

# STATE OF KANSAS



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GOVERNOR JEFF COLYER, M.D.  
LARRY L. CAMPBELL, CHIEF BUDGET OFFICER

April 19, 2018

The Honorable Bud Estes, Chairperson  
Senate Committee on Federal and State Affairs  
Statehouse, Room 136-E  
Topeka, Kansas 66612

Dear Senator Estes:

**SUBJECT:** Fiscal Note for SB 456 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 456 is respectfully submitted to your committee.

Under current law, all rights-of-way of state highways must be used exclusively for public highway purposes. The Secretary of Transportation may authorize other uses of rights-of-way provided they will not interfere with public travel and conform to state and federal laws, rules and regulations relating to highways.

SB 456 would require the Secretary of Transportation to authorize other uses of rights-of-way by a public utility in a competitively neutral and nondiscriminatory manner.

The Kansas Department of Transportation (KDOT) indicates that it has a Utility Accommodation Policy (UAP), which provides for the installation of utility facilities on highway rights-of-way while also maintaining KDOT's responsibility to preserve the safety and function of the state highway system. The UAP was submitted to the Federal Highway Administration (FHWA) in accordance with a mandate from FHWA that all state transportation departments develop a utility accommodation policy that complies with federal and state laws. FHWA regulations require state departments of transportation to establish and enforce reasonable uniform policies and procedures for utility accommodation. KDOT is concerned that SB 456 would place the agency out of compliance with its FHWA-approved UAP and jeopardize receipt of future federal highway funding. If this occurs, it could result in reductions totaling approximately \$380.3 million in FY 2019. Any reductions in federal revenues would require reductions, cancellations, and/or delays to planned expenditures for projects funded under the Transportation Works for Kansas (T-WORKS) Program. The potential loss of federal revenues could be approximately \$379.5 million in FY 2020 and \$363.9 million in FY 2021.

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KDOT notes that current laws and regulations create two restrictions regarding placement of utilities on highway rights-of-way: (1) that the utility be located in the area designated by the Secretary of Transportation; and (2) the utility must obtain a permit for installation. KDOT asserts that by removing the Secretary's discretionary authority regarding non-highway uses of rights-of-way, it also removes the Secretary's authority to require a utility to obtain a permit. According to KDOT, permits contain the terms and conditions regarding traffic control during utility installation, liability for any damages, documentation of liability insurance, protection of other utilities, timeframes for completing the work, and clauses specifying the conditions under which the Secretary may terminate the permit. Additionally, permits provide that the utility is responsible for costs of relocation or removal of the utility if the right-of-way is needed for state highway purposes. FHWA agreements also require utilities on a right-of-way that is needed for highway purposes must be moved at no expense to KDOT or the FHWA. KDOT indicates it would need to hire 2.00 Utility Coordinator FTE positions for each district to monitor unregulated installation of utilities. KDOT estimates the additional positions would require total expenditures of \$1,067,789 from the State Highway Fund in FY 2019 for 12.00 FTE positions (two positions x six districts). Of the total amount of expenditures, \$755,789 would be for salaries and wages and \$312,000 would be for other operating expenditures including office equipment, supplies, technology support, and vehicles. Approximately \$24,000 of the other operating expenditures would be for one-time expenditures. KDOT's expenditure limitation on its agency operations account of the State Highway Fund would need to be increased by the total amount needed for the additional positions.

Without a utility permit process to document liability, KDOT anticipates it would incur additional legal expenses to defend property damage and personal injury claims from unregulated activities of utilities on highway rights-of-way. KDOT also estimates that it would incur higher costs for highway construction if the agency is responsible for relocating utilities installed on highway rights-of-way. Under the UAP and current permit process, removal or relocation of the utility must be at the utility's expense. However, KDOT is unable to estimate what the legal expenses or construction costs might be.

The Kansas Corporation Commission indicates the bill would have no fiscal effect on the agency. Any fiscal effect associated with SB 456 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,



Larry L. Campbell  
Chief Budget Officer

cc: Ben Cleaves, Transportation  
Jake Fisher, KCC