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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/2010

SPONSOR Fischmann LAST UPDATED _____ HB _____

SHORT TITLE Utility Local Right-of Way Access Fees SB 256

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY10	FY11		
	None		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

No Response Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 256 proposes to enact a new section of Chapter 5 to allow municipalities and counties the ability to impose, by ordinance, a right-of-way access fee on a public utility as compensation for access to or use of public roads, streets, alleys, highways, structures, places and other public rights of way.

The bill provides that the fee can be expressed as a percentage, or as an annual flat fee equivalent to such percentage of the public utility's gross revenues derived from the public utility's gross revenues derived from the business conducted within the municipal boundaries or a county's unincorporated area. The fee shall be no larger than 4 percent of gross revenues, unless otherwise mutually agreed upon. "Gross revenues" are defined as revenues actually collected, less any taxes, fees, assessments, or other governmental charges, by the utility for providing service to customers within the municipal boundary or unincorporated areas of the county. The bill excludes revenues received from customers located on an Indian nation, tribe, or pueblo; governing body; or public educational institution from the being included in the gross revenue calculation.

The right-of-way fee shall be in lieu of all other fees, taxes, assessments, charges and any other form of consideration or compensation related indirectly or directly, to access or use public rights of way, except for property taxes, special assessments for local improvements and locally adopted gross receipts tax increments. The bill specifies that it does not invalidate any existing franchise fee or charge, unless agreed to; however, upon expiration of existing agreements the provisions of bill apply.

FISCAL IMPLICATIONS

Recently, the Public Regulation Commission (PRC) issued an order regarding franchise fees outside of municipal boundaries. The finding eliminates the ability of counties to charge a franchise fee. The order required El Paso Electric to refund \$5.3 million to residents in Dona Ana and Otero counties that live outside of the municipal boundary who were charged a 2 percent franchise fee for a number of years.

The potential loss of revenue from franchise fees for counties due to the PRC ruling may reduce county budgets. This bill would restore the ability for counties to collect revenues for the use of public rights of way.

The bill allows for a fee no larger than four percent of gross revenues, less fees; taxes; assessments from governmental entities; Indian nations, tribes, or pueblos; governing bodies; and public educational institutions. The 4 percent upper limit may be overly generous, in light of the 2 percent franchise fee charged by the city of Las Cruces.

SIGNIFICANT ISSUES

Most municipalities have a system to collect from public utilities for their occupation of the right-of-way. In some cases, it is paid directly to the city, often in the form of a franchise fee. In other states, the fee may be paid directly to the state and then allocated back to the locals through a revenue sharing agreement, or apportionment agreement.

DUPLICATION

Duplicates HB269

DL/mt