

**STAFF ATTACHMENT**

**SUMMARY OF APPROVED TRANSPORTATION AND AIR QUALITY BILLS**  
**85<sup>TH</sup> TEXAS LEGISLATURE**

**SB 1004 (Hancock) Relating to the deployment of network nodes in public right-of-way; authorizing fees.**

The bill allows 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 provides definitions for the following terms: antenna, applicable codes, collocate, collocation, decorative pole, design district, historic district, law, macro tower, micro network node, municipally owned pole, municipal park, network node, network provider, permit, pole, private easement, public ROW, public ROW rate, service pole, transport facility, utility pole, wireless service, and wireless service provider.

**Limitation on Size of Network Nodes**

The bill limits 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.

**Exclusive Use Prohibited**

A municipality may not enter into an exclusive arrangement with any person for use of the public ROW for the construction, operation, marketing, or maintenance of network nodes or node support poles.

**Annual Public ROW Rate and Adjustment**

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.

**Use of Public ROW and Applicable Rate**

A network provider that wants to connect a network node to the network using the public ROW may install its own transport facilities or obtain transport service from a person that is paying municipal fees to occupy the public ROW that are the equivalent of not less than \$28 per node per month.

**Collocation of Network Nodes on Service Poles**

A municipality shall allow collocation of network nodes on service poles on nondiscriminatory terms and conditions and at a rate not greater than \$20 per year per service pole.

### **Prohibition on Other Compensation**

A municipality may not require a network provider to pay any compensation other than the compensation authorized by this chapter for the right to use a public ROW for network nodes, node support poles, or transport facilities for network nodes.

### **Right of Access to Public ROW**

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
- collocate on a pole, subject to an agreement with the municipality

### **General Construction and Maintenance Requirements**

A network provider must construct and maintain network nodes and support poles that do not:

- obstruct, impede, or hinder the usual travel or public safety on a public ROW
- obstruct the legal use of a public ROW by other utility providers
- violate nondiscriminatory applicable codes
- violate or conflict with the municipality's publicly disclosed public ROW design specifications
- violate the federal Americans with Disabilities Act of 1990

### **General Limitation on Placement of Poles**

A network provider must ensure that each new, modified, or replacement utility pole or node support pole installed in a public ROW in relation to which the network provider received approval of a permit application does not exceed the lesser of 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public ROW, or 55 feet above ground level.

### **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**

In a historic district or design district, 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 may also request that the provider comply with the design and aesthetic standards of district or use camouflage measures.

### **Compliance with Undergrounding Requirement**

A network provider must comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private

restrictions that prohibit installing aboveground structures in a public ROW without first obtaining zoning or land use approval.

### **Design Manual**

A municipality may adopt a design manual for the installation and construction of network nodes and new node support poles in the public ROW that includes additional installation and construction details and the network provider must comply with a design manual.

### **Exceptions**

A network provider may construct, modify, or maintain in a public ROW a network node or node 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.

### **Discrimination Prohibited**

A municipality, in the exercise of the municipality's administrative and regulatory authority related to the management of and access to the public ROW, must be competitively neutral with regard to other users of the public ROW.

### **Applications and Permit Review Process**

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.

No later than the 30th day after the date the municipality receives an application for a permit for a network node or node support pole, or the 10th day after the date the municipality receives an application for a permit for a transport facility, the municipality shall determine whether the application is complete and notify the applicant of that determination. If the municipality determines that the application is not complete, the municipality shall specifically identify the missing information.

A municipality shall 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 or other municipal rules, regulations, or other law that is consistent with this chapter.

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.

### **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.

### **Certain Work Exempted**

A municipality may not require a network provider to submit an application, obtain a permit, or pay a rate for routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public ROW; replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public ROW; or the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in compliance with the National Electrical Safety Code.

### **Use of Municipally Owned Utility Poles**

The governing body of a municipally owned utility shall allow collocation of network nodes on municipally owned utility poles on nondiscriminatory terms and conditions and pursuant to a negotiated pole attachment agreement, including any applicable permitting requirements of the municipally owned utility.

### **Local Police-Power-Based Regulations**

Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles. A municipality may exercise that authority to impose police-power-based regulations for the management of the public ROW that apply to all persons subject to the municipality. A municipality may impose police-power-based regulations in the management of the activities of network providers in the public ROW only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

### **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.