

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 165
94TH GENERAL ASSEMBLY

Reported from the Committee on Ways and Means, April 26, 2007, with recommendation that the Senate Committee Substitute do pass.

0613S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, and to enact in lieu thereof eight new sections relating to assessment and collection of various taxes on telecommunications companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, 92.092, and 92.095, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 71.675, 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, to read as follows:

71.675. 1. Notwithstanding any other provision of law to the contrary, no city, **county, village**, or town shall bring **or maintain** any action in federal or state court in this state as a representative member of a class to enforce or collect any business license tax imposed on a telecommunications company. **This subsection shall not apply to any action that is certified as a class action before August 28, 2007.**

2. **If otherwise permitted by any other provision of law**, a city, **county, village**, or town may, individually or as a single plaintiff in a multiple-plaintiff lawsuit, bring an action in federal or state court in this state to enforce or collect any business license tax imposed on a telecommunications company.

[2.] 3. Nothing in this section shall be construed to preclude any taxpayer from initiating an action in federal or state court as a representative member of a class seeking injunctive relief against the Missouri department of revenue to

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 enforce the imposition, assessment, or collection of the business license tax
16 provided under sections 92.074 to [92.095] **92.092**, RSMo.

92.074. Sections 92.074 to [92.095] **92.092** shall be known as the "**2007**
2 Municipal Telecommunications Business License Tax Simplification Act".

92.077. As used in sections 92.074 to [92.095] **92.092**, unless the context
2 clearly requires otherwise, the following terms mean:

3 (1) "Business license tax", any tax, including any fee, charge, or
4 assessment in the nature of a tax, assessed by a municipality on a
5 telecommunications company for the privilege of doing business within the
6 borders of such municipality, and specifically includes any tax assessed on a
7 telecommunications company by a municipality under section 66.300, RSMo,
8 [and] section 80.090, RSMo, section **92.045 or** 92.073, section 94.110, 94.270, or
9 94.360, RSMo, or under authority granted in its charter, as well as an occupation
10 license tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

11 (a) Any state or municipal sales tax imposed under sections 144.010 to
12 144.525, RSMo; or

13 (b) Any municipal right-of-way usage fee imposed under the authority of
14 a municipality's police powers under Section 253(c) of the Federal
15 Telecommunications Act of 1996, or under sections 67.1830 to 67.1846, RSMo; or

16 (c) Any tax or fee levied for emergency services under section 190.292,
17 190.305, 190.325, 190.335, or 190.430, RSMo, or any tax authorized by the
18 general assembly after August 28, [2005] **2007**, for emergency services;

19 (d) Any flat tax [duly imposed on or before August 28, 2005] **not**
20 **exceeding twenty-seven thousand five hundred dollars per taxpayer per**
21 **year;**

22 (2) "Director", the director of the department of revenue;

23 (3) "Municipal", of or relating to a municipality;

24 (4) "Municipality", any city, county, town, or village in Missouri entitled
25 by authority of section 66.300, RSMo, section 80.090, RSMo, section **92.045 or**
26 92.073, section 94.110, 94.270, or 94.360, RSMo, or under authority granted in its
27 charter to assess a business license tax on **any type of** telecommunications
28 [companies] **company;**

29 (5) "Telecommunications company", any company doing business in this
30 state that provides telecommunications service;

31 (6) "Telecommunications service", the same meaning as such term is
32 defined in section 144.010, RSMo. The term telephone company, as used in

33 sections 94.110, 94.270, and 94.360, RSMo, shall have the same meaning as
34 telecommunications company as defined in this section;

35 **(7) "Protested tax", a business license tax that is not available for**
36 **the unrestricted use of a municipality because it has been either:**

37 **(a) Paid to a municipality under protest under section 139.031,**
38 **RSMo; or**

39 **(b) Paid into, or segregated under, an escrow or other similar**
40 **arrangement under an agreement between a telecommunications**
41 **company and a municipality, or under a court order issued in a**
42 **pending case involving the business license tax liability of a**
43 **telecommunications company to a municipality.**

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80,
2 or 94, RSMo, or the provisions of any municipal charter, after August 28, [2005]
3 **2007**, no municipality [may] **shall** impose any business license tax, tower tax, or
4 antennae tax on a telecommunications company except as specified in sections
5 92.074 to [92.095] **92.092**.

