

February 10, 2016

REVISED

The Honorable Rob Olson, Chairperson
Senate Committee on Utilities
Statehouse, Room 236-E
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Revised Fiscal Note for SB 401 by Senate Committee on Utilities

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 401 is respectfully submitted to your committee.

SB 401 would establish in statute the relationship between broadband and wireless service providers and any governing body that is authorized by law to make legislative, quasi-judicial, or administrative decisions concerning a service provider's application to construct, modify, or replace wireless support structures and facilities. Governing bodies authorized by law to make these decisions would include boards, agencies, offices or commissions of municipalities, counties, or the state. The bill would specify under what circumstances one of these authorities could or could not charge fees associated with an application and would limit the amount that could be charged. While the bill would allow an authority to choose not to charge for the placement of wireless facilities on public lands, any charges that the authority chose to apply could not exceed those already in place for other service providers or utilities. The bill would also specify the rights and remedies of a wireless service provider and an authority with regard to the use of a public right-of-way.

SB 401 would enact statewide prohibitions that an authority must adhere to when considering an application and would allow an applicant for a small cell network involving multiple individual small cell facilities within the jurisdiction of a single authority to file one application and receive one permit. The bill would establish time frames within which authorities must respond to applications for a new wireless support structure or substantial modification of an existing structure or base station. An application not acted upon within those time frames would be considered approved. An applicant who does not agree with the final action of the authority could bring an action in court. Authorities would not be allowed to institute a moratorium on filing, consideration, approval, permitting, or the construction or substantial modification of wireless support structures. An authority would be allowed to continue exercising zoning, land use, planning and permitting authority within its territorial boundaries, but would not have jurisdiction over the construction, installation, or operation of a

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facility or equipment located in an interior structure or on land not owned or controlled by the authority. The bill would also define terms used with regard to broadband and wireless service providers, equipment, and facilities.

According to the Kansas Corporation Commission, passage of SB 401 would have no fiscal effect on its budget. The Kansas Association of Counties reports that due to restrictions placed on fees that could be charged by authorities, passage of SB 401 could reduce revenues to counties. However, the Association is unable to estimate what the amount of that reduction might be.

The League of Kansas Municipalities reports that passage of SB 401 could have a fiscal effect upon cities that currently have agreements with telecommunication companies regarding colocation of equipment and possibly on cities that would subsequently be approached by telecommunications companies. The League is unable, however, to determine what the extent of that effect might be.

Since the original fiscal effect statement was issued, the Kansas Department of Transportation (KDOT) has completed its analysis of the fiscal effect that passage of SB 401 could have on the agency. The Department states that although the bill allows authorities to assess competitively neutral charges for the use of a public right-of-way, the bill does not require a wireless service provider to apply to use a public right-of-way, which means there is no effective mechanism in the bill for charging fees. In addition, the agency states that due to the lack of definitions in the bill, all KDOT property could be deemed to constitute “public right-of-way,” or “public lands, buildings and facilities.” Any use of right-of-way purchased with federal funds would require payment of market value for that use under Federal Highway Administration regulations, but the agency states that the bill would not allow KDOT to comply with that requirement. The agency indicates that passage of SB 401 would put it in conflict with federal regulations and would jeopardize \$371.2 million in federal receipts anticipated for FY 2017. Any fiscal effect associated with SB 401 is not reflected in *The FY 2017 Governor’s Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Amy Gilbert, KCC
Larry Baer, League of Municipalities
Melissa Wangemann, Association of Counties
Ben Cleeves, Transportation