

BILL ANALYSIS

S.B. 586
By: Perry
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that the upcoming expiration of statutory provisions providing for qualifying small and rural incumbent local exchange companies to receive distributions from the Texas universal service fund will cause these companies to lose millions of dollars in annual support, negatively impacting the development and maintenance of basic telecommunications infrastructure across rural Texas. S.B. 586 seeks to provide for a program to support these small and rural companies that expires in 2023.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 586 amends the Utilities Code to require the Public Utility Commission of Texas (PUC), on the written request of a small provider that has neither elected to be subject to incentive regulation or to make an infrastructure commitment nor to be subject to corresponding regulation, to determine and disburse support from universal service funds to the small provider in fixed monthly amounts based on an annualized support amount the PUC determines to be sufficient, when combined with regulated revenues, to permit the small provider the opportunity to earn a reasonable return on the utility's invested capital. The bill defines "small provider" as an incumbent local exchange company or cooperative that, on September 1, 2013, together with all local exchange companies affiliated with the company or cooperative on that date, served 31,000 or fewer access lines in Texas or a company or cooperative that is a successor to such a company or cooperative.

S.B. 586 requires the PUC, not later than January 1, 2018, to initiate rulemaking proceedings to develop and implement a mechanism to determine the annualized support amount to be disbursed under the bill and sets out requirements for that mechanism. The bill requires a small provider that makes a written request for support to the PUC to continue to receive the same level of support it was receiving on the date of the written request until the PUC makes a determination or adjustment through the mechanism. The bill authorizes the PUC, in a proceeding to adjust support levels using the mechanism, to consider the small provider's data for a period not to exceed three fiscal years before the date the proceeding is initiated. The bill establishes that, for purposes of the mechanism, a return is deemed reasonable if the return is within two percentage points above or three percentage points below the prescribed rate of return of the Federal Communications Commission (FCC) as of the date of any determination, review,

or adjustment under the bill's provisions, to be no greater than 9.75 percent before July 1, 2021. The bill requires the PUC, if the PUC finds that the FCC no longer prescribes a rate of return necessary to implement the bill's Utilities Code provisions, to initiate proceedings to determine or modify the rate of return to be used for the purposes of those provisions as necessary. The bill subjects a small provider's reported return to assessment under certain procedures required to be provided by the mechanism and prohibits the PUC from approving a support adjustment under the bill's provisions if the PUC determines that a small provider's return for the previous fiscal year was reasonable.

S.B. 586 authorizes a small provider whose return is not reasonable because the return is more than three percentage points below the FCC's prescribed rate of return, as described by the bill, to file an application that is eligible for administrative review or informal disposition to adjust support or rates to a level that would bring the small provider's return into the range that would be deemed reasonable, except that the bill prohibits the adjustment from setting a small provider's support level at more than 140 percent of the annualized support amount the provider received in the 12-month period before the date of adjustment. The bill prohibits such an adjustment rate from adversely affecting universal service and prohibits a small provider that files such an application from filing a subsequent application for adjustment before the third anniversary of the date on which the small provider's most recent application for adjustment is initiated, except for good cause.

S.B. 586 establishes that there is no presumption that the return is unreasonable for a small provider whose return is more than two percentage points above the FCC prescribed rate of return, as described by the bill, but authorizes the PUC on its own motion to initiate a proceeding to review the small provider's support level and regulated revenues and, after notice and an opportunity for a hearing, to adjust the provider's level of support or rates, if appropriate. The bill prohibits such a rate adjustment from adversely affecting universal service and prohibits the PUC from initiating a subsequent adjustment proceeding for a small provider before the third anniversary of the date on which the small provider's most recent adjustment proceeding is initiated, except for good cause.

S.B. 586 requires a small provider that is eligible to have support determined and distributed under the bill's provisions to continue to receive the same level of support it was receiving on August 31, 2017, until the earlier of the date on which the PUC makes a determination or adjustment through the adjustment mechanism, or the 61st day after the date the PUC adopts the mechanism. The bill makes confidential and exempts from disclosure under state public information law a report or information the PUC requires a small provider to provide under the bill's provisions. The bill subjects a third party's access to confidential information in any PUC rulemaking proceeding regarding the mechanism to an appropriate protective order. The bill establishes that provisions governing adjustments under the small and rural incumbent local exchange universal service plan do not limit the authority of the PUC to initiate a review of a small provider under another provision of the Public Utility Regulatory Act. The bill authorizes the PUC, in certain rate-related proceedings for a small provider, to recalculate the annualized support amount to be disbursed to the small provider and to be used as the basis for adjustment in any subsequent proceeding under the bill's provisions.

S.B. 586 postpones the date on which certain provisions governing adjustments under the small and rural incumbent local exchange universal service plan are set to expire from September 1, 2017, to September 1, 2023, and sets certain other related bill provisions to expire on September 1, 2023.

S.B. 586 requires the PUC, on or after January 1, 2022, and before July 1, 2022, to initiate a proceeding to review and evaluate whether statutory provisions governing adjustments under the small and rural incumbent local exchange universal service plan, as amended by the bill, accomplish the purposes of the establishment of the universal service fund and allow each small provider the opportunity to earn a reasonable return and should be continued or whether changes

in law to amend or replace the created mechanism are necessary to accomplish those purposes. The bill grants the PUC all authority necessary to conduct the review and requires the PUC, after the review is conducted and not later than September 1, 2022, to submit a specified report to the legislature. The bill entitles a party to a PUC proceeding under the bill's provisions examining the universal service fund and the effectiveness of statutory provisions governing adjustments under the small and rural incumbent local exchange universal service plan, as amended by the bill, to access certain confidential information provided to the PUC by a telecommunications provider if a protective order is issued in the proceeding for the confidential information.

EFFECTIVE DATE

September 1, 2017.