

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

LR No.: 1518-06
Bill No.: HCS for SS for SCS for SB 369
Subject: Political Subdivisions: Utilities, Right-of-way
Type: Original
Date: May 9, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Total Estimated Net Effect on <u>All</u> State Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government*	(Unknown)	(Unknown)	(\$Unknown)

* Fiscal impact is estimated to exceed \$1,000,000 annually.

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Department of Economic Development-Public Service Commission**, stated there would be no fiscal impact to their department.

Officials of the **Missouri Department of Transportation** assume no fiscal impact.

Officials of the **Missouri Department of Conservation** stated this proposal would not have fiscal impact on MDC funds.

Officials of the **Office of Administration- Division of Design and Construction** stated their would be no fiscal impact to their division.

Officials of the **Department of Natural Resources** stated that their department manages the state park system and is responsible for maintaining certain roads within the state park system. Depending upon the definition/intent of the term public right-of-way, the department may be fiscally impacted.

Officials of the **City of Ozark** assume this proposal would cause the city to lose their franchise capabilities on all utility companies and the corresponding revenues. Officials stated that this proposal would give the utility companies the full use of the city right-of-way including the ability to supercede local zoning laws. Officials assume if a utility wanted to locate a tower or satellite dish in front of someone's house the city would have to allow it. That assumption is based on language in the bill, "you shall grant consent". Officials assume they would lose any in-kind services to their schools and government, and any franchise agreement. Officials estimate fiscal impact to the City's General Revenue Fund for the current year would be \$193,000.

Officials of the **City of Kansas City** stated this proposal would penalize the City of Kansas City over \$1 to \$1.5 million dollars every year, on lost street degradation fees. The money needed to resurface the streets at an accelerated rate because so many street cuts are made each year must come from some other source. Officials assume this proposal does not "require" companies to enter into franchises. Telecommunications companies are explicitly exempted from any franchise requirement, but nowhere is a cable television operator "required" to enter into a franchise. This could potentially leave the City of Kansas City without, in current dollars, franchise fee-rental- payments of at least \$3 million each year when the current franchise expires. Officials concluded that this proposal would have multi-million dollar impact on the City of Kansas City.

ASSUMPTION (continued)

Officials of the **City of St. Louis** stated that the major impact would be the termination of current franchise fees in 2004. Officials stated this proposal would deprive the City of fees assessed to maintain and repair hundreds of miles of streets. Fiscal impact is unknown. Officials stated there would be a loss of income from franchise tax revenues from cable operators of approximately \$1.45 million annually, and there would be an annual loss of income of approximately \$13.3 million from Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers. Officials stated the City would lose in-kind services, which have an estimated annual value of \$891,666.

Officials stated that the change in Section 67.1836.1(3) creates new costs not previously reported. Officials assume that a political subdivision is now obligated to conduct research on the cost of alternative routes before having the right to deny a permit, no matter how justified the reason. Estimated cost is approximately \$500 to \$1,000 per incident, including internal investigation, additional review time of project costs, and legal counsel. Officials assume that this procedure would make it easier for a public utility to challenge a permit denial and demand mediation. Officials assume that new language in Section 67.1842.3, which states, "For the purpose of protecting the public health and welfare through proper management of the public right-of-way, records of a proprietary nature provided by public utility right-of-way users or their agents to a governmental entity shall be closed records unless the public utility right-of-way user determines otherwise." Officials assume that this broad language requires the City to provide separate treatment for materials open and accessible under the Sunshine Act and materials closed and proprietary under this bill. Officials assume that separate treatment would require the City to maintain separate records, and separate files. Officials assume that costs would be in the \$100,000 range.

Officials of the **City of Springfield** stated that this proposal does not alleviate the financial burden on Springfield or their local school districts or colleges in the area with the loss of cable television in-kind services and free use of valuable channels. Therefore, officials assume this proposal would have fiscal impact to City funds.

Officials stated they would lose utility franchise fee payments as no franchise would be allowed to require rental for right-of-way use over and above the right-of-way permit fee as defined by this proposal. City Officials estimate the loss of revenue from franchise fees at \$19.4 million in 2002, \$20 million in 2003, and \$22 million in 2004. Officials assume the actual loss of revenues of in kind services, and other requirements is unknown. Officials also stated they would have new costs from arbitration and litigation expenses, street and sidewalk repairs, delays in work, etc. are estimated to cost the City as much as \$12.1 million in 2002; \$12.3 million in 2003; and \$12.4 million in 2004. **Springfield officials stated that their local school district would lose approximately \$1.5 million in services and an access channel free each year. Southwest Missouri State University will lose its in-kind services bargained for by the city as a part of the franchise.**

ASSUMPTION (continued)

Officials of the **Office of the Director of Administration of St. Louis County** stated that this proposal would deprive the county of revenues for all three years in the millions, due to the bill's prohibition on franchises, which is the means by which rent is collected for the use of the public's right-of-way. St. Louis County currently receives franchise fees totaling more than 2.5 million dollars per year from public utility right-of-way users. Officials identified the following fiscal impact.

