

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5533-01
Bill No.: SB 837
Subject: Bonds - Surety; Business and Commerce; Cities, Towns, and Villages;
 Construction and Building Codes; Fees; Historic Preservation; Housing; Insurance
 - General; Planning and Zoning; Political Subdivisions; Public Records; Public
 Meetings; Telecommunications
Type: Original
Date: February 6, 2018

Bill Summary: This proposal establishes the Uniform Small Wireless Facility Deployment Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Highway Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Total Estimated Net Effect on Other State Funds	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development (Public Service Commission, Office of Public Counsel, Division of Energy)** assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Department of Transportation (MoDOT)** believe that the results of this proposal could be negative for three primary reasons: safety issues, hampering of MoDOT operations, and any additional costs of administration. In sum, at this early point in the legislative process, MoDOT is unable to quantify the myriad of provisions these bills modify, but will continue to work with the General Assembly and stakeholders to create the optimal solution.

Oversight will reflect a \$0 or (Unknown) cost to MoDOT to Highway Funds.

Officials from the **St. Louis County Government** assume this provision concerning application processing time deadlines would necessitate a minimum of one additional full time staff person. An estimate for salary and benefits for the additional full time staff person would be approximately \$120,000/year. For 2019, 2020, and 2021 the increased cost for this full time employee would be approximately \$360,000. Another \$50,000 per year for additional staff time as needed would total \$150,000 (note explanation below). Total additional staffing cost estimate for 2019, 2020, and 2021 is \$510,000.

The bill as presently worded would severely limit the amount of bonding that can be required of applicants. Cost to County for the limited bonding is unknown.

As presently worded, this bill jeopardizes St. Louis County's ability to continue to collect the linear foot fees and antenna fees set forth by St. Louis County ordinances for placement of communications facilities in the public rights-of-way. The St. Louis County Government estimate these lost revenues to be approximately \$500,000 for FY 19, \$ 1,200,000 for 2020 and \$1,300,000 for 2021.

ASSUMPTION (continued)

The bill prohibits requiring liability insurance coverage naming County as additional insured from the applicant. This provision would result in increased liability exposure for the County. The losses resulting from increased liability exposure are unknown.

The bill contains a provision that would deem applications approved if not approved or denied by the County within 45 days of submittal. The bill would allow applicants to submit up to 25 separate facility applications at one time, and up to 75 separate facility applications within a 14 day period, with the requirement to process the applications within 10 days and approve or deny the applications within 45 days. Processing this many applications in such a short time would not be possible even with one additional full time staff person. Additional staff time beyond the one additional full time staff person would be required on an as needed basis at an estimated cost of \$50,000/year. For 2019, 2020, and 2021 this additional cost would total approximately \$150,000.

Since **Oversight** has only received one response from a local political subdivision, Oversight will reflect an Unknown Cost and Loss to local governments as a result of this proposal.

Officials from the **Office of Administration - Information Technology Services Division** and **Facilities Management Design and Construction**, the **Missouri Department of Conservation**, the **Department of Natural Resources** and the **Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the City of Columbia, Springfield, City of Kansas City, Boone County, Jackson County and Greene County did not respond to **Oversights** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2019	FY 2020	FY 2021
	(10 Mo.)		
HIGHWAY FUNDS			
<u>Cost - MoDOT - change of operations and/or additional costs of administration</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
ESTIMATED NET EFFECT TO HIGHWAY FUND	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> - Administrative Cost	(Unknown)	(Unknown)	(Unknown)
<u>Loss</u> - Loss of fees and increased liability coverage	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	(Unknown)	(Unknown)	(Unknown)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to the deployment of wireless facilities.

This act modifies the definition of "managing the public right-of-way" to include that permitting requirements for wireless communications facilities shall be consistent with the Uniform Wireless Communications Infrastructure Deployment Act and the Uniform Small Wireless Facility Deployment Act.

Currently, certain political subdivisions may enact ordinances charging a public utility right-of-way user a linear foot fee if the right-of-way user does not pay gross receipts taxes. This act prohibits political subdivisions from assessing a linear foot fee if the right-of-way user pays business license fees, or business license taxes that are imposed specifically on communications-related revenue, services, or equipment.

This act prohibits an authority, defined as the state or any political subdivision thereof, from entering into an exclusive arrangement with any person for the use of the right-of-way for the collocation of small wireless facilities or the installation or replacement of utility poles. This act also allows wireless providers to collocate small wireless facilities and install and replace utility poles in the public right-of-way, except for in single-family residential neighborhoods or historic neighborhoods where an authority may require reasonable concealment measures. The new or replaced utility poles shall meet certain criteria as set forth in this act. Small wireless facility collocations shall not interfere with existing utility facilities, and an authority may require a wireless provider to repair all damage to the right-of-way caused by the provider's activities.

FISCAL DESCRIPTION (continued)

If such provider does not make the required repairs, the authority may effect those repairs and charge the provider accordingly.

This act prohibits an authority from prohibiting, regulating, or charging for the collocation of small wireless facilities. Further, small wireless facilities shall be classified as permitted if they are collocated in the right-of-way, or outside the right-of-way in a property not zoned exclusively for single family residential use.

