

COUNTY ROAD COMMISSION PERMIT FEES

Phone: (517) 373-8080
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Senate Bill 399 (Substitute H-1 as adopted on 11-29-16)

Sponsor: Sen. Wayne Schmidt

House Committee: Communications and Technology

Senate Committee: Local Government

Complete to 12-1-16

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

SUMMARY:

Senate Bill 399 would prohibit a county road commission from requiring that a telecommunication or video service provider 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 authorize 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 jurisdiction of the county road commission.

Also, the bill also would extend to these providers the same permit fee limits of \$300 per permit and \$1,000 total for all permits per project that presently apply to governmental entities. However, SB 399 would specify that for purposes of determining these fee limits, "permit fee" would not include a fee charged by a county road commission to recover its actual costs incurred to inspect facilities installed under a permit.

The bill would amend Section 19b of Chapter IV of PA 283 of 1909 (MCL 224.19b), and take effect 90 days after it is enacted into law.

Under the bill, a county road commission would not be able to require the security bond or right-of-way bond to be a cash bond. The telecommunication or video service provider could decide whether the security bond or right-of-way bond would be an insurance bond or a cash bond. The amount of this security bond or right-of-way bond would have to be based on the estimated cost to restore the right-of-way to a condition "reasonably equal to or better than" it was prior to the installation and could not exceed \$20,000. However, in a county with a population of 400,000, the security bond or right-of-way bond could exceed \$20,000. Upon the request of a provider, the county road commission must return a security bond or right-of-way bond to the provider within 60 days after the provider completes construction work in the right-of-way.

[Note: Five counties—Genesee, Kent, Macomb, Oakland, and Wayne—have at least 400,000 residents.]

Rather than providing a security bond or right-of-way bond, a provider could provide security that consists of an irrevocable letter of credit issued by a state or federally regulated financial institution that has an A.M. Best financial strength rating of "good" or above to secure the performance of the conditions of all permits issued that authorize 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 jurisdiction of the county road commission.

A provider would be required to maintain general liability insurance with minimum policy limits of \$1 million per occurrence for both property damage and for bodily injury that 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 a right-of-way under the jurisdiction of a county road commission.

A county with a population of 400,000 or more could require a provider to maintain general liability insurance with a \$2 million aggregate policy limit.

The county road commission could 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.

The bill would define the term "Provider" as follows:

A "telecommunication provider," which means a person that for compensation provides one or more telecommunication services. Telecommunication provider does not include a provider of commercial mobile service as defined in Section 332(d)(1) of the telecommunications act of 1996, 47 USC 332. "Telecommunication services" or "services" includes regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage. A telecommunication service is not a public utility service.

A "video service provider," which means a person authorized under this act to provide video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) 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.

FISCAL IMPACT:

As passed by the Senate, the bill would have no fiscal impact on state government. The bill's impact would be limited to local government, specifically county road agencies (county road commissions and those county governments that have assumed the powers and duties of road commissions (Wayne, Macomb, Ingham, Calhoun and Jackson).

To the extent that county road commissions currently charge permit fees to private parties in excess of the proposed limits, the bill would reduce local road commission revenue.

The amount of the revenue loss would be localized and would obtain in those situations in which the actual costs of road commission permit work exceeded the permit fee limits

established in the bill. The bill's impact would be greatest in relation to large complex telecommunication or video service projects within the road commission right of way, and more particularly within urban environments – projects that potentially require higher levels of road commission review and oversight.

BACKGROUND INFORMATION:

It is often necessary for utilities, construction firms, and others to work within county road right-of-way in order to lay pipelines, construct drains, or install or repair telecommunication equipment. Public Act 212 of 1980 added Section 19b to County Road Law to require that private entities or public agencies first obtain a permit from a county road commission, as well as from the city, village, or township in which the road is located if those other governmental units require such a permit.

Section 19b allows a county road commission, and a local unit of government, to establish 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."

Subsection 5 within Section 19b currently limits the permit fee that a county road agency can charge a "government entity" to \$300 per permit or \$1,000 total for all permits per project. This maximum permit fee for governmental entities has not been adjusted since Public Act 212 took effect in early 1981.

Note that this analysis uses the term "county road agency" to mean either a county road commission or a division of county government with authority over the county road system. The bill uses a defined term "county road commission" to mean the same thing.

Legislative Analyst: Josh Roesner
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.