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BILL



ANALYSIS

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House Bill 5097 (Substitute H-4 as passed by the House)  
Sponsor: Representative Beth Griffin  
House Committee: Communications and Technology  
Senate Committee: Energy and Technology

Date Completed: 3-8-18

### **CONTENT**

**The bill would amend Section 19b of Public Act 283 of 1909, the county road law, to do the following:**

- **Limit the amount of per-project fees a county road commission could charge a provider (a telecommunications provider or a video service provider) for a permit to perform work within the right-of-way (ROW) of a county road.**
- **Prohibit a county road commission from requiring a provider to obtain a permit for performing routine maintenance or repair work in an ROW more than once a year, and limit the annual fee that a county road commission could charge.**
- **Prohibit a county road commission from requiring a provider to have more than one security bond or ROW bond to secure the performance of the conditions of a permit to work within an ROW.**
- **Allow a provider to provide an irrevocable letter of credit, instead of a security bond or ROW bond.**
- **Require a provider to maintain general liability insurance with certain minimum policy limits.**
- **Permit a county road commission and a local unit of government to adopt a schedule of civil fines that could be imposed on a provider that performed work in an ROW without a permit, or that failed to maintain a security bond, ROW bond, or irrevocable letter of credit.**

The bill would take effect 90 days after its enactment.

### **Permit Requirement**

Section 19b of the Act requires an entity constructing, operating, maintaining, or removing a facility or performing any other work within the right-of-way of a county road to obtain a permit from the county road commission that has jurisdiction over the road and from the local unit of government (township, city, or village) in which the road is located, if required by that local unit.

A county road commission and a local unit of government may adopt, after a public hearing, reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs for issuing a permit and for review of the proposed activity, inspection, and related expenses.

A county road commission is prohibited from requiring a permit for an activity that is otherwise permissible under Michigan laws. The bill would replace "an activity" with "a driveway or routine maintenance in silvicultural operations". "Silvicultural operations" would mean that term as defined in Section 51101 of the Natural Resources and Environmental Protection Act (the management and manipulation of forest vegetation for the protection, growth, and enhancement of forest products).

#### Permit Fees & Conditions

Public Act 283 prohibits a county road commission from charging a government entity a permit fee exceeding \$300 per permit or \$1,000 total for all permit fees per project, except as otherwise provided. Under the bill, a county road commission could not charge a government entity or, except as otherwise provided in Section 19b, a provider a fee exceeding those limits. The bill also would prohibit a county road commission, in a county with a population of more than 250,000, from charging a provider a permit fee exceeding \$600 per permit or, except as otherwise provided, \$2,000 total for all permit fees per project.

Under the bill, except as otherwise provided, a county road commission could not require a provider to obtain a permit for performing routine maintenance or repair work, as defined in the permit, in an ROW more than once a year, and could not charge a provider an annual permit fee exceeding \$300, or \$600 for a county with a population of more than 250,000, for that permit for performing routine maintenance or repair work in an ROW.

Additionally, a county road commission could not require a provider to perform or, except as otherwise provided, pay for any topographic, boundary, environmental, or other kind of survey, study, or analysis of an ROW as a condition of or in connection with issuing a permit. A commission could require a provider to submit detailed engineering plans directly related to work in the ROW by that provider as a condition of or in connection with issuing a permit. In addition to any permit fees, a commission could require a provider to pay for any necessary and actual costs for inspections related to the provider's work in an ROW.

"Provider" would mean either of the following:

- A telecommunications provider as that term is defined in the Michigan Telecommunications Act (a person that for compensation provides one or more telecommunication services, but not a provider of commercial mobile service).
- A video service provider as that term is defined in the Uniform Video Services Local Franchise Act (a person authorized to provide video service).

#### Bonds

Under the bill, except as otherwise provided, a county road commission could not require a provider to have more than one security bond or ROW bond to secure the performance of the conditions of all permits issued authorizing the provider to construct, operate, maintain, or remove a facility or perform any other work anywhere within the ROW, as designated in the permits, of any road under the jurisdiction of the county road commission. The provider would have to determine whether the security bond or ROW bond was an insurance bond or a cash bond. A county road commission could not require the security bond or ROW bond to be a cash bond.

Except as otherwise provided, the amount of a security bond or ROW bond could not exceed \$20,000, or \$40,000 in a county with a population of more than 250,000. A bond would have to be from a State or federally regulated entity licensed to do business in Michigan.

Upon the request of a provider, the county road commission would have to return a security bond or ROW bond to the provider within 120 after the provider completed construction work in an ROW.

Instead of providing a security bond or ROW bond, a provider could provide security that consisted of an irrevocable letter of credit issued by a State or federally regulated financial institution licensed to do business in Michigan to secure the performance of the conditions of all permits issued authorizing the provider to construct, operate, maintain, or remove a facility or perform any other work anywhere within the ROW, as designated in the permits, of any road under the jurisdiction of the county road commission.

Notwithstanding the limitation requiring only one security bond or ROW bond, if a claim were made against the bond, the provider would have to provide the county road commission with another security bond or ROW bond in order to continue working in that county.

### Fines

The bill would allow a county road commission and a local unit of government to adopt a schedule of civil fines that could be imposed on a provider that performed work in a right-of-way without obtaining a required permit or that failed to maintain a security bond, ROW bond, or irrevocable letter of credit as required during construction work within the ROW. The amount of a civil fine imposed on a provider could not exceed \$5,000 per violation, and a civil fine could not be imposed on a provider if the work were required in a ROW on an emergency basis to restore services affecting public safety.

Unless work was required in an ROW on an emergency basis to restore service affecting public safety, a provider that performed work in an ROW without obtaining a permit as required or that failed to maintain a security bond, ROW bond, or irrevocable letter of credit as required during construction work with the ROW would be responsible for a civil fine of not more than \$5,000 per violation as provided in the schedule of civil fines adopted by a county road commission and a local unit of government.

### Liability Insurance

The bill would require a provider to maintain general liability insurance with minimum policy limits of \$2.0 million per occurrence for property damage and \$2.0 million per occurrence for bodily injury that would apply 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 an ROW under the jurisdiction of a county road commission.

### Right-Of-Way Access

The bill specifies that Section 19b would not prohibit a county road commission and a provider from entering into a voluntary agreement regarding ROW access that included permits, terms, and conditions that were different than the requirements or limitations imposed, including the amount of permit fees, terms of insurance, the size or number of security bonds or ROW bonds, or other valuable consideration.

A county road commission that entered into a voluntary agreement for access to the ROW with one provider would have to offer to other providers similar terms and conditions regarding access to the ROW.

MCL 224.19b

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bill would not have a fiscal impact on State government. The bill could have a potential negative impact on local units of government.

The bill would set limits on the amounts of fees a county road commission could charge to providers for work within the public right-of-way. The bill also would limit county bonding requirements for work within the ROW. The limits would be staggered at two levels based upon population. The limits for counties with a population of more than 250,000 would be double the limits set for smaller counties. Despite the staggering of amounts and a civil fine provision for providers that did not properly acquire a permit before working in the ROW, instances in which the permitting process created expenses for counties in excess of the fees allowed under the bill would require those counties to absorb the additional costs. This most likely would occur in situations in which ROW permit oversight and review involved complicated and detailed technical work.

Fiscal Analyst: Michael Siracuse

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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.