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FISCAL ANALYSIS

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SENATE BILL 880 SUBSTITUTE (H-4)

Sponsor: Sen. John J. H. Schwarz

House Committee: Energy and Technology

FLOOR ANALYSIS - 3/13/02

Analyst(s): Bob Schneider

SENATE BILL 881 SUBSTITUTE (H-4)

Sponsor: Sen. Leon Stille

House Committee: Energy and Technology

SENATE BILL 999 SUBSTITUTE (H-2)

Sponsor: Sen. Valde Garcia

House Committee: Energy and Technology

SUMMARY

The bill would generate between \$9 and 14 million in right of way maintenance fee revenue during the first year of implementation and between \$24 and 36 million in subsequent years. This would replace roughly \$11.5 million in annual revenue currently generated by local units of government in right-of-way fees. Additional one-time revenue from the \$500 permit fees would generate an additional \$3 – 4 million in the first year and an indeterminate amount in future years.

The fiscal implications of SB 881 are indeterminate at this time. It is possible that state appropriations and expenditures will be necessary to provide for the operation of the financing authority. Under SB 880 as introduced, the financing authority would have received some of the maintenance fee revenue generated under the right-of-way fee provisions. This is not the case under the House committee-reported bills.

SB 999 would reduce state revenue from the Utility Property Tax by an indeterminate amount. This amount could range from between roughly \$2 – 3 million to \$24 – 36 million per year depending upon the determination as to whether incumbent local exchange carriers imposing an End User Common Line (EUCL) charge would be eligible to recover the costs of maintenance fees through the credit. Any revenue reduction would impact the state's general fund.

BACKGROUND:

On November 29, 2001, Governor John Engler announced that legislation was being introduced to establish the MI HiSpeed Internet Plan. The plan was developed out of earlier proposal – LinkMichigan – developed by the Michigan Economic Development Corporation. The legislation is aimed at expediting the development and deployment of broadband technology throughout the state. The plan has two main features:

- Establishing a common right-of-way fee paid by telecommunications providers to local units of government – Anecdotal evidence had suggested that unreasonable fees charged some local units as well as the fact that some telecommunications providers (incumbent local telephone companies) were not subject to these fees. This component of the plan is contained within Senate Bill 880.
- Creation of statewide finance authority to assist in broadband deployment – The authority was deemed to be needed in order to ensure deployment in certain urban and rural areas that might not otherwise attract private funding. The authority would be modeled after the Michigan Housing Development Authority (MSHDA), a public financing authority autonomous from the State. A separate bill – Senate Bill 881 – would create this authority.

The Senate Technology and Energy Committee held meetings throughout January and into early February on the bills as introduced. On February 14, 2002, the Senate Committee reported substitutes for both bills to the Senate floor. The Senate then amended and finally passed the bills on February 20, 2002.

The House Committee on Energy and Technology reported the bills on March 13, 2002. Below is overview of the major features of the bills as reported, focusing on an analysis of the anticipated fiscal effects of the bills.

Senate Bill 880 – Right-of-Way Permit Fees

The bill would create a new right-of-way oversight authority within the Department of Consumer and Industry Services and give this authority the exclusive right to assess fees on telecommunications providers for access to public rights-of-way within virtually all local units of government in the State (the plan excludes municipalities in certain very small counties, but allow these municipalities to opt into the provisions of the bill). The bill then sets specific right-of-way fees that are to be assessed on certain categories of providers. The bill establishes an effective date of November 1, 2002 for these provisions. Specific provisions are reviewed below:

- Annual maintenance fee on telecommunications providers – The bill establishes uniform fees that telecommunication providers must pay in order to utilize public rights-of-way for their facilities (cables, wire, etc.). The bill sets an annual fee of 2 cents per linear foot of occupied right-of-way on most telecommunication providers (e.g. local phone companies) for the period between November 1, 2002 and March 31, 2003, and then increases this fee to 5 cents per linear foot in subsequent one-year periods beginning April 1, 2003. In addition, Section 8(6) of the bill provides that the fee to any one incumbent local telephone provider not exceed the statewide per access line cost that the fee imposes on the incumbent local telephone provider with the highest number of access lines in this state (which is Ameritech). Furthermore, any other provider would have its fees within each local exchange area limited to the same fee per linear foot as that paid by the incumbent local exchange telephone provider serving in that exchange. Finally, the bill exempts educational institutions, certain electric and gas utilities, and governmental entities from the fees as long as access to right-of-way is used solely for internal purposes (i.e. not to provide Internet access to other business or residential consumers).
- Annual maintenance fee on cable providers - Cable providers are charged a lower 1 cent fee per linear foot of occupied right-of-way and are allowed to bypass the fee if the provider can show a certain level of investment in broadband capacity. Testimony before the Senate committee suggests that most, if not all, cable providers would qualify for this exemption. Cable providers would continue, however, to pay franchise fees to the local units of government within which they provide service.
- Extension of maintenance fee to incumbent local phone providers – Currently, incumbent local telephone providers such as Ameritech and Verizon assert that they are exempt from paying right-of-way fees to local units of government and, in fact, have not paid those fees. The bill would require these incumbent providers to pay the maintenance and permit fees outlined in the bill.
- Prohibition against passing maintenance fee costs to customers: The bill contains a provision in section 8(17) prohibiting providers from passing the costs of the maintenance fees on to their customers. Instead, the bill allows these providers to claim a credit against their Utility Property Tax for any demonstrated costs that can be shown to arise from the fees. The actual credit is provided for in SB 999. Additional provisions limit the amount of credit for each provider to the amount by which fee costs imposed by the bill combined with the providers “total service long-run incremental cost” of providing local phone service (which is used by the Public Service Commission (PSC) as the cost factor in determining rates) exceeds all revenues generated for local phone service (including End User Common Line (EUCL) charges). This provision could affect the amount that Ameritech and Verizon could claim as a credit since both levy a EUCL charge. In particular, Ameritech’s EUCL charge was added since its last rate review by the PSC.
- Distribution of maintenance fee revenue – Proceeds from the maintenance fees would be returned by formula to local units of government. The first \$30.0 million in fee revenue would be distributed 25% to townships (based on linear feet of right-of-way in each township and 75% to cities and villages (based on the Act 51 transportation funding formula). Any revenue over \$30.0 million would be distributed based on weighted average of the amount of linear feet of right-of-way through each unit. Local units would have refrain from charging other right-of-way related fees in order to collect their share of this revenue. While the Governor’s proposal in the bill as introduced was to utilize some of this fee revenue to administer the financing authority outlined below in SB 881, this provision was removed by the Senate and remains out of the House committee-reported bill.
- One-time permit fee: In addition to the annual maintenance fee described above, providers other than cable providers would have to pay a \$500 permit fee each time the provider accessed right-of-way within a particular municipality (e.g. to lay new wire or cable). Educational, electric and gas utility, and governmental entities are also exempt from this provision as described in the first bullet above.

The fiscal ramifications of the bill are difficult to determine given the lack of available data on occupied right-of-way. During Senate committee deliberations, it was estimated that the State’s largest provider – Ameritech - would be subject to roughly \$20 - \$30 million in maintenance fees at 5 cents per linear foot. This would amount to between \$8 - 12 million in right-of-way maintenance fees in the first year period and \$20 - 30 million in subsequent years. The access line limitation noted above would apparently limit fees imposed on other incumbent local exchange providers to an amount of

no more than Ameritech's cost per access line serviced. This suggests that between \$1 – 2 million in additional revenue would be generated in the first year and \$3 - 5 million in additional revenue would be generated in subsequent years from these other incumbent local exchange providers. Other providers (e.g. competitive local exchange providers) would contribute smaller amounts of probably less than \$1 million per year. Growth in occupied rights-of-way by Ameritech would increase these revenues further over time. However, no reliable data exists on the extent to which this will occur. Finally, additional one-time revenue from the \$500 permit fees would be generated within the first year period which would generate an additional \$3 – 4 million in that year.

The fees imposed in the bill would increase local revenues above the level currently being collected for right-of-way maintenance. Testimony during Senate committee deliberations from the Michigan Municipal League suggested that revenue from right-of-way fees generated by local units of government is currently around \$11.5 million annually.