92.083. 1. On or after [July 1, 2006] **January 1, 2008**, if any city,
2 county, village, or town has imposed a business license tax on a
3 telecommunications company, as authorized in this chapter, or chapter 66, 80, or
4 94, RSMo, or under the authority granted in its charter, the terms used in such
5 ordinance shall be construed, for the purposes of sections 92.074 to [92.095]
6 **92.092**, to have the meanings set forth in this section, regardless of any contrary
7 definition in the ordinance:

8 **(1) "Gross receipts", or any similar term,** means all receipts from the
9 retail sale of telecommunications service taxable under section 144.020, RSMo,
10 and from any retail customer now or hereafter exempt from the state sales tax;

11 **(2) "Telephone service", "telephonic service", "telecommunications**
12 **service", "telecommunications", "local exchange service", "local exchange telephone**
13 **transmission service", "exchange telephone service" or similar terms means**
14 **telecommunications service as defined in section 92.077.**

15 2. Nothing in this section shall have the effect of repealing any existing
16 ordinance imposing a business license tax on a telecommunications company;
17 provided that a city with an ordinance in effect [prior to August 28, 2005] **before**
18 **July 1, 2008**, complies with the provisions of section 92.086.

19 3. Any business license tax imposed on a telecommunications company **on**
20 **and** after July 1, [2006] **2008**, shall be imposed on the retail sale of

21 telecommunications service.

92.086. 1. On or before [January 1, 2006] **October 1, 2007**, the director
2 shall publish a list of the municipalities which have[, prior to August 28, 2005,]
3 enacted ordinances imposing a business license tax on a telecommunications
4 company. The list shall contain:

- 5 (1) The name of the municipality imposing the tax;
- 6 (2) The name of the tax as denoted by the municipality;
- 7 (3) **Classifications, if any, of revenues from certain customers**
8 **that are subject to different tax rates or that are excluded from tax;**
- 9 (4) The citation to the municipal code provisions imposing the tax; and
- 10 [(4)] (5) The percentage of gross receipts for each listed
11 classification.

12 The director shall not be required to include any figures for the percentage of
13 gross receipts if the municipality [in question at the time of August 28, 2005,
14 had] **has** an ordinance which [imposed] **imposes** a flat fee instead of a fee based
15 on gross receipts as its business license tax. In compiling the list, the director
16 shall collect information from telecommunications companies, municipalities,
17 municipal codes, and other reliable sources.

18 2. (1) On or before [February 1, 2006] **October 1, 2007**, all
19 telecommunications companies in Missouri shall provide the director and the
20 state auditor with the amount of municipal business license tax which they paid
21 each Missouri municipality identified by the director in accordance with
22 subsection 1 of this section for **telecommunications services provided in the**
23 **previous [four quarters] calendar year, excluding any protested tax.** On or
24 before [February 1, 2006] **October 1, 2007**, all telecommunications companies
25 in Missouri shall provide the director and the state auditor with an itemized list
26 establishing their gross receipts for **telecommunications services provided**
27 **in the previous [four quarters] calendar year** for each category of gross receipts
28 in each municipality identified by the director in accordance with subsection 1 of
29 this section [upon which a sales tax is paid], **including receipts from retail**
30 **sales to customers that are exempt from sales tax, but excluding gross**
31 **receipts from sales to nonbusiness customers or other classifications of**
32 **customers with respect to those municipalities that exclude such**
33 **receipts from their business license tax.** If a telecommunications
34 company does not maintain records that segregate gross receipts into
35 the listed classification, then such company may use any reasonable

36 **method to estimate such receipts.**

37 (2) On or before [February 1, 2006] **October 1, 2007**, each municipality
38 shall provide the director and state auditor with the total amount of **municipal**
39 **business license** tax revenue collected for [the previous fiscal year of taxable
40 gross receipts from] telecommunications [companies] **services provided in the**
41 **previous calendar year, excluding protested tax.** Any inconsistency or
42 dispute arising from the information provided by the municipalities and
43 telecommunications companies shall be resolved through an audit performed by
44 the state auditor.

