

As Engrossed: 3/1/94

1 **State of Arkansas**
2 **79th General Assembly**
3 **First Extraordinary Session, 1994**
4 **By: Representative Dietz**

A Bill

Call Item 6
ACT 7 OF 1994
HOUSE BILL 1005

For An Act To Be Entitled

8 "AN ACT TO CLARIFY THE AUTHORITY OF MUNICIPALITIES TO
9 ASSESS UTILITY FRANCHISE FEES AS RENTALS FOR USE OF PUBLIC
10 RIGHTS-OF-WAY; AND TO DECLARE AN EMERGENCY AND FOR OTHER
11 PURPOSES."

Subtitle

14 "THE MUNICIPAL FRANCHISE FEE
15 CLARIFICATION ACT."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. LEGISLATIVE FINDINGS.

20 (a) In the State of Arkansas, municipalities are granted jurisdiction
21 and authority over the use and control of the public rights-of-way within the
22 corporate limits of the municipality, to the extent that such *jurisdiction*
23 does not conflict with *state or federal statutes or regulations*.

24 (b) This historic authority has included the right to assess franchise
25 *fees for the privilege of the use of such rights-of-way and of providing*
26 *utility service to the public*.

27 (c) On numerous occasions, the courts of the State of Arkansas have
28 referred to this right to assess franchise fees against public utilities. For
29 example, in Hot Springs Electric Light Co. v. Hot Springs, 70 Ark. 300 (1902),
30 the Arkansas Supreme Court expressly stated that cities may assess a franchise
31 fee as a condition for the use of public rights-of-way.

32
33 SECTION 2. STATEMENT OF POLICY. It is, and historically has been, the
34 policy of the State of Arkansas to permit municipalities, as one means of
35 raising revenues, to assess municipal franchise fees against public utilities
36 for the privilege of *providing utility services to the public and of using*

1 public rights-of-way, including streets, highways, or other public places of
2 any kind whatsoever within municipal boundaries and such franchise fees have
3 not been considered to be within the scope of A.C.A. §26-73-103 so as to
4 require a vote of the electorate.

5 *It is also the policy of the State that nothing in this Act shall amend*
6 *or adversely impact the terms and provisions of an existing franchise*
7 *agreement between a municipality and a public utility entered into pursuant to*
8 *A.C.A. §14-54-704, A.C.A. §14-200-101, or any other enabling legislation*
9 *relating to franchise fees in effect at the time of the agreement.*

10

11 SECTION 3. Arkansas Code Annotated § 14-200-101(a) is hereby amended to
12 read as follows:

13 "(a) Acting by ordinance or resolution of its council, board of
14 directors, or commission, every city and town shall have jurisdiction to:

15 (1) Except as provided in § 23-4-201, determine the quality and
16 character of each kind of, and rates for, product or service to be furnished
17 or rendered by any public utility within the city or town and all other terms
18 and conditions, including a *reasonable franchise fee*, upon which the public
19 utility may be permitted to occupy the streets, highways, or other public
20 places within the municipality, and the ordinance or resolution shall be
21 deemed *prima facie reasonable*, provided that no increase in any franchise fee
22 that is fixed in amount or in the rate used for calculating any franchise fee
23 that is variable in amount and no assessment of a new franchise fee, in either
24 case, made after January 1, 1994 shall be enforceable by any municipality
25 against any public utility until such increase or assessment shall have been
26 accepted in writing by the public utility affected by such action;

27 (2) Require of any public utility such additions and extensions
28 to its physical plant within the municipality as shall be reasonable and
29 necessary in the interest of the public and to designate the location and
30 nature of all such additions and extensions, the time within which they must
31 be completed, and all conditions under which they must be constructed;

32 (3) Provide a penalty for noncompliance with the provisions of
33 any ordinance or resolution adopted pursuant to the provisions of this
34 chapter;

35 (4) Nothing herein shall limit the authority of the public

1 utility to collect from its customers residing in each municipality an amount
2 which equals the franchise fee assessed by the municipality on the public
3 utility; and

4 (5) The term "public utility" for the purposes of this section
5 shall mean any electric, gas, sewer, or telephone company, and any company
6 providing similar services, except those currently excluded pursuant to A.C.A.
7 §23-1-101(4)(B)(ii); and provided further that when franchise fees assessed
8 for basic local exchange services are based on revenues, such revenues shall
9 consist of revenues from basic local service excluding among other things
10 extension, terminal equipment, toll, access, yellow page and other
11 miscellaneous equipment revenues."

12

13 SECTION 4. Arkansas Code Annotated § 26-73-103 is hereby amended by
14 adding a subsection (h) to read as follows:

15 "(h) Nothing in this subchapter shall limit the authority of
16 municipalities to assess or contract for franchise fees pursuant to A.C.A.
17 §14-200-101, A.C.A. §14-54-704 or any other enabling legislation related to
18 franchise fees."

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20 SECTION 5. Arkansas Code Annotated § 23-17-101 is hereby amended by
21 adding a subsection (c) to read as follows:

22 "(c) Nothing in this subchapter shall limit the authority of
23 municipalities to impose franchise fees pursuant to § 14-200-101."

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25 SECTION 6. Effective January 1, 1994, regardless of the date of filing,
26 no cause of action that challenges the right of a municipality to assess a
27 franchise fee against a public utility for permission to occupy the streets,
28 highways, or other public places within the municipality shall result in the
29 award of money damages, provided, however, that consistent with the provisions
30 of Article 16, § 13 of the Arkansas Constitution, any cause of action for
31 illegal exaction found to be meritorious may result in the granting of
32 injunctive relief.

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34 SECTION 7. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code

1 Revision Commission shall incorporate the same in the Code.

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3 SECTION 8. If any provision of this act or the application thereof to
4 any person or circumstance is held invalid, such invalidity shall not affect
5 other provisions or applications of the act which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 act are declared to be severable.

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9 SECTION 9. All laws and parts of laws in conflict with this act are
10 hereby repealed.

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12 SECTION 10. EMERGENCY. It is hereby found and determined by the
13 Seventy-Ninth General Assembly that the decision of the Arkansas Court of
14 Appeals in AT&T Communications of the Southwest, Inc. v. City of Little Rock
15 has created uncertainty and confusion concerning the ability of municipalities
16 to assess franchise fees as a term or condition for the use of public rights-
17 of-way; that the immediate implementation of this Act is necessary to
18 eliminate this uncertainty and confusion and to reconfirm the authority of
19 municipalities to levy franchise fees. Therefore, an emergency is hereby
20 declared to exist and this Act, being immediately necessary for the
21 preservation of the public peace, health, and safety, shall be in full force
22 and effect from and after its passage and approval.

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24 */s/James Dietz*

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26 APPROVED: 3-3-94

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