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FISCAL IMPACT REPORT

SPONSOR: Salazar DATE TYPED: 03/9/01 HB 916/aHTC
 SHORT TITLE: Telecommunication Facilities Along Highways SB _____
 ANALYST: Valdes

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			Indeterminate	Recurring	State Road Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
	Minimal	Minimal	Recurring	State Road Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of HTC Amendment

This amendment revises language to “encourage” the telecommunications industry to design, construct and maintain telecommunications facilities in highway rights of way. It deletes new language proposed in the original bill to charge a reasonable fee for use of highway right of way for telecommunications infrastructure. It also deletes language in the original bill which required the State Highway and Transportation Department to place phone conduit in all new and reconstruction highway projects. The amendment requires the department to prescribe by rule, conditions under which the department will accommodate telecommunications facilities pursuant to the federal Telecommunications Act of 1996.

Synopsis of Original Bill

House Bill 916 amends the statute which sets forth the powers and duties of the State Highway Commission. The bill makes several revisions in the current language to clarify and update the statutes. The primary purpose of the bill, however, is the addition of a new subsections G and H. Subsection G gives the commission the authority to accommodate telecommunications facilities in the right-of-way of state highways and to charge a reasonable fee for the use of the right-of-way or SHTD facilities. Subsection H authorizes the commission to promulgate rules concerning the specifications for the placement of telecommunications conduit in state highway right-of-way and directs SHTD to place conduit as part of all future highway construction and reconstruction projects.

Significant Issues

According to the department, by accommodating telecommunications facilities in state highway right-of-way, the bill may encourage the development of telecommunications infrastructure in the state. Such development would also generate revenues for the state. The bill also allows the commission to charge for the use of highway right-of-way by telecommunications facilities, which will generate revenue for the State Road Fund. However, by allowing the commission to charge fees to telecommunications companies, the bill may allow the commission to treat telecommunications providers differently from other utilities, which are addressed under Subsection 67-3-12C. This may raise a constitutional issue under the equal protection clauses of the state and federal constitutions.

The bill authorizes the commission to develop specifications for telecommunications conduit and requires SHTD to install telecommunications conduit as part of any new highway project. This provision is unworkable due to the fact that telecommunications technology is constantly developing. The specifications for conduit developed this year, may not be adequate for telecommunications facilities in five years. This would also be true for any conduit placed by SHTD as part of a highway project. Also, requiring SHTD to install conduit as part of highway construction and reconstruction projects will result in the piecemeal placement of conduit throughout the state, without any possibility of connection to telecommunications facilities. This is due to the fact that SHTD does not generally reconstruct entire highways at one time, but often only reconstructs or constructs ten miles or less of a highway.

PERFORMANCE IMPLICATIONS

The bill could reduce the percent of programmed projects let and reduce the percent of funding available compared to needs due to the additional cost of installing conduit for each road construction project.

FISCAL IMPLICATIONS

The bill would generate modest revenues to the State Road Fund through additional fees. The required placement of conduit on all highway construction projects would substantially increase project costs.

ADMINISTRATIVE IMPLICATIONS

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The bill would require staff to spend additional time processing applications for placement of telecommunications facilities in the highway right-of-way, developing specifications for conduit and designing projects to include conduit. Additional FTE may be necessary.

TECHNICAL ISSUES

The department provided the following proposed amendments to the bill:

Page 5, lines 13 and 14, delete subsection G(1), and renumber subsequent subsections;

Page 5, line 17, after “facilities”, insert “by telecommunication providers”;

Pages 5, lines 20-25, and page and 6, lines 1-3, delete subsection H.

Or, as an alternative to the above amendments, delete new subsections G and H and rewrite subsection C to address telecommunications facilities, and allow the commission to charge a reasonable fee for the placement of utilities and telecommunications facilities

OTHER SUBSTANTIVE ISSUES

The department provided the following information on this bill:

Subsection G.(1) allows SHTD to design, construct or maintain telecommunications facilities. SHTD is not in the telecommunications business, and it is unclear why this authority is necessary.

By allowing the commission to charge fees for the placement of telecommunications facilities, but not for other utilities, the bill may raise an equal protection issue under the state and federal constitutions.

Subsection H. is not workable due to the fast changes in technology in this area. Conduit specifications that are developed now may not be current in a few years. Furthermore, the required placement of conduit on all SHTD highway projects is impracticable given the change in technology and the fact that SHTD does not often construct or reconstruct an entire stretch of highway at one time. The placement of conduit on a short highway reconstruction project in a remote area would be a waste of resources as there would be a small probability the conduit would ever be used.

MV/njw