



**House
Legislative
Analysis
Section**

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UTILITY USE OF HIGHWAY RIGHTS OF WAY

House Bill 4767 as passed by the House
Second Analysis (6-5-89)

Sponsor: Rep. Curtis Hertel
Committee: Transportation

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H.B. 4767 (6-5-89)

THE APPARENT PROBLEM:

Until 1987, when U.S. Code 21 (the Federal Highway Act) was amended, regulations concerning the conditions under which utilities could be located parallel to interstate highways were promulgated by the Federal Highway Administration (FHWA). In Michigan, it has been illegal, up until now, for utility companies to put underground cable on the rights of way on these highways. Instead, companies such as AT&T had to go through the lengthy and expensive process of obtaining permission from each property owner and local government that owned the right of way where construction of longitudinal facilities was planned. Under FHWA's new regulations, it is up to each state to decide if this type of construction will be permitted. The Department of Transportation has developed plans to lease limited access highway rights of way to utility companies, but must first have the statutory authority to do so. Current law in Michigan does not authorize the Department of Transportation to permit this type of construction. The department contends that passage of legislation granting this authority would result in added revenues to sorely needed transportation funds; utility companies maintain that passage of the legislation would result in savings to the companies, which would be reflected in reduced prices to customers.

THE CONTENT OF THE BILL:

The bill would amend the act that regulates the use of highways by public utilities, Public Act 368 of 1925. Currently, the act allows public utility companies access across or under public roads, bridges, streets, or public places, provided that they first obtain consent from the governing body of the appropriate city, village, or township. The bill would delete longitudinal construction from this provision. Instead, permission for longitudinal construction would be obtained from the Department of Transportation.

Under the bill, the Department of Transportation could allow the construction of public or private structures, including longitudinal utility lines, within limited access highway rights of way. The bill would require that the structures comply with standards approved by the State Transportation Commission, that lines and structures be underground, or otherwise constructed so as not to be visible, that they conform to governing federal laws and regulations, and that a charge could be imposed for longitudinal use of limited access highway rights of way. The imposition of such charges would constitute a governmental function, offsetting a portion of the capital and maintenance expense of the highway, and would not be a proprietary function. All revenue received under the bill would be used for capital and maintenance expenses incurred for limited access highways.

MCL 247.183

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an undetermined fiscal impact on the state. (6-5-89)

ARGUMENTS:

For:

The bill would allow utility companies to by-pass the costly procedure of negotiating with individual property owners when construction of longitudinal facilities along highway rights of way are needed. Instead, they would negotiate with the Department of Transportation for lease of the department's rights of way. The resulting savings in construction costs, according to utility companies, would be reflected in reduced prices to customers.

Against:

As written, the bill's requirement that utility lines and structures be constructed underground within limited access highway rights of way "so as not to be visible," could conflict with the intention of one utility company to place fiberoptic cable along these rights of way. According to the utility company, there is a possibility that "portholes," or access points, would have to be placed along the cable line. These access points would protrude two to three inches above the ground at regular intervals, so the underground construction would not be completely invisible. The bill should be amended to provide for less restrictive language.

POSITIONS:

The Department of Transportation supports the concept of the bill, but is concerned that the requirement that longitudinal construction not be visible may prove too restrictive for the practical requirements of the type of underground cable now used in the telecommunications industry. (6-5-89)

AT&T supports the bill. (5-26-89)

The Public Service Commission has no position on the bill. (5-22-89)