

Legislative Analysis



HIGHWAY OBSTRUCTION

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House Bill 4396 as reported from committee

Sponsor: Rep. Robert Wittenberg

1st Committee: Transportation

2nd Committee: Ways and Means

Complete to 2-4-20

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

(Enacted as Public Act 264 of 2020)

SUMMARY:

House Bill 4396 would repeal section 19 of 1925 PA 368, an act concerning highway rights-of-way, encroachments into the right-of-way, and obstructions to traffic.

Section 19 provides that, if a person moving a building or obstruction leaves it in a road and it interferes with travel, the entity with jurisdiction over the road may notify the person to remove it within two days. The person is liable for a \$5 penalty for each day the obstruction remains. After five days, the jurisdictional entity may remove it at the owner's expense.

House Bill 4396 would repeal this section. It would take effect 90 days after its enactment.

MCL 247.189

FISCAL IMPACT:

1925 PA 368 provides remedies for the removal of encroachments on the public road by a "commissioner or commissioners having jurisdiction over the road." Some sections of the act refer to the "highway commissioner or commissioners." The term "commissioner" is not defined in the act. It is understood to include the executive authority of any agency with jurisdiction over a public road; that is, the director of the Michigan Department of Transportation (MDOT), the manager of a county road commission, or the person with operating authority over a city or village street department.

The act has several sections that deal with encroachments and obstructions, including providing penalties for persons who fail to remove them, as follows:

Section 1 deals with encroachment upon a public highway by "any fence, building, or other encroachment."

Section 2 provides for a penalty of \$1 per day for encroachments not removed 30 days after notice is given and provides for charging the owner of the encroachment for the cost of removal.

Section 10 includes provisions specific to "saw logs, cordwood, or other loose obstructions."

Section 11 includes provisions regarding obstructions that have no value or insufficient value to pay for removal.¹

Section 17 provides for the removal of “encroachments, pipe lines, wires, cables, poles, conduits, sewers, and like structures” and for the assessment for the cost of removal.

Section 18 prohibits a “building, other obstruction to traffic” from being moved across, upon, or along any road without permission from the “commissioner or commissioners” having jurisdiction over the road. This section provides that a violation is a misdemeanor punishable by a \$100 fine and up to 30 days’ imprisonment in the county jail.

Section 19 provides an additional penalty for “any building or other obstruction as aforesaid... left in the highway so as to interfere with the traffic thereon...” Specifically, this section provides for a penalty of \$5 per day for each day the obstruction is not removed. Section 19 also provides for the removal of the building or other obstruction at the owner’s expense.

It is not clear how these various provisions act together. The bill sponsor testified in committee that the provisions of section 19 were outdated and no longer enforced. A representative of the County Road Association of Michigan indicated that the penalty provisions of section 19 were still a tool available to road commissions for effecting the removal of encroachments or obstructions from highway rights-of-way.

The fiscal impact of repealing section 19 cannot be readily determined at this time. It is not clear if the section is currently used by road agencies to compel the removal of encroachments or obstructions from highway rights-of-way. It is not clear if other sections of 1925 PA 368 provide road agencies with sufficient authority to control road and street rights-of-way and to remove obstructions to traffic.

POSITIONS:

The following entities indicated support for the bill:

Michigan State Police (9-10-19)

County Road Association of Michigan (1-28-20)

Legislative Analyst: E. Best

Fiscal Analyst: William E. Hamilton

■ 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.

¹ Note: The compiler’s heading for this section refers to “loose obstructions, logs or wood” although the words “loose obstructions,” “logs,” and “wood” are not actually used in the section.