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Fiscal Note

Drafting Number:	LLS 24-0283	Date:	February 5, 2024
Prime Sponsors:	Sen. Pelton B.; Mullica Rep. Martinez; Catlin	Bill Status:	Senate Transportation & Energy
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Bill Topic: RIGHTS-OF-WAY PERMITS FOR BROADBAND DEPLOYMENT

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Local Government
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> TABOR Refund	<input type="checkbox"/> Statutory Public Entity

The bill requires the Department of Transportation to allow broadband providers fair access to public rights-of-way for deployment and establishes a permit process. Beginning in FY 2024-25, the bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: No appropriation is required. The State Highway Fund is continuously appropriated to the Department of Transportation.

Fiscal Note Status: The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

**Table 1
State Fiscal Impacts Under SB 24-091**

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue	State Highway Fund	\$343,707	\$227,697
	Total Revenue	\$343,707	\$227,697
Expenditures	State Highway Fund	\$286,863	\$170,853
	Centrally Appropriated	\$56,844	\$56,844
	Total Expenditures	\$343,707	\$227,697
	Total FTE	3.2 FTE	3.2 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	\$343,707	\$227,697

Summary of Legislation

The bill requires the Department of Transportation (CDOT) to allow broadband providers fair access to public rights-of-way (ROW) for the deployment of broadband. The bill establishes a permit and fee process for access to ROW, and allows providers seeking access to pursue either the permit process or the existing public-private initiative agreement process.

In issuing permits that grant access to ROW, the bill:

- requires the CDOT to approve or deny a permit application within 30 days;
- specifies that the term of any permit is 30 years and the CDOT cannot take ownership of broadband infrastructure except if it is abandoned;
- prohibits the CDOT from requiring the permit recipient to lay additional fiber;
- prohibits the CDOT from requiring the permit recipient to provide any in-kind good or services as a condition of granting access to ROW; and
- the CDOT will produce an anticipated annual budget for the costs associated with the permit application process and the anticipated annual forecast of revenue generated from the permit fees.

The bill allows the CDOT to impose a one-time permit processing fee that does not exceed the costs of granting and administering permits. The CDOT is prohibited from including any charge in the permit processing fee to receive compensation for the fair market value of ROW or access to ROW. However, if the attorney general declares this violates federal law and that the violation will result in the loss of federal money apportioned to the state, the department must include fair market value in the permit processing fee. In this case, the department must set the rate of fair market value at a level that does not exceed the lowest rate of fair market value established by any other state for access to that state's ROW for broadband deployment.

Background

Current ROW access fees. The Transportation Commission approved a resolution in December 2023 adopting initial and annual payments for fiber builds within CDOT ROW, which are outlined in Table 2.

Table 2
Adopted Fee Structure for ROW Access and Use for Broadband (Fiber) Deployment

One-time Application Fee	Annual Property Use Fee
<i>\$0.05 per foot</i>	<i>\$0.10 per foot for counties with >200k population</i>
	<i>\$0.03 per foot for rural counties <200k population</i>

CDOT data show that up to 2,362 miles of new fiber may be built in CDOT ROW.

State Revenue

On net, the bill is expected to increase state revenue to the SHF by about \$344,000 in FY 2024-25 and \$228,000 in FY 2025-26 to cover the costs of the bill’s expenditures. The bill removes the annual fee for ROW access; however, CDOT is allowed to impose a one-time permit processing fee to cover its actual costs for granting and administering permits. The fiscal note assumes the total revenue from implementing this fee will not exceed the cost of the new expenditures (see State Expenditures section below), plus any existing costs for permit processing.

State Expenditures

The bill increases state expenditures in the CDOT by about \$344,000 in FY 2024-25 and \$228,000 in FY 2025-26, paid from the State Highway Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under SB 24-091**

	FY 2024-25	FY 2025-26
Department of Transportation		
Personal Services	\$166,757	\$166,757
Operating Expenses	\$4,096	\$4,096
Capital Outlay Costs	\$20,010	-
Computer Programming	\$96,000	-
Centrally Appropriated Costs ¹	\$56,844	\$56,844
Total Cost	\$343,707	\$227,697
Total FTE	3.2 FTE	3.2 FTE

¹ Centrally appropriated costs are not included in the bill’s appropriation.

Department of Transportation. Costs will increase in the CDOT in FY 2024-25 and ongoing years to satisfy the bill’s requirements.

- **Staff.** The CDOT requires 3.2 FTE of administrator work beginning in FY 2024-25 to meet requirements of turnaround time for application processing. Currently, it takes CDOT about 45 days to process a fiber permit, so meeting the bill’s 30-day requirement necessitates additional staff dedicated to processing fiber permits. The fiscal note assumes staff will begin work in July 2024.
- **Computer programming.** The bill requires CDOT to update Salesforce to process permits under the new process created in the bill. Based on previous updates to Salesforce, the CDOT will need two developers working 40 hours per week for eight weeks at \$150 an hour. This is 640 hours of work costing \$96,000.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

State Highway Fund. Funding from the SHF is allocated by the Transportation Commission. The commission will adjust spending from the SHF to accommodate the increase in CDOT expenditures under this bill.

Other Budget Impacts

The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Counties	Information Technology	Law
Local Affairs	Regulatory Agencies	Transportation

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).