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SFA**BILL ANALYSIS**

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House Bill 4259 (Substitute S-1 as reported)
Sponsor: Representative John Pappageorge
House Committee: Local Government and Urban Policy
Senate Committee: Judiciary

Date Completed: 4-28-03

RATIONALE

Public Act 152 of 1929 authorizes a State-owned and -operated radio broadcast system for police purposes. Public Act 538 of 1996 amended that Act to establish the Michigan Public Safety Communications System (MPSCS) and assign responsibility for its construction and implementation to the Directors of the Department of State Police and the Department of Management and Budget (DMB). The Act gave the State Police Director the responsibility of locating buildings and equipment necessary to implement the system. The MPSCS includes 181 radio transmission towers located across the State.

Public Act 538 also permits the State Police Director to authorize any governmental public safety agency to use the MPSCS. Reportedly, nearly 300 local public safety agencies are currently using radios on the MPSCS. These agencies pay an activation fee and an annual membership fee in order to be a part of and use the system. Some public safety agencies in Michigan, however, maintain their own radio communications systems and would like to attach their equipment to the MPSCS communications towers, but the Department of State Police has denied local agency requests to do so. On April 17, 2003, Governor Granholm issued Executive Directive 2003-12, which requires State officials to allow any governmental public safety agency to install communications equipment on MPSCS towers under certain circumstances. Nevertheless, some people believe that the executive directive is not sufficient to ensure local agencies' use of the towers and that the State Police Director's authority to deny their requests should be limited in statute. (Please see **BACKGROUND** for further information on Executive Directive 2003-12.)

CONTENT

The bill would amend Public Act 152 of 1929 to require the Director of the Michigan Department of State Police to allow any local governmental public safety agency to use the Michigan Public Safety Communications System, including attaching public safety communications equipment to towers built under the Act. A local agency requesting permission to use the towers would be responsible for all costs associated with installing and maintaining local agency equipment and any damage to it from natural causes. The bill also would allow the State Police Director to authorize any other governmental public safety agency to use the MPSCS, including attaching public safety communications equipment to MPSCS towers.

A local governmental public safety agency requesting permission to attach equipment to a tower would be required, at its own expense, to conduct a structural analysis and wind load analysis of the tower that included any existing and proposed loads or antennas, cabling, and appurtenances. The local agency also would have to perform a radio frequency interference analysis of its proposed equipment with all other equipment on the tower on the date of the request. The Director would have to give the agency documentation necessary to perform the structural, wind load, and radio frequency analyses.

The Director could deny permission to a local governmental public safety agency to install or attach equipment to a tower only if the structural, wind load, or radio frequency interference analysis determined that the installation or attachment would structurally impair the tower or harmfully interfere with the operation of the MPSCS.

BACKGROUND

Executive Directive 2003-12

Executive Directive 2003-12 requires "responsible department directors and autonomous agency heads" to "permit any governmental public safety agency to install public safety communications equipment upon MPSCS towers and related facilities". Those officials are mandated to allow the installation of equipment if all of the following apply:

- The public safety agency seeking to use the MPSCS agrees to pay all costs associated with the installation, maintenance, or removal of the equipment.
- The public safety agency agrees to pay for any damage to the MPSCS caused by the agency's equipment or the installation or maintenance of it.
- The public safety agency demonstrates to the satisfaction of the department or agency responsible for the operation of the MPSCS that the installation of its equipment will not structurally impair or degrade the operation of the MPSCS. Information provided by a public safety agency must include an analysis of the structural, wind load, and radio frequency impact of the proposed installation.
- The public safety agency demonstrates to the satisfaction of the responsible department or agency that the installation of its equipment "will provide an appropriate level of interoperability with the MPSCS". (As used in the Executive Directive, "interoperability" means "the use of necessary communications technologies and systems to enable different public safety agencies to communicate seamlessly and reliably with each other".)
- The responsible department or agency determines that the installation of the equipment complies with Federal Communications Commission requirements.
- The Department of Attorney General gives the responsible department or agency a written determination that the installation and related activities of the public safety agency would neither violate State or Federal law nor impair a bond or other debt obligation of the State Building Authority.
- The department or agency responsible for the operation of the MPSCS and the public safety agency enter into an agreement (approved by the Department of

Management and Budget) governing the cost, installation, and priority of equipment and use of the system by the public safety agency.

The Executive Directive also requires any State agency or department not using the MPSCS for two-way mobile radio communications to develop a plan, in coordination with the Department of Information Technology and the State Police, "to integrate radio communications with the MPSCS and to migrate radio communications to the MPSCS".

In addition, the Executive Directive specifies that the department or agency responsible for the operation of the MPSCS may use, or enter into agreements to use, the system "to facilitate the efficient and effective operation within this state of the Emergency Alert System created under Part 11 of Title 47 of the Code of Federal Regulations". (Under Part 11 of Title 47, the Emergency Alert System "provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency".)

