Legislative Analysis

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RELOCATION OF UTILITY FACILITIES

House Bill 5098 as introduced
Sponsor: Rep. Michele Hoitenga
Committee: Communications and Technology
Complete to 10-23-17

SUMMARY:

House Bill 5098 would amend Public Act 368 of 1925 (Highway Obstructions and Encroachments; Use of Highway by Public Utilities Act) by regulating the relocation of facilities owned by an entity holding a license under the Michigan Telecommunications Act or a franchise under the Uniform Video Services Local Franchise Act.

Under the bill, if a city, village, township, or county (a "local unit") or the state transportation department (MDOT) requests or requires an entity holding a license under the Michigan Telecommunications Act or holding a franchise under the Uniform Video Services Local Franchise Act (an "entity") to temporarily or permanently relocate its facilities for any reason (except for an act of God or emergency), then the local unit or MDOT would be required to send a written notice, by first-class or electronic mail, to the entity at least one year before the relocation would occur. If a local unit or MDOT learns of or secures funding for a construction project that may entail the relocation of an entity's facilities less than one year before the planned start date, then the local unit or MDOT would have to send the written notice within 30 days of learning of or securing funding for the project. The written notification would have to identify the following:

- Specific rights-of-way affected, including the beginning and ending points.
- Affected cross streets and structures.
- Planned start date of the project.

If a local unit or MDOT requests or requires an entity to relocate facilities, the local unit or MDOT can require the entity to obtain a permit for the relocation, but cannot charge any permit or inspection fees. A local unit or MDOT also cannot request or require an entity to conduct any study or survey, such as drainage, soil, or center line studies, related to relocating facilities.

Under the bill, an "act of God" is an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

Under the bill, an emergency includes, but is not limited to, flooding not caused by an "act of God," a water main break, a sewer line failure, a natural gas leak, or an act of terrorism.

FISCAL IMPACT:

Section 13 of Public Act 368 of 1925 authorizes the MDOT, or a local road agency, to impose a reasonable charge for the use, by a utility, of limited access highway right of way to offset a portion of the capital, maintenance, and permitting expense of the limited access highway. Section 13 currently provides for a one-time installation permit fee not to exceed $1,000 per longitudinal mile, with a minimum fee of $5,000 per permit.

House Bill 5098 directs that when the MDOT, or a local road agency, requires an entity to relocate facilities may require the entity to obtain a permit for the relocation of the facilities, but the bill would also require the MDOT, or local road agency, to waive any permit or inspection fees.

In requiring the MDOT and local road agencies to waive permit or inspection fees, the bill could have a negative fiscal impact on the department and local road agencies. The impact would vary by year and by agency depending on the circumstances of specific highway projects. For many agencies the bill would have no impact or minimal impact in most years. However, in those circumstances where a highway construction or reconstruction project necessitates the relocation of certain telecommunication facilities–in particular, major projects in urban areas–the costs to the highway agency could be substantial.

Because federal funds would not participate in those relocation costs, the relocation costs would have to come from the State Trunkline Fund with respect to state trunkline projects, or from local road or street funds with respect to local unit projects.

Note that the bill would apply only to an entity holding a license under the Michigan Telecommunications Act, or an entity holding a franchise under the Uniform Video Services Local Franchise Act, under circumstances defined in the bill. The bill would have no impact on the treatment of other utilities occupying public highway rights-of-way, such as electric transmission companies, gas pipelines, water or sewer lines or steam pipes.

BACKGROUND:

Statutory Authority

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 right-of-way is typically granted by permit issued by the highway agency.

Reimbursement

The widening or reconstruction of a highway or street by MDOT, or a local road agency, may require the relocation of utility facilities within the right-of-way. Under Michigan law, when a utility's facilities are within the right-of-way by permit, the highway agency typically does not pay for relocation. The department or a local road agency only pays for utility relocation when the utility has an easement or actual ownership of the property on which its facilities are placed.

While highway agencies typically do not pay for utility relocation costs, except under circumstances described above, utilities typically do not pay for occupying public highway rights-of-way. Utilities benefit from this free use of the public right-of-way that would otherwise be very costly to purchase.

Federal Participation in Relocation Costs

Federal-aid highway funds will participate in the cost of highway-related utility relocation under provisions of 23 CFR 645. Specifically, federal funds will participate in utility relocation costs necessitated by highway construction only under one or more of the following circumstances: the utility has a property interest in its present location; the state has a law or some legal basis for payment which provides authority to pay for utility relocations; the utility is municipally owned; or the relocation involves implementing safety corrective measures. Federal participation is made on a reimbursement basis; the state is reimbursed for relocation costs only after it is demonstrated that state funds have paid for relocation. A complete description of the federal regulations governing reimbursement of utility relocation is found in the Federal Highway Administration publication, *Utility Relocation, and Accommodation on Federal-Aid Highway Projects* at http://www.fhwa.dot.gov/reports/utilguid/index.cfm.

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