

RELOCATION OF BROADBAND FACILITIES: GOVERNMENT NOTICE

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House Bill 5016 (H-5 as reported from committee)
Sponsor: Rep. Eric Leutheuser
Committee: Communications and Technology
Complete to 12-17-15

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

BRIEF SUMMARY: House Bill 5016 would amend Section 13 of Public Act 368 of 1925, which regulates the usage of the public right-of-way along roads, to require a city, village, township, county, or the state Department of Transportation (MDOT) to provide advance notice if relocation is to be requested or required of the facilities of an entity holding a license under the Michigan Telecommunications Act, or an entity holding a franchise under the Uniform Video Services Local Franchise Act. If such notification is not provided, then those entities would have to be reimbursed by the local unit or MDOT for 50% of relocation costs. The bill would take effect 180 days after the date it is enacted.

FISCAL IMPACT: In requiring the Michigan Department of Transportation and local road agencies to pay for a portion of the costs of relocating certain telecommunication facilities under the circumstances described in the bill, House Bill 5016 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 county or city/village projects. Note that the bill would only apply 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.

THE APPARENT PROBLEM:

According to testimony presented during committee, there is a lack of communication between units of government and certain entities about long-term planning involving of projects that require the movement of facilities from the public right-of-way. Requiring entities to move those facilities on short notice can result in higher costs to the entity, but if longer-term notice is provided, the entities can incorporate planned movements of facilities into their own long-term plans for facility upgrades.

THE CONTENT OF THE BILL:

House Bill 5016 would amend Section 13 of Public Act 368 of 1925, which regulates the usage of the public right-of-way along roads, to require a city, village, township, county, or the state Department of Transportation (MDOT) to provide advance notice if relocation is to be requested or required of the facilities of an entity holding a license under the Michigan Telecommunications Act, or an entity holding a franchise under the Uniform Video Services Local Franchise Act. If such notification is not provided, then those entities would have to be reimbursed by the local unit or MDOT for 50% of relocation costs. The bill would take effect 180 days after the date it is enacted.

The written notification requirement contained within the bill must occur at least one year before the relocation is to occur, and must be done by first-class mail or electronic mail. As part of the written notification, the requesting unit of government must specify the rights-of-way affected, including the beginning and ending points, affected cross streets and structures, and the planned start date of the project. Beginning one year after the effective date of the bill, if MDOT or a local unit of government fails to send a required notice to an entity in the manner described in the bill, then that unit of government would be required to reimburse that entity for 50% of relocation costs, but only if the entity invests money in broadband infrastructure in Michigan.

The notification requirement would not apply in the event that facilities must be moved as the result of an emergency or an act of God, and the entity could still be required by the unit of government to obtain any permits or conduct any surveys or studies related to the relocation. However, the local unit of government would be required to waive any permit fees and/or reimburse for survey or study costs.

The bill defines the following terms.

Act of God: "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."

Emergency: this 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."

Relocation costs: all costs for relocating an entity's facilities in the public right of way, including, but not limited to, boring costs and labor costs associated with that relocation.

Broadband infrastructure: "all facilities, hardware, and software and other intellectual property necessary to provide broadband services in this state, including, but not limited to, voice, video, and data."

Study: "a study or survey, including, but not limited to, drainage, soil, or center line studies."

BACKGROUND INFORMATION:

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 the Michigan Department of Transportation, or a local road agency (city, village, or county road commission), 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*. See:

<http://www.fhwa.dot.gov/reports/utilguid/index.cfm>

ARGUMENTS:

For:

Supporters of the bill say it brings common sense requirements to the process of relocating facilities in public rights-of-way and in doing so, frees up money better spent on expanding broadband access by allowing providers to plan ahead for when existing infrastructure will need to be moved. Additionally, they say the one-year plan ahead is not burdensome, and

that even in the event of a situation where a unit of government finds itself with additional money to perform repairs and cannot provide one-year advance notice, the 50-50 splitting of relocation costs is reasonable. Supporters also note that the bill does not mandate reimbursement in the event relocation is required due to an act of God or an emergency.

Against:

Opponents of the bill argue that units of government should not have to reimburse licensees or franchisees who have decided to bury their facilities in a public right-of-way, as it could strain the budget of local municipalities, and force cuts to services. Critics of the bill also argue that it is unfair to force all taxpayers to fund reimbursements related to a service they may not use, and that entities should already be prepared for the possibility of relocating facilities located in a public right-of-way.

POSITIONS:

The following indicated support for HB 5016:

- Michigan Cable Telecommunications Association (12-15-15)
- At&T (12-15-15)
- Telecommunications Association of Michigan (12-15-15)

The following were neutral on HB 5016:

- Michigan Department of Transportation (12-15-15)

The following were opposed to HB 5016:

- M-1 Rail (12-15-15)
- Michigan Coalition to Protect Public Rights-Of-Way (12-15-15)
- Great Lakes Water Authority (12-15-15)
- Detroit Water and Sewage Department (12-15-15)

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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.