

FY 2010 Annual Program Performance Measures

DEPARTMENT: MICHIGAN DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Sec 104 Public Service Commission and Energy Systems

PROGRAM: METRO Authority and FOIA

TIMELINE: October 1, 2009 through September 30, 2010

PROGRAM MISSION STATEMENT (Customer-Focus Direction)

The Mission of the Metro Authority is to implement the provisions of the METRO Act by streamlining the right-of-way permitting process between municipalities and telecommunication providers; recover the costs of public right-of-way use by the providers; and coordinate public right-of-way matters with municipalities and telecom providers. This process starts each February by the Authority sending out notices to all telecom providers requiring them to submit information regarding their linear footages in public rights-of-way. The Authority then assesses maintenance fees owed by providers each April based on the figures they submitted and the formulas provided in the Act. With the money collected from the telecommunication providers, and any interest earned throughout the year, the Authority calculates payments due to eligible municipalities; and in early June, distributes these payments. Currently, 100% of fees assessed on providers are paid out to eligible municipalities. Seventy-five percent of available funds are distributed to eligible cities and villages based on the Michigan Department of Transportation fund distribution formula as found in Section 13 of PA 51 of 1951. Twenty-five percent of available funds are disbursed to eligible townships based on each township's proportionate share of the total linear feet of public rights-of-way in or on which providers' facilities are located within all townships located in metropolitan areas.

VISION STATEMENT

A. METRO Authority

The vision of the Metro Authority unit is to grow Michigan telecommunication providers to each municipality by:

- Establishing a common right-of-way procedure and fee paid by telecommunication providers to each municipality.
- Allowing Michigan's municipalities to reasonably control and manage their public right-of-ways.
- Recovering the costs of using rights-of-way by telecommunication providers.
- Ensuring effective review and disposition of disputes between municipalities and telecommunication providers as they relate to right-of-way matters.
- Assuring that all available funds from providers are timely collected and distributed to municipalities.

B. Freedom of Information Act (FOIA)

The vision of the FOIA operation is to timely and accurately process the approximately 44,000 to 46,000 annual requests, including subpoenas, from citizens/organizations received by the Department.

- Assuring that FOIA requests and subpoenas are processed accurately and timely.

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PROGRAM STATEMENT

A. METRO Authority (Public Act 48 of 2002). MCL 484.3101 et seq.

The Metropolitan Extension Telecommunications Right-of-Way Authority (Metro Authority) was created on November 1, 2002, as a result of Public Act 48 of 2002. The METRO Act gives the Authority the responsibility to coordinate public right-of-way matters with municipalities (cities, villages and townships); the exclusive power to assess maintenance fees from telecommunication providers owning telecommunication facilities in public rights-of-ways within a municipality; and to allocate and disburse collected annual maintenance fees to 1,755 eligible municipalities. The Authority may also promulgate rules to implement and administer the Act. The METRO Act also:

- Encourages competition in the availability, prices, terms, and other conditions of providing telecommunication services
- Encourages the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in Michigan
- Improves the opportunities for economic development and the delivery of telecommunication services
- Ensures the reasonable control and management of public rights-of-way by municipalities within Michigan
- Provides for a common public rights-of-way maintenance fee applicable to telecommunication providers
- Ensures effective review and disposition of disputes under the act
- Allows for a tax credit for providers to recover the costs under the act (and ensure that providers do not pass costs on to end-users through rates and charges for telecommunication services)

B. Freedom of Information Act (Public Act 442 of 1976, as amended) MCL 15.231 et seq.

The Freedom of Information Act (FOIA) provides Michigan residents (and others) access to public records and information regarding the department's activities. The FOIA regulates and sets requirements for the disclosure of public records by all public bodies.

FUND SOURCE:

A. METRO Authority (Public Act 48 of 2002)

Public Act 48 of 2002 created a funding stream to distribute collected maintenance funds to municipalities but did not allow the funds to be used for program administration. Commencing with the 2010 budget bill, funding was transferred to the MPSC for the Metro Authority to operate the program at a bare minimum.

B. Freedom of Information Act (Public Act 442 of 1976, as amended)

The FOIA office support is absorbed as part of the Metro Authority operations.

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LEGAL BASIS:

A. METRO Act (Public Act 48 of 2002), MCL 484.3101 et seq.
Metro Authority (Public Act 48 of 2002)

B. Freedom of Information Act (Public Act 442 of 1976, as amended), MCL 15.231 et seq.
Freedom of Information Act (Public Act 442 of 1976, as amended)

CUSTOMER IDENTIFICATION:

Metro Authority/FOIA customers consists of Michigan consumers of METRO Act/FOIA services (1,775 municipalities, 95+ telecommunication providers); other DELEG units (33 FOIA coordinators); trade/governmental associations (CLECA, TAM, MML, MTA, etc.); federal/other state agencies/citizens; state legislators; peers/subordinates.

As a semi-regulatory unit implementing both METRO Act and FOIA statutes mandates, the unit provides support to customers by:

- Continuously educating the municipalities, providers, and the public regarding the implementation of the METRO Act.
- Coordinating the FOIA activities of DELEG bureaus/offices in a consistent and timely manner.
- Timely decisions regarding PA48 and FOIA issues.
- Providing proper funding/staffing to enable efficient operation of PA48 and FOIA activities.
- The way we conduct business and respond to our customers.
- Regular communications with peers, customers, and DELEG policy makers via letter, email, website inclusions.
- Regular staff meetings and planning sessions.
- Website publications of "Determinations" regarding relevant policy decisions.
- Periodic meetings with customer groups, including Michigan Municipal League, Michigan Township Association, Telecommunication Association of Michigan, Telecommunication Association of Michigan, CLECA, etc.
- Annual reports; telephone discussions with customers; work groups; surveys, etc.

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CRITICAL GOALS/MAJOR OBJECTIVES and RESULTS

Program Goals:

A. METRO Authority (Public Act 48 of 2002)

1. Annual Report (Section 3(4))

Pursuant to Section 3(4) of PA 48 of 2002, prepare and file the year 2009 annual report of activities with the Governor and members of the legislative committees dealing with energy, technology, and telecommunications by or before March 1, 2010.

Result: Report prepared and submitted to Governor and Legislature February 2010.

2. Collection and Disbursement of Provider Fees (Section 8)

- a. Send providers request to confirm and/or correct the linear footage of right-of-way facilities regarding fees to be billed by February 12, 2010, or sooner.

Result: MA met this goal.

- b. Determine fee amount owed by each provider and bill providers by or before March 12, 2010.

Result: MA met this goal.

- c. Collect all due provider fees by April 30, 2010.

Result: MA collected \$22,401,769 from 90 providers, an increase of \$510,465 than previous year.

- d. Re-bill delinquent payer providers by May 14, 2010.

Result: MA met this goal--\$93,622 late payments carried over.

- e. Prescribe the schedule for the allocation and disbursement of fees to municipalities by May 14, 2010.

Result: MA met this goal.

- f. Disburse maintenance fees to eligible (opted-in) municipalities by May 30, 2010.

Result: MA disbursed \$21,910,017 million by May 30, 2010.

- g. Determine status of any delinquent payer provider and consider authorizing the department of Treasury to collect delinquent fees by or before June 11, 2010.

Result: MA met this goal; no fines requested to be assessed.

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3. Provider Credits (Section 8(14, 16, 16))

Provide information to the MPSC regarding the payment of maintenance fees by providers to be used in the determination of provider applications for property tax credits via PA 282, MCL 207 of 1905 for Metro Authority.

Result: MA met this goal.

4. Municipality Use of Funds (Section 10(4)&(5))

a. Post on Metro Authority website 2009 Annual Report Form; to simplify municipal reporting by or before April 1, 2010.

b. Collect and analyze information reported by eligible municipalities by or before June 11, 2010.

Result: MA met this goal. Only 20 of 1,775 municipalities ineligible to receive METRO Act funds. Payments for 6 municipalities totaling \$49,391 held in escrow for non-compliance with PA48.

5. Undisputed Fee Payments (Section 18(2))

Determine whether there are undisputed fees owed the Metro Authority for referral to MPSC for action by or before June 30, 2010.

Result: MA continues to determine undisputed fees regarding several telecom providers.

6. Other:

- Revise/update Metro Authority website information quarterly or as needed.

Result: MA met this goal.

- Confirm correct address to send payments; correct name of chief elected official/appointed official by May 14, 2010.

Result: MA met this goal.

- In 2008, MA staff made a presentation to House and Senate committees/representatives regarding the need for administrative/operating funds for the MA. House Committee, in May 2008, referred matter to “Work Group.” No further action taken. Also, in 2008 MA met with Representative Frank Accavitti regarding possibility of introduction of amendment to METRO Act to provide administrative/operating funds—no further action at this time.

Result: The FY10 budget bill transferred Metro Authority funding to the Michigan Public Service Commission (MPSC). MA and MPSC will need to review whether to pursue amending METRO Act to provide for administrative/operating funds.

B. Freedom of Information Act (Public Act 442 of 1976, as amended), MCL 15.231 et seq.

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1. FOIA Rules/Procedures

- Publish DELEG FY11 FOIA Fees procedures/guidelines by or before October 1, 2010.
Result: FOIA Unit published revised cost guidelines November 4, 2010.
- Develop and distribute to designated FOIA liaisons DELEG rules and procedures governing DELEG responses to FOIA requests by February 12, 2010, or sooner.
Result: Issued Revised Attachment 12 to DELEG Freedom of Information Act Policy/Procedures/Guidelines November 4, 2010.

2. FOIA Liaisons

- Update DELEG unit's designated FOIA liaisons listing by October 1, 2010.
Result: FOIA Unit met this goal—done as staff/assignments change.
- Arrange for FOIA liaisons training via the Attorney General's office and/or Civil Service as offered.
Result: FOIA Unit met this goal – several training opportunities made available.

Processes/Services

PROGRAM EFFECTIVENESS and Efficiency (Current Year)

Program Goals/Metrics

See attached charts

Performance Measures

- Waived \$770 in fees for AT&T.
- Disbursed about \$22 million to municipalities by May 31, 2010, including \$300 in interest and \$208,119 in prior year carry-forward.
- Non-eligible municipalities not receiving METRO Act funds in 2010 remained at 20.
- New fee waivers received/granted—none.
- Four Determinations/Rulings issued.
- 183 municipalities' annual reports received and reviewed for compliance.
- 118 inquiries sent to potential providers.
- 5 annual/special reports prepared, including:
 - 2009 Annual METRO Act Report to Governor/Legislature (2-26-10)
 - Metro Authority database updated

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- METRO Act Property Tax Credit Report
- Reinvestment Recovery Act Broadband Funding
- Two Metro Authority/FOIA Transition Reports

Program Improvements Made

METRO Authority

Improvements to on-line data base

- Submitted 8 requests for improvements/upgrades to the database.
- Submitted to Treasury Metro Authority Debt Collection Procedures

Freedom of Information Act

- Developed, revised, published revised FOIA Processing Cost Guidelines distributed to DELEG's 28 bureau/office FOIA liaisons. New guidelines address FOIA unreasonably high costs, labor and other charges to process FOIA requests as well as provide instructions/examples of processing these type of requests.
- Updated as necessary DELEG FOIA Policy/Procedure/Guidelines manual.

PROGRAM IMPROVEMENT PLANS FOR FY11

- Improve collection of \$21-\$25 million from over 90 telecommunication providers to distribute to 1,755 eligible providers.
- Issue Determinations to establish/clarify policy/procedures regarding the implementation of the METRO Act; and FOIA.
- Improve guidelines for Metro Authority/FOIA activities.
- Improve the FOIA related activities of 28 DELEG unit FOIA Coordinators (and appeals) regarding 44,000-46,000 annual requests for information and subpoenas received by the department.
- Publish Annual Report of Metro Authority activities to Governor and Legislature.
- Improve consultation services to 1,775 municipalities and 90 telecom providers as needed.
- Improve coordination activities with other state agencies involved with FOIA and METRO Act activities (Attorney General, MPSC, Governor's office, legislators).
- Improve research/interpret relevant statutes/regulations related to METRO Act and FOIA.
- Improve data base modules for telecom providers and municipalities.
- Implement debt collection procedures approved by Treasury and Office of Attorney General to collect maintenance fees owed by delinquent paying telecom providers.

