

EXEMPT PUBLIC UTILITY AND TRANSMISSION COMPANY SUBCONTRACTOR TRUCKS FROM SEASONAL WEIGHT LIMITS

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House Bill 4999 (Substitute H-1)
Sponsor: Rep. Jeff Mayes
Committee: Energy and Technology

Revised First Analysis (8-20-09)

BRIEF SUMMARY: The bill would expand an existing exemption in the Motor Vehicle Code that allows public utility trucks exceeding seasonally-reduced weight limits to travel on restricted roads under the jurisdiction of a county road agency to perform emergency or non-emergency work, provided that certain procedures are followed. This exemption would be expanded to cover *any public utility under the jurisdiction of the Public Service Commission or a transmission company*, as well as *any subcontractor* of a public utility or a transmission company. A subcontractor would no longer be limited to performing emergency electrical work during the "frost law" period but could perform any public utility work, electrical or non-electrical, emergency or routine, if it has seasonal permits for its trucks and it follows prescribed rules about signage and notices.

MCL 257.722

FISCAL IMPACT: With the exception of additional local road agency costs of issuing permits, and related revenue from permit applications, the bill would have no apparent direct fiscal impact on local units of government, and no apparent fiscal impact on state government.

THE APPARENT PROBLEM:

The Michigan Vehicle Code establishes various vehicle weight limits (e.g., maximum axle loads, maximum wheel loads, and gross vehicle weights) for vehicles driven on Michigan roads. Under Section 722 of the Code — sometimes referred to as Michigan's "frost law" — maximum allowable axle loads and wheel loads are reduced as specified during the months of March through May, when the spring freeze-and-thaw cycle makes roads more susceptible to damage from heavy vehicles. For example, axle loads are reduced by 25 percent on concrete paved roads (or those with concrete bases) and 35 percent for all other types of roads. The maximum wheel load is lowered to 525 pounds per inch of tire width (on concrete or concrete based roads) or 450 pounds per inch of tire width on all other roads. Although the statute provides a three-month "frost law" period, the Department of Transportation and local road commissions are authorized to modify the specified period or suspend seasonal restrictions for roads under their jurisdiction. A much shorter period of seasonal restrictions is reportedly common in many areas as road agencies impose and lift seasonal restrictions based on actual road conditions. Under legislation passed last session, Public Act 579 of 2008, the Department of Transportation

and county road agencies must post information about when and where seasonal restrictions are in effect on their websites.

In general, public utilities and persons hauling agricultural commodities are exempted from the seasonally-reduced weight limits if they follow applicable procedural requirements. This exemption also applies to vehicles subcontracted by public utilities but only when they are performing emergency work for an electrical utility.

It has been suggested that the public utility exemption should be expanded to include transmission companies and to allow subcontractors of any public utility or transmission company to perform public utility work on restricted county roads during the "frost law" period as long as permit and notice provisions are followed. Subcontractors would no longer be limited only to emergency electrical work on restricted roads during this period. The bill would also allow either the utility or its subcontractor to apply for required permits or provide required notices. Although the subcontractors of public utilities and transmission companies would now be allowed to do routine work on restricted county roads during the "frost law" period, the bill would require a subcontractor to display a sign on the outside of its truck indicating it was performing public utility work and would require a subcontractor to have in its possession any notice provided to a county road agency.

THE CONTENT OF THE BILL:

The following is a detailed description of House Bill 4999.

Seasonal weight restrictions. Under current law, Section 722(8), which contains the seasonal weight limit reductions, "does not apply to vehicles transporting agricultural commodities or public utility vehicles on a highway, road, or street under the jurisdiction of a local road agency." The bill would amend this exemption language to include cross references to Section 722(5) (which sets forth the conditions under which agricultural commodity haulers are exempt from seasonal weight restrictions) and to Section 722(6) (which sets forth the conditions under which public utility vehicles are exempt from the seasonal weight restrictions).

Agricultural commodity hauler exemption. Section 722(5) would be amended to clarify "that seasonal reductions described under subsection (8) to the loading maximums and gross vehicle weight requirement[s] of subsection (12) do not apply to a person hauling agricultural commodities" under the circumstances described in that subsection. That subsection's requirements include notifying the county road commission at least 48 hours before the pickup or delivery.

Public utility exemption. Section 722(6) would be amended to clarify that "[s]easonal reductions described under subsection (8) to the loading maximums and gross vehicle weight requirements of subsection (12) do not apply to public utility vehicles" under the circumstances described in that subsection. The circumstances described in that

subsection vary depending on whether the public utility work is of an emergency or routine nature.

Emergency work. When a public utility needs to use a truck that might exceed the seasonally-reduced weight restrictions during an emergency, the public utility must notify the county road agency as soon as practical (not necessarily in advance) of the location of the emergency public utility work (if the road agency requires this), and the utility trucks must not travel at a speed greater than 35 miles per hour to and from the site of the emergency work. Currently, public utility *subcontractor vehicles* exceeding weight limits are eligible for this exemption only when performing *electrical emergency public utility work*. Under the bill, this restriction would be removed. A subcontractor of any public utility or transmission company could perform emergency public utility work on a restricted road.