45 (3) **Within thirty days of receiving a written request, the director**
46 **shall provide a telecommunications company with the aggregate gross**
47 **receipts and aggregate tax revenue by municipality that is reported to**
48 **the director by all telecommunications companies and municipalities,**
49 **so that the company may verify the new rates determined by the**
50 **municipalities.**

51 3. Beginning on [July 1, 2006] **January 1, 2008**, the director shall
52 henceforth collect, administer, and distribute telecommunications business license
53 tax revenues in accordance with the provisions of sections 92.074 to [92.095]
54 **92.092.**

55 4. [Notwithstanding the provisions of any municipal business license tax
56 ordinance, effective July 1, 2006,] **On and after January 1, 2008:**

57 (1) All business license taxes shall be based solely and exclusively on
58 those gross receipts of telecommunications companies for the retail sale of
59 telecommunications services [which are subject to taxation under sections 144.010
60 and 144.020, RSMo]; and

61 (2) **In order to impose a business license tax, a municipality shall**
62 **have previously amended its business license tax ordinance to**
63 **accomplish the following:**

64 (a) **Incorporate the tax base definitions provided in subdivisions**
65 **(1) and (2) of subsection 1 of section 92.083;**

66 (b) **Adopt the tax rate promulgated by the director under**
67 **subsection 6 of this section; and**

68 (c) **Adopt the provisions of subsection 13 of this section.**

69 Any provisions in any municipal taxing ordinances which provide different
70 definitions, rules, or provisions are expressly preempted and are null and void;
71 **provided, however, that any such provisions classifying revenues from**

72 certain customers as being either subject to different tax rates or
73 excluded from tax shall not be preempted; and provided further that a
74 telecommunications company may rely on its existing customer
75 classifications maintained in its books and records to implement any
76 such tax classifications. No municipality shall require any
77 telecommunications company to change the customer classifications it
78 maintains in its books and records and, if a municipality requires any
79 customer classification to be matched to a different tax classification,
80 such change shall apply prospectively only.

81 5. The director is authorized to promulgate regulations to establish the
82 appropriate procedures for collecting, administering, and distributing such
83 taxes. **Not less than thirty days after the end of each calendar quarter,**
84 a telecommunications company shall file a quarterly return with the director with
85 an attached schedule setting forth the total amount of taxable gross receipts for
86 the quarter and the amount of business license tax due to each municipality. The
87 director shall distribute the appropriate amounts, as set forth in this section, to
88 the municipalities. In exchange for its collection, administration, and distribution
89 functions, the department of revenue shall retain a collection fee of up to one
90 percent (not to exceed the actual costs incurred) on all funds collected and
91 distributed and shall be allowed to collect the interest off such funds during the
92 time between collection and distribution. In no event shall the director fail to
93 distribute the collected funds to a municipality more than thirty days after the
94 collection of the funds.

95 6. It is the intent of the general assembly that sections 92.074 to [92.095]
96 **92.092** comply with article X, section 22 of the Missouri Constitution, so that the
97 application of sections 92.074 to [92.095] **92.092** shall have a revenue-neutral
98 effect. Because business license taxes shall now be based on [the] gross receipts
99 [subject], **defined by reference** to the sales tax, it is anticipated that the base
100 of the existing business license taxes in most cases shall be broadened, so in order
101 to comply with article X, section 22 of the Missouri Constitution, the municipality
102 shall adjust the gross receipts percentage rate identified by the director in
103 accordance with subsection 2 of this section so that the amount collectible, in
104 total from all telecommunications companies, excluding the collection fee
105 authorized in subsection 5 as defined herein, before and immediately after
106 enactment remains the same in each municipality. If the determination is made
107 by a municipality that in order to comply with article X, section 22 of the

108 Missouri Constitution the gross receipts percentage rate must be increased, such
109 increase shall be passed by a majority vote of the qualified voters voting in that
110 municipality. The existing tax base shall be an amount equal to the total amount
111 of [telecommunications] **telecommunication** business license taxes collected by
112 a municipality for [fiscal year 2005,] **telecommunications services provided**
113 **during calendar year 2007 (excluding any protested tax), and** increased
114 by fifty percent of the [difference between such amount and the] business license
115 tax receipts that would have been yielded by applying the gross receipts
116 percentage rate identified in accordance with subsection 1 of this section to the
117 total gross receipts for all wireless telecommunications services provided by
118 telecommunications companies as identified in 47 U.S.C. Section 332(D)(1) and
119 47 C.F.R. Parts 22 or 24 in such [fiscal] **calendar** year attributable to the
120 municipality, **excluding any gross receipts upon which taxes were paid**
121 **without protest but including any gross receipts upon which protested**
122 **tax was paid.** Based upon the rate information received from the director under
123 this section, each municipality shall, no later than [April 1, 2006, promulgate and
124 publish] **December 1, 2007, provide to the director** the revenue-neutral rates
125 to be applied in each municipality. **The director shall verify that each rate**
126 **was computed under the methodology provided in this section and,**
127 **after verifying all such rates and modifying any such rates as needed**
128 **to bring them into compliance with the methodology provided in this**
129 **section, shall promulgate such rates and notify municipalities and**
130 **telecommunications companies of such rates.** Such tax rates shall be the
131 applicable business license tax rate for bills rendered on or after [July 1, 2006]
132 **January 1, 2008.** Any percentages in any ordinance that are contrary to that
133 established by the [municipality herein] **methodology set forth in this**
134 **section** are null and void. If any municipal business license tax ordinance [as
135 of January 1, 2005, had] **has** a provision stating that the tax only applied to
136 **receipts from** business customers, the new calculated rate under this section
137 also shall be determined based only on **receipts from** business customers and
138 shall apply only to business customers.

