

METRO ACT FUNDS

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Senate Bill 108 as passed by the Senate
Sponsor: Sen. Raymond E. Basham
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

Complete to 4-30-08

A SUMMARY OF SENATE BILL 108 AS REPORTED FROM HOUSE COMMITTEE

The bill would amend the Metropolitan Extension Telecommunications Rights-of Way Oversight (METRO) Act, MCL 484.3101 *et seq.*, to allow additional municipalities to opt to receive funds under the METRO Act. Currently, a municipality that did not "opt in" to receive METRO Act funds by adopting an appropriate resolution or ordinance effective by January 1, 2004 does not receive METRO Act distributions.

(In general, a municipality "opts in" by modifying their fee schedules and passing a resolution or ordinance that requires that telecommunications providers using public rights-of-way in that municipality pay maintenance fees under the METRO Act, rather than directly to the local unit of government.¹)

After the METRO Act was enacted, approximately 40 communities did not "opt in" by the original deadline, but some did so subsequently. Under the bill, municipalities that adopted the appropriate resolution or ordinance effective by January 1, 2008 would be eligible for METRO Act fee distributions. Also, if a municipality adopted the resolution after the distribution of funds for 2007 (June), it would be eligible to receive funds for 2007.

MCL 484.3113

BACKGROUND INFORMATION:

The Metropolitan Extension Telecommunications Rights-of-Way (METRO) Act, was enacted in 2002 as part of a package of bills designed to promote broadband technology deployment throughout the state. The METRO Act established the METRO Authority, currently housed within the Department of Labor and Economic Growth, with the right to assess fees on telecommunications and cable providers for access to public rights-of-way.

Under the METRO Act, telecommunications providers must obtain permits to use a municipality's rights-of-way (most obtain a unilateral permit good for up to five years rather than the longer bilateral permits). Annual maintenance fees (and related tax

¹ The act defines "public right-of-way" to mean the area on, below, or above a public roadway, highway, street, alley easement, or waterway. It does not include a federal, state, or private right-of-way.

credits) are established according to formulas set forth in the METRO Act. Fees are based on linear feet and access lines, as reported by the providers within a metropolitan area.² The telecommunications provider with the largest number of access lines pays five cents per linear foot in fees and the rest of the incumbent local exchange carriers (ILECs) pay the lesser of five cents per linear foot or the access line rate. Competitive local exchange carriers (CLECs) pay the same linear-foot rate as the ILEC in whose area the CLEC resides.

At first glance, the METRO Act appears to require traditional cable providers to pay a lower one-cent-per-linear-foot fee but, in fact, most traditional cable providers are exempt from paying the one-cent fee so long as they have made an aggregate investment in Michigan since January 1, 1996, in facilities capable of providing broadband Internet transport service that exceeds the amount of the METRO Act fee. No traditional cable provider paid METRO Act fees in 2006 or is expected to in the near future because of significant aggregate broadband investments in the past.

In 2006, METRO Act fees charged to all telecommunications providers totaled \$21,420,633, of which \$15,106,658 was billed to AT&T and \$3,902,767 was billed to Verizon. METRO Act fees collected by the METRO Authority are allocated to local units of government based on the formula set forth in Section 11 of the METRO Act. Seventy-five percent of the funds collected are disbursed to cities and villages based on the formula found in Section 13 of Public Act 51 of 1951 for transportation funds. The remaining 25 percent are distributed to townships based on the number of linear feet in a particular township as a percentage of the total linear feet reported for all townships. If a local governmental unit has not opted in to receive METRO Act funds, the money they would have received had they opted in is redistributed to other communities according to the Act.

The METRO Act allows for a tax credit as the means by which telecommunications providers can recover the fees paid under the METRO Act. Providers are not allowed to pass along METRO Act fees to customers. These tax credits must be applied for and approved by the Public Service Commission. The act allows telecommunication providers to claim a credit against their utility property tax (which is paid to the state General Fund). In addition, providers under the Uniform Local Video Services Franchise Act, Public Act 480 of 2006, are entitled to a credit toward their annual franchise fees for all funds allocated to a local unit of government from annual METRO Act fees, minus any property tax credit allowed under Section 8 of the METRO Act.

FISCAL IMPACT:

The bill would enable 19 municipalities that have "opted-in" after the initial deadline to receive approximately \$75,920 in the current year from funding paid by telecommunications providers to the METRO Authority based on the amount of the

² The act defines, "metropolitan area" to mean one or more municipalities located, in whole or in part, within a county having a population of 10,000 or more or a municipality that enacts an ordinance or resolution electing to be classified as part of a metropolitan area.

public right-of-way occupied by providers between April 1, 2006 and March 30, 2007. (There are an additional 20 municipalities, mostly villages, that have not passed the required ordinances or resolutions prior to the December 31, 2007 deadline set in the bill.) If the bill is passed prior to mid-May, the Department of Labor and Economic Growth has indicated that this funding would be distributed to these 19 municipalities in June 2008 along with the regular 2008 payment. Absent that, the \$75,920 would be incorporated in the June payment to the 1,739 municipalities that are currently eligible.³ (As it is, this funding was already carried forward from FY 2006-07 to FY 2007-08.) These 19 municipalities would be eligible to receive funding from the METRO Authority in 2008 and future years. The chart below shows the amount each of the 19 municipalities would receive.

