

PROTEC 2023 ANNUAL REPORT
AN UPDATE & LOOK FORWARD



www.protec-mi.org

THE MICHIGAN COALITION TO PROTECT PUBLIC RIGHTS-OF-WAY

“ON GUARD FOR 27 YEARS - SINCE 1996”

PROTEC LAUNCHES A NEW LEGISLATIVE AGENDA

“TAKING BACK OUR ROW”

PROTEC is going to Lansing with our Members and Association partners to seek changes - reestablishing ROW local control and revenue.

Join us.

Please?

Local Communities have a Friendly Majority in Lansing across all branches of state government today. This circumstance raises the potential to reverse industry friendly legislation which dramatically reduced both local control and reimbursement of Right of Way costs.

Over the last several decades, the Courts and Legislature have trampled the rights of communities set forth in the state Constitution¹ and reduced the longstanding rights of Home Rule communities. Our new Legislature has already begun reversing the damage. And our newly constituted Michigan Supreme Court has begun enforcing those Constitutional guarantees. So judicial remedies may be useful, too, but reform Legislation is our first priority².

PROTEC 2023/24 LEGISLATIVE AGENDA

¹ 1963 Michigan constitution Article 7, Section 29

² For example, see: [Associated Builders & Contractors v City of Lansing, 499 Mich 177; 880 NW2d 765 \(2016\)](#)
[UPPCO v Village of L'anse, Upper Peninsula Power Co v Village of L'Anse, NW2d ; 2019 Mich. App. LEXIS 6781 \(Ct App, Oct. 30, 2019\)](#) Lv Den'd

**PROTEC LEGISLATIVE AGENDA
AMEND, REPEAL or APPEAL:**

i. Broadband: State Laws (arguably) barring local eligibility for \$2 Billion in BB Grants

See [Act 224 of 2020](#); MCL [484.3251](#) et seq and 2022 Appropriations [PA 53 SB 565 Sec 359](#)

1. Fed ARPA and BEAD Laws support government eligibility
2. We must bring State law in line with Federal law and local authority or we risk losing these Billions of Dollars for Broadband

ii. Video Service Act: Limiting local control over Cable/Video Services

See [Act 480 of 2006](#); MCL [484.3301](#) et seq

1. No Local Control of Rates or Service and
2. Last Bastion of Local Video Programming – PEG - Being Squeezed Out
 - a. See FCC Sec 621 Order and 9th Cir Appeal Opinion
3. Proof of the problem: Have you looked at your cable bill lately? Have you tried to find good local programming?

iii. “Not so” Small Cell Act Limiting local control over Cell Towers in our ROW

See [Act 365 of 2018](#); MCL [460.1301](#)

1. These front yard Cell Towers were never small and now they are growing
2. There are legitimate RF Radiation issues
3. Industry issues: AT&T going back to fiber and Verizon Wireless “5G” slammed by Wall Street for lack of reliability and financial viability
4. See FCC Orders and 9th Cir Appeal Opinion
5. We need to reassert control over our neighborhoods and street ROW
6. See recently introduced HB 4499
<http://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2023-HIB-4499.pdf>

iv. ZEA Amendment which eliminated local review of significant additions and growth of existing Macro Cell Towers:

See [Act 110 of 2006](#); MCL [125.3514](#)

1. See also the Fed Telecom Act Sec 6409
2. This law must be amended or repealed allowing local zoning to address these significant expansions
3. See recently introduced HB 4499
<http://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2023-HIB-4499.pdf>

v. Metro Act – Limiting local control and fees for ROW access

See [Act 48 of 2002](#); MCL [484.3201](#) et seq

1. We need to improve local revenue:

- a. **5 cents/ft** for Telecom ROW Access vs Market:
- b. Oregon Munis at **\$5+ Dollars/ft**
- c. N. Mexico at **35 cents/ft rural and \$1.81 Urban**

2. We need to reassert local control over lines and large Boxes in our ROW

vi. Miss Dig Amendment: Eliminated local government immunity for Miss Dig Operations.

See [Act 174 of 2013](#) Sec 12; MCL [460.732](#) and MCL [691.1407](#) Sub Sec (7)

1. WHY? Because the Gas Pipeline Industry sought to avoid liability for its 80 year old gas lines, one of which blew up the City of San Bruno on September 9, 2010



https://en.wikipedia.org/wiki/San_Bruno_pipeline_explosion#:~:text=The%20loud%20roar%20and%20shaking,death%20toll%20was%20eight%20people

2. The law must re-establish governmental immunity so the pipeline industry cannot deflect its own responsibility to uninvolved local government.

vii. 1995 PA 30 Electric Transmission Line Certification Act: Elevating MPSC Rules over Home Rule and Local ROW control

See [Act 30 of 1995](#) Sec 10; MCL [460.570](#)

1. Allows ITC and MPSC to unilaterally rewrite/ignore duly authorized Local Zoning and install 150' towers right down Main street
2. This law must be amended to re-establish local zoning

viii. Continue pushing back on new Anti-Local Legislation

1. HB 6449 attempting to bar Netflix OTT franchise litigation; and HB 4207 and 4208 seeking to exempt Broadband infrastructure from taxation, thus gutting local and school funding
2. PROTEC has opposed and succeeded on stopping these Bills in 2022

ix. Promote Regulation of Broadband at State and Local Levels

1. Like our unregulated cable bills, Michigan Broadband bills keep climbing while service remains largely 3rd worldly
2. Regulation of the Monopoly Broadband industry is critical for customer protection

x. Reverse DTE v City of Taylor: This Opinion Elevated MPSC Rules over Home Rule and Local ROW control