An authority may require a wireless provider to obtain a permit to collocate a small wireless facility or install or replace a utility pole. Such authority shall receive applications and issue permits, subject to certain requirements and permit issuance timelines set forth in this act. An authority shall not require an application for routine maintenance on previously permitted small wireless facilities, the replacement of small wireless facilities, or the installation of micro wireless facilities strung between existing utility poles. No approval for the installation of a small wireless facility shall be construed to confer authorization for the provision of cable TV service, or the installation of a wireline backhaul facility or communications facility, in the right-of-way.

This act requires an authority to authorize the collocation of small wireless facilities on authority wireless support structures and utility poles to the same extent the authority permits access to such structures for other commercial projects or uses. Further, this act prohibits an authority from entering into an exclusive agreement with a wireless provider concerning authority poles or support structures, including stadiums and enclosed arenas, unless the agreement meets certain requirements set forth in this act.

This act prohibits a person owning, managing, or controlling authority utility poles in the right-of-way from entering into an exclusive arrangement with any person for the right to attach to such poles. The rates to collocate on authority poles shall be nondiscriminatory regardless of the services provided by the collocating person.

Under this act, make-ready work shall be addressed as follows: rates, fees, terms, and conditions for make-ready work to collocate on an authority pole shall be nondiscriminatory, the authority shall provide a good faith estimate for any make-ready work necessary and work within the timelines set forth in this act, and the person owning or managing the authority utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work shall not exceed actual costs.

FISCAL DESCRIPTION (continued)

This act prohibits an authority from requiring a wireless provider to pay any rates, fees, or compensation to the authority for the right to use the right-of-way, for collocation of small wireless facilities, or for the installation and replacement of utility poles in the right-of-way. Further, this act sets forth criteria for application fees that may be assessed by an authority, including that an authority may charge a fee only if such fee is required for similar types of commercial development or construction. Further, where costs to be recovered by an application fee are already recovered by existing fees, rates, licenses, or taxes paid by a wireless provider, no fee may be assessed. An application fee shall also not include travel expenses incurred by a third party, and a collocation fee shall be limited to the cost of granting a building permit for similar types of commercial development. The total fee for any application for the collocation of a small wireless facility on an existing or replacement utility pole shall not exceed \$500 per application. Application fees for the installation, modification, or replacement of a non-authority utility pole and collocation of a small wireless facility shall not exceed \$250 per pole for access to the right-of-way, and the rate for collocation of a small wireless facility to an authority pole shall not exceed \$20 per pole per year.

Under this act, an authority shall not demand any fees for small wireless facilities except those authorized under this act, and right-of-way permit fees. Right-of-way permit fees shall be competitively neutral, and shall not be in the form of a franchise fee or tax, or other fee based on non-cost related factors.

Nothing in this act shall be interpreted to allow any entity to provide service regulated under certain provisions of federal law, without compliance with such federal provisions. Further, nothing in this act shall be interpreted to impose new requirements on cable providers for the provision of such service.

Subject to the provisions of this act, an authority may continue to exercise zoning, land use, planning, and permitting authority within its boundaries, including with respect to wireless support structures and utility poles. An authority shall not have jurisdiction over the installation or operation of any small wireless facility in an interior structure, or upon the site of any campus, stadium, or athletic facility not owned or controlled by the authority.

This act allows an authority to adopt an ordinance that makes available to wireless providers rates, fees, and terms that comply with this act. If such ordinance is not adopted, wireless providers may install and operate small wireless facilities and utility poles under the requirements of this act.

FISCAL DESCRIPTION (continued)

Under this act, a municipal electric utility may require an attaching entity to enter into a pole attachment agreement, except that wireless providers may collocate small wireless facilities on municipal electric utility-owned poles within the right-of-way without being required to apply for any license or franchise with the utility. Within 3 months from August 28, 2018, or 3 months after receiving a request from a wireless provider, each municipal electric utility shall prepare and make available a standard wireless pole attachment agreement. In the absence of a standard pole attachment agreement by such date, wireless providers may install and operate small wireless facilities and utility poles under the requirements of this act. All pole attachment agreements with wireless providers shall be considered a public record.

A court of competent jurisdiction shall have jurisdiction to determine all disputes arising under this act.

This act allows an authority to adopt indemnification, insurance, and bonding requirements related to small wireless facility permits, except an authority shall not require a wireless provider to indemnify and hold harmless the authority in certain claims. Further, an authority may require a wireless provider to obtain and have proof of insurance coverage prior to the effective date of any permit issued for a small wireless facility, but the authority shall not require such provider to name the authority or its officers or employees as additionally insured. An authority may adopt bonding requirements for small wireless facilities if the authority imposes similar requirements in connection with permits issued for other right-of-way users. Such bonds shall provide for the removal of abandoned or improperly maintained small wireless facilities, restoration of the right-of-way in connection with such abandoned facilities, and shall assist in recouping rates or fees that have not been paid by a wireless provider in over 12 months. Such bonding requirements shall not exceed \$200 per small wireless facility, and shall not exceed \$10,000 across all facilities within the jurisdiction of a single authority.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Economic Development
Office of Administration
Department of Transportation
Missouri Department of Conservation
Department of Natural Resources
Office of the State Courts Administrator
St. Louis County Government

Ross Strope

A handwritten signature in black ink, appearing to read "Ross Strope".

Acting Director
February 6, 2018