HCS HB 165 -- 2007 MUNICIPAL TELECOMMUNICATIONS BUSINESS LICENSE TAX SIMPLIFICATION ACT

SPONSOR: Sutherland (Cooper, 120)

COMMITTEE ACTION: Voted "do pass" by the Committee on Ways and Means by a vote of 4 to 2 with 1 present.

This substitute establishes the 2007 Municipal Telecommunications Business License Tax Simplification Act and changes the laws regarding the telecommunications business license tax. The substitute limits a business license flat tax amount to $27,500 or less. After July 1, 2008, any municipality may impose this tax on a telecommunications company for the privilege of doing business within its borders if the municipality amends its business license tax ordinance to include the new tax rate, tax base definitions, and provisions.

The maximum rate of the gross receipts percentage for any municipality is 5% unless the actual calculated rate is greater than 5%. If the calculated rate is greater than 5%, the maximum rate of the gross receipts percentage for the municipality is adjusted to be revenue neutral based on revenues collected and forecasted for July 1, 2008, to June 30, 2009; half of the difference between the determined rate and 5% for July 1, 2009, to June 30, 2010; and 5% for July 1, 2010, and thereafter.

If a telecommunications company pays its deemed past liability to a municipality by January 1, 2008, the telecommunications company is entitled to full immunity and any pending lawsuits with respect to all periods up to and including July 1, 2008, will be dismissed.

FISCAL NOTE: No impact on state funds in FY 2008, FY 2009, and FY 2010.

PROPONENTS: Supporters say that the bill provides fairness in taxation for phone customers and telecommunication companies. The telecommunication tax is a business license tax that is passed on to the customer. Changes in technology have caused reduced receipts for municipalities except for Jefferson City and Clayton. Many Missouri cities impose business license taxes on the local revenue of wire-line phone companies for the privilege of doing business in their city. These taxes range from 2% to 11% of gross receipts. These rates are well in excess of the business license taxes imposed on other types of businesses because the telephone company is a monopoly and can be taxed higher without affecting the demand for service. The telephone company should pay a rental fee for the use of the cities' rights of way. With newer technology, these reasons no longer apply.

Cities have tried to collect taxes on wireless carriers with ordinances that are out-of-date, and a group of these cities filed a class action lawsuit in December of 2001. Multiple lawsuits have since been filed. The wireless industry reluctantly agreed to this new tax since the cost would ultimately pass on to the customer and the customer might file a lawsuit because that would violate the Hancock amendment since it wasn't approved by voters. House Bill 209 was passed in 2005 to address this issue, but was ruled unconstitutional by the Missouri Supreme Court since it exempted Jefferson City and Clayton from the 5% rate cap. The bill removes the unconstitutional language of the bill, adds compromise language, increases revenues for municipalities in the future, rolls back any rates found too high, requires payment of three months back taxes at the existing rates for the dismissal of lawsuits, requires all surcharges collected from customers to be returned to the customers, and adds a severability clause. The bill provides cities with a stable growing tax base in the future, simplifies the filing process, protects consumers from excessive tax rates, equalizes the local tax rate on both wireless and wire-line, and keeps Missouri from being one of the highest telecommunications tax states in the nation.

Testifying for the bill were Representative Cooper (120); Sprint Nextel; Missouri Chamber of Commerce and Industry; Missouri Telecommunications Industry Association; AT&T; Scott Mackey, Kimbell Sherman Ellis; Verizon; and Associated Industries of Missouri.

OPPONENTS: Those who oppose the bill say that every city has a telephone tax. Most cities oppose the bill because this issue is currently being litigated, and cities need a meaningful settlement. While industry revenues have increased substantially, cities have seen gross receipts tax revenue decrease. The wireless industry is not paying, and land lines are only paying on select billings. Various cities filed lawsuits to collect the tax. The tax rate for telecommunications is about the same as other utilities pay. Some cities have changed their ordinances to include wireless in the definition of a telephone. Wireless services use land lines. The bill should reflect the compromise between cities and the telecommunications industry, not dismiss the current lawsuits, nor give the tax receipts in question back to the industry.

Testifying against the bill were John Mulligan; Dan Wichmer; Missouri Municipal League; and St. Louis County Municipal League.