- 1.) Loss of revenue from franchise fees will need to be replaced with tax revenue, or there will be a reduction of governmental services.
- 2.) Replacement of in-kind services which are currently included in the County's franchise with DTI, a telecommunications company, and the County's cable franchise.
- 3.) Personnel costs due to staff time involved in administrative appeals of denials or revocations of permits.
- 4.) Costs of mandatory mediation, including County's attorney fees and internal costs, and required payments of external costs of mediation.
- 5.) Costs of litigation over the meaning of such terms as "unreasonable requirement for entry", "unlawfully discriminate," "grant a preference", and whether costs are "substantiated", or properly "allocated".

Officials concluded that they expect losses, for each fiscal year, to be in excess of 1 million dollars.

Oversight will show loss of revenue to local government, and increased cost of street maintenance, etc. as (unknown). Oversight assumes fiscal impact to local governments on a statewide basis would exceed \$1,000,000 annually.

<u>FISCAL IMPACT - State Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
	\$0	\$0	\$0
	FY 2002 (10 Mo.)	FY 2003	FY 2004
<u>FISCAL IMPACT - Local Government</u>			
<u>Income</u> to Cities from permit fees	Unknown	Unknown	Unknown

Loss of income to Cities

	FY 2002	FY 2003	FY 2004
<u>FISCAL IMPACT - Local Government</u>	(10 Mo.)		
from Franchise Fees	(Unknown)	(Unknown)	(Unknown)
<u>Cost</u> to Cities			
from Mediation fees, street repairs etc.	(Unknown)	(Unknown)	(Unknown)
Estimated Net Effect to Local Government*	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

*** Oversight assumes that, on a statewide basis, the fiscal impact to local governments would exceed \$1,000,000 annually. Income from permit fees is not expected to offset costs or loss of income, therefore, Net Effect is shown as (Unknown).**

FISCAL IMPACT - Small Business

Small business in the excavation business would be expected to pay a permit fee when excavating on municipal rights-of-way.

DESCRIPTION

This substitute outlines procedures for public utility right-of-way user access to the public rights-of-way. Political subdivisions may by ordinance require public utility right-of-way users to obtain excavation permits and to submit plans for anticipated construction projects requiring excavation in the public right-of-way. After excavation, a right-of-way user must restore the right-of-way and surrounding areas to the equivalent condition that existed prior to excavation.

Right-of-way permits may be denied or revoked for specified reasons; a review process of denied or revoked permits by the governing body of the political subdivision or a delegated body is provided. Right-of-way permit fees must reflect the actual costs of managing the public right-of-way and be allocated among all users in a nondiscriminatory manner. Political subdivisions must not unlawfully discriminate among users of the right-of-way, grant preference to any right-of-way user over another, or create unreasonable requirements for access to the right-of-way. Political subdivisions are prohibited from collecting a right-of-way fee through the provision of in-kind services by a public utility right-of-way user, except from cable television service providers as authorized by federal law. The public utility right-of-way user is responsible for all acts or omissions of contractors or subcontractors used for excavating in the public right-of-way.

DESCRIPTION

Nothing in the substitute relieves a political subdivision of any obligations under an existing franchise or relieves a public utility right-of-way user of the provisions of an existing franchise, franchise fees, license, or other agreement in effect on the bill's effective date. Nothing in the substitute prohibits a political subdivision or public utility right-of-way user from renewing an existing franchise or entering into a new franchise or prohibits a political subdivision from enacting or enforcing an ordinance to require a business license tax, sales tax, occupation tax, franchise tax, gross receipts tax, property tax, or other similar tax, as long as the tax is not a condition of using the public right-of-way.

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- Public Service Commission
Department of Natural Resources
Missouri Department of Transportation
Missouri Department of Conservation
Office of Administration- Division of Design and Construction
City of Kansas City
City of St.Louis
City of Springfield
St. Louis County- Director of Administration
City of Ozark



Jeanne Jarrett, CPA
Director
May 9, 2001