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BILL ANALYSIS



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Senate Bill 1209
Sponsor: Senator Jon Cisky
Committee: Appropriations

Date Completed: 11-8-96

CONTENT

Background

The Michigan Public Safety Communications System was first authorized as the Department of State Police Statewide Two-Way Radio System and Micro-Wave Backbone System in Public Act 253 of 1990 in order to replace the existing, antiquated communication system. Subsequently, Public Act 19 of 1993, an FY 1992-93 appropriation act, established an appropriation account in anticipation of estimated costs that would result from development of a system plan by the communications industry. Senate Concurrent Resolution 521 of 1994 established a cost of \$187.3 million and Public Act 128 of 1995 designated the system as the Public Safety Communications System and authorized expenditures for construction and implementation of the system.

The Michigan Public Safety Communications System, as designed by the Department of State Police, the Department of Management and Budget, and Motorola Communications and Electronics, Inc. (the successful bidder on the project), proposes 181 microwave tower sites Statewide that will provide 97% coverage, 100% of the time for police and public service communications. The system is designed to accommodate expansion to other systems including local law enforcement and local community public service needs. Implementation of the system has been divided into four phases, each representing a geographic area. Phase I, representing Southeast Michigan, is scheduled for testing and implementation in December 1996. Senate Concurrent Resolution 228 which also is before the Appropriations Committee, would authorize the State Building Authority to issue bonds totaling \$34.9 million for the purpose of financing Phase I of the project.

Issue

Phase I includes 27 separate sites that are strategically located specific to the coverage requirements. The Department of State Police reports that all of the sites, with the exception of a tower site in Addison Township, Oakland County, have been constructed and are ready for testing. However, Addison Township, in June this year, filed a lawsuit in Oakland County Circuit Court requesting that the court issue a preliminary and permanent injunction preventing construction of a tower at the selected site because it violated both location and tower height local ordinance restrictions. The Court issued a preliminary injunction on June 17, 1996. The Office of the Attorney General then requested leave to appeal the injunction to the Appeals Court and on July 15, 1996, the Appeals Court denied leave to appeal. Subsequently, the State petitioned the Supreme Court regarding this issue. On July 25, 1996, the Supreme Court remanded the issue

to the Court of Appeals with instructions for expedited consideration. Oral arguments before the Appeals Court took place on October 15, 1996, and a decision of the Court is currently pending.

The Office of the Attorney General is of the opinion that statute, case law, and practice exempt State projects from local zoning ordinances unless compliance is otherwise required in legislation. Addison Township's position is directly contrary to this contention, arguing that local ordinances adopted under the provisions of the Township Rural Zoning Act, prevail unless specifically waived.

In the instant case, the Department of State Police has indicated that Federal Communications Commission (FCC) licences will be forfeited if Phase I is not operational by the end of the year. The Department of State Police has indicated that a "work around" testing and implementation system for Phase I has been devised that does not include the Addison Township site, thereby satisfying FCC requirements. However, this leaves a "dead" space approximately seven miles long and three miles wide.

Concurrent with State activities relative to adjudication of this issue, the Department of Management and Budget notified the Legislature that an alternate suitable site had been identified in Addison Township. In response, the Legislature approved H.B. 6016 allowing the State to sell the existing site at fair market value if necessary pursuant to the findings of the Appeals Court.

Bill Summary

Senate Bill 1209 represents recognition of Department of Management and Budget, Department of State Police, and Attorney General concerns regarding the timing and future implementation of the Michigan Public Safety Communications System. The bill would amend Public Act 152 of 1929, which authorizes a State-owned and -operated radio broadcast station for police purposes, to explicitly establish the Michigan Public Safety Communications System and assign responsibility for the construction and implementation of the system to the Director of the Department of State Police. The bill specifically states that the Act "**preempts**" any local law, ordinance, or regulation that relates to the location, construction, or operation of this project. In addition, the Director of the Department of State Police would not be subject to those local ordinances, laws, or regulations.

The bill also would allow the Department of State Police to charge access and maintenance fees to users of the system.

MCL 28.281 et al.

FISCAL IMPACT

The bill would give the Department of State Police a clear legal right to construct and operate the Michigan Public Safety Communications System and is designed to preclude successful legal challenges by local units of government based on noncompliance with a local law, ordinance, or regulation governing location, construction, or operation of radio broadcast stations and towers. Most local units of government in the State have regulations limiting the height of a tower to 200 feet (and other zoning restrictions) that if enforced and legally upheld, would preclude the Communications System Project from being completed within its original 181 Statewide tower configuration. Each of the 181 towers under the System's plan is 400 feet in height or more. If each local unit of government were to successfully block the siting of these towers within its jurisdiction on the basis of tower height restriction, the Department estimates that the communication system would require an increase in the number of towers from 181 to 360-400 and an increase in overall cost from \$187.3 million to \$400.0 million. In addition, there are clearly

potential, but indeterminate, costs associated with tower site litigations should the Court find that local zoning ordinances do apply to this project.

The bill would also permit the Department to charge a reasonable access and maintenance fee to users of the communication system. These funds would be used to partially support annual system maintenance costs. Current departmental costs for the support and maintenance of the new system include 39.0 FTEs and \$4.2 million for FY 1996-97. When the entire project is completed, the Department projects that system support and maintenance activities will require 90.0 FTEs and \$11.1 million for FY 1990-2000. Support and maintenance appropriations include funding for technical equipment, engineers, steplejacks, radio technicians, and other support staff.

The Department has proposed a fee rate schedule for users of the system that would include a \$250 per radio one-time radio access charge and a \$300 per-radio annual service fee. According to the Department, the fee structure is set at a level that adheres to a Federal communications regulation that prohibits charges from being levied for access to a public service frequency that would result in a profit or in an amount that would exceed the cost of any services delivered for that access. Within Phase 1 of the project, there have been approximately 33 local agencies that have expressed an interest in using the system. This converts to approximately 2,800 local unit subscribers (radios) that would each be subject to the fee schedule. This infers, at a minimum, one-time access revenue of \$700,000 and annual maintenance revenue of \$840,000 associated with operation of Phase 1. Phase 1 also includes 2,000 State unit subscribers. When the current Statewide system is completed, there will exist the capacity to accommodate 2,000,000 unit subscribers. It is not known at this time what the total number of local unit subscribers will ultimately be for Phase 1 or the State as a whole.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.