LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 18, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2838** by Geren (Relating to the deployment of network nodes in public rights-of-way; authorizing fees.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code by adding a chapter to regulate the deployment of network nodes in public rights-of-way. Establishes various definitions for use in the chapter. Places limitations on the size of these network nodes and exempts various pieces of equipment from the calculation of this size. Prohibits municipalities from entering exclusive arrangements for the use of a public right-of-way. Places a cap on fees for the use of public-right-of-ways of $1,000 per pole other than municipally owned poles used for the installation of network nodes. Provides for various adjustments to an existing right-of-way fee as established in Chapter 283 of the Local Government Code. Provides for this fee to be adjusted by the annual rate of inflation as determined by the Public Utility Commission of Texas (PUC).

The bill would establish certain rights of access on public right-of-ways for network providers. Provides certain restrictions on the construction and maintenance of network structures and facilities on these right-of-ways. Establishes limitations on the relative height of poles and their placement in proximity to residential structures or lots. Requires these structures to comport with private deed restrictions. Limits the height of equipment cabinets. Requires compliance with nondiscriminatory undergrounding requirements. Allows municipalities to establish a design manual for the installation and construction of these facilities and requires network providers to comply with these design manuals.

The bill would prohibit municipalities from regulating the deployment of these facilities other than as allowed in this bill. Explicitly prohibits requiring in-kind contribution of network capacity to the municipality and imposing a moratorium on permitting. Establishes restrictions on the type of permits municipalities may require from network providers including requiring the filing of consolidated permits. Regulates the information that municipalities may require as part of the process of issuing permits. Establishes deadlines municipalities must follow in the processing of these permits. Regulates the application fees for these permits. Exempts certain work from permitting.

According to PUC, this bill would have no significant fiscal impact on the state.

The bill takes effect immediately if it receives a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect it takes effect September 1, 2017.

Local Government Impact

According to PUC, this bill would have a significant fiscal impact on local government, however the scale of this impact cannot be determined.

According to the Texas Municipal League (TML), the capped amount of per pole revenue at $1,000 is below existing payments to Houston and Dallas of $2,500. Using node and population data from Houston, the per capita loss as estimated by the Texas Municipal League would be $1.67. For the population of Texas living in incorporated cities (21.2 million) this amounts to an estimated loss of revenue to cities of $35.5 million.

TML also estimates two potential secondary impacts. First, because cellular companies will soon be moving to a new network known as 5G, which requires five times the number of nodes as the existing network, the potential future loss of revenue from pole rentals could be as high as five times current revenue, or $177.5 million annually.

Second, because of the reduction in fees described in this bill, existing video and telecom providers would be incentivized to convert to wireless to avoid paying city franchise fees on existing land-based facilities. Using data from Dallas, TML estimates that these fees provide $30 per capita in revenue to the city. This potential loss projected across the population of Texas living in incorporated cities would be $636 million annually.

In addition to the estimates provided by TML, the City of Dallas indicates that the bill would result in an additional cost of $15 million per year to the city for relocating wireless nodes to conform with public works projects. A statewide estimate for costs due to utility relocation was not provided.

Source Agencies: 473 Public Utility Commission of Texas

LBB Staff: UP, GG, GP, AG, CL, SD, AO