

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 355 Department of Transportation

SPONSOR(S): Harrell

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee		Johnson	Miller
2) Rulemaking Oversight & Repeal Subcommittee			
3) Transportation & Economic Development Appropriations Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The Department of Transportation (DOT) is currently not required to allow local government entities to have access to its fiber optic facilities.

The bill requires DOT to adopt rules governing the use of its excess fiber optic communications network for nontransportation purposes by July 1, 2014. The rules must follow state law and, if applicable federal regulations governing property acquired with federal aid. The rules may, but are not required to allow any nontransportation use. If nontransportation use is allowed, the rules must:

- Provide for an interlocal agreement to defined the agreed to parameters for the use of DOT's fiber optic network.
- Establish a statewide policy for the allowed use of the fiber optic network.

The bill has an indeterminate fiscal impact on state and local government. The bill does not specify whether DOT may charge local government entities a fee for the use of its fiber optic network.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Transportation (DOT) currently deploys an Intelligent Transportation System (ITS) which has been instrumental in reducing congestion and making urban areas safer places to drive. Some of this system is deployed using a fiber optic network. DOT is currently not required to allow local government entities to have access to its fiber optic network. However, federal rules¹ and recent FHWA guidelines authorize the use of the right-of-way for non-transportation purposes.

Some local governments wish to use DOT's excess fiber optic capacity for nontransportation purposes. While DOT has excess fiber, it wishes to participate in several national initiatives that are under development which will have communications requirements, and currently has plans to use its fiber. However, DOT has set out some parameters for the use of its dark (not currently in use) optical fibers.²

Proposed Changes

The bill requires DOT to adopt rules governing the use of its excess fiber optic communications network by local government entities for nontransportation purposes by July 1, 2014. The rules must comply with state law and, if applicable, federal regulations governing property acquired with federal aid. The rules may allow, but are not required to allow, any such nontransportation use. However, if such nontransportation use is allowed, the rules must:

- Provide for an interlocal agreement to define the agreed to parameters for the use of DOT's fiber optic network. The agreement defines each party's respective rights and roles and must preserve DOT's right to terminate the agreement of the right-of-way area occupied by the fiber is subsequently required for transportation purposes.
- Establish a statewide policy for the allowed use of the fiber optic network. The policy must be consistent with federal regulations governing federal-aid projects, provide for future fiber optic needs for transportation purposes, and include requirements for a needs analysis to be performed before each nontransportation use is considered.

The bill has an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 Requires DOT to adopt rules governing use of its excess fiber communication network for nontransportation purposes.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

¹ 23 C.F.R. 1.23(c)

² January 24, 2013, letter from Brian Blanchard, DOT's Assistant Secretary of Engineering and Operations to Ken Kryzda, Chief Information Officer, Martin County Board of County Commissioners. Copy on file with the Transportation & Highway Safety Subcommittee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not specify whether or not DOT may charge local government entities a fee for using its fiber optic network

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires DOT to adopt rules governing the use of its excess fiber optic communication networks by local government entities for nontransportation purposes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is silent as to whether or not DOT may charge local government entities for the use of its fiber optic network.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES