055. **PUBLIC RIGHT-OF-WAY RATE OR FEE APPLICABLE TO TELECOMMUNICATIONS NETWORK.** (a) Provides that the right-of-way fee provisions of Subchapter B (Right-of-Way Fees), Chapter 283, apply to the use of a public right-of-way for telecommunications network facilities, other than network nodes, installed by a network provider.

(b) Provides that, for the purposes of calculating the right-of-way fee under Subchapter B, Chapter 283, each network node is considered to be an end-use customer termination point as specified in the definition of "access line" in Section 283.002 (1)(A)(ii) (defining "access line") and the exception provided by Section 283.002(1)(B) (relating to prohibiting "access line" from being construed in certain ways).

(c) Provides that, notwithstanding Section 283.056 (Municipal Authorizations; Prohibition on Other Fees and Charges), a network provider is responsible for paying both the public right-of-way rate or fee required by this chapter and any applicable right-of-way fee required by Chapter 283.

SUBCHAPTER C. ACCESS AND APPROVALS

Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHTS-OF-WAY. (a) Provides that, except as specifically provided by this chapter and, subject to the requirements of this chapter and the approval of a permit application, if required, a network provider is entitled to take certain actions in the public rights-of-way as a permitted use that is not subject to zoning review or similar approval and is not subject to further land use approval in an area that is not zoned.

(b) Provides that a network provider taking an action authorized by Subsection (a) is subject to applicable codes.

Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS. Requires a network provider to construct and maintain structures and facilities 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 greater of certain measurements and is spaced at least 300 linear feet from the nearest existing pole that is capable of supporting network nodes and is located in a public right-of-way.

Sec. 284.104. INSTALLATION IN 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 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. 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. 284.106. 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. 284.107. 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 rights-of-way that includes additional installation and construction details that do not conflict with this chapter.

(b) Requires a network provider to comply with the design manual in relation to work for which the municipality approved a permit application.

Sec. 284.108. EXCEPTIONS. Authorizes a network provider, subject to Subchapter D, to construct, modify, or maintain in a public right-of-way a network node or network 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. 284.109. 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 rights-of-way, to be competitively neutral with regard to other users of the public rights-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, to prohibit, regulate, or charge 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 an express or de facto moratorium 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 to require a network provider to obtain one or more permits to install a network node or node support pole in a public right-of-way if the permit is of general applicability to users of the public rights-of-way and does not apply exclusively to network nodes.

(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 a single permit 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.

(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 rights-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 the 30th day after the date the municipality receives an application, 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.

(d) Requires a municipality to approve or deny a complete application for a new node support pole not later than the 150th day after the date the municipality receives the application. Requires the municipality to approve or deny all other complete applications not later than the 90th day after the date the municipality receives the application.

(e) Requires a municipality that denies a complete application to document the basis for the denial, including the specific applicable code provisions on which the denial was based. Requires the municipality to send the documentation to the applicant on or before the date the authority 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 application not later than the 45th day after the date the municipality receives the 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 the 90th day after the date the permit is approved and requires the network provider to complete the installation not later than the 180th day after the date the installation begins.

(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 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) Requires the amount of an application fee charged by a municipality to fulfill certain criteria.

(c) Authorizes the municipality, in determining for purposes of Subsection (b) the amount of the actual, direct, and reasonable costs, to include reasonable and direct reimbursement of costs incurred by the municipality in relation to third-party legal or engineering review of an application, including reasonable and necessary travel expenses in this state. Prohibits the municipality, in determining for purposes of Subsection (b) the amount of the actual, direct, and reasonable costs, from including direct payments or reimbursement of third-party public right-of-way rates or fees charged on a contingency basis or under a result-based arrangement.

(d) Provides that payment by a network provider of applicable application fees under this chapter does not affect the provisions of Section 283.056 that prohibit a municipality from requiring the provider to pay application or permit fees in relation to telecommunications facilities, other than network nodes, that the provider installs in the public rights-of-way.

Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Prohibits a municipality from requiring a network provider to submit an application for certain routine maintenance or for certain replacements of upgrades of a network node or pole.

(b) Provides that, for the purposes of Subsection (a)(2), a pole or network node is considered to be “substantially similar” if the pole or network node 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.

SUBCHAPTER E. ACCESS TO AUTHORITY STRUCTURES

Sec. 284.201. USE NOT MANDATED. Prohibits this chapter from being construed to require that a municipality allow collocation of network nodes on a municipal pole or a municipally owned utility pole.

Sec. 284.202. NONDISCRIMINATORY USE OF MUNICIPAL POLES. Requires a municipality that chooses to allow collocation of network nodes on municipal poles to comply with Section 54.204 (Discrimination by Municipality Prohibited), Utilities Code.

SUBCHAPTER F. GENERAL CONDITIONS OF ACCESS

Sec. 284.251. 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 rights-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 rights-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

Sec. 284.252. 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 certificated telecommunications providers or municipalities 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. 284.253. RELOCATION. Requires a network provider to relocate or adjust network nodes in a timely manner and without cost to the municipality if the municipality requires the relocation or adjustment to accommodate public improvements constructed on behalf of the municipality in a public right-of-way.

Sec. 284.254. INTERFERENCE. (a) Require 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,” “fee,” “network node,” “node support pole,” “public right-of-way,” and “public right-of-way rate.”

(b) Requires each municipality that charges a public right-of-way rate or fee to construct, install, mount, maintain, modify, operate, or replace a network node or node support pole in a public right-of-way, including collocation in a public right-of-way, not later than the first anniversary of the effective date of this Act, to determine whether the rate or fee complies with the requirements prescribed by Section 284.053, Local Government Code, as added by this Act, and, if the rate or fee does not comply, amend the rate or fee for all persons in any manner necessary for compliance.

SECTION 3. Effective date: upon passage or September 1, 2017.