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SFA**BILL ANALYSIS**

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Senate Bill 293 (Substitute S-2 as reported)
Sponsor: Senator Michael D. Bishop
Committee: Judiciary

Date Completed: 4-1-03

RATIONALE

Public Act 152 of 1929 authorizes a State-owned and -operated radio broadcast system for police purposes. Public Act 538 of 1996 amended that Act to establish the Michigan Public Safety Communications System (MPSCS) and assign responsibility for its construction and implementation to the Directors of the Department of State Police and the Department of Management and Budget. The Act gave the State Police Director the responsibility of locating buildings and equipment necessary to implement the system. The MPSCS includes 181 radio transmission towers located across the State.

Public Act 538 also permits the State Police Director to authorize any governmental public safety agency to use the MPSCS. Reportedly, nearly 300 local public safety agencies are currently using radios on the MPSCS. These agencies pay an activation fee and an annual membership fee in order to be a part of and use the system. Some public safety agencies in Michigan, however, maintain their own radio communications systems and would like to attach their equipment to the MPSCS communications towers. To date, the Department of State Police has denied local agency requests to install their communications equipment on the towers. Some people believe that the Director's authority to deny these requests should be limited.

CONTENT

The bill would amend Public Act 152 of 1929 to require the Director of the Department of State Police to allow any governmental public safety agency to use the Michigan Public Safety Communications System, including attaching public safety communications

equipment to towers built under the Act. The local agency requesting permission to use the towers would be responsible for all costs associated with installing and maintaining local agency equipment and any damage done to the local agency's equipment from natural causes.

A local governmental public safety agency requesting permission to attach equipment to a tower would be required, at its own expense, to conduct a structural analysis and wind load analysis of the tower that included any existing and proposed loads or antennas, cabling, and appurtenances. The local agency also would have to perform a radio frequency interference analysis of its proposed equipment with all other equipment on the tower on the date of the request. The Director would have to give the agency documentation necessary to perform the structural, wind load, and radio frequency analyses.

The Director could deny permission to install or attach equipment to a tower only if the structural, wind load, or radio frequency interference analysis determined that the installation or attachment would structurally impair the tower or harmfully interfere with the operation of the MPSCS.

MCL 28.283

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

At a capital investment of \$221 million, the

State has built the MPSCS, a public safety communications system that covers all of Michigan. According to the Department of State Police website, the system's completion makes Michigan the first state to have a statewide public safety communications system and provides "communications interoperability to first responders across Michigan, improving the effectiveness of...public safety users". Many people believe that, in 1996, the system was authorized with the understanding that local agencies could use it for their own communications systems. With 181 radio towers around the State, the MPSCS has the infrastructure necessary for local agencies to attach their communications equipment.

If local units of government had to build their own separate towers for each communications system, the cost would be staggering and the towers simply would duplicate the radio transmission infrastructure that the State already has developed. For instance, according to testimony before the Senate Judiciary Committee, Allegan County's 9-1-1 system, which dispatches law enforcement and other emergency personnel from a variety of public safety agencies, was denied use of a nearby MPSCS tower for its newly developed communications system. Using the MPSCS tower rather than building its own radio transmission tower, in close proximity to the MPSCS tower, would save the county several hundred thousand dollars. Similarly, 10 MPSCS towers apparently are located in the area of Charlevoix, Cheboygan, and Emmet Counties, which share a central dispatch operation. If those counties had to build their own 10 towers to accommodate their communications system equipment, the cost reportedly would be approximately \$2 million. In addition, in southeastern Michigan, the Court and Law Enforcement Management Information System (CLEMIS), a consortium of approximately 100 public safety agencies serving six counties, would like to install its communications system equipment on MPSCS towers. Due to the urban and suburban nature of the area, siting transmission towers is a particularly difficult process, but at least two MPSCS towers are nearby and could accommodate the consortium's transmission needs. Using valuable public safety resources to build duplicate towers would be unwise and could compromise the future of public safety in those areas.

Transmission towers are the backbone of any public safety radio system. The towers are integral to ensuring the safety of citizens. Fortunately, they can easily be shared by various local and State public safety agencies, in a cost-effective manner. The shared use of transmission towers for communications equipment from State, county, and municipal public agencies would enhance the delivery of effective and efficient public safety services on a regional basis, without respect to local political boundaries.

Response: The MPSCS was built as a statewide compatible communications system with the capability of being used by both State and local agencies, which may subscribe to the system and become MPSCS members. It was not meant to be a mechanism to provide tower infrastructure for transmission equipment from a myriad of different communications systems. Local units that want their public safety agencies to use the towers and the integrated communications system may join the MPSCS with the payment of activation and annual membership fees.

Opposing Argument

Allowing local public safety agencies to attach or install their equipment on MPSCS transmission towers could endanger the structural integrity of the towers or the effectiveness of the communications system. The MPSCS towers were built for the purpose of providing a single integrated public safety communications system with the potential for statewide communications compatibility for all participating public safety agencies. They were not designed to hold heavy antennas and communications equipment from various other communications systems. The towers should be used solely for the MPSCS, a system to which local agencies may subscribe.

Response: Under the bill, a local public safety agency requesting permission to install equipment on an MPSCS tower would have to conduct structural, wind load, and radio frequency interference analyses before it could install its own communications equipment. The bill would allow the State Police Director to deny a local agency permission to install or attach its equipment if the structural, wind load, or radio frequency interference analysis determined that the installation would impair the tower or harmfully interfere with the operation of the MPSCS.

Opposing Argument

Installing local agency communications equipment on the MPSCS towers could hinder the future development of the very system for which the towers were built. As the MPSCS grows in membership and technological capability, it is possible that currently unused areas of the transmission towers will be needed for updated MPSCS equipment. Housing communications equipment from local public safety agencies on the towers could curtail the growth of the statewide, integrated communications system. The bill at least should specify that the MPSCS would have priority in the use of space on the towers, and allow the State Police Director to order the removal of local agency equipment if the MPSCS needed to use areas of the towers on which local agency equipment had been installed.

Response: Giving the State Police Director the unilateral authority to remove from the MPSCS towers equipment that belonged to local public safety agencies could leave them without electronic communications, which would endanger the citizens those agencies were charged with protecting. Local agencies would need some sort of assurance that their communications systems would not be compromised. Perhaps the bill should provide for leasing of the tower space over a definite time period and allow the removal of equipment only after a lease expired and/or with adequate warning time.

Opposing Argument

Although the bill would require local agencies to show that installation or attachment of their equipment would not impair a tower structurally or harmfully interfere with the operation of the MPSCS, the bill does not address the subject of interoperability. According to a brochure published by the National Law Enforcement and Corrections Technology Center, "Interoperability is the ability of public safety agencies to talk to one another via radio communication systems—to exchange voice and/or data with one another on demand, in real time, when needed." In addition to requiring that a local agency conduct structural, wind load, and radio interference analyses, the bill should require that any local system using an MPSCS tower be interoperable with the MPSCS.

Response: Such a requirement would be unreasonable, because 100%, true interoperability between different

communications systems may not be possible. It also could be a way of influencing local agencies to abandon their own communications systems and become paying members of the MPSCS. Different systems operate on different wavelengths or areas of the radio spectrum, and not all agencies have access to the 800 megahertz spectrum used by the MPSCS. In addition, some groups of local agencies, like CLEMIS in southeastern Michigan, have banded together to provide themselves with an interoperable public safety communications system. Requiring that CLEMIS also be interoperable with (or a member of) the MPSCS essentially would derail a system that has been developed to serve about 100 public safety agencies in a six-county area.

Opposing Argument

There could be legal factors preventing the use of tower space for purposes other than the operation of the MPSCS. The construction of the towers was funded through the sale of tax-exempt bonds. It is unclear whether allowing the towers to be used for purposes other than that for which they were funded would jeopardize the tax-exempt status of the bonding for the towers' construction. Using them for the placement of public agencies' equipment could be considered a "private use" under Internal Revenue Service rules governing tax-exempt bonding. In addition, allowing the installation of equipment, other than MPSCS equipment, on the towers could raise liability concerns. For instance, if a tower collapsed due to the excess weight of non-MPSCS equipment or if that equipment fell off the tower, it would be unclear who would be liable for damage to the tower, equipment attached to it, or surrounding property.

Opposing Argument

The bill is unnecessary. According to testimony by a representative of the Department of State Police, although local agencies' requests for use of the MPSCS towers have been denied in the past, the Governor recently proposed allowing all agencies that meet certain criteria to use the towers for their equipment. Rather than enacting a blanket requirement for approval of such use, the State should allow the Department to address technical and engineering issues related to transmission tower use on a case-by-case basis,

considering pertinent issues for each individual request.

Response: Disagreement over the use of MPSCS towers for local agency communications equipment has been an ongoing problem. Arguably, if a legislative solution were not needed, a system for approving local agency use of the towers already would have been developed. In addition, while the current administration may be willing at this time to allow some local use of the towers, there is no guarantee that that willingness will last or be consistent or that future administrations will take the same position. Local agencies should have a statutory right to use the MPSCS towers.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local and State public safety agencies. Though at least one local public safety agency has expressed interest in placing its communications equipment on a State-operated tower, it is not known how many would do so, or what the cost to the local agency would be.

Currently, if a local public safety agency chooses to become a member of the MPSCS and use existing State equipment on MPSCS towers without placing its own local equipment on these towers, it must pay an activation fee of \$25 per radio and an annual membership fee of \$200 per radio.

Fiscal Analyst: Bruce Baker

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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.