Municipality	Est. 2007 Payment	Municipality	Est. 2007 Payment
Arenac County		Lenawee County	
City of Standish	\$6,841.71	Village of Deerfield	\$3,382.14
Village of Turner	\$1,227.83		
Barry County		Manistee County	
Village of Woodland	\$1,518.59	Village of Kaleva	\$3,247.11
Benzie County		Menominee County	
Village of Beulah	\$1,905.40	Village of Powers	\$2,193.33
Berrien County		Ogemaw County	
Township of Sodus	\$2,619.40	Village of Prescott	\$2,176.52
Village of Shoreham	\$1,980.66		
Calhoun County		Sanilac County	
Village of Athens	\$3,631.84	Village of Forestville	\$1,164.09
Hillsdale County		Wayne County	
Village of North Adams	\$1,862.57	City of Ecorse	\$27,620.93
Houghton County		Wexford County	
Village of Copper City	\$837.57	Village of Buckley	\$2,758.25
Iosco County		Village of Harrietta	\$1,260.85
City of Tawas City	\$7,704.48	Total	\$75,919.66
Jackson County			
Village of Hanover	\$1,986.39		

Source: METRO Authority

³ A similar situation arose with the 2006 payment after legislation similar to SB 108 was introduced. After SB 1211 of the 2005-06 (93rd) legislative session was introduced in April 2006, the METRO Authority notified the 40 local units that did not initially opt-in that they could still do so under SB 1211. The authority withheld \$54,895 from the 2006 payment for later distribution to those municipalities that chose to opt-in as provided in SB 1211. The legislation was not acted upon, and the \$54,895 that was withheld was rolled then into the June 2007 payment to eligible municipalities.

Going forward, beyond the 2007 payment at issue here, the bill would not materially affect the total amount of fees paid to the METRO Authority. Under the act, MCL 484.3113(2), any fees paid by a provider to a municipality are deducted from the amount of fees the provider pays to the METRO Authority. Because the 19 affected municipalities have already modified their fee schedules as provided in the bill, the state fee paid by providers is not reduced by any local fee. In this regard, providers will essentially pay what they have in prior years after the municipalities modified their fee schedule (except to the extent providers have increased or decreased the amount of the public right-of-way their telecommunication facilities occupy).

Because the amount of revenue to the METRO Authority will not increase under the bill, the bill would generally serve to nominally reduce the overall payment to each of the 1,739 municipalities currently eligible to receive funding, because funding would be spread across an additional 19 municipalities. (If the bill is not enacted the \$75,920 that would otherwise be paid to the 19 municipalities under the bill would be paid out to the eligible municipalities, for an average payment of \$43.66). Under the act, in years where fee revenue is less than \$30.0 million, which has been every year since enactment, fee revenue is distributed to municipalities on a proportionate basis, such that:

- 75% of the fee revenue is distributed to cities and villages within a metropolitan area in proportion to the distribution of Michigan Transportation Fund revenue those same cities and villages received under 1951 PA 51, Section 13.
- 25% is distributed to townships in a metropolitan area in proportion to the amount of the public right-of-way occupied in each township by telecommunication and cable service providers.

The act currently provides that these fees may only be used by the municipalities for "public right-of-way-related purposes" which the act, MCL 408.3110(4), specifically states does not include constructing or utilizing telecommunications facilities to serve residential or commercial customers. According to the authority, allowable uses for these funds include: (1) administrative expenses related to the act, including engineering and consulting costs; (2) public rights-of-way maintenance and repair; (3) public street lighting installation and expenses for rights-of-way purposes; (4) snow removal and dust control for rights-of-way purposes; (5) maintenance of the unimproved area of a public right-of-way, such as trimming trees and brush; (6) construction and maintenance of sidewalks and bike paths within the public right-of-way; (7) construction or utilization of telecommunication facilities within the public rights-of-way to serve noncommercial governmental interests; (8) signage within a public right-of-way; and (9) equipment purchases used strictly for rights-of-way purposes, such as portable scales used to keep overloaded trucks off public rights-of-way.

POSITIONS:

The METRO Authority (within the Department of Labor and Economic Growth) supports the bill. (4-30-08)

The Michigan Municipal League supports the bill. (4-30-08)

The Michigan Townships Association supports the bill. (4-30-08)

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■ 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.