

SUBJECT: Requirements for installing network nodes in public right-of-way

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Giddings, Craddick, Geren, Guillen, K. King, Meyer

0 nays

5 absent — Farrar, Kuempel, Paddie, E. Rodriguez, Smithee

1 present not voting — Oliveira

SENATE VOTE: On final passage, April 6 — 29-0-2 (Hinojosa and Watson present not voting)

WITNESSES: *On House companion bill, HB 2838:*  
For — David Tate and Randy Williams, AT&T; Robert Millar, Crown Castle; Patrick Fucik, Sprint; J.D. Rimann, Texas Public Policy Foundation; Richard Lawson, Verizon; (*Registered, but did not testify:* Amandus Derr, Crown Castle; Tom Jones, General Motors; Drew Scheberle, The Greater Austin Chamber of Commerce; Randy Williams, JLL; Thomas Ratliff, T-Mobile; Caroline Joiner, TechNet; Amanda Martin, Texas Association of Business; Pauline Anton, Texas Association of Mexican American Chambers of Commerce; Elizabeth Lippincott, Texas Border Coalition; Michael Geary, Texas Conservative Coalition; Nora Belcher, Texas e-Health Alliance; Matt Matthews, Wireless Infrastructure Association; Cecilia Wood)

Against — Rob Spillar, City of Austin; Tom Tagliabue, City of Corpus Christi; Don Knight, City of Dallas; Dana Burghdoff, City of Fort Worth; Yushan Chang, City of Houston Mayor's Office; Jarrett Atkinson, City of Lubbock; Rogelio Pena, City of San Antonio; Cathy Cunningham, Cities of Westlake and Hurst; Clarence West, Texas Coalition of Cities for Utility Issues; Snapper Carr, Texas Municipal League; (*Registered, but did not testify:* Robert Turner, Brownwood Area Chamber Legislative Committee, City of Brownwood, and City of Early; Clark Cornwell; City

of Austin; Chance Sparks, City of Buda and the Texas Chapter of the American Planning Association; Lindsey Baker, City of Denton; Guadalupe Cuellar, City of El Paso; Douglas Athas, City of Garland; Heberto Ramirez, City of Laredo; Michelle Leftwich, Kevin Pagan, and Austin Stevenson, City of McAllen; Angela Hale, City of McKinney; Karen Kennard, City of Missouri City; James McCarley, City of Plano; Scott Campbell, City of Roanoke; Ricardo Ramirez and Robert Valenzuela, City of Sugar Land; Ashley Nystrom, City of Waco; Craig Farmer, City of Weatherford; Jim Arnold, Scenic Houston and Scenic Texas; Holly McPherson, Texas Municipal League)

On — Todd Baxter, Charter Communications; Velma Cruz, Texas Cable Association; Walt Baum, Texas Public Power Association; (*Registered, but did not testify*: Blanca Laborde, Level 3 Communications; Brian Lloyd, Public Utility Commission)

**BACKGROUND:** Local Government Code, ch. 283 governs the management of public right-of-way used by telecommunications providers in a municipality. Under sec. 283.002(6), a public right-of-way is defined as the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

According to the Federal Communications Commission, small cells are defined as low-powered, base stations that provide wireless coverage for areas ranging in size from homes and offices to stadiums, hospitals, and other outdoor spaces. Wireless service providers often use small cells to provide connectivity in areas that present coverage gaps created by buildings, towers, and challenging terrain. Small cells are a type of network node.

**DIGEST:** CSSB 1004 would allow wireless network companies to place network nodes in the public right-of-way (ROW) and would provide rules, regulations, and fee structures to reimburse cities for use of the ROW. Municipalities would retain authority to manage the public ROW to ensure the health, safety, and welfare of the public, and would receive compensation installing network nodes on poles.

**Definitions.** The bill would define "network node" as equipment at a fixed location that enables wireless communications between user equipment, such as a cell phone, and a communications network. The bill would define "collocation" as the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public ROW on or adjacent to a pole.

