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SFA BILL ANALYSIS

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Senate Bill 880 (Substitute S-4 as reported by the Committee of the Whole)
Sponsor: Senator John J. H. Schwarz, M.D.
Committee: Technology and Energy

CONTENT

The bill would create the "Metropolitan Extension Telecommunications Rights-of-Way Oversight Act" to do the following:

-- Create the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority, and give it the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a metropolitan area.
-- Require a provider to obtain a permit from a municipality for access to its public rights-of-way, pay the municipality a one-time $500 administrative fee, and submit route maps; and require municipalities to grant permits.
-- Require a telecommunication provider to pay to the Authority an annual maintenance fee per linear foot of public right-of-way occupied by the provider's facilities, which would be two cents per foot in the first year and five cents per year in subsequent years, or one cent per linear foot for a provider providing cable services within a metropolitan area; and allow a cable provider to satisfy the fee requirement based on aggregate investment in Internet broadband facilities in Michigan since January 1, 1996.
-- Extend the permit and fee requirements to a provider asserting rights under Public Act 129 of 1883, and require the provider to apply for a permit in municipalities where it had facilities, but not pay the one-time administrative fee.
-- Require maintenance fee revenue to be distributed to municipalities in metropolitan areas.
-- Require municipalities, in order to receive fee-sharing payments, to comply with the bill and modify fees to the amount permitted under the bill.
-- Allow providers to take a credit for the maintenance fee against their utility property tax imposed by Public Act 282 of 1905 (pursuant to Senate Bill 999).
-- Provide for a discount against the maintenance fees of providers implementing a shared use arrangement.
-- Allow the Authority to waive the fee for facilities in underserved areas.
-- Make exceptions to the fee, permit, and mapping requirements for educational institutions, electric and gas utilities, counties, municipalities, and municipally owned utilities.
-- Require providers to return rights-of-way to their original condition.
-- Specify remedies and penalties the Public Service Commission (PSC) could order for violations of the bill.

The bill states that it would not affect the requirement of a cable operator to obtain a cable franchise from cities, villages, and townships.

The bill would take effect on August 1, 2002, and is tie-barred to Senate Bills 881 and 999. (Senate Bill 881 (S-6) would create the "Michigan Broadband Development Authority Act", and allow the Authority to enter into joint ventures for the development and operation of broadband infrastructure. Senate Bill 999 (S-2) would amend Public Act 282 of 1905 to allow a tax credit for expenditures for certain equipment with the capability of carrying information, and a tax credit for the maintenance fee proposed by Senate Bill 880 (S-4).)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would increase State revenues by an unknown but negligible amount. (If the language of the bill were modified, however, as discussed below, the bill would likely increase revenues by $10.7 million FY 2001-02 and $26.8 million in FY 2002-03.) The bill would have an indeterminate impact on the revenues and expenses of local units of government. It would increase State revenues through a maintenance fee assessed at $0.02 per linear foot of right-of-way used by a provider in the initial year the bill was in effect, and $0.05 per linear foot in later years. Cable providers that provide telecommunications services would be eligible to pay a substitute fee of $0.01 per linear foot of right-of-way and could waive the substitute fee if the provider had made a sufficient investment in broadband since 1996. According to FCC data, Michigan contains approximately 1 billion feet of wire and fiber that likely require access to a right-of-way. Some types of wire or fiber are placed in conduits such that there is more than one foot of wire for each foot of right-of-way, and the estimate accounts for this phenomenon.

