

SENATE BILL No. 880

November 29, 2001, Introduced by Senator SCHWARZ and referred to the Committee on Technology and Energy.

A bill to create a telecommunication rights-of-way oversight authority; to establish a Michigan telecommunications service improvement fund; to provide for fees; to prescribe the powers and duties of 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. This act shall be known and may be cited as the
2 "metropolitan extension telecommunications rights-of-way over-
3 sight act".

4 Sec. 2. As used in this act:

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

7 (b) "Commission" means the Michigan public service
8 commission.

1 (c) "Metropolitan area" means an area comprised of a
2 municipality located, in whole or in part, within a county having
3 a population of 10,000 or more or a municipality that enacts an
4 ordinance or resolution electing to be classified as part of a
5 metropolitan area under this act.

6 (d) "Municipality" means a township, city, or village.

7 (e) "Telecommunication provider", "provider", and
8 "telecommunication services" mean those terms as defined in sec-
9 tion 102 of the Michigan telecommunications act, 1991 PA 179,
10 MCL 484.2102. A provider also includes both of the following:

11 (i) A person providing wireless or cellular telecommunica-
12 tion services.

13 (ii) A cable television operator that provides a telecommun-
14 ication service.

15 Sec. 3. (1) Pursuant to section 27 of article VII of the
16 state constitution of 1963, there is created within the commis-
17 sion the metropolitan extension telecommunications rights-of-way
18 oversight authority.

19 (2) The authority shall have the exclusive power to assess
20 fees for access to and use of the public rights-of-way within a
21 metropolitan area for the purpose of installing or using lines,
22 poles, conduits, ducts, or other facilities or equipment to pro-
23 vide telecommunication services.

24 (3) A municipality in a metropolitan area shall not enact or
25 enforce an ordinance or other local law that is inconsistent with
26 this act or that assesses fees for access to or use of the public

1 rights-of-way that are in addition to the fees assessed under
2 this act.

3 (4) This section does not prohibit a municipality from seek-
4 ing reimbursement of the hourly wages and compensation paid to
5 its employees for their time in providing engineering services to
6 review and inspect drawings, plans, and activities directly
7 related to the construction and installation of telecommunication
8 facilities within a rights-of-way and excavations, pavement cuts,
9 or other activities physically performed by, or under the direc-
10 tion of, a provider, within a rights-of-way. A charge allowed
11 under this subsection shall not be excessive, inadequate, or
12 unreasonable.

13 Sec. 4. (1) A provider shall not have access to or use of a
14 municipality's rights-of-way unless it has obtained a permit
15 required by the municipality and paid all fees required under
16 this act.

17 (2) A provider asserting franchise rights under 1883 PA 129,
18 MCL 484.1 to 484.10, is not exempt from the permit and fee
19 requirements of this act with respect to data, video, advanced,
20 high-speed digital, and any other telecommunication services that
21 it did not offer before January 1, 1909.

22 Sec. 5. (1) The commission shall prescribe by order the
23 form and application process to be used in applying to a munici-
24 pality for a permit and the provisions of a permit to be issued
25 by a municipality. The initial standardized application forms
26 shall be those approved by the commission as of August 16, 2001.

1 (2) A provider filing an application for a permit shall pay
2 a \$500.00 administrative fee to each municipality whose
3 boundaries include rights-of-way for which access or use is
4 sought by the provider.

5 (3) An application for a permit shall include a map showing
6 the location of the provider's existing and proposed lines and
7 facilities.

8 (4) A municipality shall notify the commission when it
9 issues a permit, including information regarding the date on
10 which the application was filed and the date on which the permit
11 was granted. The commission shall maintain on its website a
12 listing showing the average length of time required for each
13 municipality to grant an application during the preceding 3
14 years.

15 Sec. 6. If a provider and 1 or more municipalities are
16 unable to agree on arrangements for coordinating activities that
17 minimize the disruption to rights-of-way or ensure the efficient
18 construction of facilities, the authority shall appoint a repre-
19 sentative to mediate and make recommendations for a resolution of
20 the dispute. If any of the parties are unwilling to comply with
21 the mediator's recommendations, any party to the dispute may
22 apply to the commission for a review and determination of a reso-
23 lution of the dispute.

24 Sec. 7. Within 90 days after the completion of construction
25 of new lines and facilities, a provider shall submit maps and
26 descriptions of the lines and facilities to both the authority
27 and the affected municipalities.

1 Sec. 8. (1) A provider shall pay to the authority an annual
2 maintenance fee as provided under this act.

3 (2) The commission may prescribe by order the annual period
4 covered by each assessment, the date due for payment, and the
5 schedule for the allocation and disbursement of the fees as pro-
6 vided by this act.

7 (3) Within 180 days of the effective date of this act, each
8 provider shall pay an initial annual maintenance fee to the
9 authority of 7 cents per linear foot of rights-of-way for all
10 rights-of-way occupied by the provider's lines and facilities.
11 If the act is effective for less than the entire year covered by
12 the initial fee, the fee shall be prorated.

13 (4) For each succeeding year, the maintenance fee shall be
14 adjusted by the commission by an amount equal to the change in
15 the consumer price index. As used in this section, "consumer
16 price index" means the most recent reported annual average per-
17 centage increase in the Detroit consumer price index for all
18 items for the prior 12-month period by the United States depart-
19 ment of labor.

20 (5) The commission may prescribe by order the forms, stan-
21 dards, methodology, and procedures for assessing fees under this
22 act. Each provider and municipality shall provide any requested
23 information regarding rights-of-way that assists the authority in
24 computing and issuing the assessments under this section.

25 (6) For purposes of assessing the maintenance fee to a tele-
26 communication provider that also provides cable service, the
27 basis of assessment shall be the linear feet of rights-of-way

1 used to provide telecommunication services, regardless of whether
2 the same facilities are also used to provide cable service.

3 (7) For purposes of assessing the maintenance fee to a tele-
4 communication provider asserting franchise rights under 1883
5 PA 129, MCL 484.1 to 484.10, the basis of the assessment shall be
6 the linear feet of rights-of-way used to provide any data, video,
7 advanced, high-speed digital, or other telecommunication services
8 that it did not offer before January 1, 1909, regardless of
9 whether the same facilities are also used to provide telecommuni-
10 cation services that it did offer before January 1, 1909. A pro-
11 vider under this subsection shall not include on any customer's
12 bill a line item designating a pass-through of the maintenance
13 fee required under this act.

14 (8) A provider may recover the cost of the maintenance fee
15 required under this act if it has received commission approval
16 under section 304 of the Michigan telecommunications act, 1991 PA
17 179, MCL 484.2304.

18 Sec. 9. (1) If 2 or more providers implement a shared use
19 arrangement and meet the requirements of this section, each pro-
20 vider participating in the arrangement shall be entitled to a
21 shared use discount.

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

24 (a) Occupy and use the same poles, trenches, conduits,
25 ducts, or other common spaces or physical facilities jointly with
26 other participating providers.

1 (b) Coordinate the construction or installation of its own
2 lines, equipment, and facilities with the construction schedules
3 of other participating providers so that any pavement cuts, exca-
4 vation, construction, or other activities undertaken to construct
5 or install all of the participating providers' facilities occur
6 contemporaneously and do not impair the physical condition, or
7 interrupt the normal uses, of the rights-of-way on more than 1
8 occasion.

9 (c) Enter the shared use arrangement after the effective
10 date of this act. A shared use arrangement does not apply to
11 poles, trenches, conduits, ducts, or other common facilities that
12 were constructed or installed before the effective date of this
13 act.

14 (3) Each provider that qualifies for a shared use discount
15 is entitled to the following percentage discount against the fees
16 imposed by section 8, but the discount shall apply only to the
17 linear feet that each provider shares with other participating
18 providers:

19 (a) 25%, if there are 2 participating providers.

20 (b) 40%, if there are 3 participating providers.

21 (c) 50%, if there are 4 or more participating providers.

22 Sec. 10. The authority shall allocate the annual mainte-
23 nance fee collected under this act as follows:

24 (a) The first \$35,000,000.00 or 50% of the annual fees,
25 whichever is greater, to fund the fee-sharing mechanism provided
26 in section 11.

(b) The remaining proceeds, as follows:

(i) 88% to the Michigan community communications authority.

(ii) 5% to the Michigan telecommunication service improvement fund created in section 13.

(iii) 7% to the commission.

Sec. 11. (1) The commission shall allocate the funding provided for fee-sharing in section 10(a) among the municipalities in which providers occupy rights-of-way, as follows:

(a) 86% to be disbursed to cities and villages on the basis of the linear feet of rights-of-way occupied by providers within each city or village as a proportion of the total linear feet of rights-of-way occupied by providers within all cities and villages located in metropolitan areas.

(b) 14% to be disbursed to townships on the basis of each township's proportionate share of the total linear feet of rights-of-way occupied by providers within all townships located in metropolitan areas.

(2) To be eligible to receive fee-sharing payments under this act, a municipality shall comply with this act.

Sec. 12. (1) Until the authority assesses the maintenance fees under this act, a municipality may continue to collect any authorized fees established before the effective date of this act. Fees and revenues allowed under this section for any partial year shall be prorated.

(2) Fees collected under subsection (1) by a municipality after the effective date of this act shall be taken into account

1 in determining the municipality's allocated share of funding
2 under section 11.

3 Sec. 13. (1) The Michigan telecommunication service
4 improvement fund is created in the state treasury and shall be
5 administered by the commission for the purpose of providing
6 grants to providers serving rural and low income customers to
7 improve the quality of telecommunication services to those
8 customers. The fund shall be expended only as provided by this
9 act.

10 (2) The state treasurer shall credit to the fund all fees
11 collected under this act designated for the fund and any other
12 money received by the state treasurer designated for the fund.

13 (3) The state treasurer shall invest money in the fund in
14 the same manner as surplus funds are invested under section 3 of
15 1855 PA 105, MCL 21.143. Earnings shall be credited to the
16 fund.

17 (4) Money remaining in the fund at the end of the fiscal
18 year shall remain in the fund and not revert to the general
19 fund.

20 Sec. 14. (1) Except as provided in subsections (2) and (3),
21 a local unit of government shall grant a permit for access to and
22 the ongoing use of all rights-of-way under its control and juris-
23 diction to providers of telecommunication services.

24 (2) This section shall not limit a local unit of
25 government's right to review and approve a provider's access to
26 and ongoing use of a rights-of-way or limit the unit's authority
27 to ensure and protect the health, safety, and welfare of the

1 public. An applicant for a permit shall provide all information
2 requested by the local unit of government that is reasonably
3 related to the criteria for issuing a permit.

4 (3) A local unit of government shall approve or deny access
5 under this section within 45 days from the date a provider files
6 an application for a permit for access to a rights-of-way. A
7 provider's right to access and use of a rights-of-way shall not
8 be unreasonably denied by a local unit of government. A local
9 unit of government may require as a condition of the permit that
10 a bond be posted by the provider, which shall not exceed the rea-
11 sonable cost to ensure that the rights-of-way is returned to its
12 original condition during and after the provider's access and
13 use.

14 (4) Any conditions of a permit granted under this section
15 shall be limited to the provider's access and usage of any
16 rights-of-way.

17 (5) A provider holding a permit shall ensure that the
18 rights-of-way is returned to its original condition during and
19 after the provider's access and use. A provider undertaking an
20 excavation or constructing or installing facilities within a
21 rights-of-way or temporarily obstructing the rights-of-way, as
22 authorized by the permit, shall promptly repair all damage done
23 to the street surface and all installations on, over, below, or
24 within the rights-of-way and shall promptly restore the
25 rights-of-way to its preexisting condition.

26 Sec. 15. (1) The procedures governing a complaint
27 proceeding under this act shall be the same as those under

1 section 203 of the Michigan telecommunications act, 1991 PA 179,
2 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 a fee assessed by the authority under
9 this act, order the provider to pay a fine of not less than 1% or
10 more than 5% 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 less than 2% or more than
13 10% for each day the assessment remains unpaid.

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

19 (c) If the person is a provider, order that the provider's
20 permit allowing access to and use of a municipality's
21 rights-of-way be revoked.

22 (d) Issue cease and desist orders.

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

1 Sec. 16. A decision or assessment of the authority or order
2 of the commission issued under this act is subject to review as
3 provided in section 26 of 1909 PA 300, MCL 462.26.

4 Sec. 17. (1) The commission shall conduct a study of the
5 feasibility of extending the fee provisions of this act to wire-
6 less carriers and make recommendations for assessing a fee on
7 wireless carriers that is equivalent to not more than 50% of the
8 maintenance fee imposed on the basis of linear feet under section
9 8.

10 (2) No more than 1 year after the effective date of this
11 act, the commission shall, after input from wireless and other
12 providers, municipal governments, and other interested persons,
13 issue a report to the legislature regarding how to implement its
14 recommendations under subsection (1).

15 Sec. 18. (1) A municipality shall approve or deny requests
16 for permits, franchises, or authorizations required to construct
17 or install wireless facilities or provide wireless service within
18 45 days from the date a wireless provider files an application
19 for permission, authorization, or variance.

20 (2) A provider's right to provide wireless service and to
21 install, operate, and maintain towers and other wireless facili-
22 ties shall not be unreasonably denied by a municipality.

23 Sec. 19. If any provision or the application of any provi-
24 sion to a certain person is found to be invalid or unconstitu-
25 tional, the remaining provisions or application of a provision to
26 other persons shall not be affected and will remain in full force
27 and effect.

1 Sec. 20. Pursuant to section 8 of article III of the state
2 constitution of 1963, the legislature shall request an advisory
3 opinion on the constitutionality of this act. In addition to any
4 other provisions of this act, the request shall specifically ask
5 the court to address the fee and permit provisions of sections 8
6 and 14 and the limitation on any claimed rights under section
7 8(7).

8 Enacting section 1. Sections 251, 252, 253, and 254 of the
9 Michigan telecommunications act, 1991 PA 179, MCL 484.2251,
10 484.2252, 484.2253, and 484.2254, are repealed.