

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2018**

As Recommended by Senate Committee on
Utilities

Brief*

Senate Sub. for HB 2018 would amend the Kansas Video Competition Act (Act) to prohibit municipalities from imposing additional requirements for the deployment of micro wireless facilities in the public right-of-way and to allow a municipality to require compliance with certain standards.

Definitions

The bill would add the following definitions to the Act:

- “Communications service” would mean information service or telecommunications service as defined in 47 U.S.C § 153; and
- “Micro wireless facility” would mean equipment at a fixed location that is:
 - Installed on cables that are owned and operated by a video service provider between utility poles, as defined in KSA 66-2019;
 - Used to provide communications services; and
 - Not larger in dimensions than 24 inches in length, 15 inches in width, and 12 inches in height, and does not have any associated exterior antenna longer than 11½ inches.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The definition of the term “video service” would be amended to specify the term would not include any video programming provided by a commercial mobile service provider, as defined in 47 U.S.C § 332(d), unless such programming is determined by the Federal Communications Commission to be cable service.

Changes to Prohibited Activities Under the Act

The bill would clarify what activities a municipality, defined as a city or county under the Act, would be prohibited from engaging in regarding the holder of a state-issued video service authorization, and add the following prohibitions:

- Impose any fee, tax, or charge other than any applicable federal and state taxes or the Video Service Provider Fee found in KSA 2019 Supp. 12-2024 [*Note: The bill would remove similar language in law that addresses gross tax receipts and fees associated with the Act.*];
- Require the holder of a state-issued video service authorization to obtain any additional authorization or license for the provision of communications service over a holder’s network; and
- Require a video service provider to make an application or pay any fee, license, tax, or rent for the installation, placement, maintenance, operation, or replacement of a micro wireless facility.

Compliance With Certain Standards for Deployment

The bill would authorize a municipality to require the holder of a state-issued video service authorization to comply with the National Electrical Safety Code and all industry-recognized engineering safety standards.

Clarifications

The bill would clarify nothing in the Act would prohibit a municipality from assessing the Video Service Provider Fee or rates or enforcing any regulations pursuant to law relating to wireless infrastructure siting found in KSA 66-2019.

The bill would also clarify nothing in the bill would be construed to prohibit a cooperative or the owner of a utility pole from setting rates, fees, terms, and conditions of any pole attachment agreement with an authorized video service provider.

The bill would amend a provision in the Act governing the requirements of an application for a state-issued video service authorization to add taxes to the list of items with which an applicant must comply.

Background

HB 2018 was introduced during the 2019 Session by Representative Carmichael and would have created the Kansas Criminal Justice Reform Commission. The contents of the bill, as amended by the House Committee of the Whole, were enacted in 2019 HB 2290. On March 17, 2020, the bill was withdrawn from the Senate Committee on Judiciary and rereferred to the Senate Committee on Utilities (Senate Committee). The Senate Committee deleted the contents of the bill and inserted the language of SB 380, as passed by the Senate, and adopted a substitute bill.

SB 380

SB 380 was introduced by the Senate Committee at the request of the Kansas Cable Telecommunications Association (KCTA).

In the Senate Committee hearing, representatives of Cox Communications and KCTA provided proponent testimony. The proponents stated generally the bill would be a more efficient way to deploy broadband infrastructure and would eliminate barriers to deployment. Written-only proponent testimony was provided by a representative of Huckaba & Associates.

Opponent testimony was provided by representatives of the City of Topeka, City of Wichita, League of Kansas Municipalities (LKM), Sprint, and the Unified Government of Wyandotte County. The opponents stated generally the bill would allow cable providers to launch a new fixed wireless service in the public right-of-way without municipal oversight.

Written-only opponent testimony was provided by representatives of the cities of Derby, Garnett, Manhattan, McPherson, Overland Park, and Pittsburg; a coalition of Northeast Johnson County cities; Kansas Association of Counties (KAC); and Kansas Municipal Utilities.

Written-only neutral testimony was provided by a representative of AT&T, noting its neutral position as both a video service provider and wireless service provider.

The Senate Committee amended the bill to:

- Change the definition of “micro wireless facility”;
- Remove the definitions of “wireless facility” and wireless services”;
- Add taxes to the list of items with which an applicant for a state-issued video service authorization must comply;
- Clarify language regarding activities a municipality is prohibited from engaging in;

- Authorize a municipality to require compliance with the National Electrical Safety Code and industry standards;
- Clarify a municipality's ability to assess fees or rates and enforce regulations under the law relating to wireless infrastructure siting; and
- Clarify provisions of the bill would not prohibit a cooperative or an owner of a utility pole from setting the terms and conditions of pole attachment agreements.

In the House Committee on Energy, Utilities and Communications hearing on March 12, 2020, representatives of Cox Communications and the KCTA provided proponent testimony. The proponents stated the bill would provide a way to deploy broadband and provide more regulatory certainty to cable providers deploying micro cell technology. Written-only proponent testimony was provided by a representative of Huckaba & Associates.

The hearing was scheduled to be continued on March 17, 2020, but the hearing was canceled. Representatives of LKM and the Unified Government of Wyandotte County/Kansas City were scheduled to appear as opponents to the bill. These representatives instead provided written-only testimony that generally stated the bill would override a city's ability to provide oversight when working with cable providers seeking to install wireless technology in the right-of-way. Written-only opponent testimony was provided by representatives of the KAC, the cities of Overland Park, Shawnee, and Topeka, and a coalition of Northeast Johnson County cities.

A representative of Kansas Electric Cooperatives, Inc., was scheduled to appear as a neutral conferee at the hearing and instead provided written-only neutral testimony. Written-only neutral testimony was also provided by representatives of AT&T and Sprint.

According to the fiscal note prepared by the Division of the Budget on SB 380 as introduced, the Kansas Corporation Commission indicates enactment of the bill would have no fiscal effect on the agency. KAC indicates enactment of the bill would reduce county revenues by exempting wireless and video service providers from local regulations and fees, but KAC cannot estimate what the reduction might amount to for the counties, individually or statewide. LKM was unable to estimate a fiscal effect.