

March 2, 2016

CORRECTED

The Honorable Dennis Hedke, Chairperson  
House Committee on Energy and Environment  
Statehouse, Room 581-W  
Topeka, Kansas 66612

Dear Representative Hedke:

**SUBJECT:** Corrected Fiscal Note for HB 2131 by House Committee on Energy and Environment

In accordance with KSA 75-3715a, the following corrected fiscal note concerning HB 2131 is respectfully submitted to your committee.

HB 2131, as substituted by the Senate Committee on Utilities, would establish in statute the relationship between broadband and wireless service providers and any governing body that is authorized by law to make legislative, quasi-judicial, or administrative decisions concerning a service provider's application to construct, modify, or replace wireless support structures and facilities. Governing bodies authorized by law to make these decisions would include boards, agencies, offices or commissions of municipalities, counties, or the state. The bill would specify under what circumstances one of these authorities could or could not charge fees associated with an application and would limit the amount that could be charged. While the bill would allow an authority to choose not to charge for the placement of wireless facilities on public lands, any charges that the authority chose to apply could not exceed those already in place for other service providers or utilities. The bill would also specify the rights and remedies of a wireless service provider and an authority with regard to the use of a public right-of-way.

Senate Substitute for HB 2131 would enact statewide prohibitions that an authority must adhere to when considering an application and would allow an applicant for a small cell network involving multiple individual small cell facilities within the jurisdiction of a single authority to file one application and receive one permit. The bill would establish time frames within which authorities must respond to applications for a new wireless support structure or substantial modification of an existing structure or base station. An application not acted upon within those time frames would be considered approved. An applicant who does not agree with the final action of the authority could bring an action in court. Authorities would not be allowed to institute a moratorium on filing, consideration, approval, permitting, or the construction or

substantial modification of wireless support structures. An authority would be allowed to continue exercising zoning, land use, planning and permitting authority within its territorial boundaries, but would not have jurisdiction over the construction, installation, or operation of a facility or equipment located in an interior structure or on land not owned or controlled by the authority. The bill would also define terms used with regard to broadband and wireless service providers, equipment, and facilities. “Public lands, buildings and facilities” as defined by the bill, would not include real property, structures or facilities under the ownership, control or jurisdiction of the Kansas Department of Transportation. The statutory definition of “provider” would not apply to an applicant as defined by this bill. The bill makes a number of technical corrections to existing statutes.

The bill would prohibit any local exchange carrier operating under traditional rate of return regulation from using Kansas Universal Service Fund (KUSF) funding to provide telecommunications services in an area outside the carrier’s authorized service area. The only exception to this prohibition would be that the carrier could use KUSF funding for the Kansas Lifeline Service Program. In addition, the bill would delete the current prohibition on providing KUSF support to replace any loss of federal support. Specifically, the proposed revision to existing law limits the prohibition on KUSF offsetting any reduction to federal support to only federal support for the recovery of interstate costs and investments. The KCC lacks jurisdiction over interstate costs and investments; thus, only intrastate costs and expenses are considered in KUSF audits. Under the proposed language of the bill, KUSF support could be used to replace any lost federal support, except for federal support for the recovery of interstate costs and investments.

In addition, the bill would provide for rate of return regulated carriers to receive KUSF support to ensure the reasonable opportunity for recovery of such carriers’ intrastate embedded costs, revenue requirements, investments, and expenses. It was incorrectly stated in the last version of this fiscal note that the bill would redefine “broadband.”

Revenues and disbursements associated with the KUSF are not a part of the Kansas Corporation Commission (KCC) budget. The KCC estimates the fiscal impact of passage of this bill to be \$769,049, which is the difference between the \$30.0 million cap and the \$29,230,951 amount of annual KUSF support rate of return carriers are expected to receive in KUSF Year 20. The last version of this fiscal note transposed digits in the amount of the fiscal impact. If the \$30.0 million cap is altered or removed, the fiscal impact would be a minimum of \$17.1 million. This figure is based on the reduction in federal universal service support to rate of return carriers between 2013 and 2015. The impact could be even larger if the language reaffirming the cap is removed, and the courts interpret the proposed language “ensure the reasonable opportunity for recovery of” to allow recovery of currently disallowed expenses. The KCC finds it difficult to quantify the fiscal effect of such an interpretation, however.

The Kansas Department of Transportation (KDOT) states that passage of Senate Substitute for HB 2131 would have no fiscal effect on the agency. The Kansas Association of Counties reports that due to restrictions placed on fees that could be charged by authorities,

The Honorable Dennis Hedke, Chairperson

March 2, 2016

Page 3—HB 2131

passage of Senate Substitute for HB 2131 could reduce revenues to counties. However, the Association is unable to estimate what the amount of that reduction might be.

The League of Kansas Municipalities reports that passage of Senate Substitute for HB 2131 could have a fiscal effect upon cities that currently have agreements with telecommunication companies regarding colocation of equipment and possibly on cities that would subsequently be approached by telecommunications companies. The League is unable, however, to determine what the extent of that effect might be. Any fiscal effect associated with passage of Senate Substitute for HB 2131 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,  
Director of the Budget

cc: Amy Gilbert, KCC  
Katie Mitchell, Water Office