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ACCESS TO STATE PUBLIC SAFETY COMMUNICATION SYSTEM

House Bill 4259 (Substitute H-1)
First Analysis (3-20-03)

Sponsor: Rep. John Pappageorge
Committee: Local Government and
Urban Policy

THE APPARENT PROBLEM:

Public Act 538 of 1996 amended Public Act 152 of 1929 to create the Michigan Public Safety Communications System (MPSCS), an 800 megahertz communication system and telecommunication network. Public Act 538 assigned responsibility for the construction, implementation, operation, and maintenance of the system to the directors of the Departments of State Police and Management and Budget. As described by the state police department's web site, the system is set up to provide communications interoperability to first responders throughout Michigan, and the act explicitly permits the director of the state police department to authorize any governmental public safety agency "to utilize" the system.

What is meant by "utilizing the system" is not entirely clear. As defined in statute, the system includes both physical facilities and required functions. Specifically, the act states that the system "includes all real and personal property, towers, buildings, equipment, and other related facilities and fixtures necessary for the maintenance and operation of the system". The act also requires the state police to broadcast all police dispatches and reports connected with the apprehension of criminals, crime prevention, or the maintenance of peace, order, and public safety. The distinction between the system's facilities and the system's function has arisen because some local governmental public safety agencies want to use components of the system's physical infrastructure without subscribing to the services that the system offers. Because the act says that the state police director may authorize local governmental public safety agencies to utilize the system, it is up to the director to decide the conditions under which the system may be utilized. The state police department actively promotes subscriptions to the system to agencies throughout the state touting the benefits of a uniform, statewide public safety communications system. However, local police, fire, and emergency medical service personnel argue that public safety

events and crises generally occur on a local level and that, at least in most cases, it is far more important for a police officer from one city to be able to talk directly with a firefighter from a neighboring township or for the firefighter to be able to talk directly with a county EMS provider than it is for any of these people to communicate directly with the state police. As a result some local governmental public safety agencies want to utilize the (physical components of) the system by attaching their own communications equipment to MPSCS towers without subscribing to the state system. According to committee testimony, they have met stiff resistance from the state police.

To give a concrete example, Oakland County has developed its own system for crime reporting, known as CLEMIS, an acronym for Courts and Law Enforcement Management Information System. The CLEMIS database was implemented in 1982, and since then county and local officials have actively cooperated to expand the size of the database and the scope and complexity of services available through CLEMIS. Today, CLEMIS officials argue that their system is bigger, better, and more efficient than the Michigan Public Safety Communications System, and therefore they prefer to continue using and expanding CLEMIS to subscribing to the MPSCS. Oakland County's primary goal for CLEMIS is to provide complete in-building, interoperable coverage throughout its service territory so that police officers, firefighters, and other public safety personnel can communicate with one another, whether indoors or out. A significant challenge involved in achieving this goal is building--or better yet finding--existing radio towers capable of supporting the system's communications equipment both physically and operationally. CLEMIS administrators need tower space in Addison Township, where the state police department currently has a 500-foot tower. According to Oakland County officials, the county will have to build two new 250-foot towers on its

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own at a cost of over \$2 million, unless the state allows the county to use the existing tower. In testimony before the House Local Government and Urban Policy Committee, officials from the Washtenaw County Sheriff's Office and the Michigan Emergency Alert System cited similar experiences and concerns. And according to committee testimony, county and local officials throughout the state have experienced similar frustration.

Again, under current law, the director of the Department of State Police may allow any governmental public safety agency to utilize the MPSCS. Legislation has been introduced to require the director to allow governmental public safety agencies to utilize the system and, more specifically, to require the director to give those agencies permission to attach their own communications equipment to the system's towers.

THE CONTENT OF THE BILL:

House Bill 4259 would amend Public Act 152 of 1929 to require the director of the Department of State Police to allow any governmental public safety agency "to utilize the Michigan Public Safety Communications System, including attaching public safety communications equipment to towers constructed under [the] act", with the following exception: the director could deny permission to install or attach local governmental public safety equipment to a tower constructed under the act only if the required structural, wind load, or radio frequency interference analysis (see below) determined that the installation or attachment would structurally impair the tower or harmfully interfere with the operation of the system.

The director would be required to provide to a local governmental public safety agency requesting permission to attach equipment to a tower documentation necessary to perform structural, wind load, and radio frequency analysis of the tower. The local government agency would be required to conduct a structural analysis and wind load analysis of the tower that included any existing and proposed loads of antennas, cabling, and appurtenances. The agency would also have to perform a radio frequency interference analysis of the agency's proposed equipment with all other equipment on the tower on the date of the request for permission.

A local governmental public safety agency requesting permission to install and maintain public safety equipment would be responsible for installation and

maintenance costs and for damages to the equipment from natural causes.

MCL 28.283

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have indeterminate fiscal impacts on both the state and local governments. Costs associated with constructing local public safety communications systems could potentially be reduced through the use of MPSCS towers. The total amounts of any such savings is indeterminate.

A legal issue has been raised regarding the possible violation of the tax-exempt status of the bonds issued to construct the MPSCS if nonsubscribers to the system were allowed to use the towers. If this concern is valid, state bonding costs would increase under the bill, though there is not enough information available to determine the magnitude of the impact.

Finally, it is unclear if the department would have the authority to remove local equipment in the future if the tower capacity was needed for the MPSCS and whether the state or the local government involved would bear the costs of the equipment removal. (3-18-03)

ARGUMENTS:

For:

According to testimony from a vice-chair of the National Task Force on Interoperability, on the morning of September 11, 2001, after the first tower of the World Trade Center collapsed, New York City police officials who realized that the collapse of the second tower was imminent wanted to warn firefighters inside the building. The police and fire departments' communication systems were not fully compatible, and 121 firefighters died. Whether the firefighters inside the second tower would have dropped what they were doing to escape or would have continued to help others while the second tower collapsed, no one would argue that it was better that they had not been forewarned. In short, effective communication among public safety personnel is one of the most important components of any plan for managing crises and mitigating their effects.

State, county, and local public safety personnel share a common goal: ensuring the well-being of the state's residents and visitors. While supporters of the bill do not dispute the state police's general commitment to

this goal, they believe that, at least in some instances, the department has placed its own desire to recruit subscribers to the MPSCS above the reasonable interests of taxpayers in keeping taxes down, as well as above county and local agencies' best efforts to improve communication among public safety personnel. Oakland County's system, CLEMIS, preceded the state's system, and county officials sincerely believe that local communities are better served by CLEMIS than they would be by the MPSCS. A June 2002 *Detroit News* editorial cites criticisms of the MPSCS as being "poorly constructed, expensive and lacking the range of mobile coverage needed for police patrols". Critics of the system also argue that the state police have contracted with an equipment provider whose equipment lacks the quality of other systems on the market.

In general, critics argue that the state police department is using the high--some would say prohibitive--cost of building physical infrastructure as a means of pressuring county and local governmental public safety agencies into subscribing to the MPSCS. As public safety professionals, CLEMIS administrators and many other local public safety officials argue that it is simply not an option to shortchange the communities they serve. Unless they can get access to state radio towers, local governments will be forced to burden taxpayers with the cost of unnecessarily duplicating (unsightly) physical infrastructure. Representatives of rural areas of the state argue that their low budgets simply preclude them from building their own towers. The bill contains safeguards to specify that local agencies that attached equipment to towers would be responsible for associated costs and to allow the state police department to turn down a request if structural, wind load, or radio frequency analysis showed that the installation would impair the tower or interfere with the MPSCS. The state police department should not be allowed to hinder access to a system that has been built with the dollars of taxpayers, including taxpayers who reside in those counties, cities, and townships that were prescient enough to build interoperable public safety communication systems long before the MPSCS was built.

Response:

Although the bill would require the director of the state police department to allow *any governmental public safety agency* to utilize the MPSCS and attach equipment to the system's towers, as currently written the bill's cost provisions and analysis requirements would apply only to *local* governmental public safety agencies. Perhaps the bill should be amended to require the director to authorize local

governmental public safety agencies to utilize the system and to allow the director to authorize non-local governmental public safety agencies--e.g., federal and other state governmental agencies--to use the system, under conditions established by the director.

Also, it is unclear what is intended by allowing the state police to refuse permission to install or attach equipment to a tower if a structural, wind load, or radio frequency interference analysis determined that the installation or attachment would impair or harmfully interfere with the MPSCS. It appears that this determination would be made by the local public safety agency conducting the analysis, but it is unclear how the bill would deal with disputes concerning the results of such analysis.

Finally, as noted by the House Fiscal Agency, it is unclear whether the state or local government would be responsible for costs associated with equipment removal in the event that the state police needed to use tower space occupied by equipment of nonsubscribing local governmental public safety agencies.

Against:

The entire premise of the MPSCS is that county and local public safety agencies be allowed *and encouraged* to join the state system. The state police chose to construct an "open architecture" system to maximize interoperability among state, county, and local officials. The Department of State Police has expressed concerns about unanticipated costs that may arise from allowing nonsubscribers to attach equipment to MPSCS towers. Also, the department has concerns that allowing nonsubscribers to use the system in this way might jeopardize the tax-exempt status of the bonds issued to pay for the system.

Response:

Encouraging county and local public safety agencies to hook up to the MPSCS is not the same as refusing access to the taxpayer-funded system when such access will have no impact on the system's functionality. It is unclear why utilization of the system by county and local governmental public safety agencies should put the bonds' tax-exempt status at risk.

POSITIONS:

The Michigan Townships Association supports the bill. (3-19-03)

The Michigan Association of Counties supports the bill. (3-19-03)

Analyst: J. Caver

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