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BILL



ANALYSIS

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House Bill 4999 (Substitute H-1 as reported without amendment)
Sponsor: Representative Jeff Mayes
House Committee: Energy and Technology
Senate Committee: Transportation

Date Completed: 10-27-09

RATIONALE

Michigan's climate puts significant stress on the State's roads and highways, particularly during the freeze and thaw cycle in the spring. During that period, the ground beneath the road softens as the frost subsides, and roads are more susceptible to damage from heavy vehicles. To help reduce the damage done while the roads are in that weak state, the Michigan Vehicle Code provides for reduced vehicle weight limits during the months of March, April, and May. The dates when the restrictions apply are subject to modification by the Michigan Department of Transportation or a local road agency, which may suspend the limits and impose them at other times based on road conditions, and may suspend the limits in the interest of public safety, health, and welfare. Also, the seasonal weight restrictions do not apply on some designated all-season roads. Generally speaking, most major highways throughout the State are designated all-season roads while most smaller county roads are subject to the seasonal weight restrictions.

Public utility vehicles, which often carry heavy equipment used to maintain electric lines or water and sewer systems, sometimes exceed the seasonal weight limits. The Code makes an exception for those vehicles under certain circumstances, but some have pointed out that those provisions do not apply to subcontractors, except when they are doing emergency public utility work. Since subcontractors regularly perform maintenance and other work on behalf of utility companies, it has been suggested that the current exemption should apply to subcontractors as well.

CONTENT

The bill would amend the Michigan Vehicle Code to include subcontractors in provisions exempting public utility vehicles from seasonal weight limits.

Exception to Weight Limits

The Code prescribes maximum axle loads and gross vehicle weights for various configurations of vehicles. During the months of March, April, and May, the maximum axle load allowable must be reduced by 25% from the specified maximum load on concrete pavements or pavements with a concrete base, and by 35% on all other types of roads. Additionally, the maximum wheel load may not exceed 525 pounds per inch of tire width on concrete and concrete base or 450 pounds per inch of tire width on all other roads while the seasonal road restrictions are in effect.

The Code makes an exception to those seasonal restrictions for public utility vehicles that are owned and operated by public utilities under the jurisdiction of the Michigan Public Service Commission (MPSC), or are subcontracted by public utilities to perform electrical emergency public utility work, under certain circumstances.

The bill, instead, would make an exception to the seasonal restrictions for public utility vehicles, under the same circumstances.

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

"Public utility" would mean a public utility under the jurisdiction of the MPSC or a transmission company. "Transmission company" would mean either an affiliated transmission company or an independent transmission company as those terms are defined in the Electric Transmission Line Certification Act. (Under that Act, "affiliated transmission company" means a person, partnership, corporation, association, or other legal entity that has satisfied the requirements to join a regional transmission organization, is engaged in the transmission of electricity in the State using facilities it owns that were transferred to it by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this State on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the State. "Independent transmission company" means a person, partnership, corporation, association, or other legal entity engaged in the transmission of electricity in the State using facilities it owns that have been divested to it by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this State on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in the State.)

Emergency Utility Work

Currently, for emergency public utility work on restricted roads, if required by the county road commission, the public utility must notify the county road commission of the location of the work and provide a statement that the vehicles used to perform the work may have exceeded the loading maximums and gross vehicle weight requirements reduced by the seasonal restrictions.

Under the bill, the public utility or its subcontractor would have to notify the county road commission.

Nonemergency Work

For nonemergency public utility work on restricted roads, if the county road commission requires, the public utility must apply to the county road commission annually for a seasonal truck permit for roads under its authority before seasonal

weight restrictions are effective. Under the bill, that requirement also would apply to the public utility's subcontractor.

The county road commission must issue a seasonal truck permit for each vehicle or vehicle configuration the utility anticipates will be used for nonemergency public utility work. The bill would require the road commission to issue a permit for each public utility vehicle or vehicle configuration the public utility or subcontractor anticipated would be used.

