

## RELOCATION OF UTILITY FACILITIES

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**House Bill 5098 as enacted**

**Public Act 565 of 2018**

**Sponsor: Rep. Michele Hoytenga**

**House Committee: Communications and Technology**

**Senate Committee: Energy and Technology**

**Complete to 6-25-19**

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

## SUMMARY:

House Bill 5098 amends 1925 PA 368 (highway obstructions and encroachments) concerning the relocation of facilities owned by a licensee under the Michigan Telecommunications Act or a franchisee under the Uniform Video Services Local Franchise Act.

Under the bill, if a city, village, township, county, or county road commission requests or requires a telecommunications or cable provider to move facilities, the local governmental entity may require the provider to get a permit, but must waive all permit fees, for the relocation. This does not apply, however, if the relocation request is because the provider placed the facilities in an unauthorized location.

[As enacted, the bill also contains changes pertaining to broadband companies. These amendments are from Senate Bill 1050, enacted as 2018 PA 450, and were added to HB 5098 so that the bills would not conflict with one another as they moved through the legislative process.]

The bill took effect March 28, 2019.

MCL 247.183

## BACKGROUND:

### Statutory Authority

Public utility structures and facilities, including aboveground 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 in highway rights-of-way. The use of these rights-of-way is governed in Michigan law by 1925 PA 368, which 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.

### **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.<sup>1</sup>

## **FISCAL INFORMATION:**

Section 13 of 1925 PA 368 authorizes MDOT and local units to impose a reasonable charge for the use, by a utility, of limited access highway rights-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 would add a new provision specific to entities holding a license under the Michigan Telecommunications Act or holding a franchise under the Uniform Video Services Local Franchise Act. The bill would effectively prohibit local units or MDOT, as applicable, from imposing facility relocation permit fees on those entities unless the request to relocate was due to an entity placing facilities in a location that was not authorized by a current or previous permit.

In requiring MDOT and local units to waive permit or inspection fees related to the relocation of certain utility facilities under circumstances defined in the bill, the bill could reduce MDOT and local unit permit fee revenue and increase unreimbursed costs. The impact would vary by year and by agency depending on the circumstances of specific

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<sup>1</sup> 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>.

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's provisions regarding waiver of permit fees would apply only to licensees under the Michigan Telecommunications Act, or franchisees under the Uniform Video Services Local Franchise Act, under circumstances defined in the bill. The bill would have no apparent 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.

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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.