139 7. On or before [April 1, 2007] **September 1, 2008**, the director, in
140 consultation with the state auditor and municipalities, shall examine revenues
141 collected and forecast whether a shortfall or excess in municipal revenues for each
142 municipality is likely to occur for the fiscal year ending [June 30, 2007]
143 **December 31, 2008**, due to data reporting errors or other errors in the

144 calculation of the revenue-neutral tax rate. Section 32.057, RSMo, shall not
145 restrict the disclosure of information to perform such consultation. If a shortfall
146 or excess is expected, the director, after review and comment from municipalities
147 and telecommunications companies, shall promulgate and publish an adjustment
148 in the rate in such municipalities. Such tax rate adjustment, if necessary, shall
149 apply to bills issued after [July 1, 2007] **January 1, 2009**.

150 8. The director shall be notified in writing within thirty days of any
151 change in the municipal business license tax rate adopted by a municipality. The
152 director shall promulgate such rate changes, but such rate changes [may] **shall**
153 only take effect on the first day of a calendar quarter and only after a minimum
154 of ninety days notice from the director to a telecommunications company. Any
155 subsequent increase in the business license tax rate passed through an ordinance
156 by a municipality which is above that rate as established by the [municipality
157 under] **methodology provided by** subsection 6 of this section shall be passed
158 by a majority vote of the qualified voters voting in that municipality. No
159 municipal tax rate shall exceed the cap provided in subsection 9 of this section.

160 9. Notwithstanding the provisions of subsections 3 to 8 of this section or
161 any other provision of law to the contrary, [for any municipality not subject to the
162 provisions of subsection 10 of this section,] the maximum rate of taxation on gross
163 receipts shall not exceed five percent for bills rendered on or after [July 1, 2006]
164 **January 1, 2008**, except if the business license tax rate for any municipality, as
165 calculated in subsection 6 of this section, or if necessary, subsection 7 of this
166 section, is determined to be greater than five percent, then, notwithstanding the
167 provisions of such subsections, the business license tax rates for such
168 municipality on and after [July 1, 2006] **January 1, 2008**, shall be as follows:

169 (1) For bills rendered between [July 1, 2006] **January 1, 2008**, and [June
170 30, 2008] **December 31, 2008**, the rate shall be the actual adjusted rate as
171 determined by subsection 6 of this section[, or, if necessary, subsection 7 of this
172 section];

173 (2) For bills rendered between [July 1, 2008] **January 1, 2009**, and [June
174 30, 2010] **December 31, 2009**, the rate shall be half the sum of the rate
175 determined in subdivision (1) of this subsection and five percent; and

176 (3) For all bills rendered on and after [July] **January 1, 2010**, five
177 percent.

178 10. [(1) Any municipality which prior to November 4, 1980, had an
179 ordinance imposing a business license tax on telecommunications companies

180 which specifically included the words "wireless", "cell phones", or "mobile phones"
181 in its business license tax ordinance as revenues upon which a business license
182 tax could be imposed, and had not limited its tax to local exchange telephone
183 service or landlines, and had taken affirmative action to collect such tax from
184 wireless telecommunications providers prior to January 15, 2005, shall not be
185 required to adjust its business license tax rate as provided in subsection 6 of this
186 section and shall not be subject to the provisions of subsection 9 of this section.

