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FISCAL IMPACT REPORT

SPONSOR HBIC DATE TYPED 3/9/05 HB CS/281/aHBICS/aHJC
 SHORT TITLE Telecommunication Provider Property Access SB _____
 ANALYST Rosen

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$45.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Public Regulation Commission (PRC)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Business and Industry Committee substitute for House Bill 281 provides that a property owner may impose a condition on a telecom provider to protect the safety or security of property or facilities owned or leased by government agencies as well as the circumstances set out in the original bill; amends the definition of “commercial private property” to exclude apartments, along with property owned by a governmental agency and property used as a permanent residence; and adds a section that clarifies that nothing in this new section is to construed as impairing the obligations of a property owner or tenant pursuant to a contract in existence as of the effective date of the act, or to limit the right of parties to such contract to enforce their rights.

Significant Issues

AGO reports the HJC amendment cures a potential defect of the bill by clarifying that it shall not impair existing contracts.

Synopsis of Original Bill

House Business and Industry Committee substitute for House Bill 281 amends the New Mexico Telecommunications Act to create a series of prohibitions and conditions on commercial private property owners regarding the installation of and access to public telecommunications facilities by public telecommunications service providers.

HBICS281 gives PRC the power, authority and responsibility to enforce the provisions of the bill, which include determinations of whether the property owner is (1) preventing or interfering with the installation of a telecommunications service facility; (2) discriminating in the terms, conditions or compensation imposed for the installation of a telecom facility; (3) demanding or accepting an unreasonable payment from a tenant or a telecom service provider for access to the property; (4) discriminating in favor of or against a tenant, including rental charge discrimination, because of the tenant's choice of a telecom service provider. HBICS281 also provides certain circumstances under which a commercial private property owner may impose conditions or limitations on a public telecommunications service provider or tenant.

Significant Issues

According to PRC, the purpose of the bill is to provide for the nondiscriminatory treatment of public telecommunications service providers by commercial private property owners upon tenants' requests; promote the rights of consumers of public telecommunications services; encourage competition for public telecommunication services; and encourage investment in telecommunications infrastructure. Appeals from any PRC order pursuant to this section are to the state district court.

PRC indicates it may not be the appropriate agency to monitor and enforce the provisions of the bill, lacking expertise, or the appropriate legal venue for tenant remedies.

FISCAL IMPLICATIONS

Indeterminate, depending upon the number and nature of the complaints and the process utilized to deal with these complaints because PRC does not have expertise in landlord/tenant issues and property evaluations. However, since the scope of the responsibility has been narrowed to commercial property PRC has reduced the estimated need to \$45,000 for 1 FTE.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications, above.

TECHNICAL ISSUES

PRC believes there may be some internal inconsistencies between definitions in this bill and the Definition Section of the New Mexico Telecommunications Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

PRC indicates property owners, tenants and public telecommunications service providers will

seek remedies under the current state of the law with regard to their rights surrounding provisioning of public telecommunications services by the tenant's provider of choice.

JR/njw:yr