

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

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

2

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 residents 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

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

3

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) "Metropolitan area" means 1 or more municipalities
6 located, in whole or in part, within a county having a population
7 of 10,000 or more or a municipality that enacts an ordinance or
8 resolution electing to be classified as part of a metropolitan
9 area under this act.

10 (e) "Municipality" means a township, city, or village.

11 (f) "Person" means an individual, corporation, partnership,
12 association, governmental entity, or any other legal entity.

13 (g) "Public right-of-way" means the area on, below, or above
14 a public roadway, highway, street, alley, easement, or waterway.
15 Public right-of-way does not include a federal, state, or private
16 right-of-way.

17 (h) "Telecommunication facilities" or "facilities" means the
18 equipment or personal property, such as copper and fiber cables,
19 lines, wires, switches, conduits, pipes, and sheaths, which are
20 used to or can generate, receive, transmit, carry, amplify, or
21 provide telecommunication services or signals. Telecommunication
22 facilities or facilities do not include antennas, supporting
23 structures for antennas, equipment shelters or houses, and any
24 ancillary equipment and miscellaneous hardware used to provide
25 federally licensed commercial mobile service as defined in sec-
26 tion 332(d) of part I of title III of the communications act of
27 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880 as amended February 19, 2002

4

1 defined as commercial mobile radio service in 47 C.F.R. 20.3, and
2 service provided by any wireless, 2-way communications device.

3 (i) "Telecommunication provider", "provider", and
4 "telecommunication services" mean those terms as defined in sec-
5 tion 102 of the Michigan telecommunications act, 1991 PA 179,
6 MCL 484.2102. Telecommunication provider or services does not include
7 a provider or services of any federally licensed commercial mobile radio
8 service as defined in section 332(d) of part I of the communications act of
9 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further
10 defined as commercial mobile radio service in 47 C.F.R. 20.3, and
11 service provided by any wireless, 2-way communication device.
12 For the purposes of this act only, a provider also includes all
13 of the following:

14 (i) A cable television operator that provides a telecommuni-
15 cation service.

16 (ii) Except as otherwise provided by this act, a person who
17 owns telecommunication facilities located within a public
18 right-of-way. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 (iii) A person providing broadband internet transport access
22 service.

23 Sec. 3. (1) Pursuant to section 27 of Article VII of the state
24 constitution of 1963, the metropolitan extension telecommunications
25 rights-of-way oversight authority is established as an autonomous
26 agency within the department of consumer and industry services.
27 The director of the authority shall be appointed by the governor
for a 4-year term. The director of the authority shall report

1 directly to the governor. The department of consumer and
2 industry services shall provide the authority all budget, pro-
3 curement, and management-related functions. The department of
4 consumer and industry services shall also provide suitable
5 offices, facilities, equipment, staff, and supplies for the
6 authority in the city of Lansing.

7 (2) The director is responsible for carrying out the powers
8 and duties of the authority under this act.

9 (3) The authority shall coordinate public right-of-way mat-
10 ters with municipalities, assess the fees required under this
11 act, and have the exclusive power to assess fees on telecommuni-
12 cation providers owning telecommunication facilities in public
13 rights-of-way within a metropolitan area to recover the costs of
14 using the rights-of-way by the provider.

15 (4) The authority shall file an annual report of its activi-
16 ties for the preceding year with the governor and the legislature
17 on or before March 1 of each year.

18 (5) The authority shall promulgate rules for the implementation and
administration of this act under the administrative procedures act of
1969, 1969 PA 306, MCL 24.201 to 24.328.

18 Sec. 4. (1) Except as otherwise provided by this act, after
19 the effective date of this act, a metropolitan area shall not
20 enact, maintain, or enforce an ordinance, local law, or other
21 legal requirement applicable to telecommunication providers that
22 is inconsistent with this act or that assesses fees or requires
23 other consideration for access to or use of the public
24 rights-of-way that are in addition to the fees required under
25 this act.

26 (2) This act shall not affect any existing rights that a
27 provider or municipality may have under a permit issued by a

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

6

1 municipality or contract between the municipality and the
2 provider related to the use of the public rights-of-way.

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

6 Sec. 5. (1) A provider using or seeking to use public
7 rights-of-way in a metropolitan area for its telecommunication
8 facilities shall obtain a permit under section 15 from the munic-
9 ipality and pay all fees required under this act. Authorizations
10 or permits previously obtained from a municipality under section
11 251 of the Michigan telecommunications act, 1991 PA 179,
12 MCL 484.2251, satisfy the permit requirement of this section.

13 (2) A provider asserting rights under 1883 PA 129, MCL 484.1
14 to 484.10, is subject to the permit and fee requirements of this
15 act. Within 180 days from the effective date of this act, a pro-
16 vider with facilities located in a public right-of-way as of the
17 effective date of this act that has not previously obtained
18 authorization or a permit under section 251 of the Michigan tele-
19 communications act, 1991 PA 179, MCL 484.2251, shall submit an
20 application for a permit to each municipality in which the pro-
21 vider has facilities located in a public right-of-way. A pro-
22 vider submitting an application under this subsection is not
23 required to pay the administrative fee required under section
24 6(4). The authority may, for good cause, allow a provider up to
25 an additional 180 days to submit the application required under
26 this subsection.

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

7

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

8 (2) If the parties cannot agree on the requirement of addi-
9 tional information requested by the municipality or the use of
10 additional or different permit terms, either the municipality or
11 the provider shall notify the commission, which shall appoint a
12 mediator to make recommendations within 30 days from the date of
13 the appointment for a resolution of the dispute. The commission
14 may order that the permit be temporarily granted pending resolu-
15 tion of the dispute. If any of the parties are unwilling to
16 comply with the mediator's recommendations, any party to the dis-
17 pute may within 30 days of receipt of the recommendation request
18 the commission for a review and determination of a resolution of
19 the dispute. Except as provided in subsection (3), the determi-
20 nation by the commission under this subsection shall be issued
21 within 60 days from the date of the request to the commission.
22 The interested parties to the dispute may agree to an extension
23 for up to 30 days of the 60-day requirement under this
24 subsection.

25 (3) A request for emergency relief under section 18(1) shall
26 have the same time requirements as under section 203(2) of the
27 Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

8

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

6 (5) An application for a permit under this section shall
7 include route maps showing the location of the provider's exist-
8 ing and proposed facilities as required by the authority under
9 subsection (8). Except as otherwise provided by a mandatory pro-
10 tective order issued by the commission, information included in
11 the route maps of a provider's existing and proposed facilities
12 that is a trade secret, proprietary, or confidential information
13 is exempt from the freedom of information act, 1976 PA 442,
14 MCL 15.231 to 15.246.

15 (6) A municipality shall notify the commission when it
16 issues a permit, including information regarding the date on
17 which the application was filed and the date on which the permit
18 was granted. The commission shall maintain on its website a
19 listing showing the length of time required by each municipality
20 to grant an application during the immediately preceding 3
21 years.

22 (7) Within 90 days after the substantial completion of con-
23 struction of new facilities in a municipality, a provider shall
24 submit route maps showing the location of the telecommunication
25 facilities to both the commission and the affected
26 municipalities.

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

5 Sec. 7. If a provider and 1 or more municipalities are
6 unable to agree on arrangements for coordinating and minimizing
7 the disruption of public rights-of-way, ensuring the efficient
8 construction of facilities, restoring the public rights-of-way
9 after construction or other activities by a provider, protecting
10 the public health, safety, and welfare, and resolving disputes
11 arising under this act, the commission shall appoint a mediator
12 to make recommendations within 30 days from the date of the
13 appointment for a resolution of the dispute. If any of the par-
14 ties are unwilling to comply with the mediator's recommendations,
15 any party to the dispute may within 30 days of receipt of the
16 recommendation request the commission for a review and determina-
17 tion of a resolution of the dispute. The determination by the
18 commission under this section shall be issued within 60 days from
19 the date of the request to the commission. The interested par-
20 ties to the dispute may agree to an extension for up to 30 days
21 of the 60-day requirement under this **section**.

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

25 (2) The authority shall determine for each provider the
26 amount of fees required under **subsections (3) and (4)**. The authority may
27 prescribe the annual period covered by each assessment, the date

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

10

1 due for payment, and the schedule for the allocation and
2 disbursement of the fees under this act. The authority shall
3 disburse the annual maintenance fee to each municipality as pro-
4 vided under sections 10, 11, and 12 on or before the last day of
5 the month following the month of receipt of the fees by the
6 authority. The authority may authorize the department of trea-
7 sury to collect and make the allocations and disbursements of
8 fees required under this act.

9 (3) Within 180 days of the effective date of this act, a
10 provider shall pay an initial annual maintenance fee to the
11 authority of 2 cents per each linear foot of public right-of-way
12 occupied by the provider's facilities within a metropolitan
13 area. If the effective date of this act results in less than an
14 entire year of coverage for the initial fee, the fee shall be
15 prorated for that year.

16 (4) Except as otherwise provided under subsection (5), for
17 each year after the initial annual maintenance fee paid under
18 subsection (3), a provider shall pay the authority an annual
19 maintenance fee of 5 cents per each linear foot of public
20 right-of-way occupied by the provider's facilities within a met-
21 ropolitan area.

22 (5) The fee required under this section is based on the
23 linear feet occupied by the provider regardless of the quantity
24 or type of the provider's facilities utilizing the public
25 right-of-way.

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

11

1 (6) The fees required under this section for any provider
2 shall not exceed the per access line cost of the provider with
3 the highest number of access lines in this state.

4 (7) A provider granted additional time under section 5(2) to
5 submit an application for a permit beyond the 180-day requirement
6 shall within the 180 days make a good faith estimate, in consul-
7 tation with the staff of the authority, of the number of linear
8 feet of rights-of-way in which facilities owned by the provider
9 are located in a metropolitan area and pay an annual maintenance
10 fee to the authority based upon the estimate.

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

25 (9) The authority may prescribe the forms, standards, meth-
26 odology, and procedures for assessing fees under this act. Each
27 provider and municipality shall provide reasonably requested

1 information regarding public rights-of-way that is required to
2 assist the authority in computing and issuing the assessments
3 under this section.

4 (10) Notwithstanding any other provision of this act, a pro-
5 vider possessing a franchise or operating with the consent of a
6 municipality to provide and that is providing cable services
7 within a metropolitan area is subject to an annual maintenance
8 fee of 1 cent per linear foot of public right-of-way occupied by
9 the provider's facilities within the metropolitan area. An
10 affiliate of such a provider shall not pay any additional fees to
11 occupy or use the same facilities in public rights-of-way as initially
12 constructed for and used by a cable provider. The fee required under this subsection is
13 in lieu of any other maintenance fee or other fee except for fees
14 paid by the provider under a cable franchise or consent
15 agreement. A cable franchise or consent agreement from a munici-
16 pality that allows the municipality to seek right-of-way related
17 information comparable to that required by a permit under this
18 act and that provides insurance for right-of-way related activi-
19 ties shall satisfy any requirement for the holder of the cable
20 franchise or consent agreement or its affiliates to obtain a
21 permit to provide information services or telecommunications
22 services in the municipality.

23 (11) The cable provider may satisfy the fee requirement
24 under subsection (10) by certifying to the authority that the
25 provider's aggregate investment in this state, since January 1,
26 1996, in facilities capable of providing broadband internet

1 transport access service exceeds the aggregate amount of the
2 maintenance fees assessed under subsection (10).

3 (12) The fees collected under this act shall be used only as
4 provided by this act and shall be subject to an audit by the
5 state auditor general.

6 (13) A provider may apply to the commission for a determina-
7 tion of the maximum amount of credit available under section
8 13b(5) of 1905 PA 282, MCL 207.13b. Each application shall
9 include sufficient documentation to permit the commission to
10 accurately determine the allowable credit. Except as otherwise
11 provided under subsection (14), the commission shall issue its
12 determination within 60 days from the date of the application. Upon
certification by the commission of the documentation provided in
subdivisions (a) and (b), a provider shall qualify for a credit equal to
the costs paid under this act and shall not be subject to subsection (15)
if the provider files the following documentation under this subsection:

(a) Verification of the costs paid by the provider under this act.
(b) Verification that the provider's rates and charges for basic
local exchange service, including revenues from intrastate subscriber
line or end-user line charges, do not exceed the commission's approved
rates and charges for those services.

13 (14) If the commission finds that it cannot make a determi-
14 nation based on the documentation required under subsection (13),
15 it may require the provider to file its application under section
16 203 of the Michigan telecommunications act, 1991 PA 179, MCL
17 484.2203.

18 (15) The maximum credit allowed under subsection (13) or
19 (14) shall be the lesser of the following:

20 (a) The costs paid under this act.

21 (b) The amount that the costs paid under this act, together
22 with the provider's total service long run incremental cost of
23 basic local exchange service, exceeds the provider's rates for
24 basic local exchange service plus any additional charges of the
25 provider used to recover its total service long run incremental
26 cost for basic local exchange service. "Total service long run

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

14

1 incremental cost" means that term as defined in section 102 of
2 the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

3 (16) The tax credit allowed under subsections (13) and (14)
4 shall be the sole method of recovery for the costs required under
5 this act. A provider shall not recover the costs required under
6 this act through rates and charges to the end-users for telecom-
7 munication services.

8 (17) An educational institution is not required to pay the
9 fees and charges required under this act for facilities that are
10 constructed and used as provided under applicable provisions of
11 section 307 of the Michigan telecommunications act, 1991 PA 179,
12 MCL 484.2307. To the extent that an educational institution pro-
13 vides services beyond that allowed by section 307 of the Michigan
14 telecommunications act, 1991 PA 179, MCL 484.2307, the educa-
15 tional institution shall pay the fees and charges required under
16 this act for each linear foot of public right-of-way used in pro-
17 viding telecommunication services to residential or commercial
18 customers. An educational institution shall notify the commis-
19 sion if it provides telecommunication services beyond that
20 allowed by section 307 of the Michigan telecommunications act,
21 1991 PA 179, MCL 484.2307, to a residential or commercial cus-
22 tomer for compensation.

23 (18) An electric or gas utility, or an affiliate of a utili-
24 ty, or an electric transmission provider is not required to
25 obtain a permit, pay the fees and charges, or fulfill the mapping
26 requirements required under this act for facilities located in
27 the public rights-of-way that are used solely for electric or gas

1 utility services including internal utility communications and
2 customer services such as billing or load management. The elec-
3 tric or gas utility, or an affiliate of a utility, or an electric
4 transmission provider shall only obtain a permit, pay the fees
5 and charges, and fulfill the mapping requirements required under
6 this act for each linear foot of public right-of-way containing
7 facilities leased or otherwise provided to an unaffiliated tele-
8 communication provider or used in providing telecommunication
9 services to a person other than the utility, or its affiliate,
10 for compensation. An electric or gas utility, or an affiliate of
11 a utility, or an electric transmission provider shall notify the
12 commission if the electric or gas utility, or an affiliate of a
13 utility, or an electric transmission provider provides or leases
14 telecommunication services to a person other than the utility or
15 its affiliate for compensation. For the purposes of this subsec-
16 tion, electric and gas utility services include billing and
17 metering services performed for an alternative electric supplier,
18 an alternative gas supplier, electric utility, electric transmis-
19 sion provider, natural gas utility, or a water utility.

