

SESSION OF 2019

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 68**

As Amended by Senate Committee of the Whole

**Brief\***

SB 68, as amended, would amend law relating to valid contract franchise ordinances and their application to wireless service providers and wireless infrastructure providers.

***Franchises for Wireless Services and Infrastructure Providers***

The bill would prohibit a city from requiring a wireless services provider or wireless infrastructure provider to enter into a franchise, franchise agreement, franchise ordinance, contract franchise, or contract franchise ordinance for the provision of wireless services.

The bill also would clarify that nothing in the bill would be construed as prohibiting a city from requiring a telecommunications local exchange service provider to enter into a valid contract franchise ordinance as provided elsewhere in the section.

***Right-of-Way***

The bill would allow a city to govern a wireless services provider's or wireless infrastructure provider's use of the public right-of-way by requiring a small cell facility deployment agreement or a master license agreement, or through permitting requirements, municipal ordinances or codes, or

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

any combination of such mechanisms in a manner consistent with federal and state law.

### ***Fees***

The bill also would allow a city to assess a wireless services provider or a wireless infrastructure provider a fixed right-of-way access fee for each small cell facility that a provider deploys that requires the use of the city's right-of-way. The fee could not be based on such a provider's gross receipts derived from services provided within a city's corporate limits.

### ***Exceptions***

The bill would specify that the above provisions would apply only to a wireless infrastructure provider in its deployment of small cell facilities in a city's right-of-way, used for the provision of wireless services. The bill would further clarify that nothing would be construed to apply to such a provider's other operations and services as a utility or have any effect on any franchise that is related to other operations and services.

### ***Definitions***

The terms "authority," "public right of way," "small cell facility," "utility pole," "wireless infrastructure provider," "wireless services," and "wireless services provider" would have the same meanings as provided in the Wireless Siting Act.

The bill would also create the definition of "small cell facility deployment agreement" to mean an agreement between a wireless services provider or wireless infrastructure provider and an authority for the deployment of small cell facilities on or adjacent to existing, modified, replacement, or new utility poles within the public right-of-way

pursuant to state and federal law. A small cell facility deployment agreement would not be considered a franchise, franchise agreement, franchise ordinance, contract franchise, or contract franchise ordinance.

## **Background**

The bill was introduced by the Senate Committee on Utilities at the request of AT&T.

In the Senate Committee hearing, representatives of AT&T, Sprint, and Verizon testified in favor of the bill, stating its provisions would help streamline the deployment of small-cell technology and enhance wireless services. Written-only proponent testimony was provided by a representative of CTIA.

Representatives of the League of Kansas Municipalities (LKM), the Unified Government of Wyandotte County and Kansas City, Kansas, the City of Overland Park, and the City of Wichita provided testimony in opposition to the bill. Opponents generally stated the bill raises concerns over the ability of cities to manage the use of rights-of-way. Written-only opponent testimony was provided by the cities of Derby, Dodge City, Leawood, Lenexa, Manhattan, Olathe, and Pittsburg.

Written-only neutral testimony was provided by the City of Andover.

The Senate Committee amended the bill to:

- Clarify the types of franchises that would be prohibited (and removing the previous language regarding prohibition of such franchises);
- Clarify how a city may govern the use of the right-of-way with regard to wireless service providers and wireless infrastructure providers;

- Allow a city to assess certain fees for deployment of small cell facilities in the right-of-way;
- Limit what a fee for deployment of a small cell facility in the right-of-way can be based on;
- Clarify what provider operations the provisions in the bill would apply to;
- Make explicit that a city may still require a telecommunications local exchange service provider to enter into a valid contract franchise ordinance;
- Reference the Wireless Siting Act for definitions of certain terms; and
- Clarify that a right-of-way access fee may be assessed when a small cell facility requires the use of the right-of-way rather than when a small cell facility is deployed within the right-of-way.

The Senate Committee of the Whole amended the bill to:

- Remove a reference to the term “franchise related obligation”;
- Allow a city to use a small cell facility deployment agreement to govern access to the public right-of-way;
- Reference the Wireless Siting Act for the definitions of “authority” and “utility pole”; and
- Create a definition for “small cell facility deployment agreement.”

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Kansas Corporation Commission states enactment of the bill would have no fiscal

effect on agency expenditures or revenues. LKM states enactment of the bill would not have an effect on existing or ongoing revenues to cities in Kansas, but cities would not see the increase in revenues with the implementation of wireless services that they would ordinarily experience when additional public utilities are deployed.