In addition, the bill would allow any notice required to be given to a county road agency with respect to emergency public utility work to be provided either by the public utility (meaning a public utility or a transmission company) or by a subcontractor of a public utility.

Nonemergency work. Most counties now require that public utilities obtain a seasonal permit for each truck used to perform nonemergency work on restricted roads. The bill would allow either the public utility (meaning a public utility or a transmission company) *or its subcontractor* to apply to a county road commission for a seasonal permit to perform nonemergency work on restricted roads in counties where such permits are required.

- A seasonal permit would only allow public utility vehicles or vehicle configurations to travel on restricted roads during weight restrictions when performing "public utility work." (Currently, the provision only says "work.")
- A seasonal permit would be valid as to a subcontractor only while the subcontractor vehicle was being used to perform public utility work.
- A subcontractor vehicle or vehicle configuration would have to display a sign on the outside of the vehicle to identify the vehicle as operating on behalf of the public utility.
- The current requirement that a public utility notify a county road agency by fax or e-mail at least 24 hours before intended travel on restricted roads (if required by the commission) would be amended to allow either the public utility *or its subcontractor* to provide the required notice. If the commission denied the request for access to a road because the road's condition made it unusable, the commission would have to communicate the denial by fax or e-mail to the public utility *or its subcontractor*.
- A subcontractor using a vehicle on a restricted road would need to keep a copy of any notice provided to a county road commission in its possession while performing nonemergency public utility work.
- The provision allowing a county road commission to deny access to all or any part of a particular road whose condition makes it unusable would be retained. Under the bill, however, a denial would have to be made and communicated via fax or e-mail to

- the public utility *or its subcontractor* within 24 hours after the utility *or subcontractor* has notified the road commission that it intends to perform nonemergency work on a restricted road. The current requirement that a notification not disapproved within 24 is considered approved would be retained.
- An application submitted by a subcontractor for access to operate on a restricted road could be required to include the name of the utility on whose behalf the subcontractor was performing service.

Definitions. The bill would add the following definitions:

"Public utility" would mean "a public utility under the jurisdiction of the Public Service Commission or a transmission company."

A **"public utility vehicle"** would mean "a vehicle owned or operated by a public utility or operated by a subcontractor on behalf of a public utility."

"Transmission Company" would mean "either an affiliated transmission company or an independent transmission company as those terms are defined in Section 2 of the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.562."

MCL 257.722

BACKGROUND INFORMATION:

Liability for damages. Under Public Act 283 of 1909 (MCL 230.7) someone who damages a road or bridge is liable for damages and can be ordered to pay up to three times the amount of the damage to the local road authority:

Whoever shall injure any bridge maintained at the public charge, or any public road, by drawing logs or timber on the surface of any such road or bridge, or by any other act, shall be liable in damages to 3 times the amount of the injury, to be recovered in an action of trespass or on the case, by the commissioner of highways of the township within which the injury was done, in his name of office, to be expended by him in the repair of roads in his township.

Road agencies. Except for Wayne County, each Michigan county's road agency is a separate county road commission. Wayne County's road agency is part of general county government.

ARGUMENTS:

For:

The public utility exception to the "frost law" should be expanded to include transmission companies because all utility service depends on the maintenance and proper functioning of the electrical grid. This is critical infrastructure that must be maintained during all

seasons. The law should be updated to reflect changes in the industry.

It is also important that the "frost law" exemption for public utilities be expanded to include all subcontractors of public utilities and transmission companies, not just subcontractors doing emergency electrical work. In general, public utility companies rely heavily on subcontractors to perform a variety of maintenance and repair functions. Utility company representatives indicated that many of them contract out most or all of their tree trimming and trench digging work to outside subcontractors. Using subcontractors has enabled them to maintain reliable service at a lower cost. Prohibiting public utilities from using subcontractors to perform nonemergency work during the "frost law" period limits their ability to keep up with crucial tree trimming in preparation for heavy spring storms. In addition, although a residential electrical hookup may be a routine matter, it is of critical importance to a homeowner who is otherwise ready to move in to a newly-constructed home. In short, subcontractors ought to be able to perform both emergency and routine public utility work on restricted roads.

It is especially important that transmission company subcontractor trucks be allowed on restricted roads during the frost period because at least one transmission company relies exclusively on subcontractors to perform necessary work and does not own the trucks or directly employ the skilled workers needed for this work.

The services being provided to customers and the potential damage to the roads are the same whether trucks are being driven by utility employees or subcontractor employees. Why should there be a distinction in the law, limiting the use of subcontractors only to electrical emergencies?

The bill strikes a balance between the wishes of the utility and transmission companies to operate (or have their subcontractors operate) on restricted roads during the "frost law" period and the need to protect Michigan roads when they are most fragile. The bill maintains the requirement that seasonal permits be obtained and that road commissions be notified of emergency and non-emergency work, and contains additional rules to make sure subcontractors are identifiable and limited to performing public utility work. A road commission may still completely ban travel on a particular road when warranted by conditions, and the notice requirements will enable commissions to identify the owners of trucks that may have damaged roads.

