

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 654 (Delegate D.E. Davis)
Economic Matters

Wireless Facilities - Installation and Regulation

This bill establishes procedures and requirements for the deployment, installation, and regulation of small wireless facilities. Except as otherwise provided by law, the provisions of the bill are not subject to the jurisdiction of the Public Service Commission. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: The effect on State finances and operations cannot be estimated at this time but is likely significant, as discussed below.

Local Effect: Significant impact on local government revenues and expenditures depending on the number of small wireless facilities permit applications. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

The bill establishes comprehensive and interwoven definitions related to small wireless facilities. “Authority” means the State or any unit, county, municipality, district, or subdivision, or any instrumentality of those units, in the State. It includes a public utility district, an irrigation district, and a municipal electric utility.

“Small wireless facility” means a facility that meets specified requirements, including that:

- the facilities (1) are mounted on structures 50 feet or less in height, including the antennas; (2) are mounted on structures not more than 10% taller than other adjacent structures; or (3) do not extend existing structures on which they are located to the greater of either a height of more than 50 feet or an extension of more than 10%;
- each antenna associated with the deployment is not more than three cubic feet in volume, excluding associated antenna equipment; and
- all other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is not more than 28 cubic feet in volume.

State Preemption Generally, Except for Grandfathered Agreements or Ordinances

An authority may enact a local law to carry out the requirements of the bill. If an authority does not, a wireless provider may install and operate small wireless facilities and utility poles in accordance with the bill. If there is an inconsistency between the bill and an applicable local law, the bill must prevail over the local law to the extent of the inconsistency. Further, an agreement or ordinance that applies to small wireless facilities or utility poles that was in effect before June 1, 2019, is valid and enforceable only as to small wireless facilities that became operational or were constructed before that date.

Deployment of Small Wireless Facilities – Generally

Subject to specified requirements, a wireless provider has the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, operate, modify, maintain, and replace utility poles along, across, on, and under a right-of-way. Subject to specified requirements and the applicant’s right to terminate at any time, a permit is valid for least 10 years, with an option of renewal at the applicant’s discretion. Except as provided in the bill, an authority may not prohibit, regulate, or impose a rate or fee for the collocation of small wireless facilities.

An authority may not require an applicant for a permit to:

- perform services or provide goods unrelated to the permit, including reserving fiber, conduit, or utility pole space for the authority;
- provide information in addition to that required of communications service providers other than wireless providers;

- place small wireless facilities on a specific utility pole or category of utility poles or place multiple antenna systems on a single utility pole; or
- place small wireless facilities a certain minimum distance apart in order to limit the placement of small wireless facilities.

An authority may deny an application for a permit to collocate a small wireless facility or for the installation, modification, or replacement of a utility pole only if the subject of the application meets specified criteria.

The bill also specifies limitations on liability and generally authorizes an authority to require a wireless provider to carry insurance and/or a surety bond, subject to specified requirements.

Fees

An authority may not require a wireless provider to pay any rate, fee, or other compensation to the authority or any other person except as authorized by the bill for:

- the right to use or occupy a right-of-way;
- the collocation of small wireless facilities on utility poles in a right-of-way; or
- the installation, maintenance, modification, operation, or replacement of utility poles in a right-of-way.

An application fee for a permit for the collocation of small wireless facilities on existing or replacement authority utility poles may be no more than \$500 for a single up-front application that includes up to five small wireless facilities, with an additional \$100 for each small wireless facility beyond the initial five on the same application. The application fee for the installation, modification, or replacement of a utility pole together with the collocation of an associated small wireless facility may be no more than \$1,000 per utility pole. A rate for the occupancy of a right-of-way may be no more than \$20 per year for each small wireless facility. A rate for the collocation of a small wireless facility attached to an authority utility pole must be set at \$100 per year for each small wireless facility connected to an authority utility pole.

Facility Abandonment

Generally, a wireless provider must notify the authority of abandonment of any small wireless facility at the time the decision to abandon is made and at least 30 days before abandonment. After receiving the notice, the authority may direct the wireless provider to remove all or any portion of the small wireless facility that the authority determines would

be in the best interest of the public safety and public welfare to remove. There are also provisions for facilities deemed abandoned.

Applicability of Federal Law

The bill may not be construed or interpreted to (1) authorize any person to provide cable services that are regulated under federal law without complying with all laws applicable to those services and providers or (2) impose any new requirements on cable providers for the provision of cable service in the State.

District Court Jurisdiction over Disputes

The District Court has jurisdiction over any dispute arising under the bill. The court must adjudicate a case arising from a dispute within 180 days after the complaint or petition is filed.

Current Law/Background: As demand for high speed Internet access has increased, wireless providers are seeking new ways to meet this demand. One method used by wireless providers to increase network speed and density is through the deployment of small wireless facilities. Small wireless facilities include antennas and poles of various sizes and heights.

However, this desire to meet customer demands for faster, more accessible, and more reliable high speed Internet service and the general lack of a regulatory framework at the State level, in many instances, has led to conflict between the wireless industry and local governments. One such conflict is over the use of public rights-of-way and publicly owned property and equipment. The wireless industry has argued that they should have access to local rights-of-way and locally owned equipment as the infrastructure is already in place for the siting of small wireless facilities. Local governments, on the other hand, have argued the need to have systems in place to allow for uniformity in siting, design, permitting, and maintenance of these wireless facilities. Local jurisdictions typically have this jurisdiction over other users of local rights-of-way, including telecommunications companies and cable television providers.

Several states have enacted legislation limiting local control of the permitting and siting process for small wireless facilities. There are similar components shared in the legislation of these states, including (1) expedited application processing; (2) limited or capped fees for applications and for the use of rights-of-way; (3) presumed application approvals and limitations on denying applications; and (4) limitations or prohibitions on zoning for new equipment, including poles.

The 2019 [report](#) by the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service discusses many of these and other related issues.

State Fiscal Effect: The bill's permitting/installation requirements affect State finances in several ways. The direction and magnitude of the effect depends on a variety of factors, including the number of wireless providers that choose to install wireless facilities on State rights-of-way and the associated State costs paid and revenues received as a result of the installations. The net effect cannot be reliably estimated, but is likely significant, particularly due to the fee limitations, permit approval times, and the general prioritization of wireless facility installations. For example, the Maryland Department of Transportation, which is responsible for a significant amount of State rights-of-way, advises that the bill creates conflicts with its existing resource sharing agreements and related uses of its rights-of-way, including permitting timelines and associated fees.

The effect on the District Court is likewise unknown; however, barring a significant number of cases, the overall effect is likely absorbable within existing budgeted resources.

Local Fiscal Effect: The bill affects local revenues and expenditures in several ways. The actual effect varies by local jurisdiction and depends on a variety of factors, including the number of wireless providers operating in a jurisdiction, the number of permits that may be applied for, and the number of small wireless facilities that may be located in a jurisdiction. The actual effect on local revenues and expenditures cannot be reliably estimated; however, in some jurisdictions, the effect is likely significant. The effects are made more significant by the bill's general preemption of local zoning authority, fee setting authority, and limitations on wireless provider liability.

Montgomery County advises, for example, that the bill's fee limitations reduce county revenues by more than \$1.7 million annually in the out-years.

Additional Information

Prior Introductions: None.

Cross File: SB 937 (Senator Klausmeier) - Rules.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Office of People's Counsel; Montgomery County; Maryland Municipal League; Department of Legislative Services

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Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510