



MEMORANDUM

TO: Member Companies

FROM: Jennifer Greenburg

DATE: April 3, 2018

RE: Implementation of Public Act 97 (HB 5097) – Rights-of-Way Permit Reforms

Governor Snyder signed House Bill 5097 on April 2, 2018, creating Public Act 97 of 2018. The bill imposes caps on the fees county road commissions can require broadband providers to pay for access to public road rights-of-way. It also prohibits road commissions from requiring certain studies and surveys, limits insurance liability coverage and prohibits mandatory cash bonds. Finally, the law allows road commissions to adopt financial penalties for companies that fail to obtain permits or maintain bonds. A detailed summary of the new law is provided below. (Please remember that this law does not apply to cities, townships and villages as they are regulated by the METRO Act.)

Section-By-Section Description of PA 97 Provisions

The following substantive changes were enacted with the signing of HB 5097. (This summary does not cover stylistic amendments like changing “the issuance of” to “issuing.”)

Enacting Section 1	Specifies that the new law takes effect 90 days after the date it is signed by the governor, which is July 1, 2018 .
Section 19b(2)	Allows county road commissions and counties to adopt a schedule of civil fines of up to \$5,000 per violation on providers that work in the right-of-way (ROW) without obtaining a permit or fail to maintain a security bond, ROW bond or irrevocable letter of credit during construction work within the ROW. This does not apply to work conducted in an emergency to restore services impacting public safety.
Section 19b(5)	Prohibits a road commission from requiring “any topographic, boundary, environmental, or other kind of survey, study, or analysis of a ROW as condition of or in connection with issuing a permit.” Road commissions can require “detailed engineering plans related to work in the ROW” and can require providers to pay necessary actual costs for inspections.
Section 19b(6)	Road commission permit fees are capped at: <ul style="list-style-type: none"> • \$300 per permit or \$1,000 for all permit fees per project in counties with populations fewer than 250,000. • \$600 per permit or \$2,000 for all permit fees per project in counties with populations of more than 250,000.
Section 19b(7)	Road commissions are prohibited from requiring more than one permit annually for permits related to routine maintenance and repair work in a ROW. The fees for these permits are capped at: <ul style="list-style-type: none"> • \$300 in counties with populations of 250,000 or less. • \$600 in counties with populations of more than 250,000.
Section 19b(8)	This provision addresses “silvicultural operations” and should have no impact on TAM members.
Section 19b(9)	Prohibits road commissions from requiring more than one security bond or ROW bond to secure the performance of “all permits issued that authorize the provider to construct, operate, maintain, or remove a facility or perform any other work anywhere within the ROW.” Road commissions are prohibited from requiring a cash bond. (Providers can choose whether to use a cash bond or insurance bond.)

	<p>The bond amounts are capped at:</p> <ul style="list-style-type: none"> • \$20,000 in counties with populations of 250,000 or less. • \$40,000 in counties with populations of more than 250,000. <p>Bonds must be returned by road commissions within 120 days after construction work is complete (at the request of the provider).</p> <p>In place of bonds, providers may utilize an irrevocable letter of credit issued by qualified financial institutions.</p> <p>If a claim is made against a bond, providers must obtain another bond for the duration of the project.</p>
Section 19b(10)	Requires providers to maintain general liability insurance with minimum policy limits of \$2,000,000 per occurrence for both property damage and bodily injury. (Road commissions can't require higher policy limits.)
Section 19b(11)	Road commissions and providers can negotiate voluntary permit terms that are different from the restrictions in the law.
Section 19b(12)	Requires a provider to pay civil fines of up to \$5,000 per violation of the permitting or bond requirements if a county adopts a schedule of fines as allowed in subsection (2).
Section 19b(13)	Provides definitions of "county road commission" and "provider." All TAM members with BLES licenses are providers, as are video service providers.
County Populations	<p>Counties with populations exceeding 250,000:</p> <p>Genesee Ingham Kalamazoo Kent Macomb Oakland Ottawa Washtenaw Wayne</p> <p>Counties with populations of not more than 250,000:</p> <p>All others.</p>