Executive Orders & Executive Directives

The Michigan Constitution vests the executive power of the State in the Governor and that power is exercised formally by executive order. Executive orders may reorganize State agencies in the executive branch of government; reassign functions among executive branch agencies; establish an advisory body, commission, or task force; regulate conduct within the executive branch; or proclaim or end an emergency. Once signed by the Governor, an executive order is filed with the Secretary of State and is sealed and retained by the Office of the Great Seal.

Similar to an executive order, an executive directive is issued by the Governor to establish basic internal policy or procedure for the executive branch. Executive directives often establish guidelines, rules of conduct, or rules of procedures for State departments and their employees. Executive directives are signed by the Governor and distributed to State departments, but are not filed with the Secretary of State.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

At a capital investment of \$221 million, the State has built the MPSCS, a public safety communications system that covers all of Michigan. According to the Department of State Police website, the system's completion makes Michigan the first state to have a statewide public safety communications system and provides "communications interoperability to first responders across Michigan, improving the effectiveness of...public safety users". Many people believe that, in 1996, the system was authorized with the understanding that local agencies could use it for their own communications systems. With 181 radio towers around the State, the MPSCS has the infrastructure necessary for local agencies to attach their communications equipment.

If local units of government had to build their own separate towers for each communications system, the cost would be staggering and the towers simply would duplicate the radio transmission infrastructure that the State already has developed. For instance, according to testimony before the Senate Judiciary Committee, Allegan County's 9-1-1 system, which dispatches law enforcement and other emergency personnel from a variety of public safety agencies, was denied use of a nearby MPSCS tower for its newly developed communications system. Using the MPSCS tower rather than building its own radio transmission tower, in close proximity to the MPSCS tower, would save the county several hundred thousand dollars. Similarly, 10 MPSCS towers apparently are located in the area of Charlevoix, Cheboygan, and Emmet Counties, which share a central dispatch operation. If those counties had to build their own 10 towers to accommodate their communications system equipment, the cost reportedly would be approximately \$2 million. In addition, in southeastern Michigan, the Court and Law Enforcement Management Information System (CLEMIS), a consortium of approximately 100 public safety agencies serving six counties, would like to install its communications system equipment on MPSCS towers. Due to the urban and suburban nature of the area, siting transmission towers

is a particularly difficult process, but at least two MPSCS towers are nearby and could accommodate the consortium's transmission needs. Using valuable public safety resources to build duplicate towers would be unwise and could compromise the future of public safety in those areas.

Transmission towers are the backbone of any public safety radio system. The towers are integral to ensuring the safety of citizens. Fortunately, they can easily be shared by various local and State public safety agencies, in a cost-effective manner. The shared use of transmission towers for communications equipment from State, county, and municipal public agencies would enhance the delivery of effective and efficient public safety services on a regional basis, without respect to local political boundaries.

Response: The MPSCS was built as a statewide compatible communications system with the capability of being used by both State and local agencies, which may subscribe to the system and become MPSCS members. Local units that want their public safety agencies to use the towers and the integrated communications system may join the MPSCS with the payment of activation and annual membership fees.

Opposing Argument

The bill is unnecessary because Governor Granholm has issued an executive directive requiring that a governmental public safety agency be allowed to install public safety communications equipment on MPSCS towers under conditions that are designed to ensure the structural and operational integrity of the MPSCS. Executive Order 2003-12 outlines the requirements that a public safety agency must meet in order to be permitted to install its communications equipment on an MPSCS tower, and, if an agency meets those conditions, State officials responsible for the operation of the MPSCS must allow the installation of the agency's equipment.

Response: While the executive directive represents a good-faith effort to address local use of the MPSCS towers, it falls short of resolving the issue. Some of the wording in the executive directive is vague and subjective. In several places, it refers to "the department or agency responsible for the operation of the MPSCS" but does not identify the department or agency. The executive directive mentions that the Act gives the State Police Director and the DMB Director responsibility for building, implementing,

operating, and maintaining the system but also states that "all of the powers, duties, functions, responsibilities, personnel, equipment, and budgetary resources involved in or related to the provision of information technology services located within any executive branch department or agency, including the MPSCS, were transferred by Executive Order 2001-3 to the Department of Information Technology" (DIT). Thus, it is unclear whether a public safety agency seeking to attach equipment to MPSCS towers needs the approval of the State Police, the DMB, the DIT, or some other State agency. Moreover, the executive directive requires that certain conditions be demonstrated "to the satisfaction of" the responsible department or agency, without identifying any criteria for satisfaction or providing an appeal process in the event of a denial.

In addition, unlike executive orders, executive directives remain effective only during the tenure of the governor who issues them. When Governor Granholm leaves office, Executive Directive 2003-12 will expire. The MPSCS was created by statute and the issue should be addressed by legislation.