187 (2) Any municipality which has an ordinance or an amendment to an
188 ordinance imposing a business license tax on telecommunications companies
189 which was authorized or amended by a public vote subsequent to November 4,
190 1980, and such authorization specifically included the terms "wireless", "cell
191 phones", or "mobile telephones" as revenues upon which a business license tax
192 could be imposed, and had not limited its tax to local exchange telephone service
193 or landlines, and had taken affirmative action to collect such tax from wireless
194 telecommunications providers prior to January 15, 2005, shall not be required to
195 adjust its business license tax rate as provided in subsection 6 of this section and
196 shall not be subject to the provisions of subsection 9 of this section.

197 11.] For purposes of sections 92.074 to [92.095] **92.092**, the director and
198 any municipality shall have the authority to audit any telecommunications
199 company. Notwithstanding the provisions of section 32.057, RSMo, the director
200 of revenue shall furnish any municipality with information it requests to permit
201 the municipality to review and audit the payments of any telecommunications
202 company.

203 [12.] **11.** The statute of limitations shall be three years for the alleged
204 nonpayment or underpayment of the business license tax.

205 [13.] **12.** Any telecommunications company is authorized to pass through
206 to its retail customers all or part of the business license tax.

207 [14.] **13.** The provisions of subsection 5 of section 144.190, RSMo, and
208 subdivision (3) of subsection 12 of section 32.087, RSMo, shall apply to the tax
209 imposed under sections 92.074 to [92.095] **92.092**.

210 [15.] **14.** Unless specifically stated otherwise in sections 92.074 to
211 [92.095] **92.092**, taxpayer remedies, enforcement mechanisms, tax refunds, tax
212 protests, assessments, and all other procedures shall be the same as those
213 provided in chapter 144, RSMo.

214 [16.] **15.** Any rule or portion of a rule, as that term is defined in section
215 536.010, RSMo, that is created under the authority delegated in this section shall

216 become effective only if it complies with and is subject to all of the provisions of
217 chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and
218 chapter 536, RSMo, are nonseverable and if any of the powers vested with the
219 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective
220 date, or to disapprove and annul a rule are subsequently held unconstitutional,
221 then the grant of rulemaking authority and any rule proposed or adopted after
222 August 28, [2005] **2007**, shall be invalid and void.

92.089. 1. The general assembly finds and declares it to be the policy of
2 the state of Missouri that costly litigation which [have] **has been** or may be filed
3 by Missouri municipalities against telecommunications companies, concerning the
4 application of certain business license taxes to certain telecommunications
5 companies, and to certain revenues of those telecommunications companies, as set
6 forth below, is detrimental to the economic well being of the state[, and the
7 claims of the municipal governments regarding such business licenses have
8 neither been determined to be valid nor liquidated].

9 **2.** The general assembly further finds and declares that the [resolution
10 of such uncertain litigation, the uniformity, and the administrative convenience
11 and cost savings to municipalities resulting from, and the revenues which will or
12 may accrue to municipalities in the future as a result of the enactment of sections
13 92.074 to 92.095 are full and adequate] **payment of deemed past liability as**
14 **provided in this section represents** consideration to municipalities, as the
15 term "consideration" is used in article III, section 39(5) of the Missouri
16 Constitution, for the immunity and dismissal of lawsuits outlined in subsection
17 [2] **3** of this section.

18 [2. In the event any] **3. If a** telecommunications company, prior to [July
19 1, 2006, failed to pay any amount to a municipality based on a subjective good
20 faith belief that either:

21 (1) It was not a telephone company covered by the municipal business
22 license tax ordinance, or the statute authorizing the enactment of such taxing
23 ordinance, or did not provide telephone service as stated in the business license
24 tax ordinance, and therefore owed no business license tax to the municipality; or

25 (2) That certain categories of its revenues did not qualify under the
26 definition or wording of the ordinance as gross receipts or revenues upon which
27 business license taxes should be calculated;

28 such a] **January 1, 2008, failed to pay to a municipality some or all of the**
29 **business license tax that is or may be claimed by such municipality to**

30 **be due from such** telecommunications company [is], **then upon the**
31 **tendering of payment to such municipality by such telecommunications**
32 **company on or before April 30, 2008, of the deemed past liability of**
33 **such telecommunications company, such telecommunications company**
34 **shall be** entitled to full immunity from, and shall not be liable to a municipality
35 for, the payment of [the] **any** disputed [amounts] **amount** of business license
36 taxes[,] **for any period** up to and including [July 1, 2006] **June 30,**
37 **2008.** [However, such immunity and release from liability shall not apply to any
38 business license tax imposed in accordance with subdivisions (1) and (2) of
39 subsection 10 of section 92.086 or sections 92.074 to 92.095 after July 1, 2006. If
40 any municipality, prior to July 1, 2006, has brought litigation or caused an audit
41 of back taxes for the nonpayment] **Upon such payment** by a
42 telecommunications company of [municipal business license taxes, it shall
43 immediately dismiss such lawsuit without] **such deemed past liability to a**
44 **municipality:**