Against:

Utilities already are able to respond to electrical emergencies using subcontractors with heavy trucks. No advance notice is needed in emergencies and road commissions are accommodating in such situations.

On the other hand, it would be fiscally irresponsible to allow an expanded group of companies to perform routine, nonemergency work with heavy trucks during the short period during which the roads are most susceptible to damage. During the "frost law" period, it may take only one heavy truck to do substantial damage to a road. During this period, new utility hookups can still be done with lighter trucks and all types of routine

maintenance can be performed on unrestricted roads. If it is truly essential that a heavier truck be used, the routine work can be done just before or just after the "frost law" period with a small amount of planning. The "frost law" period only lasts four to six weeks in many areas. (In addition, opponents of the legislation point out that it is highly unlikely that someone would be ready to move into a new home except for an electrical hookup. They note that the electrical hookup is usually one of the first things done at the construction site of a new home to enable the workers to use power tools to build the house. If such work truly needed to be performed on a restricted road during the frost law period, it could still be performed using a lighter truck.)

Allowing subcontractors to be covered by the public utility exception to the "frost law" would be more reasonable if the law contained a provision making the public utility or transmission company that hired the subcontractor to be responsible for the actions of its subcontractors. Although some subcontractors are financially stable and locally-owned, this is not always the case. County road commissions should not have to worry about trying to identify and track down the subcontractors of public utility companies to hold them responsible for road damages they have caused. Currently, the bill lacks any provision holding a utility or transmission company responsible for road damage caused by its subcontractors.

In addition, the bill allows either the public utility or the subcontractor to obtain necessary permits and provide required notices. By not requiring the public utility or transmission company to be responsible for the notices and permits, the bill may make it easier for public utilities to evade responsibility for damages caused by their subcontractors. It will force county road commissions to monitor potential road damage from and deal with permit requests and notifications from a greatly expanded pool of subcontractors. This is particularly unreasonable for routine work.

It is unclear which utilities and subcontractors will be covered by the expanded utility exception to the "frost law" contained in the bill. The bill defines a public utility as one under the jurisdiction of the Public Service Commission (PSC), but this definition leaves much room for debate as to which companies are covered. Some companies are under the jurisdiction of the PSC with respect to rates or other functions but are unregulated in other respects. For example, would electrical cooperatives that have elected to become "member-regulated" as to rates and certain other matters (as opposed to being regulated by the Public Service Commission) under Public Act 167 of 2008 still qualify for the public utility exemption? Would telecommunications and cable companies and their subcontractors qualify? Municipal water companies? The law should be clarified to prevent future disputes between companies and road commissions.

As a technical matter, the bill should clearly require that the sign on the outside of a subcontractor's truck identify *by name* the public utility for which the subcontractor is working. As the bill is currently drafted, a subcontractor could arguably comply with the signage requirement with a sign on the outside of the truck indicating it is performing work for a public utility but without specifying which one.

POSITIONS:

American Transmission Company indicated support for the bill. (7-14-09)

Antler Tree Service, LLC sent a letter in support of the bill. (7-8-09)

Asplundh Tree Expert Co. sent a letter in support of the bill. (7-9-09)

C.C. Power, LLC sent a letter in support of the bill. (Undated)

Consumer's Energy indicated support of the bill. (7-14-09)

Davey Tree Expert Co. sent a letter in support of the bill (7-8-09)

DTE Energy indicated support for the bill. (7-14-09)

The Hydaker-Wheatlake Co. sent a letter in support of the bill. (6-30-09)

Indiana Michigan Power Company testified and provided written testimony in support of the bill. (7-14-09)

International Brotherhood of Electrical Workers, Local 876, sent a letter in support (7-9-09) and testified in support of the bill. (7-14-09)

ITC Holdings Corp. indicated support of the bill. (7-14-09)

Kent Power Inc sent a letter in support of the bill. (Undated)

The Michigan Manufacturers Association indicated support for the bill. (7-14-09)

M.J. Electric, LLC sent a letter in support (7-9-09) and testified in support of the bill. (7-14-09)

The Michigan Chamber of Commerce indicated support for the bill. (7-14-09)

The Michigan Electric and Gas Association testified in support of the bill. (7-14-09)

The Michigan Electric Cooperative Association testified in support of the bill. (7-14-09)

Midwest Electric sent a letter in support of the bill. (7-9-09)

Robert Henry Corporation sent a letter in support of the bill. (7-9-09)

SEMCO Energy indicated support of the bill. (7-14-09)

Tree Care Industry Association sent a letter in support of the bill. (7-9-09)

Wright Tree Service, Inc. sent a letter in support of the bill. (7-8-09)

The Department of Transportation is neutral on the bill. (7-27-09)

The County Road Association of Michigan testified against the bill. (7-14-09)

The Macomb and Oakland County Road Commissions indicated opposition to the bill.
(7-14-09)

Legislative Analyst: Shannan Kane
Fiscal Analyst: William E. Hamilton

■ 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.