

Act No. 97
Public Acts of 2018
Approved by the Governor
April 2, 2018
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April 2, 2018
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Griffin, Hoitenga, Iden and Phelps

ENROLLED HOUSE BILL No. 5097

AN ACT to amend 1909 PA 283, entitled "An act to revise, consolidate, and add to the laws relating to the establishment, opening, discontinuing, vacating, closing, altering, improvement, maintenance, and use of the public highways and private roads; the condemnation of property and gravel therefor; the building, repairing and preservation of bridges; maintaining public access to waterways under certain conditions; setting and protecting shade trees, drainage, and cutting weeds and brush within this state; providing for the election or appointment and defining the powers, duties, and compensation of state, county, township, and district highway officials; and to prescribe penalties and provide remedies," by amending section 19b of chapter IV (MCL 224.19b), as amended by 2016 PA 456.

The People of the State of Michigan enact:

CHAPTER IV

Sec. 19b. (1) A person, partnership, association, corporation, or governmental entity shall not construct, operate, maintain, or remove a facility or perform any other work within the right-of-way of a county road, except sidewalk installation and repair, without first obtaining a permit from the county road commission having jurisdiction over the road and from the township, city, or village in which the county road is located when a permit is required by ordinance of the township, city, or village, under the authority conferred by section 29 of article VII of the state constitution of 1963. The adjacent property owner is not required to obtain a permit for work incidental to the maintenance of the right-of-way lying outside of the shoulder and roadway.

(2) A county road commission and a local unit of government may adopt, after a public hearing of which notice has been given by publication at least twice in a newspaper circulated in the county not more than 30 days nor less than 7 days before the hearing, reasonable permit requirements and, subject to subsections (6) and (7), 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. In addition, a county road commission and a local unit of government may adopt a schedule of civil fines that can be imposed on a provider that performs work in a right-of-way without obtaining a permit as required under this section or that fails to maintain a security bond, right-of-way bond, or irrevocable letter of credit as required under this section during construction work within the right-of-way. The amount of a civil fine imposed on a provider must not exceed \$5,000.00 per violation, and a civil fine must not be imposed on a provider if the work is required in a right-of-way on an emergency basis to restore services impacting public safety. After the work authorized in the permit has been completed, itemization of all costs must be supplied upon request of the permit holder.

(3) When a road commission adopts procedures for issuing permits or adopts a schedule of fees as provided in this section, separate procedures and fee schedules must be adopted for issuing annual and emergency permits that reflect the minimal administrative burden of issuing an annual permit for frequent but routine and unobtrusive work such as surveying and the extraordinary emergency repairs to municipal or public utilities.

(4) A county road commission may not refuse a permit requested by a government entity for the installation of a facility or utility owned by that government entity if security is given by the permittee or its contractor to the county road commission sufficient to insure restoration of the road and appurtenances to the road and the adjacent right-of-way to a condition reasonably equal to or better than that existing before that installation.

(5) A county road commission shall not require a provider to perform or, except as otherwise provided in this section, pay for any topographic, boundary, environmental, or other kind of survey, study, or analysis of a right-of-way as a condition of or in connection with issuing a permit. A county road commission may require a provider to submit detailed engineering plans directly related to work in the right-of-way by that provider as a condition of or in connection with issuing a permit. In addition to any permit fees, a county road commission may require a provider to pay for any necessary and actual costs for inspections related to work in a right-of-way by that provider.

(6) A county road commission shall not charge a government entity or, except as otherwise provided in this section, a provider a permit fee exceeding \$300.00 per permit or, except as otherwise provided in this section, \$1,000.00 total for all permit fees per project. In a county with a population of more than 250,000, a county road commission shall not charge a provider a permit fee exceeding \$600.00 per permit or, except as otherwise provided in this section, \$2,000.00 total for all permit fees per project.