In terms of the proposed tax credit, the tax credit to the Utility Property Tax would likely reduce state revenue by an amount offsetting the fee revenue for most providers. However, as discussed above, Ameritech and Verizon would have to justify their EUCL charges before they could receive this credit. If the EUCL charges were justified, the credit could amount to roughly \$24 - 36 million per year after the initial period. However, if the EUCL charges are found to bring total revenues above total costs (fee costs plus local phone services costs), credits could be eliminated for these entities. In this case, the revenue impact of the credit could be reduced to \$2 – 3 million annually. In either case, any revenue impact would reduce state general fund revenues.

Finally, administration of the new right-of-way authority would increase state costs by an indeterminate amount.

Senate Bill 881 – Michigan Broadband Development Authority

Senate-passed SB 881 establishes a public broadband financing authority within the Department of Treasury to assist in financing the deployment of broadband infrastructure around the State. The authority would be governed by an eleven member board composed of the President and CEO of the Michigan Economic Development Corporation, the State Treasurer, the Executive Director of the Michigan State Housing Development Authority, and eight other members appointed by the Governor with the advice and consent of the Senate. Included in these eight members would be a board president and vice-president who would serve at the pleasure of the Governor. Other appointed members would serve for fixed terms.

The authority would be authorized to issue tax-exempt bonds and notes to finance the development of the State's broadband infrastructure. The bill specifies that these bond are not a debt of the State. The authority would be required to create a reserve capital account to secure its bond and note issues.

Proceeds from the bond and note issues could be used to make loans and enter into joint venture and partnership agreements with broadband developers through the year 2008. After December 31, 2008, the authority could not enter into any new loan or agreement involving a new component of the broadband infrastructure. The bill includes specific limitations on the authority's activities as well. In particular, the authority could not make loans or enter into joint venture or partnership agreements with any governmental entity or non-profit organization except in connection with developing a portion of the broadband infrastructure to be used exclusively by governmental entities and non-profit organizations. Thus, the authority could not provide assistance in developing infrastructure for the public and non-profit sectors which would be used to provide broadband access to the private sector and thus compete with private sector providers. The bill also provides for the establishment of a Seed Capital Loan Program to make loans to persons planning to apply to the authority for financing of broadband infrastructure. The bill specifically allocates \$1 million from the program during the initial 2 years of its operations towards rural underserved and urban underserved areas.

The fiscal implications of SB 881 are indeterminate at this time. It is possible that state appropriations and expenditures will be necessary to provide for the operation of the financing authority. Under SB 880 as introduced, the financing authority would have received some of the maintenance fee revenue generated under the right-of-way fee provisions. This is not the case under the current bills.

In addition, the bill provides that the Governor include appropriations in the Executive budget recommendation to replenish the Reserve Capital Account if funds fall below the level necessary to maintain required reserve levels on bond and note issues. Final action on this matter would be subject to legislative approval, however. Again, it is not clear that such appropriations would be necessary.

SB 999 – Utility Property Tax Credit

The bill would reduce annual state general fund revenue by an indeterminate amount. The bill would establish a utility property tax credit of 6% of the amount of eligible broadband investments. The credit, however, would be limited to between 3 (for tax year 2003) and 12% (by tax year 2006 and beyond) of a utility's total liability under the act or to the amount of credit received in the preceding tax year, whichever is greater. The credit also could not exceed a utility's total tax liability.

The bill also allows providers to claim a credit for any costs imposed by the maintenance fees imposed in SB 880 net of the broadband investment credit discussed in the first paragraph. Essentially, this limits the credit to the amount paid towards maintenance fees unless the broadband investment credit exceeds the amount of fees paid.

The fiscal impact of the bill again depends upon the issue discussed above in the section related to SB 880 related to EUCL charges. If the EUCL charges imposed by Ameritech and Verizon were found to be justified in terms of revenues and costs, the credit could amount to roughly \$24 - 36 million per year after the initial period. However, if the EUCL charges are found to bring total revenues above total costs (fee costs plus local phone services costs), credits could be eliminated for these entities. In this case, the revenue impact of the credit could be reduced to \$2 – 3 million annually. In either case, any revenue impact would reduce state general fund revenues. There is also the potential that some utilities could claim credits exceeding fee payments if broadband investments are sufficiently high.