20 (19) A county, municipality, municipally owned utility, or an affil-
21 iate is not required to obtain a permit, pay the fees and
22 charges, or fulfill the mapping requirements required under this
23 act for facilities located in the public rights-of-way that are
24 used solely for county, municipality, or governmental entity, or utility
25 services including inter-
26 nal county, municipality, governmental entity, or utility communications
27 and customer services
such as billing or load management. The county, municipality,
municipally owned utility, or an affiliate shall only obtain a

1 permit, pay the fees and charges, and fulfill the mapping
2 requirements required under this act for each linear foot of
3 public right-of-way containing facilities leased or otherwise
4 provided to an unaffiliated telecommunication provider or used in
5 providing telecommunication services to a person other than the county,
6 another governmental entity, municipality, municipally owned utility, or its affiliate for
7 compensation. A county, municipality, municipally owned utility, or an
8 affiliate shall notify the county, commission if the municipality, munic-
9 ipally owned utility, or an affiliate provides or leases telecom-
10 munication services to a person other than the county, another
11 governmental entity, municipality, municipally owned utility, or its affiliate for compensation. For the
12 purposes of this subsection, utility services include billing and
metering services performed for an alternative electric supplier, an
13 alternative gas supplier, electric utility, electric transmission
14 provider, natural gas utility, or a water utility.
15 (20) The authority may grant to a provider a waiver of the
16 fee requirement of this section for telecommunication facilities
17 located in underserved areas as identified by the authority if
18 2/3 of the affected municipalities approve the granting of a
19 waiver. If a waiver is granted under this subsection, the amount
20 of the waived fees shall be deducted from the fee revenue the
21 affected municipalities would otherwise be entitled under sec-
22 tions 11 and 12. A waiver granted under this subsection shall
23 not be for more than 10 years. As used in this subsection,
24 "underserved area" means a municipality in which less than 50% of
25 the households have access to a broadband internet transport
26 access service.

24 Sec. 9. (1) If 2 or more providers implement a shared use
25 arrangement and meet the requirements of this section, each pro-
26 vider participating in the arrangement is entitled to a discount

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

17

1 of the fees required under section 8 as provided under this
2 section.

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

5 (a) Occupy and use the same vertical space on poles,
6 trenches, conduits, ducts, or other common spaces or physical
7 facilities jointly with another provider.

8 (b) Coordinate the construction or installation of its own
9 facilities with the construction schedules of another provider so
10 that any pavement cuts, excavation, construction, or other activ-
11 ities undertaken to construct or install the facilities occur
12 contemporaneously and do not impair the physical condition, or
13 interrupt the normal uses, of the public rights-of-way on more
14 than 1 occasion.

15 (c) Enter the shared use arrangement after the effective
16 date of this act.

17 (3) This section does not apply to the utilization or
18 attachment to poles, trenches, conduits, ducts, or other common
19 facilities that were made before the effective date of this act.

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

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

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

18

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

(3) To be eligible to receive fee-sharing payments under this act, a municipality shall comply with this act. For the purpose of the distribution under this section, a municipality is considered to be in compliance with this act unless the authority finds to the contrary in a proceeding against the municipality affording due process initiated by a provider, the commission, or the attorney general. If a municipality is found not to be in compliance, fee-sharing payments shall be held by the authority in escrow until the municipality returns to compliance. A municipality is not ineligible to receive fee-sharing payments for any matter found to be a good faith dispute or matters of first impression under this act or other applicable law.

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

(5) Each municipality receiving funds under sections 11 and 12 shall file an annual report with the authority on the use and disposition of the funds.

Sec. 11. (1) The authority shall allocate the funding provided for fee sharing under section 10(1) as follows:

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

19

(a) 75% to be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under 1951 PA 51, MCL 247.651 to 247.675, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under 1951 PA 51, MCL 247.651 to 247.675, for the most recent year.

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

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

Sec. 12. (1) The authority shall allocate the funding provided for fee sharing under section 10(2) as follows:

(a) The amount available under this section multiplied by the percentage of weighted linear feet attributable to cities and villages, as compared to the total weighted linear feet attributable to cities, villages, and townships, shall be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under 1951 PA 51, MCL 247.651 to 247.675, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under 1951 PA 51, MCL 247.651 to 247.675, for the most recent year.