(7) Except as otherwise provided in this section, a county road commission shall not require a provider to obtain a permit for performing routine maintenance or repair work, as defined in the permit, in a right-of-way more than once a year, and shall not charge a provider an annual permit fee exceeding \$300.00 for that permit for performing routine maintenance or repair work in a right-of-way. In a county with a population of more than 250,000, a county road commission shall not require a provider to obtain a permit for performing routine maintenance or repair work, as defined in the permit, in a right-of-way more than once a year, and shall not charge a provider an annual permit fee exceeding \$600.00 for that permit for performing routine maintenance or repair work in a right-of-way. The annual permit fee provided in this subsection is not included in the permit fee limitation provided in subsection (6).

(8) This section does not authorize a county road commission to require a permit for a driveway or routine maintenance in silvicultural operations that are otherwise permissible under the laws of this state. A county road commission shall not be held liable for the failure of a person performing work for which a permit is not required on a county road right-of-way to post a sign that gives advance warning of the work being performed in the right-of-way. As used in this subsection, "silvicultural operations" means silvicultural practices as that term is defined in section 51101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.51101.

(9) Except as otherwise provided in this section, a county road commission shall not require a provider to have more than 1 security bond or right-of-way bond 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, as designated in the permits, of any road under the jurisdiction of the county road commission. The provider shall determine whether the security bond or right-of-way bond described in this subsection is an insurance bond or a cash bond. A county road commission shall not require the security bond or right-of-way bond to be a cash bond. Except as otherwise provided in this section, the amount of a security bond or right-of-way bond described in this subsection must not exceed \$20,000.00. In a county with a population of more than 250,000, the amount of a security bond or right-of-way bond described in this subsection must not exceed \$40,000.00. Upon the request of a provider, the county road commission shall return a security bond or right-of-way bond to the provider within 120 days after the provider completes construction work in the right-of-way. Instead of providing a security bond or right-of-way bond, a provider may provide security that consists of an irrevocable letter of credit issued by a state or federally regulated financial institution licensed to do business in this state 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, as designated in the permits, of any road under the jurisdiction of the county road commission. Notwithstanding the limitation in this subsection requiring only 1 security bond or right-of-way bond, if there is a claim made against the bond, the provider must provide the county road commission with another security bond or right-of-way bond in order to continue working in that county. A bond required under this subsection must be from a state or federally regulated entity licensed to do business in this state.

(10) A provider shall maintain general liability insurance with minimum policy limits of \$2,000,000.00 per occurrence for property damage and \$2,000,000.00 per occurrence 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.

(11) This section does not prohibit a county road commission and a provider from entering into a voluntary agreement regarding right-of-way access that includes permits, terms, and conditions that are different than the requirements or limitations imposed by this section, including, but not limited to, the amount of permit fees, terms of insurance, the size or number of security bonds or right-of-way bonds, or other valuable consideration. A county road commission that enters a voluntary agreement to access the rights-of-way with 1 provider shall offer similar terms and conditions regarding access to the rights-of-way to other providers.

(12) Except if work is required in a right-of-way on an emergency basis to restore services impacting public safety, a provider that performs work in a right-of-way without obtaining a permit as required under this section or that fails to maintain a security bond, right-of-way bond, or irrevocable letter of credit as required under this section during construction work within the right-of-way is responsible for a civil fine of not more than \$5,000.00 per violation as provided in the schedule of civil fines adopted under subsection (2).

(13) As used in this section:

(a) "County road commission" means the board of county road commissioners elected or appointed pursuant to section 6 of this chapter, or, in the case of a charter county with a population of 750,000 or more with an elected county executive that does not have a board of county road commissioners, the county executive for ministerial functions and the county commission provided for in section 14(1)(d) of 1966 PA 293, MCL 45.514, for legislative functions. In addition, if a board of county road commissioners is dissolved as provided in section 6 of this chapter, county road commission includes the county board of commissioners of the county.

(b) "Provider" means either of the following:

(i) A telecommunication provider as that term is defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(ii) A video service provider as that term is defined in section 1 of the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor