

## RELOCATION OF UTILITY FACILITIES

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**House Bill 5098 reported from committee as substitute H-3**

**Sponsor: Rep. Michele Hoitenga**

**Committee: Communications and Technology**

**Complete to 12-12-17**

Analysis available at

<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5098 would amend Public Act 368 of 1925 (highway obstructions and encroachments) to regulate the relocation of facilities owned by an entity holding a license under the Michigan Telecommunications Act or a franchise under the Uniform Video Services Local Franchise Act ("entity").

**FISCAL IMPACT:** The bill could reduce MDOT and local unit permit fee revenue and increase unreimbursed costs. The impact would vary by year and by agency depending on the circumstances of specific highway projects.

### **THE APPARENT PROBLEM:**

Many Michigan residents are without adequate, affordable, or any internet services, creating a desperate need for broadband expansion. To allow for this expansion, House Bill 5098 would allow broadband services to work with local governments and the Michigan Department of Transportation to relocate their lines for any reason with minimal burden.

### **THE CONTENT OF THE BILL:**

Under the bill, if a city, village, township, or county (a "local unit") or the Michigan Department of Transportation (MDOT) requests or requires facilities within a county to be relocated to protect those facilities due to construction by the local unit or MDOT, then the local unit or MDOT would be required to send a written notification by electronic mail to the primary and secondary contacts of any entity that indicates on the right-of-way notification list that it has facilities located in that county at least 1 year before the relocation would occur. If a local unit or MDOT learns of or secures funding for a construction project that may entail the relocation of an entity's facilities less than 1 year before the planned start date, then the local unit or MDOT would have to send the written notice within 30 days of learning of or securing funding for the project. MDOT could satisfy the notification requirement by sending an electronic copy of the most recently adopted 5-year transportation program to the primary and secondary contacts of an entity on the right-of-way notification list. However, none of these requirements apply if a local unit or MDOT requests or requires relocation due to an emergency or act of God or if underground facilities are discovered that were not previously identified or placed in the permitted location.

If a local unit or MDOT requests or requires an entity to relocate facilities, the local unit or MDOT can require the entity to obtain a permit for the relocation, but cannot charge any permit or inspection fees unless the site has been identified by the Department of

Environmental Quality of a local governmental entity as a contaminated site. If available, the requesting local unit or MDOT can share any completed topographical study or survey with the entity required to relocate, but is not liable if the entity relocating chooses not to conduct its own study or survey. Also, a local unit or MDOT cannot request or require an entity to conduct any study or survey, such as drainage, soil, or center line studies, related to relocating facilities, but it may require a provider to submit detailed engineering plans as a condition of or in connection with issuing a permit.

The bill also would require the Michigan Public Service Commission to create a right-of-way notification list. To be included on the list, an entity would have to submit all of the following:

- A list of each county where the entity has facilities located in a public right-of-way.
- The name and electronic mail address of a primary and secondary contact.

Under the bill, an “emergency” would include, but not be limited to, flooding not caused by an act of God, a water main break, a sewer line failure, a natural gas leak, or an act of terrorism. An “act of God” would mean an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

MCL 247.183

## ***BACKGROUND INFORMATION:***

### **Statutory Authority**

Public utility structures and facilities, including above-ground telecommunication and electric lines, as well as below-grade fiber-optic lines, gas transmission pipelines, water and sewer lines, and steam pipes, are frequently placed within highway rights-of-way. The use of these rights-of-way is governed in Michigan law by Public Act 368 of 1925. Public Act 368 authorizes utilities to occupy the right-of-way of public highways, subject to the consent of the public highway owner. The law also makes the construction and maintenance of the utility structures subject to “the paramount right of the public to use such public places, roads, bridges, and waters...” Access by utilities to public highway right-of-way is typically granted by permit issued by the highway agency.

### **Reimbursement**

The widening or reconstruction of a highway or street by MDOT, or a local road agency, may require the relocation of utility facilities within the right-of-way. Under Michigan law, when a utility's facilities are within the right-of-way by permit, the highway agency typically does not pay for relocation. The department or a local road agency only pays for utility relocation when the utility has an easement or actual ownership of the property on which its facilities are placed.

While highway agencies typically do not pay for utility relocation costs, except under circumstances described above, utilities typically do not pay for occupying public highway

rights-of-way. Utilities benefit from this free use of the public right-of-way that would otherwise be very costly to purchase.

### **Federal Participation in Relocation Costs**

Federal-aid highway funds will participate in the cost of highway-related utility relocation under provisions of 23 CFR 645. Specifically, federal funds will participate in utility relocation costs necessitated by highway construction only under one or more of the following circumstances: the utility has a property interest in its present location; the state has a law or some legal basis for payment which provides authority to pay for utility relocations; the utility is municipally owned; or the relocation involves implementing safety corrective measures. Federal participation is made on a reimbursement basis; the state is reimbursed for relocation costs only after it is demonstrated that state funds have paid for relocation. A complete description of the federal regulations governing reimbursement of utility relocation is found in the Federal Highway Administration publication, *Utility Relocation, and Accommodation on Federal-Aid Highway Projects* at <http://www.fhwa.dot.gov/reports/utilguid/index.cfm>.

