

# Legislative Analysis

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## PERMIT FEE LIMITS, CLARIFICATIONS, AND BONDS FOR WORK IN RIGHT-OF-WAY

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**House Bill 5097 as introduced**  
**Sponsor: Rep. Beth Griffin**  
**Committee: Communications and Technology**  
**Complete to 10-23-17**

### SUMMARY:

House Bill 5097 would amend the Public Highways and Private Roads Act by setting fee limits for projects within the right-of-way of a county road. The bill also would require either a security or right-of-way bond to secure the performance allowed in a permit authorizing the project in the right-of-way. Finally, the bill would require that a provider maintain general liability insurance.

#### Current Provisions

Currently, a person, partnership, association, corporation, or governmental entity needs a permit from the proper county road commission before they can construct, operate, maintain, or remove a facility or perform any other work within a county road right-of-way. A county road commission and a local unit of government may set the permit requirements and fees. When a road commission adopts permit requirements and fee schedules, it must also set separate permit procedures and fees for annual and emergency permits. However, a county road commission cannot refuse a permit requested by a government entity that promises to restore the road, appurtenances, and adjacent right-of-way. Additionally, a county road commission is not allowed to require a permit for other lawful activities.

#### Permit Fees

The bill would clarify that a county road commission cannot charge a government entity or provider a permit fee over \$300 per permit, or \$1,000 total for all permits per project.

The bill would add that a county road commission *cannot* require a provider to obtain a permit for performing routine maintenance or repair work in a right of way *more than once per year*. The fee for the annual permit would be capped at \$300 and would be separate from the above fee limitations.

The bill also would prohibit a county road commission from requiring a provider to perform or pay for any topographic, boundary, environmental, or other kind of survey, study, inspection, or analysis of a right-of-way as a condition of or in connection with issuing a permit.

#### Bonds

The bill also would add that a county road commission cannot require a provider to have more than one security bond or right-of-way bond from a state or federally regulated entity.

The bonds would act to secure the performance allowed in a permit authorizing the project in the right-of-way. A county road commission cannot require a cash bond, so the provider would determine whether the security bond or right-of-way bond would be an insurance bond or a cash bond.

The amount of a security bond or right-of-way bond could not exceed \$20,000 and would have to be returned within 60 days after the provider completes the work in the right-of-way.

A provider could provide an irrevocable letter of credit issued by a state or federally regulated financial institution as alternative security, other than the bonds.

### **Insurance**

The bill would require a provider to maintain general liability insurance with minimum policy limits of \$1.0 million per occurrence for property damage, and \$1.0 million per occurrence for bodily injury for all actions arising in connection with the right-of-way work. The county road commission would be prohibited from requiring the provider to name the county, road commission, its officers, employees, and others as additional insureds under a general liability insurance policy.

### **Definitions**

Provider would mean either of the following:

- A telecommunication provider as defined in MCL 484.2102(ee) (a person who provides one or more telecommunication services for compensation; it does not include a provider of commercial mobile service defined in 47 USC 332(d)(1)).
- A video service provider as defined in MCL 484.3301 (a person authorized under this act to provide video service).

Finally, the bill would make stylistic changes for clarity and to update references.

MCL 224.19b

### **FISCAL IMPACT:**

House Bill 5097 would have no fiscal impact on state government. The bill's impact would be limited to local government, specifically county road agencies (county road commissions and those county governments that have assumed the powers and duties of road commissions: Wayne, Macomb, Ingham, Calhoun and Jackson).

Section 19b, subsection 4 currently limits the permit fee that a county road agency can charge a "government entity" to \$300 per permit or \$1,000 total for all permits per project. House Bill 5097 would expand this permit fee limitation to "providers," as defined in the bill. To the extent that county road commissions currently charge permit fees to private parties in excess of the proposed limits, the bill would reduce local road commission revenue from permit fees, and would increase unreimbursed costs.

The amount of the revenue loss would be localized and would pertain to those situations in which the actual costs of road commission permit work exceeded the permit fee limits established in the bill. The bill's impact would be greatest in relation to large complex telecommunication or video service projects within the road commission right of way, and more particularly within urban environments—projects that potentially require higher levels of road commission review and oversight.

## **BACKGROUND INFORMATION**

It is often necessary for utilities, construction firms, and others to work within county road right-of-way in order to lay pipelines, construct drains, or install or repair telecommunication equipment. Public Act 212 of 1980 added Section 19b to Public Act 283 of 1909 (County Road Law) to require that private entities or public agencies working in the county road right-of-way first obtain a permit from a county road commission, as well as from the city, village, or township in which the road is located if those other governmental units require such a permit.

Section 19b currently allows a county road commission, and a local unit of government, to establish reasonable permit requirements and "a schedule of fees to be charged sufficient to cover only the necessary and actual costs applied in a reasonable manner for issuing the permit and for review of the proposed activity, inspection, and related expenses."

Subsection 4 within Section 19b currently limits the permit fee that a county road agency can charge a "government entity" to \$300 per permit or \$1,000 total for all permits per project. This maximum permit fee for governmental entities has not been adjusted since Public Act 212 took effect in early 1981.

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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.