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

20

1 (b) The amount available under this section multiplied by
2 the percentage of weighted linear feet attributable to townships,
3 as compared to the total weighted linear feet attributable to
4 cities, villages, and townships, shall be disbursed to townships
5 on the basis of each township's proportionate share of the total
6 unweighted linear feet of public rights-of-way in or on which
7 providers' facilities are located within all townships located in
8 metropolitan areas.

9 (2) The following shall be used under this section in deter-
10 mining the weighted linear feet in which telecommunications
11 facilities are first placed by any telecommunications provider
12 after the effective date of this act:

13 (a) All underground linear feet shall receive a weight of
14 3.0.

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

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

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

23 Sec. 13. (1) A municipality is eligible to receive funds
24 under sections 11 and 12 if by December 31, 2003 the municipality
25 has modified to the extent necessary any fees charged to provid-
26 ers after the effective date of this act relating to access to

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

21

1 and usage of the public rights-of-way to an amount not exceeding
2 the amounts required under section 8.

3 (2) To the extent a telecommunications provider pays fees to
4 a municipality under a contract not modified as required by this
5 section, both of the following apply:

6 (a) The provider may deduct the fees paid under that con-
7 tract from the fee required to be paid under section 8 for those
8 rights-of-way covered by the contract.

9 (b) The amounts received under the contract shall be
10 deducted from the amounts the municipality is eligible to receive
11 under sections 11 and 12.

12 (3) The authority may allow a municipality in violation of
13 this section to become eligible to receive funds under sections
14 11 and 12 if the authority determines that the violation occurred
15 despite good faith efforts and the municipality rebates to the
16 authority any fees received in excess of those required under
17 section 8, including any interest as determined by the
18 authority.

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

1 (5) Except as otherwise provided by a municipality, if
2 section 8 is found to be invalid or unconstitutional, a
3 modification of fees under this section is void from the date the
4 modification was made.

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

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

16 (a) Before the passage of any ordinance or resolution autho-
17 rizing a county or municipality to either construct telecommunication
18 facilities or provide a telecommunication or cable modem service
19 provided through a broadband internet access transport service, a county
20 or municipality shall conduct at least 1 public hearing. A notice
21 of the public hearing shall be provided as required by law.

22 (b) Not less than 30 days before the hearing required under
23 subdivision (a), the county or municipality shall prepare reasonable pro-
24 jections of at least a 3-year cost-benefit analysis. This analy-
25 sis shall identify and disclose the total projected direct costs
26 of and the revenues to be derived from constructing the
27 telecommunication facilities and providing the telecommunication

1 or cable modem service through a broadband internet access
2 transport service. The costs shall be determined by using accounting
3 standards developed under the uniform budgeting and accounting act, 1968
PA 2, MCL 141.421 to 141.440a.
4 (c) A county or municipality shall prepare and maintain accounting
5 records in accordance with accounting standards developed under the
6 uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.
The accounting records required under
7 this subdivision are subject to the freedom of information act,
8 1976 PA 442, MCL 15.231 to 15.246.

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15 (d) Charges for telecommunication service and cable modem
16 services provided through a broadband internet access transport
17 service shall include costs attributable to the provision of the
18 service that would be eliminated if the service was discontinued
19 and the proportionate share of costs identified with the provi-
20 sion of 2 or more county or municipal services including
21 telecommunication services.

22 (e) A county or municipality shall not use its status as a county or
23 municipal-
24 ity to establish a rate for telecommunication service or cable
25 modem service provided through a broadband internet access trans-
26 port service that creates undue discrimination against the rates
27 established by another telecommunication provider for the same
service.

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

7 (g) A municipality shall not impose or enforce against a
8 provider any local regulation with respect to public
9 rights-of-way that is not also applicable to the municipality in
10 its provision of a telecommunication or cable modem service pro-
11 vided through a broadband internet access transport service.

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

18 (2) Subsection (1) does not apply to either of the
19 following:

20 (a) Telecommunication facilities constructed and operated by
21 a county, municipality, or an affiliate, to provide telecommunication
22 service or a cable modem service provided through a broadband
23 internet access transport service that is not provided to any
24 residential or commercial premises.

25 (b) Telecommunication facilities that are owned or operated
26 by a county, municipality, or an affiliate for compensation, and that are
27 located within the territory served by the county, municipality or its affiliate that

1 provided a telecommunications service or a cable modem service
2 provided through broadband internet access transport service
3 before December 31, 2001 or that allowed any third party to use
4 the county's or municipality's telecommunication facilities for
compensation
5 before December 31, 2001, to provide such a service.

6 (3) If a complaint is filed under section 18 alleging a vio-
7 lation of this section, the commission shall allow a county or
municipality
8 to take reasonable steps to correct a violation found by the com-
9 mission before the commission imposes any penalties.

10 (4) The commission, in reviewing a complaint under subsec-
11 tion (3), may consider, in determining whether charges imposed by
12 a county or municipality are in compliance with subsection (1), the
appli-
13 cable federal, state, county, and local taxes and fees paid by
14 the complainant or providers serving that county or municipality.

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

21 (2) This section shall not limit a municipality's right to
22 review and approve a provider's access to and ongoing use of a
23 public right-of-way or limit the municipality's authority to
24 ensure and protect the health, safety, and welfare of the
25 public.

26 (3) A municipality shall approve or deny access under this
27 section within 45 days from the date a provider files an

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

26

1 application for a permit for access to a public right-of-way. A
2 provider's right to access and use of a public right-of-way shall
3 not be unreasonably denied by a municipality. A municipality may
4 require as a condition of the permit that a bond be posted by the
5 provider, which shall not exceed the reasonable cost to ensure
6 that the public right-of-way is returned to its original condi-
7 tion during and after the provider's access and use.

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

11 (5) A provider undertaking an excavation or constructing or
12 installing facilities within a public right-of-way or temporarily
13 obstructing a public right-of-way, as authorized by the permit,
14 shall promptly repair all damage done to the street surface and
15 all installations on, over, below, or within the public
16 right-of-way and shall promptly restore the public right-of-way
17 to its preexisting condition.

18 Sec. 16. This act does not affect the requirement of a
19 cable operator to obtain a cable franchise from cities, villages,
20 and townships.

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

26 Sec. 18. (1) Except as otherwise provided by this act, the
27 procedures governing a complaint proceeding under this act shall

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

27

1 be the same as those under section 203 of the Michigan
2 telecommunications act, 1991 PA 179, MCL 484.2203.

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

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

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

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

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

25 (e) Issue cease and desist orders.

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

28

1 (f) Order the person who violates this act to pay attorney
2 fees and actual costs of a person that is not a provider of
3 telecommunication services to 250,000 or more end-users.

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

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

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

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

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

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

29

1 the provider, which shall not exceed the reasonable cost, to
2 ensure that the right-of-way, easement, or public place is
3 returned to its original condition during and after the
4 provider's access and use.

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

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

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

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

24 (4) Except as provided under subsection (1), if any other
25 provision or the application of any provision of this act to a
26 certain person is found to be invalid or unconstitutional, the
27 remaining provisions or application of a provision to other

SB 880, As Passed Senate, February 20, 2002

Senate Bill No. 880

30

1 persons shall not be affected and will remain in full force and
2 effect.

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

7 Enacting section 1. Sections 251, 252, 253, and 254 of the
8 Michigan telecommunications act, 1991 PA 179, MCL 484.2251,
9 484.2252, 484.2253, and 484.2254, are repealed.

10 Enacting section 2. This act takes effect August 1, 2002.

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

14 (a) Senate Bill No. 881.

15 (b) Senate Bill No. 999.