### ***FISCAL INFORMATION:***

Section 13 of Public Act 368 of 1925 authorizes MDOT and local units to impose a reasonable charge for the use, by a utility, of limited access highway rights-of-way to offset a portion of the capital, maintenance, and permitting expense of the limited access highway. Section 13 currently provides for a one-time installation permit fee not to exceed \$1,000 per longitudinal mile, with a minimum fee of \$5,000 per permit.

House Bill 5098 directs that when MDOT or a local unit requires an *entity* to relocate *facilities*, MDOT or the local unit, as applicable, may require the entity to obtain a permit for the relocation of the facilities. However, the bill would also require that MDOT or local unit, as applicable, waive any permit or inspection fees, unless the relocation site has been identified by the Department of Environmental Quality or a local unit as a contaminated site.

In requiring MDOT and local units to waive permit or inspection fees related to the relocation of facilities occupying highway rights-of-way, the bill could reduce MDOT and local unit permit fee revenue and increase unreimbursed costs. The impact would vary by year and by agency depending on the circumstances of specific highway projects. For many agencies the bill would have no impact or minimal impact in most years. However, in those circumstances where a highway construction or reconstruction project necessitates the relocation of certain telecommunication facilities—in particular, major projects in urban areas—the costs to the highway agency could be substantial.

Because federal funds would not participate in those relocation costs, the relocation costs would have to come from the State Trunkline Fund with respect to state trunkline projects, or from local road or street funds with respect to local unit projects.

Note that the bill applies to the relocation of “facilities” owned by “entities.” Neither “facilities” nor “entities” are defined terms in the bill. Entities appear to be licensees under the Michigan Telecommunications Act, or franchisees under the Uniform Video Services Local Franchise Act, under circumstances defined in the bill. The bill would have no apparent impact on the treatment of other utilities occupying public highway rights-of-way, such as electric transmission companies, gas pipelines, water or sewer lines, or steam pipes.

### ***ARGUMENTS:***

#### ***For:***

Supporters of the bill argue that this bill would help ensure that broadband service providers will want to work with local governments to provide adequate and affordable broadband services to residents. By giving adequate notice and time for providers to relocate their lines, and by prohibiting another permit fee for this relocation, providers will be more willing to expand needed services to more residents throughout the state.

#### ***Against:***

Opponents of the bill argue that needed repairs would have to be postponed under the notice requirements in the bill, which would result in unsafe roads. As such, a 1-year notice requirement is unreasonable and local governments should not wait so long to conduct necessary repairs.

Critics of the bill also argue that current and up-to-date center-line and utility line studies and surveys are essential whenever an entity is digging in a right-of way. For example, in a rural area, the center-line of a dirt road could change yearly, causing any previous survey of utility lines in the right-of-way to be incorrect when calculating their distance from the current center-line. If a provider needs to move its line for any reason, it should be the provider’s responsibility to conduct surveys and studies to ensure that other utilities in the same right-of-way remain undamaged. A single county could have thousands of miles of roads, making it nearly impossible for a local government to keep track of all the utilities in any right-of-way.

### ***POSITIONS:***

Representatives from the following entities indicated support for the bill:

- Michigan Cable Telecommunications Association (10-24-17)
- Telecommunications Association of Michigan (10-24-17)
- Michigan Internet and Telecommunications Alliance (10-24-17)
- Advanced Communications and Data (ACD) (10-24-17)
- Free State Foundation (10-24-17)
- Mackinac Center (10-24-17)
- T-Mobile, USA (10-31-17)
- Americans for Prosperity (10-31-17)

Representatives from the following entities indicated being neutral on the bill:

- Michigan Department of Transportation (10-24-17 and 12-5-17)
- Frontier Communications (10-24-17)

Representatives from the following entities indicated opposition to the bill:

- Michigan Association of County Drain Commissioners (10-24-17 and 12-4-17)
- County Road Association of Michigan (10-24-17 and 12-4-17)
- Michigan Townships Association (10-24-17 and 12-5-17)
- Washtenaw County Road Commissioners (10-24-17)
- Holland Charter Township (10-24-17)
- Michigan Coalition to Protect Public Rights-Of-Way (PROTEC) (10-24-17)
- Michigan Association of Counties (10-24-17 and 12-4-17)
- Conference of Western Wayne (10-24-17)
- Michigan Broadband Cooperative (10-24-17)
- Michigan Municipal League (10-24-17 and 12-4-17)
- Genesee County Road Commission (10-24-17)
- Michigan Municipal Electric Association (bill as introduced) (10-31-17)
- City of Grand Rapids (10-31-17)
- St. Clair, Huron, Lapeer, and Genesee County Road Commissions (12-5-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.