Opposing Argument

Unlike Executive Directive 2003-12, the bill does not address the subject of interoperability. According to a brochure published by the National Law Enforcement and Corrections Technology Center, "Interoperability is the ability of public safety agencies to talk to one another via radio communication systems—to exchange voice and/or data with one another on demand, in real time, when needed." Consistent, clear, and compatible communication between public safety agencies across the State is integral to the working of the MPSCS. The bill should require that any local system using an MPSCS tower be interoperable with the MPSCS or, at least, should address interoperability as the executive directive does.

Response: The suggested requirement would be unreasonable because 100%, true interoperability between different communications systems may not be possible. Different systems operate on different wavelengths or areas of the radio spectrum, and not all agencies have access to the 800 megahertz spectrum used by the MPSCS. For instance, paging systems commonly used by on-call professional fire-fighters or volunteer fire departments apparently are incompatible with the 800 megahertz MPSCS system, but

still need to use transmission towers. Also, some groups of local agencies, like CLEMIS in southeastern Michigan, have banded together to provide themselves with an interoperable public safety communications system. Requiring that CLEMIS also be interoperable with the MPSCS could derail a system that serves about 100 public safety agencies in a six-county area.

In addition, Executive Directive 2003-12 requires that agencies wishing to install equipment on MPSCS towers provide "an appropriate level of interoperability with the MPSCS" but does not indicate what would constitute an "appropriate level". Communications systems either are interoperable or they are not. If complete interoperability were required for the use of MPSCS towers, then the only way to comply might be for a public safety agency to abandon its own system and join the MPSCS.

Opposing Argument

Allowing local public safety agencies to attach or install their equipment on MPSCS transmission towers could endanger the structural integrity of the towers or the effectiveness of the communications system. The MPSCS towers were built for the purpose of providing a single integrated public safety communications system with the potential for statewide communications compatibility for all participating public safety agencies. They were not designed to hold heavy antennas and communications equipment from various other communications systems. The towers should be used solely for the MPSCS, a system to which local agencies may subscribe.

Response: Under the bill (as well as the executive directive), a local public safety agency requesting permission to install equipment on an MPSCS tower would have to conduct structural, wind load, and radio frequency interference analyses before it could install its own communications equipment. The bill would allow the State Police Director to deny a local agency permission to install or attach its equipment if the structural, wind load, or radio frequency interference analysis determined that the installation would impair the tower or harmfully interfere with the operation of the MPSCS.

Opposing Argument

Installing additional communications equipment on the MPSCS towers could hinder the future development of the very system for which the towers were built. As the MPSCS

grows in membership and technological capability, it is possible that currently unused areas of the transmission towers will be needed for updated MPSCS equipment. Housing communications equipment from local and other public safety agencies on the towers could curtail the growth of the statewide, integrated communications system. The bill at least should specify that the MPSCS would have priority in the use of space on the towers, and allow the State Police Director to order the removal of other agencies' equipment if the MPSCS needed to use areas of the towers on which local agency equipment had been installed.

Response: Giving the State Police Director the unilateral authority to remove from the MPSCS towers equipment that belonged to other public safety agencies could leave them without electronic communications, which would endanger the citizens those agencies were charged with protecting. The agencies would need some sort of assurance that their communications systems would not be compromised. Perhaps the bill should provide for leasing of the tower space over a definite time period and allow the removal of equipment only after a lease expired and/or with adequate warning time.

Opposing Argument

As Executive Directive 2003-12 recognizes, there could be legal factors preventing the use of tower space for purposes other than the operation of the MPSCS. The construction of the towers was funded through the sale of tax-exempt bonds. It is unclear whether allowing the towers to be used for purposes other than that for which they were funded would jeopardize the tax-exempt status of the bonding for the towers' construction. Using them for the placement of public agencies' equipment could be considered a "private use" under Internal Revenue Service rules governing tax-exempt bonding. In addition, allowing the installation of equipment, other than MPSCS equipment, on the towers could raise liability concerns. For instance, if a tower collapsed due to the excess weight of non-MPSCS equipment or if that equipment fell off the tower, it would be unclear who would be liable for damage to the tower, equipment attached to it, or surrounding property. The executive directive addresses these concerns by requiring the Department of Attorney General to give a written determination that installation and operation of equipment on MPSCS towers would neither violate State or Federal law nor impair a State

Building Authority bond or other debt obligation.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local and State public safety agencies. Though at least one local public safety agency has expressed interest in placing its communications equipment on a State-operated tower, it is not known how many would do so, or what the cost to the local agency would be.

Currently, if a local public safety agency chooses to become a member of the MPSCS and use existing State equipment on MPSCS towers without placing its own local equipment on these towers, it must pay an activation fee of \$25 per radio and an annual membership fee of \$200 per radio.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.