See [City of Taylor v Detroit Edison Co, 475 Mich 109; 715 NW2d 28 \(2006\)](#)

In this 2006 Opinion, the “Strict constructionist” Michigan Supreme Court reversed 100 years of precedent and ignored clear Constitutional language granting local communities control over local ROW. This opinion must be legislatively or judicially reversed

We are on the ground running with our members and partners to pursue these changes. Join us. Share this Legislative Agenda with elected officials at every level of government and particularly those within the Legislature. Have them reach out to the undersigned or let us know of their interest, and we will reach out to them.

The time is now. Join us.

A FEW MORE NOTES ON ISSUES PROTEC IS PURSUING

BROADBAND

The Federal Government is releasing \$2 Billion Dollars to Michigan for Broadband.

Our emphasis for a decade and renewed with the 2020 pandemic, remains Broadband Development across Michigan utilizing local, federal and state dollars. We are fighting hard to make sure that local communities like yours have an absolute right to access all the same federal and state dollars for Broadband as the monopoly telecommunications industry. We are currently engaged in undoing Legislation passed in 2020 and 2022 that bars locals and Universities from funding and self-governance on the subject of Broadband. Help us fight back by maintaining your membership and support.

PROTEC and its General Counsel are very actively engaged in helping build and develop municipal Broadband networks across Michigan. If you need help building

your own, ask for our help. We **are** local government and serve only local community government. So we have no ties to industry, unlike many consultants claiming to offer similar services.

PROTEC FILES COMMENTS AT MICHIGAN SUPREME COURT

PROTEC joined many other governmental organizations and filed comments at the Michigan Supreme Court opposing a proposed change to the Michigan Court Rules deleting automatic appeals as of right to trial court denials of immunity. We acknowledge and appreciate comments of others including the MML and Michigan Association of Municipal Attorneys (MAMA) which we borrowed from and modestly elaborated upon.

CONGRESS

Congress is deadlocked. The good news is that antagonists of local communities are very limited in their ability to do more harm. The not so good news is that our allies are equally unable to assist us going forward for the time being. Thus our focus on Michigan and our terrific opportunity to improve our circumstances!

FCC STALEMATE

Like Congress, the FCC is stalemated in a 2-2 tie and given Gigi Sohn's recent withdrawal as President Biden's nominee for the 5th seat, odds are not in our favor for an active FCC anytime soon. This is disappointing as there was so much damage done during the 2016-2020 FCC, that we hoped for a chance to correct all or some of that at the FCC. Our successful appeal of some of the 2018 FCC orders, including reestablishing local zoning and aesthetics in the Small Cell Appeal Opinion from the US 9th Circuit Ct of Appeals was a good win, but there remains much to be done to reassert local control and fair market values for our ROW with respect to those ugly "Not so" Small Cells. And too, we must address the remainder of the FCC Sec 621 Order which attempts to destroy one of the few sources of local programming in the form of our many exceptional PEG centers across Michigan. Last, our appeal of the FCC Sec 6409 Order purportedly allowing massive increases in cell towers with little to no local control is moving again in the 9th Cir Ct of Appeals but, the best place to address that order is the FCC itself, when fully embodied with a community friendlier majority.

**AND IN JUST IN CASE YOU FORGOT HOW BIG, “SMALL CELLS”
CAN BE**

FLINT 120’ “SMALL” CELL



ARIZONA ROW “SMALL” CELL





“SMALL” CELL DIMENSIONS:

2018 PA 365 Sec 7 (j) “Small cell wireless facility’ means ... the following requirements:

- i) Each antenna is ... not more than **6 cubic feet** in volume ...
- (ii) All other wireless equipment ... not more than **25 cubic feet** in volume ... not included in the calculation ... **[plus]** electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.”

Total equals 6 cu ft + 25 cu ft + ? = 31+ Cubic Feet per pole and per provider

PROTEC and NETFLIX

PROTEC is researching the potential for our communities to join in a contingent fee lawsuit to recover cable/video franchise fees from the likes of Netflix, who provide video service under the Act and therefore owe franchise fees. Let us know if your community might be interested.

PROTEC MEMBERSHIP HAS GROWN

From the original three, to over 100 dues paying Michigan communities and, over 350 communities and others nationally, who follow and support us.

WHY JOIN PROTEC?

See link to our Answer on our website: <https://www.protec-mi.org/why-join.php>

JOIN US ON SOCIAL MEDIA:

Facebook –

<http://www.facebook.com/pages/Protec-Michigan/202171746532661>

LinkedIn

<https://www.linkedin.com/company/64739871/admin/>

Twitter –

<https://twitter.com/PROTECMichigan>

www.protec-mi.org

Thank you on behalf of the PROTEC Board; Dearborn, Livonia & Southfield, for your membership in and support of PROTEC. You are the reason we can and the reason we do the work we do.



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