

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

LR No.: 1518-09
Bill No.: Truly Agreed to and Finally Passed CCS for HS for HCS for SS for SCS for SB 369
Subject: Political Subdivisions: Utilities, Right-of-way
Type: Original
Date: May 31, 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 8 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 and Budget** stated there 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 Kansas City** assume that this proposal would allow a right-of-way user to pick its route and only be required to deviate if the cost of deviation to the user is less than 10% , even if the street was resurfaced the day before the permit demand. This alone has the potential of costing the City of Kansas City hundreds of thousands of dollars every year, in added street resurfacing costs, or more likely, street damage that will not be promptly repaired. Officials stated that Kansas City has about 2,200 miles of streets that it maintains. Over the long haul the costs will increase because the street degradation fee the City is authorized to charge, (the one adopted prior to May 1, 2001), can never be increased to meet future costs increases. Officials assume this proposal prohibits any future degradation fees. Officials assume Unknown loss of revenue and increased costs from this proposal.

Officials of the **City of St. Louis** assume that the major impact would be the termination of current franchise fees in 2004. Officials stated this proposal in Section 67.1846.1 states that cities are not prohibited from renewing franchises, however, language in Section 67.1842.1(4) renders that meaningless. Officials stated that Southwestern Bell Telephone's current agreement with the city expires in December 2002. Officials are unsure if this proposal becomes law if they will lose the current franchise fee or rental fee of 12 million dollars. Officials stated that this proposal wipes out in-kind services the city has received for 50 years. Officials assume that space for police and emergency wires in Southwestern Bell Telephone conduit, will now have to

ASSUMPTION (continued)

be purchased. Officials stated that Section 67.1846.2 states “for purposes of this subsection, the term ‘franchise fee’ shall mean ‘franchise tax.’” Officials stated that in every major court case since 1895 and as recently as 1997 has found a franchise fee to be in the nature of a rental for use of public property. By suddenly making it a tax, officials assume it could now be subject to voter approval under Hancock. Officials assume that this could be enormous for every city in the state, because, most all receive cable franchise fees. Officials stated that St. Louis receives about \$1.4 million a year. Officials stated that they would expect additional costs from lawsuits. Officials stated that in 1995 MCI sued the city and lost, however, the city had costs of \$130,000 which they could not recover. Officials assume there would be several lawsuits as a result of this proposal. Officials assume that the city would have additional street repair costs, because this proposal would not allow cities to require a performance bond, or insurance, if a company has over \$25 million in net assets. Officials stated that they would be prohibited from any of these requirements from a first time user with no track record of performance, and should the company not fix the right-of-way to city standards and not pay their street bill, the city would be stuck for the cost. Officials stated that industry leaders stated that they pay over \$100 million annually in franchise fees to cities. Officials are concerned how this loss can be made up, and how do cities pay legal costs with these industries, since Section 67.1830.5 specifically does not allow the cities to recover the costs of litigation.

Officials of the **City of Springfield** stated, based on industry testimony and intent that this proposal would have negative fiscal impact on their city finances. Officials stated that because some agreements in place prior to May 1st, Springfield revenues would be impacted by an amount of \$500,000 annually from telephone companies who may not be required to obtain a franchise. Officials assume, if interpreted literally, that the city would have to pay for its in-kind services from its own electric, gas, and water company which would be approximately \$12 million annually.

Officials stated that there would be some new deadlines to meet, such as the city must grant consent and deal with more companies, 31 day review, which will require at least one or more inspector at \$50,000 a year.

Officials stated that since the city must accept data in the form the company wishes to submit would require the hiring of an Information System Analyst/Programmer to be able to convert any software program to the GIS system. Officials estimate the added cost at \$50,000 a year to start. Officials stated that this cost must be paid by the city because this cost could not be put into a permit charge, since the legislation only allows permit charges to reflect what the city’s actual costs are.

ASSUMPTION (continued)

Officials assume the city would need to acquire additional right-of-way for multiple users, which requires more width since the city cannot require companies to take another route if their costs is increased by at least 10%. For safety reasons, utilities should have more width for spacing between users. Officials estimate this new cost of approximately \$500,000 annually.

