

## **Confidential Attorney/Client Memo**

To: MCRCSIP Board  
From: Bill Henn and Andrea Nester  
Date: November 16, 2017  
Re: HB 5097 Summary

---

### **HB 5097 Summary**

HB 5097 (like SB 636) is a bill to modify MCL 224.19b, part of the County Road Law section of the General Highway Law Code. Generally, the amendments would place limitations on the fees, costs, bonds or insurance a Member could charge/require from a “provider” in order to obtain a permit for work (including placement of utilities) within the right of way. As defined in the bill, “provider” refers to either:

1. A telecommunication provider as defined in MCL 484.2102 (the Michigan Telecommunications Act); or
2. A video service provider as defined in MCL 484.3301 (the Uniform Video Services Local Franchise Act).

**Fees/Costs/Bonds:** HB 5097 would prohibit a road commission from charging a permit fee over \$300.00 per permit, or \$1,000.00 total for all permits per “project.” Moreover, the amendments would prohibit the road commission requiring a provider to obtain a permit for maintenance work more than once a year or for charging more than \$300.00 for this permit; however, this yearly maintenance permit charge is not included in the above-referenced initial permit fee caps.

Perhaps even more concerning from a liability standpoint, the amendments prohibit road commissions from requiring a “provider” pay for or obtain any surveys or studies in connection with issuance of a permit. This could lead to possible liability relating back to the road commissions for providers who misidentify the boundaries of the ROW (i.e., cause damage to private property), lawsuits from property owners or the MDEQ for work done in environmentally sensitive areas, or other lawsuits related to ROW boundary or land use issues.

Finally, the amendments proposed by HB 5097 would prohibit a road commission from requiring more than one bond for any “state or federally regulated entity” for *all* permits, work, construction, and/or maintenance within the ROW under the road commission’s jurisdiction. The bond could not exceed \$20,000.00 (without regard to the scope of the proposed project) and must be returned no more than 60 days after the bonded work is complete.

**Insurance:** The amendments would require a provider to maintain general liability insurance with policy limits of one-million per occurrence for property damage and one-million per

occurrence for bodily injury. However, the county road commission would be prohibited from requiring the provider to name the road commission or any of its employees as additional named insureds under its policy. The amendments do not mention indemnification or other security beyond what appears to be a potentially low coverage minimum.

### **Recommendation**

As the above-outlined portions of the bill appear to arbitrarily limit fees and potentially increase liability exposure by handcuffing county road commissions with respect to insurance and bond requirements, it is recommended that the Pool oppose HB 5097 (and SB 636).