The bill would standardize the maintenance fees paid for rights-of-way and require the State to provide local units with the maintenance fee revenues. The method of distribution would depend upon the total amount of revenue generated. Of the first $30.0 million in fee revenue, townships would receive 25% of the money distributed to local units, and cities and villages would receive the remaining 75%. Money distributed to townships would be based on the number of linear feet of right-of-way granted by the unit, while money to cities and villages would be distributed in the same manner as State Trunkline Highway funds are distributed. For revenues in excess of $30.0 million, the fee revenue would be redistributed to local units according to a formula based upon a weighted average of the amount of linear feet of public rights-of-way. (The language in Section 12 actually specifies "linear feet attributable to cities and villages" and "linear feet attributable to townships". The analysis assumes that this language is corrected to reflect the apparent intent of "linear feet of occupied public rights-of-way attributable to" the type of local government unit.) Local units would be prohibited from levying access fees and other fees associated with rights-of-way. The fees currently paid to local units vary significantly and some local units do not charge any fees. For those local units with low or no fees, the bill would increase revenues, while for local units with high fees, the bill would likely reduce revenues.

The bill also would standardize permit fees levied by local units. Currently, some local units charge permit fees for rights-of-way while other local units do not. The bill would limit future permits to a one-time fee of $500. For local units that charge higher fees or grant permits that require renewal, the bill would reduce local unit revenues. For local units that charge lower fees or no fees, the bill would increase local unit revenues.

Revenues in future fiscal years from the per linear foot maintenance fee would change as a result of growth in the amount of cabling for which rights-of-way are needed. No information is available on expected growth rates in rights-of-way, although the historical data suggest that the amount of rights-of-way is not as likely to change as is the type of wiring or cabling running through rights-of-way. Between 1996 and 2001, the total amount of cables and wire for which rights-of-way were needed by the two largest telecommunication providers in Michigan grew by approximately 1.0% per year. It is unknown if this 1.0% growth resulted in any increase in the linear feet of occupied rights-of-way. Some growth also may be offset by the retirement of existing rights-of-way.

Growth in revenues as a result of growth in rights-of-way would be limited if affected firms were to implement qualified shared use agreements. For example, if a telecommunication company added 100,000 feet of right-of-way, the bill would increase the maintenance fee by $5,000. However, if the company were to enter into a shared use agreement, the increase in the fee revenue could be as low as $3,000.

The impact of the bill also would differ between telecommunication providers. The bill would allow all providers to pay a fee based upon the per access line cost of the maintenance fee levied on the provider with the most access lines in Michigan. Ameritech operates approximately 5.4 million of the 6.2 million access lines in Michigan. Under the bill, Ameritech would be assessed $23.3 million in maintenance fees based on $0.05 per linear foot in FY 2002-03, or approximately $4.18 per access line. However, under the current language in the bill, Ameritech likely would pay considerably less than the $23.3 million in assessed maintenance fees. The per access line equivalent of the maintenance fee for providers other than Ameritech is expected to be in excess of $15.22 per access line. The bill attempts to mitigate this differential by limiting the impact of the fee on all providers. In Section 8(6), the bill states "the fees...for any provider shall not exceed the per access line cost" of Ameritech. Under the language as written, the bill would be estimated to generate approximately $4.18 per provider, including the fee paid by Ameritech. Assuming there are 500 providers in Michigan (inclusive of cable providers, which are also included in this limit by the language in subsection 6), the bill would generate approximately $2,100.

Based on discussions with parties involved in drafting the bill, Section 8(6) is apparently intended to limit the fees under the bill to the per access line cost *times* the number of access lines a provider operates. If the language in the bill were changed to reflect this new limit, Ameritech would be expected to pay $23.3 million in fees in FY 2002-03. Based on the data available, providers other than a cable operator or Ameritech would pay $4.18 per access line rather than the $0.05 per linear foot of rights-of-way fee, generating $3.5 million in addition to the $23.3 million Ameritech would pay. Cable operators, at $0.01 to $0.00 per linear foot of right-of-way, are estimated to face lower fees under the bill than $4.18 per access line and would pay something between a negligible amount and $2.0 million. Consequently, if the language in Section 8(6) is corrected, the bill could generate between $26.8 million and $28.8 million in fee revenue in FY 2002-03.

In FY 2000-01, Ameritech operated cable services in at least 31 Michigan communities, including many larger metropolitan areas. Reportedly, Ameritech has sold those cable operations to a nonaffiliated entity. Under the bill, however, both Ameritech and other providers would have an incentive to acquire a small cable operation. Under Section 8(10) of the bill, cable operators would be exempt from the $0.05 maintenance fee on all rights-of-way and instead would pay a fee of $0.01 per linear foot of right-of-way occupied by the cable delivering the cable services. The $0.01 per linear foot fee would be levied only on the cable lines within the community, and the subsection would exempt the provider from all other fees (levied by the bill or not) except for local cable franchise fees. Larger providers, such as Ameritech, could easily qualify for the waiver that would reduce the $0.01 fee to $0.00 were they to operate a cable system. Because of the limit in Section 8(6), eliminating the fee for Ameritech would cause the bill not to generate any revenue. The fiscal impact assumes providers would not take advantage of this apparent loophole.

If the wording in the bill were to change such that Ameritech and other non-cable telecommunications providers would not qualify for the reduced rate offered to cable providers, or that Ameritech and other non-cable telecommunications providers would receive the cable rate only in those communities where they offered cable services, then based on FCC data, SBC/Ameritech would be expected to pay slightly less than $23.3 million of the fees under the bill (and the total revenue generated by the bill would be $26.8 million).

Under current law, Ameritech is effectively exempt from paying right-of-way fees. As a result, local units that depend primarily or exclusively upon telecommunication services from Ameritech would see increases in fees from rights-of-way under the bill, even if the standardized fee were lower than the fee the local unit currently levies.

The bill's language in Section 8(10) and (11), appears to exempt cable providers that provide telecommunication fees from the permit fees for right-of-way access. Section 8(7) would exempt the provider from paying any other fees as long as the $0.01 per foot fee levied on the cable rights-of-way was paid. The language thus appears not only to exempt a provider from paying the $0.05 per foot fee on any lines located anywhere in the State, but also to exempt the provider from the $500 permit fee, as long as the $0.01 fee was paid on just the cable lines within a metropolitan area where the cable provider offered telecommunication services.

Similarly, Section 8(11) would exempt a provider from the $0.01 per foot fee (and thus any fee) provided a certain minimum investment in broadband facilities had been made in the State. The subsection would require the provider to have made, since January 1, 1996, aggregate investments in broadband-capable access that exceed the aggregate amount of the $0.01 maintenance fees assessed under subsection 10. The exemption would not require that the provider actually offer broadband services but only that the facilities invested be broadband capable. Out of the 376 cable providers in Michigan, 96 are known to possess telecommunication-capable facilities, only 55 of those actually provide telecommunications services, and only 36 are known to offer Internet access. The subsection does not define "aggregate investment" and appears to quantify that "investment" based on the total investment made over the period from January 1, 1996, until the fee was levied in a given year, implying that once a provider qualified for the exemption, the provider would likely continue to be exempt. To be exempt, the language also appears to require that such investment be equal to or exceed the total of all revenue raised by the $0.01 per foot fee on all providers subject to the fee (approximately $2.0 million). The estimate assumes that "aggregate investment" would include purchasing facilities already placed into service by another company. It is unclear how many cable operators would qualify for the exemption. The fiscal impact assumes most cable operators would qualify for the exemption, because relatively few corporations own the majority of cable systems in Michigan, increasing the chance that each of them may own $2.0 million of equipment that has been installed since January 1, 1996. If the language were changed such that the investment needed only to exceed the $0.01 fee levied on the individual provider, even more providers would be expected to qualify for the exemption and subsection 10 would generate even less revenue.

Providers would not be allowed to pass the fees required by the bill on to consumers, but could receive certain tax credits (under Senate Bill 999) to offset the impact of the fees levied under the bill.

Date Completed: 2-20-02 Fiscal Analyst: David Zin