Officials assume that cases would have to be prepared for Council review if permits or other related issues to right-of-way lawsuits etc.. Officials estimate they would need one-third of FTE, Staff Person, and one-sixth of Attorney time all of which would cost approximately \$38,000.

Officials assume there could be cost associated with trying to collect repair money from companies that would be exempt from any type of performance bonds, insurance, etc. by this proposal. Officials stated the cost is unknown for attorney time.

Officials assume there would be cost of litigation over rights under this bill. Officials estimate costs of litigation at \$150,000.

Officials assume there would be losses associated with franchise fees. Officials stated if there were no agreements in place with someone on May 1st, then the gross percentage franchise fee would not be grandfathered in and Section 67.1842.1(4) purports to say no franchises may be required of phone companies. Officials noted that Sprint has just signed an agreement with Springfield R-12 School District, and is expected to build a system in Springfield. Based on comments by Southwestern Bell on what percentage of gross revenue could bring in, officials would expect from Sprint alone the loss of \$330,000 annually in franchise fees. If the linear foot charge is used, the loss is much greater. This is only one company there are others.

Officials of the **Office of the Director of Administration of St. Louis County** assume that language in this proposal is intended to protect current levels of revenue received by the County for right-of-way use. Officials stated that there would be significant new costs required for the following:

- 1.) Personnel costs due to staff time involved in administrative appeals of denials or revocations of permits.
- 2.) Costs of mandatory mediation, including County's attorney fees and internal costs, and required payments of external costs of mediation.
- 3.) 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".

ASSUMPTION (continued)

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 |
| <u>FISCAL IMPACT - Local Government</u> | FY 2002 (10 Mo.) | FY 2003 | FY 2004 |
| <u>Income</u> to Cities from permit fees | Unknown | Unknown | Unknown |
| <u>Loss of income</u> to Cities 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.

This bill 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. In managing the public right-of-way, a political subdivision may require construction performance bonds, insurance coverage, or demonstration of self-insurance. If the public utility right-of-way user has \$25 million in net assets and does not have a history of permitting noncompliance within the political subdivision, then the requirement to post bonds or insurance will not apply. Other powers of political subdivisions are outlined.

After excavation, a right-of-way user must restore the right-of-way and surrounding areas in accordance with the standards and conditions of the political subdivision, unless the political subdivision chooses to perform its own restoration. In that case, the public utility right-of-way user will reimburse the political subdivision for its reasonable actual restoration costs within 30 days of invoice.

Right-of-way permits may be denied or revoked for specified reasons; a review process for denied or revoked permits by the governing body of the political subdivision or a delegated body is provided.

DESCRIPTION

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. Excavation work in the public right-of-way will be performed in accordance with applicable safety and construction codes.

Nothing in the bill:

- (1) Limits a political subdivision's authority to require public utility right-of-way users to comply with national safety codes and other applicable zoning and safety ordinances, to the extent inconsistent with Public Service Commission laws or administrative rules;
- (2) Relieves a political subdivision from any obligations under an existing franchise or relieves a public utility right-of-way user from the provisions of an existing franchise agreement in effect on May 1, 2001;
- (3) Applies to that portion of an ordinance passed prior to May 1, 2001, that establishes a street degradation fee;
- (4) Limits the authority of county highway engineers or relieves public utility right-of-way users from any obligations established in Chapter 229 (provisions relating to all roads), Chapter 230 (county highway commissions), and Chapter 231 (maintenance of public roads), RSMo;
- (5) Relieves a public utility right-of-way user from the provisions of an existing franchise, franchise fees, license, or other agreement or permit in effect on May 1, 2001;
- (6) Prohibits a political subdivision or public utility right-of-way user from renewing an existing franchise or entering into a new franchise, as long as all public utility right-of-way users have use of the public right-of-way on a nondiscriminatory basis;

DESCRIPTION

(7) Prevents a "grand fathered political subdivision" from enacting new ordinances or amending existing ordinances charging a fair and reasonable linear foot fee or antenna fee or from enforcing or renewing an existing linear foot fee, with specified conditions; or

(8) Prohibits a political subdivision from enacting or enforcing an ordinance to require a business license tax, sales tax, occupation tax, franchise tax or franchise fee, property tax, or other similar tax, to the extent consistent with federal law.

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



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Director
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