Amy Rostkowycz

From: Hagon, Troy (MDOT) <HagonT@michigan.gov>
Sent: Tuesday, June 8, 2021 9:55 PM
To: Amy Rostkowycz
Cc: Kenneth Morin; Phil Goodrich; Andrew Solon; William Hamilton; Fedewa, Joe; Cook, Kara; Anastor, Peter (MDOT); Ford, Ouida (MDOT); Brown, Deb (MDOT); Johnson, Nikkie (MDOT); Cranson, Jeff (MDOT); Koenigsknecht, Sara (MDOT); Polsdofer, Mark (MDOT); Gallimore, Janie (MDOT)
Subject: RE: *Updated and revised comments, please delete previous editions and use the one below.* - [Hrep-comt] [COMT] STANDARD: House Communications and Technology Standing Committee Meeting
Attachments: HB 4422 (H-1).pdf

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Updated and revised written comments, please delete previous editions and use the one below.

June 8, 2021

Amy:

I would like to put in an electronic card and written testimony for the tomorrow's (Wednesday, June 9, 2021) meeting of the House Standing Committee on Communications and Technology. MDOT is "opposed, not wishing to speak, written comments submitted and would like to continue to work with the sponsor" on House Bill 4422 (H-1). My contact information is:

Troy Hagon, Director
Office of Governmental Affairs, Adviser to the State Transportation Commission and Regulatory Affairs Officer
Department of Transportation
State of Michigan
425 West Ottawa Street
Lansing, Michigan 48909

Telephone: (517) 719-2574
Email: hagont@michigan.gov

Please find below comments from MDOT's Office of Rail regarding the H-1 substitute for House Bill 4422. While it looks like progress was made in a few areas, MDOT still has significant concerns with the substitute bill.

BACKGROUND

In addition to its role in ensuring railroad crossing safety throughout the state, MDOT owns 665 miles of rail corridors, including a portion of the state's accelerated rail corridor in which train speeds can reach 110 mph. For 530 miles of its corridors, MDOT directly provides access to its rail property for third-party use, like utilities. Amtrak is responsible for providing that access for the Kalamazoo-Dearborn corridor. There are approximately 4800 public at-grade crossings in the state. Of those, 830 cross MDOT-owned corridors.

MDOT'S POINTS OF CONCERN

"Crossing" is defined as "within a right-of-way". The implications of the proposed bill are significantly different if the bill is intended to address the entirety of a railroad right-of-way or if it is intended to impact utility crossings within a public-road right-of-way. For reference, there are over 3600 miles of railroad corridors and approximately 4800 defined locations in which public roadways currently cross.

"Crossing" is also defined to include adjacent facilities. If "right-of-way" refers to a railroad right-of-way, this amendment would seemingly allow for the longitudinal use of a railroad corridor for utility purposes. Longitudinal use can constrain railroad operations and can be difficult to remove/relocate to accommodate an expansion in railroad operations once the buildout of the utility network occurs. Agreements for such use on railroad rights-of-way should be specific to that railroad corridor. MDOT would oppose allowing the longitudinal use of railroad rights-of-way for any purposes without the express permission of the railroad or MDOT, as a railroad-property owner, and appropriate compensation, as determined by the railroad or MDOT, as a railroad-property owner.

MDOT recommends that "facilities", at a minimum, are defined to exclude above-ground structures, like poles, that pose a particular constraint to the potential expansion of rail corridors, and therefore should require the approval of the railroad or railroad-property owner.

MDOT recommends that "department", if a definition is determined necessary for these sections, is done in context of the Railroad Code as a whole. MDOT is already responsible for administering the entire Railroad Code. This bill currently redefines "department" as MDOT for purposes of these sections alone, which may create confusion for the other sections of the Railroad Code.

Approval by the railroads or MDOT, as a rail-property owner, is not required in this bill. It appears that location can be a basis of dispute, but the specifics of the installation, like depth/clearance and installation methods, would not. If approval is not required, at a minimum, MDOT recommends expanding the basis of disputes to include means, methods, materials and other construction specifications and to include a uniform construction standard that is relevant to utility installations over/under/near railroad tracks, like the American Railway Engineering & Maintenance of Way Association's Manual for Railway Engineering, as amended. While the National Electric Safety Code is cited as a construction standard, MDOT is uncertain if that code includes specifications specific to utilities above/below railroad tracks and presumes it does not address non-electrical utilities that are included as a part of "facilities".

If approval by the railroads or MDOT, as a rail-property owner, is not required for utility placement in some circumstances, MDOT recommends, at a minimum, including a requirement for the utility to be removed or relocated in the event that it conflicts with a change in railroad operations that would necessitate it.

MDOT opposes a flat flee unless, at a minimum, it additionally allows for additional actual costs of the engineering review and flagging. As a railroad-property owner, the costs to MDOT and its railroad operators typically exceed $1000 for utility use of its property.

MDOT would oppose the self-determination of insurances. For the 665 miles that MDOT owns, DTMB currently sets the limits for utility crossings of the freight-exclusive lines and a contractual arrangement with Amtrak determines the insurance limits for the state-owned portion of the accelerated rail corridor.

MDOT has been previously advised by the Attorney General that state and local units of government are prohibited from indemnifying. This would impact the lines MDOT owns and any publicly-owned utilities.

Section 265b makes the utility provider (presumably) responsible for damage to "grade crossing markings or signs damaged during construction". MDOT recommends expanding this to any facilities, including grade crossing warning devices, communication systems, etc.

The bill creates a dispute-resolution process that is assigned to MDOT. MDOT is concerned about the administrative costs associated with the number of disputes it anticipates with the other changes proposed by this bill. Also, while MDOT would be committed to play a neutral role in the proposed dispute resolution, it is important to point out that it is possible that the dispute could be between a facility owner and MDOT regarding a utility crossing on the 665 miles that MDOT owns. Also, the bill does not specify what party/parties will be responsible for paying for the mediation.

If I can be of any further assistance regarding this matter do not hesitate to contact me.

Stay Healthy and Safe,

Troy

From: hrep-comt-bounces@listserver.legislature.mi.gov <hrep-comt-bounces@listserver.legislature.mi.gov> **On Behalf Of** Communications and Technology Committee
Sent: Monday, June 7, 2021 12:07 PM
To: HREP-COMT@listserver.legislature.mi.gov
Subject: [Hrep-comt] [COMT] STANDARD: House Communications and Technology Standing Committee Meeting

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Standing Committee Meeting

Communications and Technology, Rep.
Michele Hoitenga, Chair

DATE: Wednesday, June 9, 2021

TIME: 10:30 AM

PLACE: Room 307, House Office Building,
Lansing, MI

AGENDA:

HB 4422 (Rep. Hoitenga)	Public utilities; other; exceptions to stringing wire over and across railway right-of-way; modify.
HB 4778 (Rep. Steven Johnson)	State financing and management; other; state agencies using messaging apps that allow deletion of messages to avoid FOIA: prohibit.

OR ANY BUSINESS PROPERLY BEFORE THIS COMMITTEE
Please see the House Committee Protocol pertaining to COVID-19: https://www.house.mi.gov/committee_protocol.asp

To view text of legislation go to: http://www.legislature.mi.gov/mileg.aspx?page=CommitteeBillRecord

Committee Clerk: Amy Rostkowycz

Phone: (517) 373-1260

e-Mail: arostkowycz@house.mi.gov

Individuals needing special accommodations to participate in the meeting may contact the Chair's office.
Schedule changes or cancellations available at http://www.house.mi.gov/publiccommitteeschedule/

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