

# Legislative Analysis



## **BROADBAND COMPANIES: ALLOW USE OF HIGHWAY RIGHTS-OF-WAY**

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**Senate Bill 1050 as reported from committee**  
**Sponsor: Sen. Jim Stamas**  
**House Committee: Communications and Technology**  
**Senate Committee: Energy and Technology**  
**Complete to 12-9-18**

Analysis available at  
<http://www.legislature.mi.gov>

### **SUMMARY:**

Senate Bill 1050 would amend Public Act 368 of 1925, which pertains to the use of highways by public utilities, to regulate broadband companies' use of highways.

The act currently prescribes the conditions under which certain utilities may enter upon, construct, and maintain a number of different structures or fixtures (such as pipelines, wires, cables, poles, and sewers). The act also requires those utilities to obtain consent from the appropriate board of county road commissioners or the state road commissioner, as applicable, before constructing a structure or fixture upon, over, or under a county road or bridge or a state trunk line or state-constructed bridge.

The bill would add "broadband companies" to the list of utilities regulated under the act and require that construction of "broadband lines" follow the same regulations described above.

The bill would take effect 90 days after enactment.

MCL 247.183 and 247.184

### **HOUSE COMMITTEE ACTION:**

The House Committee on Communications and Technology reported the Senate-passed version of the bill without amendment.

### **BACKGROUND INFORMATION:**

Public utility structures and facilities, including above-ground telecommunication and electric lines, as well as below-grade fiber-optic lines, gas transmission pipelines, water and sewer lines, and steam pipes, are frequently placed within highway rights-of-way. The use of these rights-of-way is governed in Michigan law by Public Act 368 of 1925. Public Act 368 authorizes utilities to occupy the right-of-way of public highways, subject to the consent of the public highway owner. The law also makes the construction and maintenance of the utility structures subject to "the paramount right of the public to use such public places, roads, bridges, and waters..." Access by utilities to public highway rights-of-way is typically granted by permit issued by the highway agency.

Sections 13 and 14 of Public Act 368 of 1925 authorize the use of highway rights-of-way, under specific conditions, by certain specific utilities. Section 13 states that "telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines,

pipe lines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose.”

Section 13(1) of Public Act 368 of 1925 currently requires that the utility, before any utility work within a highway right-of-way is commenced, first obtain the consent of the governing body of the municipality (city, village, or township) through or along which these lines and poles are to be constructed and maintained. Section 13(2) includes specific provisions related to utility use of limited access highway rights-of-way.

Section 14 requires that the consent of the board of county road commissioners be obtained before that before utility work within a country road commission right-of-way is commenced. Section 14 also requires that the consent of the state highway commissioner [i.e., the director of the Michigan Department of Transportation] be obtained before that before utility work within state trunkline right-of-way is commenced.

County road commissions and the Michigan Department of Transportation authorize utility work-through permits, and charge permit fees for work related to issuing permits, including plan review and site inspection work.

Section 13(2) authorizes imposition of a reasonable charge for utility use of limited access highway rights-of-way to offset a portion of the capital, maintenance, and permitting expense of the limited access highway. The authorized permit fees for the Michigan Department of Transportation are established in Section 13(2): installation permit fee are not to exceed \$1,000 per longitudinal mile, with a minimum fee of \$5,000 per permit.

Provisions regarding utility permit fees charged by county road commissions are established in Section 19b of County Road Law (Chapter IV of Public Act 283 of 1909). This section was recently amended by House Bill 5097 of the current legislative session, enacted as Public Act 97 of 2018.<sup>1</sup>

## **FISCAL IMPACT:**

Senate Bill 1050 does not change current utility permit requirements or current statutory provisions establishing and limiting permit fees. As a result, we believe the bill would have a minimal fiscal impact on the state and local units of government.

## **POSITIONS:**

A representative of the Michigan Telecommunications Association testified in support of the bill. (12-5-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>1</sup> <http://legislature.mi.gov/doc.aspx?2017-HB-5097>.