

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 880

A bill to create a telecommunication rights-of-way oversight authority; to provide for fees; to prescribe the powers and duties of municipalities and certain state agencies and officials; to provide for penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. (1) This act shall be known and may be cited as the  
2 "metropolitan extension telecommunications rights-of-way over-  
3 sight act".

4       (2) The purpose of this act is to do all of the following:

5       (a) Encourage competition in the availability, prices,  
6 terms, and other conditions of providing telecommunication  
7 services.

8       (b) Encourage the introduction of new services, the entry of  
9 new providers, the development of new technologies, and increase

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1 investment in the telecommunication infrastructure in this  
2 state.

3 (c) Improve the opportunities for economic development and  
4 the delivery of telecommunication services.

5 (d) Streamline the process for authorizing access to and use  
6 of public rights-of-way by telecommunication providers.

7 (e) Ensure the reasonable control and management of public  
8 rights-of-way by municipalities within this state.

9 (f) Provide for a common public rights-of-way maintenance  
10 fee applicable to telecommunication providers.

11 (g) Ensure effective review and disposition of disputes  
12 under this act.

13 (h) Allow for a tax credit as the sole means by which pro-  
14 viders can recover the costs under this act and to insure that  
15 the providers do not pass these costs on to the end-users of this  
16 state through rates and charges for telecommunication services.

17 (i) Promote the public health, safety, welfare, convenience,  
18 and prosperity of this state.

19 (j) Create an authority to coordinate public right-of-way  
20 matters with municipalities.

21 Sec. 2. As used in this act:

22 (a) "Authority" means the metropolitan extension telecommu-  
23 nications rights-of-way oversight authority created in section 3.

24 (b) "Broadband internet access transport services" means the  
25 broadband transmission of data between an end-user and the  
26 end-user's internet service provider's point of interconnection

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1 at a speed of 200 or more kilobits per second to the end-user's  
2 premises.

3 (c) "Commission" means the Michigan public service commis-  
4 sion in the department of consumer and industry services.

5 (d) "Exchange" means that term as defined under section 102  
6 of the Michigan telecommunications act, 1991 PA 179,  
7 MCL 484.2102.

8 (e) "Incumbent local exchange carrier" means that term as  
9 defined under section 251(h) of title II of the communications  
10 act of 1934, chapter 652, 110 Stat. 61, 47 U.S.C. 251.

11 (f) "Metropolitan area" means 1 or more municipalities  
12 located, in whole or in part, within a county having a population  
13 of 10,000 or more or a municipality that enacts an ordinance or  
14 resolution electing to be classified as part of a metropolitan  
15 area under this act.

16 (g) "Municipality" means a township, city, or village.

17 (h) "Person" means an individual, corporation, partnership,  
18 association, governmental entity, or any other legal entity.

19 (i) "Public right-of-way" means the area on, below, or above  
20 a public roadway, highway, street, alley, easement, or waterway.  
21 Public right-of-way does not include a federal, state, or private  
22 right-of-way.

23 (j) "Telecommunication facilities" or "facilities" means the  
24 equipment or personal property, such as copper and fiber cables,  
25 lines, wires, switches, conduits, pipes, and sheaths, which are  
26 used to or can generate, receive, transmit, carry, amplify, or  
27 provide telecommunication services or signals. Telecommunication

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1 facilities or facilities do not include antennas, supporting  
2 structures for antennas, equipment shelters or houses, and any  
3 ancillary equipment and miscellaneous hardware used to provide  
4 federally licensed commercial mobile service as defined in sec-  
5 tion 332(d) of part I of title III of the communications act of  
6 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further  
7 defined as commercial mobile radio service in 47 C.F.R. 20.3, and  
8 service provided by any wireless, 2-way communications device.

9 (k) "Telecommunication provider", "provider", and  
10 "telecommunication services" mean those terms as defined in sec-  
11 tion 102 of the Michigan telecommunications act, 1991 PA 179,  
12 MCL 484.2102. Telecommunication provider does not include a  
13 person or an affiliate of that person when providing a federally  
14 licensed commercial mobile radio service as defined in  
15 section 332(d) of part I of the communications act of 1934, chap-  
16 ter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as com-  
17 mercial mobile radio service in 47 C.F.R. 20.3, or service pro-  
18 vided by any wireless, 2-way communication device. For the pur-  
19 poses of this act only, a provider also includes all of the  
20 following:

21 (i) A cable television operator that provides a telecommuni-  
22 cation service.

23 (ii) Except as otherwise provided by this act, a person who  
24 owns telecommunication facilities located within a public  
25 right-of-way.

26 (iii) A person providing broadband internet transport access  
27 service.

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1       Sec. 3. (1) Pursuant to section 27 of article VII of the  
2 state constitution of 1963 and any other applicable law, the met-  
3 ropolitan extension telecommunications rights-of-way oversight  
4 authority is established as an autonomous agency within the  
5 department of consumer and industry services. The director of  
6 the authority shall be appointed by the governor for a 4-year  
7 term. The director of the authority shall report directly to the  
8 governor. The department of consumer and industry services shall  
9 provide the authority all budget, procurement, and  
10 management-related functions. The department of consumer and  
11 industry services shall also provide suitable offices, facili-  
12 ties, equipment, staff, and supplies for the authority in the  
13 city of Lansing.

14       (2) The director of the authority is responsible for carry-  
15 ing out the powers and duties of the authority under this act.

16       (3) The authority shall coordinate public right-of-way mat-  
17 ters with municipalities, assess the fees required under this  
18 act, and have the exclusive power to assess fees on telecommuni-  
19 cation providers owning telecommunication facilities in public  
20 rights-of-way within a municipality in a metropolitan area to  
21 recover the costs of using the rights-of-way by the provider.

22       (4) The authority shall file an annual report of its activi-  
23 ties for the preceding year with the governor and the members of  
24 the legislative committees dealing with energy, technology, and  
25 telecommunications issues on or before March 1 of each year.

26       (5) The authority may promulgate rules for the  
27 implementation and administration of this act under the

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1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
2 24.328.

3       Sec. 4. (1) Except as otherwise provided by this act, after  
4 the effective date of this act, a municipality in a metropolitan  
5 area shall not enact, maintain, or enforce an ordinance, local  
6 law, or other legal requirement applicable to telecommunication  
7 providers that is inconsistent with this act or that assesses  
8 fees or requires other consideration for access to or use of the  
9 public rights-of-way that are in addition to the fees required  
10 under this act.

11       (2) This act shall not affect any existing rights that a  
12 provider or municipality may have under a permit issued by a  
13 municipality or contract between the municipality and the pro-  
14 vider related to the use of the public rights-of-way.

15       (3) Obtaining a permit or paying the fees required under  
16 this act does not give a provider a right to use conduit or util-  
17 ity poles.

18       Sec. 5. (1) A provider using or seeking to use public  
19 rights-of-way in a metropolitan area for its telecommunication  
20 facilities shall obtain a permit under section 15 from the munic-  
21 ipality and pay all fees required under this act. Authorizations  
22 or permits previously obtained from a municipality under section  
23 251 of the Michigan telecommunications act, 1991 PA 179,  
24 MCL 484.2251, satisfy the permit requirement of this section.

25       (2) A provider asserting rights under 1883 PA 129, MCL 484.1  
26 to 484.10, is subject to the permit and fee requirements of this  
27 act.

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1       (3) Within 180 days from the effective date of this act, a  
2 provider with facilities located in a public right-of-way as of  
3 the effective date of this act that has not previously obtained  
4 authorization or a permit under section 251 of the Michigan tele-  
5 communications act, 1991 PA 179, MCL 484.2251, shall submit an  
6 application for a permit to each municipality in which the pro-  
7 vider has facilities located in a public right-of-way. A pro-  
8 vider submitting an application under this subsection is not  
9 required to pay the administrative fee required under section  
10 6(4).

11       (4) The authority may, for good cause, allow a provider up  
12 to an additional 180 days to submit the application required  
13 under subsection (3).

14       Sec. 6. (1) For applications and permits issued after the  
15 effective date of this act, the commission shall prescribe the  
16 form and application process to be used in applying to a munici-  
17 pality for a permit under section 15 and the provisions of a  
18 permit issued under section 15. The initial application forms  
19 and, unless otherwise agreed to by the parties, permit provisions  
20 shall be those approved by the commission as of August 16, 2001.

21       (2) If the parties cannot agree on the requirement of addi-  
22 tional information requested by the municipality or the use of  
23 additional or different permit terms, either the municipality or  
24 the provider shall notify the commission, which shall appoint a  
25 mediator within 7 days from the date of the notice to make recom-  
26 mendations within 30 days from the date of the appointment for a  
27 resolution of the dispute. The commission may order that the

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1 permit be temporarily granted pending resolution of the dispute.  
2 If any of the parties are unwilling to comply with the mediator's  
3 recommendations, any party to the dispute may within 30 days of  
4 receipt of the recommendation request the commission for a review  
5 and determination of a resolution of the dispute. Except as pro-  
6 vided in subsection (3), the determination by the commission  
7 under this subsection shall be issued within 60 days from the  
8 date of the request to the commission. The interested parties to  
9 the dispute may agree to an extension for up to 30 days of the  
10 60-day requirement under this subsection.

11 (3) A request for emergency relief under section 18(1) shall  
12 have the same time requirements and procedures as under section  
13 203 of the Michigan telecommunications act, 1991 PA 179,  
14 MCL 484.2203.

15 (4) Except as otherwise provided by this act, a provider  
16 shall file an application for a permit and pay a 1-time \$500.00  
17 application fee to each municipality whose boundaries include  
18 public rights-of-way for which access or use is sought by the  
19 provider.

20 (5) An application for a permit under this section shall  
21 include route maps showing the location of the provider's exist-  
22 ing and proposed facilities in the format as required by the  
23 authority under subsection (8). Except as otherwise provided by  
24 a mandatory protective order issued by the commission, informa-  
25 tion included in the route maps of a provider's existing and pro-  
26 posed facilities that is a trade secret, proprietary, or



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1 confidential information is exempt from the freedom of  
2 information act, 1976 PA 442, MCL 15.231 to 15.246.

3 (6) A municipality shall notify the commission when it  
4 grants or denies a permit, including information regarding the  
5 date on which the application was filed and the date on which the  
6 permit was granted or denied. The commission shall maintain on  
7 its website a listing showing the length of time required by each  
8 municipality to grant an application during the immediately pre-  
9 ceding 3 years.

10 (7) Within 90 days after the substantial completion of con-  
11 struction of new facilities in a municipality, a provider shall  
12 submit route maps showing the location of the telecommunication  
13 facilities to both the commission and the affected  
14 municipalities.

15 (8) The commission shall, after input from providers and  
16 municipalities, require that the route maps required under this  
17 section be in a paper or electronic format as the commission may  
18 prescribe.

19 Sec. 7. If a provider and 1 or more municipalities are  
20 unable to agree on arrangements for coordinating and minimizing  
21 the disruption of public rights-of-way, ensuring the efficient  
22 construction of facilities, restoring the public rights-of-way  
23 after construction or other activities by a provider, protecting  
24 the public health, safety, and welfare, and resolving disputes  
25 arising under this act, the commission shall appoint a mediator  
26 within 7 days from the date of the notice to make recommendations  
27 within 30 days from the date of the appointment for a resolution

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1 of the dispute. If any of the parties are unwilling to comply  
2 with the mediator's recommendations, any party to the dispute may  
3 within 30 days of receipt of the recommendation request the com-  
4 mission for a review and determination of a resolution of the  
5 dispute. The determination by the commission under this section  
6 shall be issued within 60 days from the date of the request to  
7 the commission. The commission shall issue its determination  
8 within 15 days from the date of the request if a municipality  
9 demonstrates that the public health, safety, and welfare require  
10 a determination before the expiration of the 60 days. The inter-  
11 ested parties to the dispute may agree to an extension for up to  
12 30 days of the 60-day requirement under this section.

13 Sec. 8. (1) Except as otherwise provided by this act, a  
14 provider shall pay to the authority an annual maintenance fee as  
15 required under this act.

16 (2) The authority shall determine for each provider the  
17 amount of fees required under this section. April 1 to March 31  
18 shall be the annual period covered by each assessment and April  
19 29 the date due for payment. The authority shall prescribe the  
20 schedule for the allocation and disbursement of the fees under  
21 this act. The authority shall disburse the annual maintenance  
22 fee to each municipality as provided under sections 10, 11, and  
23 12 on or before the last day of the month following the month of  
24 receipt of the fees by the authority. The authority may autho-  
25 rize the department of treasury to collect and make the alloca-  
26 tions and disbursements of fees required under this act. Any

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1 interest accrued on the revenue collected under this act shall be  
2 used only as provided by this act.

3 (3) Except as otherwise provided under subsection (6), for  
4 the period of November 1, 2002 to March 31, 2003, a provider  
5 shall pay an initial annual maintenance fee to the authority on  
6 April 29, 2003 of 2 cents per each linear foot of public  
7 right-of-way occupied by the provider's facilities within a met-  
8 ropolitan area, prorated for the period specified in this  
9 subsection.

10 (4) Except as otherwise provided under subsection (6), for  
11 each year after the initial period provided for under  
12 subsection (3), a provider shall pay the authority an annual  
13 maintenance fee of 5 cents per each linear foot of public  
14 right-of-way occupied by the provider's facilities within a met-  
15 ropolitan area.

16 (5) The fee required under this section is based on the  
17 linear feet occupied by the provider regardless of the quantity  
18 or type of the provider's facilities utilizing the public  
19 right-of-way or whether the facilities are leased to another  
20 provider.

21 (6) In recognition of the need to provide nondiscriminatory  
22 compensation to municipalities for management of their  
23 rights-of-way, the fees required under this section shall be the  
24 lesser of the amounts prescribed under subsections (3) and (4) or  
25 1 of the following:

26 (a) For a provider that was an incumbent local exchange  
27 carrier in this state on January 1, 2002, the fees within the

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1 exchange in which that provider was providing basic local  
2 exchange service on January 1, 2002, when restated by the author-  
3 ity on a per access line per year basis, shall not exceed the  
4 statewide per access line per year fee of the provider with the  
5 highest number of access lines in this state. The authority  
6 shall annually determine the statewide per access line per year  
7 fee by dividing the amount of the total annual fees the provider  
8 is required to pay under subsections (3) and (4) by the  
9 provider's total number of access lines in this state.

10 (b) For all other providers in an exchange, the fee per  
11 linear foot for the provider's facilities located in the public  
12 rights-of-way in that exchange shall be the same as that of the  
13 incumbent local exchange carrier.

14 (7) If the provider with the highest number of access lines  
15 in this state is unable to provide the exact number of linear  
16 feet for a determination under subsection (6), the provider shall  
17 no later than February 1, 2003 make a good faith estimate, in  
18 consultation with the staff of the authority, of the number of  
19 linear feet of rights-of-way in which facilities owned by the  
20 provider are located in a metropolitan area and pay an annual  
21 maintenance fee to the authority based upon the estimate.

22 (8) If an estimate of the linear feet is made under subsec-  
23 tion (7), the statewide per access line per year cost shall be  
24 determined by the authority based on that provider's good faith  
25 estimate. Upon the true up of the estimated linear feet under  
26 subsection (9), the authority shall adjust the fees of all  
27 providers affected by subsection (6).

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1       (9) Within 360 days of the effective date of this act, a  
2 provider making an estimate under subsection (8) shall true up  
3 the estimated amount of linear feet of the provider's facilities  
4 in rights-of-way in a metropolitan area to the actual amount of  
5 linear feet of rights-of-way in a metropolitan area owned by the  
6 provider. If the actual amount of linear feet of rights-of-way  
7 in which facilities owned by the provider are located exceeds the  
8 estimated amount, the provider shall pay the authority the dif-  
9 ference within 30 days of the true up. If the actual amount of  
10 linear feet of rights-of-way in which facilities owned by the  
11 provider are located is less than the estimated amount, the pro-  
12 vider shall receive a corresponding credit from the authority  
13 against the annual maintenance fee due for payment in the suc-  
14 ceeding year.

15       (10) The authority may prescribe the forms, standards, meth-  
16 odology, and procedures for assessing fees under this act. Each  
17 provider and municipality shall provide reasonably requested  
18 information regarding public rights-of-way that is required to  
19 assist the authority in computing and issuing the assessments  
20 under this section.

21       (11) Notwithstanding any other provision of this act, a pro-  
22 vider possessing a franchise or operating with the consent of a  
23 municipality to provide and that is providing cable services  
24 within a metropolitan area is subject to an annual maintenance  
25 fee of 1 cent per linear foot of public right-of-way occupied by  
26 the provider's facilities within the metropolitan area. An  
27 affiliate of such a provider shall not pay any additional fees to

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1 occupy or use the same facilities in public rights-of-way as  
2 initially constructed for and used by a cable provider. The fee  
3 required under this subsection is in lieu of any other mainte-  
4 nance fee or other fee except for fees paid by the provider under  
5 a cable franchise or consent agreement. A cable franchise or  
6 consent agreement from a municipality that allows the municipal-  
7 ity to seek right-of-way related information comparable to that  
8 required by a permit under this act and that provides insurance  
9 for right-of-way related activities shall satisfy any requirement  
10 for the holder of the cable franchise or consent agreement or its  
11 affiliates to obtain a permit to provide information services or  
12 telecommunications services in the municipality.

13 (12) The cable provider may satisfy the fee requirement  
14 under subsection (11) by certifying to the authority that the  
15 provider's aggregate investment in this state, since January 1,  
16 1996, in facilities capable of providing broadband internet  
17 transport access service exceeds the aggregate amount of the  
18 maintenance fees assessed under subsection (11).

19 (13) The fees collected under this act shall be used only as  
20 provided by this act and shall be subject to an audit by the  
21 state auditor general.

22 (14) A provider may apply to the commission for a determina-  
23 tion of the maximum amount of credit available under section  
24 13b(5) of 1905 PA 282, MCL 207.13b. Each application shall  
25 include sufficient documentation to permit the commission to  
26 accurately determine the allowable credit. Except as otherwise  
27 provided under subsection (15), the commission shall issue its

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1 determination within 45 days from the date of the application.  
2 Upon certification by the commission of the documentation pro-  
3 vided in subdivisions (a) and (b), a provider shall qualify for a  
4 credit equal to the costs paid under this act, less the amount of  
5 any credit determined under section 13b(1) of 1905 PA 282,  
6 MCL 207.13b, and shall not be subject to subsection (16) if the  
7 provider files the following documentation under this  
8 subsection:

9 (a) Verification of the costs paid by the provider under  
10 this act.

11 (b) Verification that the provider's rates and charges for  
12 basic local exchange service, including revenues from intrastate  
13 subscriber line or end-user line charges, do not exceed the  
14 commission's approved rates and charges for those services.

15 (15) If the commission finds that it cannot make a determi-  
16 nation based on the documentation required under subsection (14),  
17 it may require the provider to file its application under section  
18 203 of the Michigan telecommunications act, 1991 PA 179,  
19 MCL 484.2203.

20 (16) The maximum credit allowed under subsection (14) or  
21 (15) shall be the lesser of the following:

22 (a) The costs paid under this act, less the amount of any  
23 credit determined under section 13b(1) of 1905 PA 282,  
24 MCL 207.13b.

25 (b) The amount that the costs paid under this act, together  
26 with the provider's total service long run incremental cost of  
27 basic local exchange service, exceeds the provider's rates for

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1 basic local exchange service plus any additional charges of the  
2 provider used to recover its total service long run incremental  
3 cost for basic local exchange service. "Total service long run  
4 incremental cost" means that term as defined in section 102 of  
5 the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

6 (17) The tax credit allowed under subsections (14) and (15)  
7 shall be the sole method of recovery for the costs required under  
8 this act. A provider shall not recover the costs required under  
9 this act through rates and charges to the end-users for telecom-  
10 munication services.

11 (18) An educational institution is not required to [  
12 ] pay the fees and charges [ ] or fulfill the mapping require-  
13 ments required under this act for facilities that are constructed  
14 and used as provided under applicable provisions of section 307  
15 of the Michigan telecommunications act, 1991 PA 179,  
16 MCL 484.2307. To the extent that an educational institution pro-  
17 vides services beyond that allowed by section 307 of the Michigan  
18 telecommunications act, 1991 PA 179, MCL 484.2307, the educa-  
19 tional institution shall obtain a permit, pay the fees and  
20 charges, and fulfill the mapping requirement required under this  
21 act for each linear foot of public right-of-way used in providing  
22 telecommunication services to residential or commercial  
23 customers. An educational institution shall notify the commis-  
24 sion if it provides telecommunication services beyond that  
25 allowed by section 307 of the Michigan telecommunications act,  
26 1991 PA 179, MCL 484.2307, to a residential or commercial  
27 customer for compensation.



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1       (19) An electric or gas utility, or an affiliate of a  
2 utility, or an electric transmission provider is not required to  
3 obtain a permit, pay the fees and charges, or fulfill the mapping  
4 requirements required under this act for facilities located in  
5 the public rights-of-way that are used solely for electric or gas  
6 utility services including internal utility communications and  
7 customer services such as billing or load management. The elec-  
8 tric or gas utility, or an affiliate of a utility, or an electric  
9 transmission provider shall only obtain a permit, pay the fees  
10 and charges, and fulfill the mapping requirements required under  
11 this act for each linear foot of public right-of-way containing  
12 facilities leased or otherwise provided to an unaffiliated tele-  
13 communication provider or used in providing telecommunication  
14 services to a person other than the utility, or its affiliate,  
15 for compensation. An electric or gas utility, or an affiliate of  
16 a utility, or an electric transmission provider shall notify the  
17 commission if the electric or gas utility, or an affiliate of a  
18 utility, or an electric transmission provider provides or leases  
19 telecommunication services to a person other than the utility or  
20 its affiliate for compensation. For the purposes of this subsec-  
21 tion, electric and gas utility services include billing and  
22 metering services performed for an alternative electric supplier,  
23 an alternative gas supplier, electric utility, electric transmis-  
24 sion provider, natural gas utility, or a water utility.

25       (20) A state, county, municipality, municipally owned utili-  
26 ty, or an affiliate is not required to obtain a permit, pay the  
27 fees and charges, or fulfill the mapping requirements required

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1 under this act for facilities located in the public rights-of-way  
2 that are used solely for state, county, municipality, or govern-  
3 mental entity, or utility services including internal state,  
4 county, municipality, governmental entity, or utility communica-  
5 tions and customer services such as billing or load management.  
6 The state, county, municipality, municipally owned utility, or an  
7 affiliate shall only obtain a permit, pay the fees and charges,  
8 and fulfill the mapping requirements required under this act for  
9 each linear foot of public right-of-way containing facilities  
10 leased or otherwise provided to an unaffiliated telecommunication  
11 provider or used in providing telecommunication services to a  
12 person other than the state, county, another governmental entity,  
13 municipality, municipally owned utility, or its affiliate for  
14 compensation. A state, county, municipality, municipally owned  
15 utility, or an affiliate shall notify the commission if the  
16 state, county, municipality, municipally owned utility, or an  
17 affiliate provides or leases telecommunication services to a  
18 person other than the state, county, another governmental entity,  
19 municipality, municipally owned utility, or its affiliate for  
20 compensation. For the purposes of this subsection, utility serv-  
21 ices include billing and metering services performed for an  
22 alternative electric supplier, an alternative gas supplier, elec-  
23 tric utility, electric transmission provider, natural gas utili-  
24 ty, or a water utility.

25 (21) The authority may grant to a provider a waiver of the  
26 fee requirement of this section for telecommunication facilities  
27 located in underserved areas as identified by the authority if

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1 2/3 of the affected municipalities approve the granting of a  
2 waiver. If a waiver is granted under this subsection, the amount  
3 of the waived fees shall be deducted from the fee revenue the  
4 affected municipalities would otherwise be entitled under sec-  
5 tions 11 and 12. A waiver granted under this subsection shall  
6 not be for more than 10 years. As used in this subsection,  
7 "underserved area" means that term as defined under section 7 of  
8 the Michigan broadband development authority act.

9 Sec. 9. (1) If 2 or more providers implement a shared use  
10 arrangement and meet the requirements of this section, each pro-  
11 vider participating in the arrangement is entitled to a discount  
12 of the fees required under section 8 as provided under this  
13 section.

14 (2) To qualify for the shared use discount, each participat-  
15 ing provider shall do all of the following:

16 (a) To the extent permitted by the safety provisions of the  
17 applicable electrical code, occupy and use the same [ ]  
18 poles, trenches, conduits, ducts, or other common spaces or phys-  
19 ical facilities jointly with another provider.

20 (b) Coordinate the construction or installation of its own  
21 facilities with the construction schedules of another provider so  
22 that any pavement cuts, excavation, construction, or other activ-  
23 ities undertaken to construct or install the facilities occur  
24 contemporaneously and do not impair the physical condition, or  
25 interrupt the normal uses, of the public rights-of-way on more  
26 than 1 occasion.

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1           (c) Enter the shared use arrangement after the effective  
2     date of this act.

3           (3) This section does not apply to the utilization or  
4     attachment to poles, trenches, conduits, ducts, or other common  
5     facilities that were placed in the public rights-of-way before  
6     the effective date of this act.

7           (4) Two or more providers that qualify for a shared use dis-  
8     count are entitled to a 40% discount of the fees imposed by  
9     section 8 for each linear foot of public right-of-way in which  
10    the shared use occurs.

11          Sec. 10. (1) Except as reduced by the amount provided for  
12    under subsection (2), the authority shall allocate the annual  
13    maintenance fees collected under this act to fund the fee-sharing  
14    mechanism under section 11.

15          (2) To the extent that fees exceed \$30,000,000.00 in any  
16    year and are from fees for linear feet of rights-of-way in which  
17    telecommunication facilities are constructed by a provider after  
18    the effective date of this act, the authority shall allocate that  
19    amount to fund the fee-sharing mechanism under section 12.

20          (3) To be eligible to receive fee-sharing payments under  
21    this act, a municipality shall comply with this act. For the  
22    purpose of the distribution under sections 11 and 12, a munici-  
23    pality is considered to be in compliance with this act unless the  
24    authority finds to the contrary in a proceeding against the  
25    municipality affording due process initiated by a provider, the  
26    commission, or the attorney general. If a municipality is found  
27    not to be in compliance, fee-sharing payments shall be held by

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1 the authority in escrow until the municipality returns to  
2 compliance. A municipality is not ineligible to receive  
3 fee-sharing payments for any matter found to be a good faith dis-  
4 pute or matters of first impression under this act or other  
5 applicable law.

6 (4) The amount received under sections 11 and 12 shall be  
7 used by the municipality solely for rights-of-way related  
8 purposes. Rights-of-way purposes does not include constructing  
9 or utilizing telecommunication facilities to serve residential or  
10 commercial customers.

11 (5) A municipality receiving funds under sections 11 and 12  
12 with a population of less than 10,000 may file and a municipality  
13 receiving funds under sections 11 and 12 with a population of  
14 10,000 or more shall file an annual report with the authority on  
15 the use and disposition of the funds. [The authority shall prescribe the  
form of the report to be filed under this subsection, which report shall  
be in a simplified format.]

16 Sec. 11. (1) The authority shall allocate the funding pro-  
17 vided for fee sharing under section 10(1) as follows:

18 (a) 75% to be disbursed to cities and villages in a metro-  
19 politan area on the basis of the distribution to each city or  
20 village under section 13 of 1951 PA 51, MCL 247.663, for the most  
21 recent year as a proportion of the total distribution to all  
22 cities and villages located in metropolitan areas under section  
23 13 of 1951 PA 51, MCL 247.663, for the most recent year.

24 (b) 25% to be disbursed to townships in a metropolitan area  
25 on the basis of each township's proportionate share of the total  
26 linear feet of public rights-of-way occupied by providers within  
27 all townships located in metropolitan areas.

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1           (2) Except as otherwise provided under sections 13 and 14,  
2 municipalities that are ineligible under section 13 or 14 shall  
3 be excluded from the computation, allocation, and distribution of  
4 funding under this section.

5           Sec. 12. (1) The authority shall allocate the funding pro-  
6 vided for fee sharing under section 10(2) as follows:

7           (a) The amount available under this section multiplied by  
8 the percentage of weighted linear feet attributable to cities and  
9 villages, as compared to the total weighted linear feet attribut-  
10 able to cities, villages, and townships, shall be disbursed to  
11 cities and villages in a metropolitan area on the basis of the  
12 distribution to each city or village under section 13 of 1951  
13 PA 51, MCL 247.663, for the most recent year as a proportion of  
14 the total distribution to all cities and villages located in met-  
15 ropolitan areas under section 13 of 1951 PA 51, MCL 247.663, for  
16 the most recent year.

17           (b) The amount available under this section multiplied by  
18 the percentage of weighted linear feet attributable to townships,  
19 as compared to the total weighted linear feet attributable to  
20 cities, villages, and townships, shall be disbursed to townships  
21 on the basis of each township's proportionate share of the total  
22 unweighted linear feet of public rights-of-way in or on which  
23 providers' facilities are located within all townships located in  
24 metropolitan areas.

25           (2) The following shall be used under this section in deter-  
26 mining the weighted linear feet in which telecommunications

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1 facilities are first placed by any telecommunications provider  
2 after the effective date of this act:

3 (a) All underground linear feet shall receive a weight of  
4 3.0.

5 (b) All linear feet in a city, village, or township with a  
6 population in excess of 5,000 and not covered under  
7 subdivision (a) shall receive a weight of 2.0.

8 (c) All other linear feet shall receive a weight of 1.0.

9 (3) Except as otherwise provided under sections 13 and 14,  
10 municipalities that are ineligible under section 13 or 14 shall  
11 be excluded from the computation, allocation, and distribution of  
12 funding under this section.

13 Sec. 13. (1) A municipality is not eligible to receive  
14 funds under sections 11 and 12 unless by December 31, 2003 the  
15 municipality has modified to the extent necessary any fees  
16 charged to providers after the effective date of this act relat-  
17 ing to access to and usage of the public rights-of-way to an  
18 amount not exceeding the amounts of fees and charges required  
19 under this act.

20 (2) To the extent a telecommunications provider pays fees to  
21 a municipality that have not been modified as required by this  
22 section, both of the following apply:

23 (a) The provider may deduct the fees paid from the fee  
24 required to be paid under section 8 for those rights-of-way.

25 (b) The amounts received shall be deducted from the amounts  
26 the municipality is eligible to receive under sections 11 and  
27 12.

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1       (3) The authority may allow a municipality in violation of  
2 this section to become eligible to receive funds under sections  
3 11 and 12 if the authority determines that the violation occurred  
4 despite good faith efforts and the municipality rebates to the  
5 authority any fees received in excess of those required under  
6 section 8, including any interest as determined by the  
7 authority.

8       (4) A municipality is considered to have modified the fees  
9 under subsection (1) if it has adopted a resolution or ordinance,  
10 effective no later than January 1, 2004, approving the modifica-  
11 tion so that providers with telecommunication facilities in  
12 public rights-of-way within the municipality's boundaries pay  
13 only those fees required under section 8. The municipality shall  
14 provide each provider affected by the fee a copy of the resolu-  
15 tion or ordinance passed under this subsection.

16       (5) Except as otherwise provided by a municipality, if  
17 section 8 is found to be invalid or unconstitutional, a modifica-  
18 tion of fees under this section is void from the date the modifi-  
19 cation was made.

20       (6) To be eligible to receive fee-sharing payments under  
21 this act, a municipality shall not hold a cable television opera-  
22 tor in default or seek any remedy for failure to satisfy an obli-  
23 gation, if any, to pay after the effective date of this act a  
24 franchise fee or other similar fee on that portion of gross reve-  
25 nues from charges the cable operator received for cable modem  
26 services provided through broadband internet transport access  
27 services.



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1       Sec. 14. (1) Except as otherwise provided by subsection  
2       (2), a county, municipality, or an affiliate, shall comply with  
3       all of the following requirements:

4       (a) Before the passage of any ordinance or resolution autho-  
5       rizing a county or municipality to either construct telecommuni-  
6       cation facilities or provide a telecommunication or cable modem  
7       service provided through a broadband internet access transport  
8       service, a county or municipality shall conduct at least 1 public  
9       hearing. A notice of the public hearing shall be provided as  
10      required by law.

11      (b) Not less than 30 days before the hearing required under  
12      subdivision (a), the county or municipality shall prepare reason-  
13      able projections of at least a 3-year cost-benefit analysis.  
14      This analysis shall identify and disclose the total projected  
15      direct costs of and the revenues to be derived from constructing  
16      the telecommunication facilities and providing the telecommunica-  
17      tion or cable modem service through a broadband internet access  
18      transport service. The costs shall be determined by using  
19      accounting standards developed under the uniform budgeting and  
20      accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

21      (c) A county or municipality shall prepare and maintain  
22      accounting records in accordance with accounting standards devel-  
23      oped under the uniform budgeting and accounting act, 1968 PA 2,  
24      MCL 141.421 to 141.440a. The accounting records required under  
25      this subdivision are subject to the freedom of information act,  
26      1976 PA 442, MCL 15.231 to 15.246.

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1 (d) Charges for telecommunication service and cable modem  
2 services provided through a broadband internet access transport  
3 service shall include all of the following:

4 (i) All capital costs attributable to the provision of the  
5 service.

6 (ii) All costs attributable to the provision of the service  
7 that would be eliminated if the service was discontinued.

8 (iii) The proportionate share of costs identified with the  
9 provision of 2 or more county or municipal services including  
10 telecommunication services.

11 (e) A county or municipality that provides a telecommunica-  
12 tion service or cable modem service provided through a broadband  
13 internet access transport service shall not adopt an ordinance or  
14 a policy that unduly discriminates against another [person providing  
15 ] the same service. Subject to other requirements  
16 of this section, this subsection shall not be construed as pre-  
17 cluding a county or municipality from establishing rates differ-  
18 ent from those of another [person providing ] the same  
19 service.

20 (f) In providing a telecommunication or cable modem service  
21 provided through a broadband internet access transport service, a  
22 municipality shall not employ terms more favorable or less bur-  
23 densome than those imposed by the municipality upon other provid-  
24 ers of the same service within its jurisdiction concerning access  
25 to public rights-of-ways.

26 (g) A municipality shall not impose or enforce against a  
27 provider any local regulation with respect to public

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1 rights-of-way that is not also applicable to the municipality in  
2 its provision of a telecommunication or cable modem service pro-  
3 vided through a broadband internet access transport service.

4 (h) In providing a telecommunication or a cable modem serv-  
5 ice provided through a broadband internet access transport serv-  
6 ice, a municipality shall not employ terms more favorable or less  
7 burdensome than those imposed by the municipality upon other pro-  
8 viders of the same service within its jurisdiction concerning  
9 access to and rates for pole attachments.

10 (2) Subsection (1) does not apply to either of the  
11 following:

12 (a) Telecommunication facilities constructed and operated by  
13 a county, municipality, or an affiliate, to provide telecommuni-  
14 cation service or a cable modem service provided through a broad-  
15 band internet access transport service that is not provided to  
16 any residential or commercial premises.

17 (b) Telecommunication facilities that are owned or operated  
18 by a county, municipality, or an affiliate for compensation, and  
19 that are located within the territory served by the county,  
20 municipality or its affiliate that provided a telecommunications  
21 service or a cable modem service provided through broadband  
22 internet access transport service before December 31, 2001 or  
23 that allowed any third party to use the county's or  
24 municipality's telecommunication facilities for compensation  
25 before December 31, 2001, to provide such a service.

26 (3) If a complaint is filed under section 18 alleging a  
27 violation of this section, the commission shall allow a county or

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1 municipality to take reasonable steps to correct a violation  
2 found by the commission before the commission imposes any  
3 penalties.

4 (4) The commission, in reviewing a complaint under subsec-  
5 tion (3), shall consider, in determining whether charges imposed  
6 by a county or municipality are in compliance with subsection  
7 (1), the applicable federal, state, county, and local taxes and  
8 fees paid by the complainant or providers serving that county or  
9 municipality.

10 Sec. 15. (1) Except as otherwise provided in this section,  
11 a municipality shall, upon application, grant to providers a  
12 permit for access to and the ongoing use of all public  
13 rights-of-way located within its municipal boundaries. A munici-  
14 pality shall act reasonably and promptly on all applications  
15 filed for a permit involving an easement or public place.

16 (2) This section shall not limit a municipality's right to  
17 review and approve a provider's access to and ongoing use of a  
18 public right-of-way or limit the municipality's authority to  
19 ensure and protect the health, safety, and welfare of the  
20 public.

21 (3) A municipality shall approve or deny access under this  
22 section within 45 days from the date a provider files an applica-  
23 tion for a permit for access to a public right-of-way. A  
24 provider's right to access and use of a public right-of-way shall  
25 not be unreasonably denied by a municipality. A municipality may  
26 require as a condition of the permit that a bond be posted by the  
27 provider, which shall not exceed the reasonable cost to ensure

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1 that the public right-of-way is returned to its original  
2 condition during and after the provider's access and use.

3 (4) Any conditions of a permit granted under this section  
4 shall be limited to the provider's access and usage of any public  
5 right-of-way.

6 (5) A provider undertaking an excavation or constructing or  
7 installing facilities within a public right-of-way or temporarily  
8 obstructing a public right-of-way, as authorized by the permit,  
9 shall promptly repair all damage done to the street surface and  
10 all installations on, over, below, or within the public  
11 right-of-way and shall promptly restore the public right-of-way  
12 to its preexisting condition. The authority shall also have the  
13 jurisdiction to require the repair and restoration of any  
14 right-of-way, including state right-of-way, which has not been  
15 repaired or restored after installation.

16 Sec. 16. This act does not affect the requirement of a  
17 cable operator to obtain a cable franchise from a municipality.

18 Sec. 17. A decision or assessment of the authority is  
19 subject to a de novo review by the commission upon the request of  
20 an interested person. A decision or order of the commission  
21 issued under this act is subject to review as provided under sec-  
22 tion 26 of 1909 PA 300, MCL 462.26.

23 Sec. 18. (1) Except as otherwise provided by this act, the  
24 time requirements and procedures governing a complaint proceeding  
25 under this act shall be the same as those under section 203 of  
26 the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

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1           (2) If after notice and hearing the commission finds that a  
2 person has violated this act, the commission shall order remedies  
3 and penalties to protect and make whole persons who have suffered  
4 an economic loss as a result of the violation, including, but not  
5 limited to, 1 or more of the following:

6           (a) For failure to pay an undisputed fee assessed by the  
7 authority under this act, order the provider to pay a fine of not  
8 more than 1% of the amount of the unpaid assessment for each day  
9 that the assessment remains unpaid. For each subsequent offense  
10 under this subdivision, a fine of not more than 2% for each day  
11 the assessment remains unpaid.

12           (b) For a violation under section 14, order the suspension  
13 or termination of all or a portion of the fee-sharing payments to  
14 the municipality provided for under section 11 or 12.

15           (c) Order the person who violated this act to pay a fine of  
16 not less than \$200.00 or more than \$20,000.00 per day that the  
17 person is in violation. For each subsequent offense, a fine of  
18 not less than \$500.00 or more than \$40,000.00 per day that the  
19 person is in violation of this act.

20           (d) If the person is a provider, order that the provider's  
21 permit allowing access to and use of a municipality's public  
22 right-of-way be conditioned or amended.

23           (e) Issue cease and desist orders.

24           (f) Order the person who violates this act to pay attorney  
25 fees and actual costs of a person that is not a provider of tele-  
26 communication services to 250,000 or more end-users.

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1       Sec. 19. (1) If the application of any provision of  
2   section 8 to a certain person is found to be invalid or  
3   unconstitutional, that provision and sections 3 and 15 shall not  
4   apply to any person.

5       (2) If section 15 does not apply under subsection (1), the  
6   permit process for access to and use of public rights-of-way  
7   shall be as follows:

8       (a) Except as provided in subdivisions (b) and (c), a local  
9   unit of government shall grant a permit for access to and the  
10   ongoing use of all rights-of-way, easements, and public places  
11   under its control and jurisdiction to providers of telecommunica-  
12   tion services.

13       (b) This section shall not limit a local unit of  
14   government's right to review and approve a provider's access to  
15   and ongoing use of a right-of-way, easement, or public place or  
16   limit the unit's authority to ensure and protect the health,  
17   safety, and welfare of the public.

18       (c) A local unit of government shall approve or deny access  
19   under this section within 90 days from the date a provider files  
20   an application for a permit for access to a right-of-way, ease-  
21   ment, or public place. A provider's right to access and use of a  
22   right-of-way, easement, or public place shall not be unreasonably  
23   denied by a local unit of government. A local unit of government  
24   may require as a condition of the permit that a bond be posted by  
25   the provider, which shall not exceed the reasonable cost, to  
26   ensure that the right-of-way, easement, or public place is

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1 returned to its original condition during and after the  
2 provider's access and use.

3 (d) Any conditions of a permit granted under this subsection  
4 shall be limited to the provider's access and usage of any  
5 right-of-way, easement, or public place.

6 (e) Any fees or assessments made under this subsection shall  
7 be on a nondiscriminatory basis and shall not exceed the fixed  
8 and variable costs to the local unit of government in granting a  
9 permit and maintaining the rights-of-way, easements, or public  
10 places used by a provider.

11 (f) A provider using the highways, streets, alleys, or other  
12 public places shall obtain a permit as required under this  
13 subsection.

14 (3) If section 15 does not apply under subsection (1), it is  
15 the intent of the legislature in enacting subsection (2) to  
16 return to the status quo prior to the effective date of this act  
17 for the granting of permits for access to and the use of all  
18 rights-of-way. Subsection (2) shall have the same construction  
19 and interpretation as sections 251 to 254 of the Michigan tele-  
20 communications act, 1991 PA 179, MCL 484.2251 to 484.2254, had  
21 prior to the repeal of these sections by this act.

22 (4) Except as provided under subsection (1), if any other  
23 provision or the application of any provision of this act to a  
24 certain person is found to be invalid or unconstitutional, the  
25 remaining provisions or application of a provision to other per-  
26 sons shall not be affected and will remain in full force and  
27 effect.



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1       Sec. 20. Pursuant to section 8 of article III of the state  
2 constitution of 1963, either house of the legislature or the gov-  
3 ernor may request the opinion of the supreme court on important  
4 questions of law as to the constitutionality of this act.

5       Enacting section 1. Sections 251, 252, 253, and 254 of the  
6 Michigan telecommunications act, 1991 PA 179, MCL 484.2251,  
7 484.2252, 484.2253, and 484.2254, are repealed.

8       Enacting section 2. This act takes effect November 1,  
9 2002.

10       Enacting section 3. This act does not take effect unless  
11 all of the following bills of the 91st Legislature are enacted  
12 into law:

13       (a) Senate Bill No. 881.

14       (b) Senate Bill No. 999.