



TEXAS MUNICIPAL LEAGUE  
*Empowering Texas cities to serve their citizens*

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President **John B. Love III**, Mayor Pro Tem, Midland  
Executive Director **Bennett Sandlin**

March 19, 2019

The Honorable Kelly Hancock  
Senate Business and Commerce Committee  
P.O. Box 12068  
Austin, Texas 78711-2068

Dear Mr. Chairman:

I am writing on behalf of the Texas Municipal League to express our opposition to your **Senate Bill 1152**. The bill would allow a company to elect to pay the lesser of its access line fees or state cable franchise fees.

The reason that state law mandates payment for each service is that companies profit from both. Thus, the fair market valuation of the right-of-way must include compensation for both. By allowing a company to stop paying right-of-way rental fees, S.B. 1152 would unconstitutionally gift public property to that company. Under Article III, Section 52, of the Texas Constitution, the state may not force a city to allow public property to be used by private entities for less than market value.

Some try to characterize right-of-way fees as a "tax." However, both state and federal courts have repeatedly held such payments are rent, rather a tax. The U.S. Supreme Court in 1893, the Texas Supreme Court in 1940, and the federal Fifth Circuit Court of Appeals in 1997 have all considered the issue, and all have determined that right-of-way user fees are "rental" payments. The Texas attorney general has also considered this issue and opined that right-of-way fees are rental fees.

Right-of-way rental fees protect city taxpayers and help keep property taxes low. Estimated city-reported losses range from \$50,000 annually for the City of Coppell to millions of dollars for the Cities of Dallas, Houston, Austin, San Antonio, Arlington, and El Paso.

Thank you for your consideration and please do not hesitate to contact me if I can be of any assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shanna Igo', written in a cursive style.

Shanna Igo  
*Deputy Executive Director*

cc: Members of the Senate Business and Commerce Committee