45 **(1) Such municipality shall dismiss with prejudice any pending**
46 **lawsuit,** and shall cease and desist from [continuing any audit, except those
47 cities described in subsection 10 of section 92.086] **any efforts to collect any**
48 **amount of business license tax liability that is claimed to be due from**
49 **such company, or from any person associated with or affiliated with**
50 **such company, or to otherwise enforce any alleged liability or**
51 **obligation with respect to business license taxes, with respect to all**
52 **periods up to and including July 1, 2008; and**

53 **(2) All protested tax with respect to such telecommunications**
54 **company and such municipality shall be turned over and released to**
55 **such telecommunications company, and any refund suit with respect to**
56 **such protested tax payments shall thereafter be dismissed with**
57 **prejudice by such telecommunications company. If a**
58 **telecommunications company collected a specific surcharge from a**
59 **customer to fund all or a portion of the payment of protested tax that**
60 **is returned to such telecommunications company under this**
61 **subdivision, and if such customer is still a customer of such**
62 **telecommunications company when such protested tax is returned to**
63 **such telecommunications company, then such telecommunications**
64 **company shall refund the surcharged portion of such protested tax to**
65 **such customer. Any remaining amount of the protested tax shall be**

66 refunded to existing consumers and any remaining balance in the
67 escrow accounts shall be remitted to the unclaimed property fund.

68 4. For purposes of subsections 2 and 3 of this section, "deemed
69 past liability" means the excess, if any, of:

70 (1) The liability that a telecommunications company would owe
71 to a municipality under its business license tax for the period
72 beginning July 1, 2006, and ending December 31, 2007, without regard
73 to any interest or penalty, which shall not be considered in determining
74 deemed past liability, determined by construing such municipality's
75 business license tax ordinance as if section 92.083 were in effect as of
76 January 1, 2007; over

77 (2) The business license tax (other than protested tax) actually
78 paid by such telecommunications company for such period.

92.092. 1. All provisions of sections 92.074 to 92.089 are [so essentially
2 and inseparably connected with, and so dependent upon, each other that no such
3 provision would be enacted without all others. If a court of competent jurisdiction
4 enters a final judgment on the merits that is not subject to appeal and that
5 declares any provision or part of sections 92.074 to 92.089] **severable, such that**
6 **if any provision therein is found to be** unconstitutional or unenforceable
7 [then sections 92.074 to 92.089, in their collective entirety, are invalid and shall
8 have no legal effect as of the date of such judgment. In such event, both
9 telecommunications companies and municipalities shall have the same rights as
10 existed before August 28, 2005, but shall not be entitled to reimbursement, or
11 required to pay reimbursement, for any sums paid in the good faith belief in the
12 validity and constitutionality of sections 92.074 to 92.089], **then the remaining**
13 **provisions shall remain valid and enforceable.**

14 2. If a court of competent jurisdiction determines that any rate
15 established under sections 92.074 to 92.089 exceeds the rate permitted
16 under article X, section 22 of the Missouri Constitution, then such rate
17 shall be reduced so that it complies with such section of the
18 Constitution.

19 3. If a court of competent jurisdiction determines that a
20 telecommunications company is not entitled to full immunity from a
21 municipality as provided in subsection 3 of section 92.089, then such
22 municipality shall immediately return to such telecommunications
23 company any deemed past liability paid by such company to such

24 municipality.

2 [92.095. The provisions of section 71.675, RSMo, are
3 severable from the provisions of sections 92.074 to 92.092. If any
4 portion of sections 92.074 to 92.092 is declared unconstitutional or
5 the application of any part of sections 92.074 to 92.092 to any
6 person or circumstance is held invalid, section 71.675, RSMo, and
7 its applicability to any person or circumstance shall remain valid
8 and enforceable. If any portion of section 71.675, RSMo, is declared
9 unconstitutional or the application of any part of section 71.675,
10 RSMo, to any person or circumstance is held invalid, sections
11 92.074 to 92.092 and its applicability to any person or circumstance
 shall remain valid and enforceable.]

✓

Bill

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