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BILL



ANALYSIS

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Senate Bills 636 (as introduced 10-19-17)  
Sponsor: Senator Dale W. Zorn  
Committee: Energy and Technology

Date Completed: 11-2-17

### **CONTENT**

**The bill would amend the county road law to do the following:**

- **Prohibit a county road commission from charging a telecommunication provider or a video provider a fee of more than \$300 per permit or \$1,000 total for all permits per project, for projects in the right-of-way of a county road.**
- **Prohibit a road commission from requiring a provider to obtain a permit for performing routine maintenance or repair work in a right-of-way more than once a year, and prohibit the road commission from charging more than \$300 for that permit.**
- **Prohibit a road commission from requiring a provider to perform or pay for a survey or study of a right-of-way as a condition of issuing a permit.**
- **Prohibit a road commission from requiring a provider to have more than one security bond or right-of-way bond for a project.**
- **Require a provider to determine whether a security bond or right-of-way bond was an insurance bond or cash bond, and prohibit the road commission from requiring it to be a cash bond.**
- **Specify that a road commission could not require a provider's bond to exceed \$20,000.**
- **Require a road commission to return a provider's bond within 60 days after the provider completed construction work in the right-of-way and requested the bond's return.**
- **Allow a provider to provide security through an irrevocable letter of credit, instead of a security bond or right-of-way bond.**
- **Require a provider to maintain general liability insurance with specified minimum policy limits for claims arising in connection with or as a direct result of the provider's use and occupancy of the right-of-way.**
- **Prohibit a road commission from requiring a provider to furnish a general liability insurance policy naming the county, the commission, and others as additional insureds.**

The bill would take effect 90 days after it was enacted.

### **Fee Limit**

Under the county road law, a person, partnership, association, corporation, or governmental entity may not construct, operate, maintain, or remove a facility or perform any other work within a county road right-of-way (except sidewalk installation and repair) without first obtaining a permit from the county road commission having jurisdiction over the road and

from the township, city, or village in which the county road is located when a permit is required by ordinance. A county road commission and a local unit of government may adopt 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.

A county road commission may not charge a government entity a permit fee exceeding \$300 per permit or \$1,000 total for all permits per project. The bill also would prohibit a road commission from charging a telecommunication or video service provider a permit fee that exceeded those limits.

Additionally, under the bill, a road commission could not require a provider to obtain a permit for performing routine maintenance or repair work in a right-of-way more than once a year, and could not charge a provider an annual fee exceeding \$300 for that permit. The annual permit fee would not be included in the permit fee limitation described above.

The bill also would prohibit a 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.

The bill would define "county road commission" as a board of county road commissioners elected or appointed, or, in the case of a charter county with a population of 750,000 or more with an elected county executive that does not have a board of county road commissioners, the county executive for ministerial functions and the county commission for legislative functions. If a board of county commissioners is dissolved, the term would include the county board of commissioners of the county.

"Telecommunication provider" would mean that term as defined in the Michigan Telecommunications Act. (Under that Act, "telecommunication provider" means a person that for compensation provides one or more telecommunication services, but does not include a provider of commercial mobile services. "Telecommunication services" includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.)

"Video service provider" would mean that term as defined in the Uniform Video Services Local Franchise Act. (That Act defines "video service provider" as a person authorized to provide video service. "Video service" means video programming, cable services, internet protocol television, or open video system provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology, but does not include any video programming provided by a commercial mobile service provider or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.)

### Security Bond

Under the bill, a county road commission could not require a provider to have more than one security bond or right-of-way bond from a State or federally regulated entity to secure the performance of the conditions of all permits issued that authorized the provider to construct, operate, maintain, or remove a facility or perform any other work anywhere within the right-of-way of any road under the road commission's jurisdiction.

The provider would have to determine whether the security bond or right-of-way bond was an insurance bond or a cash bond, and a road commission could not require the security bond or right-of-way bond to be a cash bond. The amount of a security bond or right-of-way bond

could not exceed \$20,000. Upon the request of a provider, the road commission would have to return the security bond or right-of-way bond to the provider within 60 days after the provider completed all work in the right-of-way.

Instead of providing a security bond or right-of-way bond, a provider could provide security that consisted of an irrevocable letter of credit issued by a State or federally regulated financial institution to secure the performance of the conditions of all permits issued that authorized the provider to construct, operate, maintain, or remove a facility or perform any other work anywhere within the right-of-way of any road under the road commission's jurisdiction.

### Liability 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 that applied to all claims, demands, suits, or causes of action arising in connection with or as a direct result of the provider's use and occupancy of a right-of-way under a county road commission's jurisdiction. The road commission could not require the provider to furnish a policy of general liability insurance naming the county, the county road commission, its officers, employees, and others as additional insureds.

MCL 224.19b

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would not have an impact on State government. The bill would have a variable, negative impact on county road commissions (including the five county governments that have assumed the duties of road commissions in those counties: Calhoun, Ingham, Jackson, Macomb, and Wayne).

Counties that currently charge permit fees to providers in excess of the proposed limits would lose revenue. Permit fees vary by county, and typically depend upon the per capita size of the county and whether the work needs to be done in an urban or rural setting. For example, the upfront cost for a large-scale project permit in Wayne County is \$2,500, with any balance returned to the applicant after administrative plan review and costs for estimates on bonds and inspections. Right-of-way permit fees in Delta County start at \$25. In Huron County, the fees are estimated at the time the application is submitted. Similar variance related to insurance coverage and bond requirements also exists from county to county. Not all counties would lose revenue under the bill, but it is likely that all counties would incur minor administrative costs associated with updating their permit forms and/or schedules.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.