

OPPOSITION TESTIMONY

Senate Committee on Utilities

SB 380

An Act concerning telecommunications; relating to the video competition act; video service providers; provision of wireless services; prohibiting cities and counties from enacting regulations.

City of Topeka

Chairman Masterson and Members of the Committee:

The City of Topeka would like to go on record in opposition to the provisions of SB 380 proposing to preempt cities and counties from exercising control over its own infrastructure as outlined in the bill.

As drafted, SB 380 seemingly proposes to grant almost unfettered access to public infrastructure with a prohibition for a city to impose any kind of application process or pay any fee, license, tax or rent for the installation, placement, maintenance, operation or replacement of their facilities (SB 380, page 4, lines 10-17).

Furthermore, on page 4, lines 13-15, “require such holder, or such holder’s affiliate, to obtain any authorization or pay any fee, license or tax for the provision of wireless services;”

Under the bill, does a cable telecommunications provider even have to provide notice to a city that it intends to place its equipment on public infrastructure? An argument can be made it does not.

Does the absence of an application process mean a city cannot review what kind of equipment is being placed on its property to see if it is appropriate for weight, sightline and other possible conflicts? Under the bill, they cannot.

With the absence of a fee, is it assumed there is no value to the cable telecommunications operator for placement of their equipment on infrastructure they do not own or is it now public policy to make any and all infrastructure available to the private sector for nonpublic use? And if so, why should just the cable industry be entitled to such favorable treatment?

Specifically, for the City of Topeka, we have a non-burdensome process that has worked for the telecommunications industry. They agreed to a new process with the City and there have not been any negative consequences or issues.

The City of Topeka has a responsibility to manage its infrastructure first and foremost for its intended use and in an orderly and effective manner.

In addition, nothing appears in the bill in regard to public improvement project relocations, general relocations or emergency relocations. Specifically, there are no timeframes required. These are not Topeka-specific issues, but rather general concerns with the bill itself.

The City of Topeka urges restraint in consideration of this legislation and believes the bill brought by the telecommunications industry can serve as a model, at least for the City of Topeka as to how the negotiation for the use of right-of-way infrastructure should work.

We understand this legislation may originate with a single bad relationship between a cable provider and a city or city affiliate entity. If that is accurate, perhaps the Legislature should consider the facts of that situation and address statutorily in a limited basis if appropriate. Or, encourage the parties involved to handle matters locally.

We would note as originally proposed, this legislation appeared to apply to private infrastructure (e.g., Investor-owned electric utility power poles) and we have heard of questions as to whether this legislation impacts existing franchise agreements cities have with cable operators as well as that this legislation codifies federal law into state statutes. The City of Topeka would ask this Committee to be clear and confident in what this legislation does and what it does not do before deciding as to whether it should be advanced in the process.

The City of Topeka believes SB 380 is an overreach into a city's appropriate management of its infrastructure and should not be passed.

On behalf of the City of Topeka, we appreciate your consideration of our concerns with SB 380 as written.

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