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CHALLENGES FOR FY11 and BEYOND

The Metro Authority/FOIA staff yet consists of two FTEs (Director and a Secretary) and a permanent intermittent staff person who works 8-24 hours/week. Due to the numerous and complex duties and responsibilities to implement PA 48, there is critical need for additional staff; and a specific, detailed budget. For instance, aside from resources needed to engage the Attorney General's assistance, or perform provider linear footage audits, there continues to be internal information technology needs from MDIT, including:

1. On-Line Database – The Metro Authority administers an on-line database that makes it possible to produce various reports, invoices, mail merges, etc. The database includes two modules: one for telecom providers to annually report their linear footages and review their account balances; one for municipalities to report on how they spend maintenance fees. Ongoing assistance is required from DTMB for maintenance and upgrades.
Result: Challenge is ongoing in FY11.
2. Web Page – The Metro Authority continues to need assistance to increase functionality and usefulness of its web page .
Result: Challenge remains for FY11.
3. Payment Calculation – The Metro Authority continues to need MDOT to make payment calculation to municipalities based on their Act 51 fund distribution system. At some point, the Authority will need the capability to do these calculations in-house.
Result: Challenge remains for FY11.
4. Budget – Metro Authority continues to be in dire need of budget/funds to perform the above and other prescribed functions of the METRO Act. Note: The FY11 Appropriation Bill transferred the Metro Authority and funding to the Michigan Public Service Commission.
Result: Challenge remains for FY11 as to whether action to amend PA48 to acquire independent funding will be undertaken.

Other Challenges:

- Possible New Fee Assessments—The Metro Authority is continuing to address the issue of whether and/or how to assess maintenance fees on telecommunication providers bundling telephone, cable TV and broadband internet services. Further, due to the Uniform Video Service Local Franchise Act (PA 480 of 2006), several major providers formerly only providing telephone or cable services, are now providing “bundled services.” The Metro Authority is continuing to review whether some of these providers are now subject to the maintenance fee provisions of the METRO Act; and should they be assessed at cable rates, telephone rates, or both.
 - Cable companies that offer telephone services may be circumventing payment of maintenance fees.

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- Video Services Act—continued; need to address certain issues related to Metro Authority references in this new legislation for statewide franchising of video services, particularly:
 - Section 6(11) calculations of METRO Act credits.
 - Coordination with MPSC of possible related METRO Act/Video Services provisions.
 - Does Act preclude non-opted-in municipalities to enter into agreements with new video service providers; is Section 6(11) applicable to these municipalities?
- VOIP Companies—MPSC indicates that it has no regulatory authority over VOIP companies. However, Sections 8(11) and 8(12) of the METRO Act could be interpreted to imply that VOIP companies may be covered, but would not necessarily result in the Authority collecting any more fees from the cable companies that provide VOIP services. In light of the Video Services legislation, does the Metro Authority need to continue to monitor this matter?
- Provider Linear Foot Reductions—Municipalities continue to express concerns about a verification process of the reductions of linear footage reported by providers. Due to the Authority's limited staff, the Authority, currently has the authority, but not the ability to audit the provider reports/information. Is this a matter that can be addressed by other means?
- Telecom Permits – Municipalities continue to express concerns that some telecom providers have and/or attempted to unilaterally change provisions of telecom permits that will adversely impact municipalities.
- Sections of the METRO Act are no longer accurate or relevant and need to be updated/eliminated, but obtaining need amendments will be problematic due to resistance from telecom providers/others.
- ARRA Funded Projects—The Metro Authority is reviewing when and how to assess and collect METRO Act fees that may be due as the result of federally funded broadband projects under the ARRA to serve unserved and underserved areas of Michigan.
- Limited Staffing/Resources—The Department's Internal Audit Office concluded that the Metro Authority has done an admirable job in meeting many of the requirements, however, without specific funding appropriated for administration of the Act, staffing is insufficient to enforce municipalities and providers to comply with the Act.

FOIA

1. Agency Coordination— There are currently about 28 offices/bureaus in DELEG which FOIA actions need coordination as regards specific responsibilities to respond to requests and/or appeals.
Result: Challenge remains for FY11.
2. Policies/Procedures – There is need to continually monitor and update policies/procedures to address unique bureau/office needs by issuing various revisions/updates as needed/requested.

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Result: FOIA Unit met this goal.

3. Operations Funding—There is need to develop methodology to cover costs of processing FOIA related activities by the Metro Authority staff.

CHARTS ATTACHED

- Maintenance Fees Collected/Disbursed
- Assessed Telecom Providers
- Eligible Funded Municipalities