

Fiscal Note & Local Impact Statement

124th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. S.B. 255** DATE: **June 19, 2002**
STATUS: **As Enacted – Effective July 2, 2002** SPONSOR: **Sen. Blessing Jr.**
(Certain sections effective September 30, 2002)

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Revises the provisions on the use of public right-of-ways by utility service providers and cable operators and makes other changes**

State Fiscal Highlights

STATE FUND	FY 2003	FY 2004	FUTURE YEARS
Utility and Railroad Regulation Fund (Fund 5F6)			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase	Potential increase	Potential increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2003 is July 1, 2002 – June 30, 2003.

- There would be a minimal increase in Utility and Railroad Regulation Fund revenue and expenditures due to an increase in Public Utilities Commission of Ohio's (PUCO) authority.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Counties and other local governments			
Revenues	(See bullet below)	(See bullet below)	(See bullet below)
Expenditures	Potential increase	Potential increase	Potential increase

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Assuming existing statutes regarding general use of the public way enacted by HB 215 of the 123rd General Assembly are constitutional, there could be an increase in county and local government revenues from fees for use of public right of ways.
- Assuming existing statutes regarding general use of the public way enacted by HB 215 of the 123rd General Assembly are unconstitutional, there would be a decrease in county and local government revenues from fees for use of public right of ways.



- There would be an increase in township revenues due to an increase in the permit application fee for township highway right of way excavation.
 - While cable companies would be subject to the right of ways fees, they would receive an offset for them against franchise fees charged by municipalities. This provision is revenue neutral since federal law limits the fees that municipalities may charge cable companies.
 - There would be an increase in local government expenditures to manage public right of ways. Municipalities may also incur additional legal costs if they are required to appear before the Public Utilities Commission (PUCO) to justify the fees charged for use of the public right of ways.
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Detailed Fiscal Analysis

The bill proposes to revise the statute governing the use of the public ways. It would include pipeline companies in the definition of utility companies for this purpose. The bill would increase the permit application fee from \$2 to \$50 for township highway right of way excavation. It establishes criteria for fees charged by municipalities to utilities and cable companies for the use of public right of ways. This bill would have a fiscal impact on local governments and on the Public Utilities Commission (PUCO).

The bill would limit the fees for use of public right of ways to the cost that municipalities “actually incurred and can clearly demonstrate” or that “can be properly allocated and assigned for occupancy or use of public ways.” None of the public right of way fees could include a return on or exceed the actual cost incurred by the local governments. Furthermore, the fees imposed by the local government for the use of public right of ways may be exempted to the government entity and charitable organizations. Local governments would also need to credit or offset the retail value of any non-monetary or free service given by the cable operator as part of the franchise fee. Under the bill, local governments are also required to establish and maintain a special fund for all such fees collected and file any public way ordinance with the PUCO within 45 days after it is enacted.

In addition, the bill provides a mechanism for utilities in certain circumstances to recover the cost of the fees in their rates by applying to the Public Utilities Commission (PUCO). This could increase utility rates of the companies affected by the right of way charges. In addition, the bill specifies that only the customers of a public utility that receive its service within the municipality charging the right of way fee are to be charged in the recovery of an unjustified public way fee.

The bill gives utilities the ability to appeal fees established by municipal corporations to PUCO. If PUCO finds that the fees are unreasonable, PUCO could suspend the public ways fees not only for the utility that filed the complaint but for all other utilities paying the fees. The municipality could later recover the lost fees only if the PUCO found that the fee was not unreasonable. The bill would increase PUCO expenditures due to the additional authority to coordinate the public right of ways fees.

Furthermore, the bill would increase the township highway or highway right-of-way excavation permit application fee from \$2 to \$50 for any new excavation project. The definition of project includes projects that consist of six or more of electric or telecommunications service poles. No fee will be assessed to any new project of less than five or fewer poles or any excavation project to repair, rehabilitate or replace an electric or telecommunications service pole that already been installed. The fee will be returned if the application is denied. In addition, a notice must be given to the township clerk at least three business-day prior to the date of the excavation. This would increase the township revenues due to the increase in the permit application fee for township highway and highway right of way excavation.

The bill declares an emergency.

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