**Limitation on size of network nodes.** The bill would limit the size and placement of network nodes. Equipment attached to a utility pole would have to be installed in accordance with the National Electric Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

**Use of public ROW.** The bill would allow a network provider to connect a network node using the ROW under certain conditions provided by the bill. A municipality would be prohibited from entering into an exclusive agreement with any person for use of the ROW for the construction, operation, marketing, or maintenance of network nodes or node support poles. A network provider that wanted to connect a network node to the network using the public ROW could install its own transport facilities, subject to certain conditions, or obtain transport service from a person that was paying municipal fees to occupy the public ROW that were not less than \$28 per month.

A rate for use of the public ROW could not exceed an annual amount equal to \$250 per network node installed in the public ROW in the city limits. The municipality could charge a network provider a lower fee if the lower fee was nondiscriminatory, related to the use of the public ROW, and not a prohibited gift of the public property. A municipality also could adjust the fee once annually by half the annual change to the consumer price index.

**Collocation of network nodes.** A municipality would be required to allow network nodes to be placed beside other network nodes on service poles under an agreement with nondiscriminatory terms and at a rate not

greater than \$20 per year per pole. The municipality would be prohibited from requiring additional compensation from a network provider other than the compensation authorized by the bill.

**Access and approvals.** Subject to the approval of a permit application if required, a network provider could, without need for a special use permit or similar zoning review and not subject to further land use approval, do the following in the public ROW:

- construct, modify, maintain, operate, relocate, and remove a network node or node support pole;
- modify or replace a utility pole or node support pole; or
- collocate on a pole, subject to an agreement with the municipality.

**Construction and maintenance requirements.** The bill would provide certain construction and maintenance requirements for network nodes and node support poles, including the requirement that network nodes and support poles not obstruct, impede, or hinder the usual travel or public safety in a public ROW. A network provider could construct, modify, or maintain a network node or support pole that exceeded height and distance limitations only if approved by the municipality.

**Installation in municipal parks and residential areas.** A network provider could not install a new node support pole in a public ROW in a municipal park or adjacent to certain streets in or around residential areas without the municipality's written consent.

**Installation in historic or design districts.** The bill would place several conditions on network provider operations in an area designated as an historic district or design district that featured decorative poles. In such areas, the network provider would have to obtain advance approval from a municipality before collocating new network nodes or installing new node support poles. A municipality also could request that the provider comply with the design and aesthetic standards of district.

**Compliance with undergrounding requirement.** A network provider

would be required to comply with underground installation requirements that prohibit installing aboveground structures without first obtaining zoning and land use approval.

**Design manual.** A municipality could adopt a design manual for the installation and construction of network nodes and support poles. A network provider would be required to comply with a manual in place on the permit application date.

**Applications and permits.** Except as provided in the bill, a municipality could not prohibit, regulate, or charge for the installation or collocation of network nodes in a public ROW.

A municipality could require one or more permits for installations under certain conditions outlined in the bill. It could require an applicant to provide certain information, but not more than it would of a telecommunications utility that was not a network provider. This information could include construction and engineering drawings, a certificate that the nodes comply with Federal Communications Commission regulations, and certification that the nodes would be placed into service no more than 60 days after the completion of construction and final testing. An application that did not require zoning or land use approval would be approved by a municipality unless the application or work did not comply with applicable codes, rules, or regulations.

The municipality would be required to approve or deny an application for a node support pole within 150 days after receiving the application, an application for a network node within 60 days, and a transport facility within 21 days. An application would be deemed approved if it was not approved or denied before the applicable date. A network provider would be required to begin installation within six months of approval.

**Application fees.** A municipality could charge an application fee for a permit only if the municipality required a fee for similar types of commercial development. The application fee could not exceed the lesser of the municipality's processing costs, or \$500 per application covering up

to five network nodes, \$250 for each additional network node per application, and \$1,000 per application for each pole.

A fee, application, or permit could not be required for certain work outlined in the bill, including routine maintenance that did not require excavation or closing of sidewalks or vehicular lanes in a public ROW. A municipality could require advance notice for certain types of work.

**Effect on other utilities and providers.** The bill would not apply to poles and structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. An approval for the installation placement, maintenance, or operation of a network node or transport facility could not be construed to allow:

- cable service or video service without complying with requirements for state-issued cable and video franchises; or
- radio station or a telecommunications service in a public ROW.

A municipality could not adopt or enforce any requirement for a wireless service provider, or its affiliate, that holds a cable or video franchise, to obtain any additional authorization or pay any fees based on the provider offering wireless service over its network nodes.

**General conditions of access.** A municipality could continue to exercise zoning, land use, planning, and permitting authority in the city limits, including with respect to utility poles. A municipality also could impose police enforcement of regulations for the management of the public ROW that apply to all persons.

A network provider would be required to relocate or adjust network nodes in a public ROW in a timely manner and without cost to the municipality. A network provider also would be required to ensure the operation of a network node did not cause harmful radio frequency interference with a Federal Communications Commission-authorized mobile telecommunications operation of the municipality.

**Effective date.** The bill would take effect September 1, 2017. The rates, terms, and conditions of agreements and ordinances entered into or enacted before the effective date would apply to all network nodes installed and operational before that date. For rates, terms, agreements, or ordinances affected by the bill that did not comply with the requirements of the bill, a municipality would be required to amend the agreement or ordinance to comply, and those amendments would take effect six months after the effective date. The rates, terms, agreements, or ordinances affected by the bill enacted on or after the effective date would be required to comply with the bill's requirements.

**SUPPORTERS  
SAY:**

CSSB 1004 would provide the regulatory framework and guidelines necessary to develop the next advancement in faster and more efficient wireless broadband, which will soon evolve to 5G service in Texas cities. Wireless consumption has increased significantly during the past several years and will only continue to grow, requiring more investment in faster service.

Rather than relying on a patchwork of confusing regulations that differ across cities, the bill would streamline the process for network providers to build small cell nodes on municipally owned poles, helping companies expand 5G access across the state. Because many cities have not adopted policies for the use of small cell nodes, a statewide policy is needed to establish a regulatory framework that is fair and equitable.

The bill would introduce several requirements on the size and placement of network nodes and support poles, including restrictions on the construction of poles in certain residential, historic, and design districts. Protections in the bill would address potential risks of interference with traffic signals and other city infrastructure. Cities also could develop their own customized design manuals, allowing them to enact policies according to their unique needs.

The bill is designed to ensure that certain companies do not receive an unfair advantage, including a provision that approval for installation not

be construed to authorize an entity to offer cable or video services without following the same requirements applicable to cable and video service providers.

The fees under the bill are at a level that would incentivize companies to provide small cell networks, creating more investment for needed technology and better wireless broadband service for consumers. While reasonable, the fees actually would be higher than those in other states with similar requirements for small cell deployment.

OPPONENTS  
SAY:

CSSB 1004 would be unnecessary because many cities already work with network providers to allow access to their poles and have agreements with them on the use of their infrastructure. The bill would take away a city's ability to control the use of rights-of-way (ROW), removing its capacity to uphold safety and design standards. Cities also would be required to allow third-party access to traffic signals and other city infrastructure, creating risks to public safety if there were electrical or other issues with the network nodes.

The bill would give an unfair advantage to certain companies by allowing them to pay one rate for use of the ROW, while cable companies would have to continue to pay higher fees and regulatory costs for the same use of the ROW.

The proposed fee for companies to have access to the ROW is too low, which could incentivize some companies to build new poles for every small cell, as allowed under the bill. This could lead to a proliferation of unsightly poles around a city. Providing private companies access to publicly owned structures without charging enough to cover costs essentially would be a subsidy for network providers.

NOTES:

CSSB 1004 differs from the Senate-passed bill in several ways, including that the committee substitute would:

- increase the amount of application fees from \$100 to \$500 per application covering up to five network nodes and from \$50 to



- \$250 for each additional network node per application;
- add a \$1,000 fee per application for each pole; and
- prohibit network providers from installing a new node in a municipal park without the city's written consent.

According to the Legislative Budget Board's fiscal note, the bill could have a significant, but indeterminate, negative fiscal impact on local governments.

A companion bill, HB 2838 by Geren, was left pending after a public hearing in the House State Affairs Committee on April 19.