In addition to meeting the current requirements, a seasonal truck permit would have to include the following:

- A requirement that in the case of a subcontractor the permit would be valid only while the subcontractor vehicle was being operated in the performance of public utility work.
- A requirement that a subcontractor vehicle or vehicle configuration display signage on the outside of the vehicle to identify it as operating on behalf of the utility.

Notification of Work

If the county road commission requires notification of nonemergency public utility work on restricted roads, the commission must provide a notification application for the public utility to use when requesting access to operate on those roads. The public utility must provide notification to the county road commission at least 24 hours before the time of the intended travel.

Under the bill, those provisions also would apply to a subcontractor for a public utility. A subcontractor using a vehicle on a restricted road would have to have a copy of any notification provided to a county road commission in his or her possession while performing the relevant nonemergency work.

The bill would require a notification application to include, in the case of a subcontractor, the utility on whose behalf the subcontractor was performing services.

MCL 257.722

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

Public utility companies rely on subcontractors to perform a variety of maintenance and repair functions. The use of subcontractors allows the utilities to operate efficiently and reduce costs, by using specialized workers as needed and assigning the appropriate team to a particular job. For instance, utility companies may hire teams that only perform underground work or tree trimming and removal. The flexibility to use subcontractors is essential for utility companies to maintain utility infrastructure and expand and upgrade the system to meet expected demand. Additionally, keeping up with routine maintenance helps reduce the need for emergency response.

Currently, however, vehicles owned by subcontractors are treated differently in the statute than those owned by utility companies. As a result, except in emergency situations, utility companies are unable to use subcontractors during the spring months, which limits the companies' ability to keep up with crucial maintenance. There is no reason that subcontractors should be treated differently than the utility companies themselves, because subcontractors are acting on their behalf. The bill would correct that discrepancy, including subcontractors in the current exemptions for utility vehicles. To minimize any damage to the roads and ensure full communication between a subcontractor and a local road commission, the subcontractor would have to contact or receive a permit from the road commission before doing work on a restricted road. The road commission then could inspect the road after the utility work had been completed to determine if there had been any damage.

Response: The bill should specify that a public utility would be responsible for any damage done by a subcontractor on its behalf. While contract law generally holds a contractor responsible for the actions of its subcontractors, the bill would create some ambiguity about the nature of the relationship between a subcontractor and a county road commission, since the commission would be granting seasonal

permits or other exemptions directly to the subcontractor. If a public utility denied responsibility for any damage done by its subcontractor, that dispute could lead to delays in collecting payment and could force the county road commission to consider legal action to determine who was responsible for the damage. Collection also could be delayed if the subcontractor was hard to locate or had its headquarters in another state. In the meantime, the county road commission would have to pay the costs of repairing the roads, which could amount to hundreds of thousands of dollars.

Opposing Argument

The seasonal weight restrictions are an essential measure designed to protect the roads when they are in a weakened state. Most other northern states and all Canadian provinces have similar restrictions, because there is widespread agreement about the damage that heavy vehicles can do when the frost is receding. Even with the seasonal restrictions, the State's roads suffer significant damage each year, and each exemption has the potential to add to that degradation. Current law already permits subcontractors to respond to emergencies. Expanding the exemption would increase the number of heavy vehicles on the roads during the critical spring months, further degrading the State's roadways.

The seasonal weight limits are in effect for only about two months each year, and utility companies should respect those limits to the greatest extent possible, rather than requesting additional exemptions. Many activities, such as tree trimming or ditch digging, can be done at any time of the year, and should be scheduled either before or after the spring thaw. Ultimately, the taxpayers bear the cost of repairing any damage done by heavy vehicles, and local governments have a responsibility to minimize those costs by preventing unnecessary wear on their roads and highways, particularly as transportation budgets fail to keep up with rising construction and maintenance costs.

Response: The bill simply would treat subcontractors in the same way as the utilities themselves are treated. If the exemption is warranted for utilities, then it makes equal sense for the subcontractors who are doing work on the utilities' behalf. In addition, road commissions would have

the discretion to grant or deny permits for subcontractors.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Zin

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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.