

Act No. 404
Public Acts of 2012
Approved by the Governor
December 20, 2012
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EFFECTIVE DATE: Pending

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Gilbert

ENROLLED HOUSE BILL No. 6022

AN ACT to amend 2002 PA 48, entitled “An act to create a telecommunication rights-of-way oversight authority; to provide for fees; to prescribe the powers and duties of municipalities and certain state agencies and officials; to provide for penalties; and to repeal acts and parts of acts,” by amending sections 2 and 3 (MCL 484.3102 and 484.3103).

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) “Authority” means the metropolitan areas metropolitan authority created under the Michigan metropolitan areas metropolitan authority act.

(b) “Broadband internet access transport services” means the broadband transmission of data between an end-user and the end-user’s internet service provider’s point of interconnection at a speed of 200 or more kilobits per second to the end-user’s premises.

(c) “Commission” means the Michigan public service commission in the department of licensing and regulatory affairs.

(d) “Exchange” means that term as defined under section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(e) “Incumbent local exchange carrier” means that term as defined under section 251(h) of title II of the communications act of 1934, chapter 652, 110 Stat. 61, 47 USC 251.

(f) “Metropolitan area” means 1 or more municipalities within this state located, in whole or in part, within a county having a population of 10,000 or more or a municipality within this state that enacts an ordinance or resolution electing to be classified as part of a metropolitan area under this act.

(g) “Municipality” means a township, city, or village.

(h) “Person” means an individual, corporation, partnership, limited partnership, association, limited liability company, governmental entity, or any other legal entity.

(i) “Public right-of-way” means the area on, below, or above a public roadway, highway, street, alley, easement, or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

(j) “Telecommunication facilities” or “facilities” means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

(k) “Telecommunication provider”, “provider”, and “telecommunication services” mean those terms as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, 2-way communication device. For the purposes of this act only, a provider also includes all of the following:

(i) A cable television operator that provides a telecommunication service.

(ii) Except as otherwise provided by this act, a person who owns telecommunication facilities located within a public right-of-way.

(iii) A person providing broadband internet transport access service.

(iv) An internet service provider that provides a telecommunication service.

Sec. 3. (1) The metropolitan areas metropolitan authority shall exercise the powers, duties, functions, and responsibilities vested in the authority under this act. The authority shall coordinate public right-of-way matters with municipalities, assess the fees required under this act, and have the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider.

(2) The authority shall file an annual report of its activities for the preceding year with the governor and the members of the legislative committees dealing with energy, technology, and telecommunications issues on or before March 1 of each year.

(3) The authority may promulgate rules for the implementation and administration of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) On October 1, 2014, all of the following shall occur:

(a) The powers, duties, functions, and responsibilities vested in the metropolitan extension telecommunications rights-of-way oversight authority before October 1, 2014 are transferred to and vested in the authority.

(b) All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the metropolitan extension telecommunications rights-of-way oversight authority are transferred to the authority.

(c) The metropolitan extension telecommunications rights-of-way oversight authority is abolished.

(5) The director of the department of licensing and regulatory affairs shall provide executive direction and supervision for the implementation of the transfers to the authority under subsection (4).

(6) The director of the department of licensing and regulatory affairs shall coordinate with the executive director of the metropolitan extension telecommunications rights-of-way oversight authority to facilitate the transfers to the authority under subsection (4) and shall develop and issue a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations resolved by the metropolitan extension telecommunications rights-of-way oversight authority before the transfers under subsection (4).

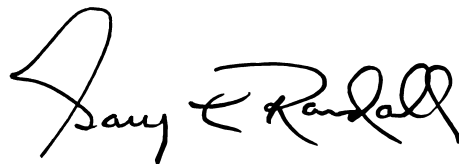
(7) State departments, agencies, officers, and employees shall fully and actively cooperate with and assist the director of the department of licensing and regulatory affairs in the implementation of transfers under subsection (4).

(8) The state budget director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state’s financial management system necessary to implement the transfers under subsection (4).

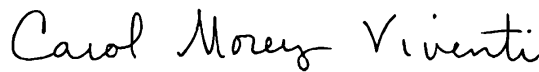
(9) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transfers under subsection (4) shall not abate by reason of the taking effect of the transfers under subsection (4). Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by the transfers under subsection (4).

(10) All rules, regulations, orders, contracts, and agreements relating to the former metropolitan extension telecommunications rights-of-way oversight authority or the powers, duties, functions, and responsibilities transferred under subsection (4) lawfully adopted before October 1, 2014 shall continue in effect until revised, amended, repealed, or rescinded by the authority unless prohibited by law.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 6026 of the 96th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor