



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Brian Malachowsky

### **H.B. 478\***

132nd General Assembly  
(As Introduced)

Reps. LaTourette and R. Smith

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## **BILL SUMMARY**

### **Small-cell facilities in the municipal public way**

- Replaces micro wireless facilities with "small cell facilities" (see **Definition changes**) regarding the municipal public way usage law and makes various other changes to that law.

### **Municipal public way usage state policy changes**

- Changes municipal public way usage state policy to do the following:
  - Require Ohioans to comply with consistent and nondiscriminatory rules pertaining to occupancy and use of the "public way" (see **Definition changes**), compliance with "OMUTCD" (see **Definition changes**), and to set forth rules of conduct for public utilities generally in seeking to occupy and use the public ways;
  - Promote the rapid deployment of small cell facility infrastructure and related capital investment in Ohio by ensuring that municipal corporations grant or deny consent to install, operate, modify, or replace wireless facilities in a timely manner;
  - Protect the integrity of residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.

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\* This analysis was prepared before the introduction of the bill appeared in the House Journal. Note that the legislative history and sponsorship may be incomplete.

- Changes the municipal public way usage policy seeking to *expedite* the installation and operation of small cell facilities in order to facilitate the deployment of advanced wireless service throughout Ohio to seeking to *foster partnerships to expedite* such installation and operation.

### **Small-cell facilities/wireless support structures**

- Provides that small cell facility "collocation" and "wireless support structure" (see **Definition changes**) construction, maintenance, modification, operation, or replacement in, along, across, upon, an under the public way is not subject to zoning review or approval.
- Requires a small cell facility "operator" (see **Definition changes**) to comply with generally applicable standards that are consistent with the municipal public way law and adopted by a municipal corporation for construction and public safety in a public way.
- Requires all structures and facilities to be constructed and maintained to not impede or impair public safety or legal use of the public way.
- Requires a municipal corporation to permit collocation of a small cell facility to a wireless support structure owned and operated by the corporation and located in the public way, provided the operator meets certain conditions and requirements for collocation, replacement, and modification.

### **Consent for placement**

- Requires a municipal corporation to grant or deny the following requests for consent to do the following in a municipal public way not later than:
  - 90 days, to collocate small cell facilities on a wireless support structure;
  - 90 days, to replace or modify a small cell facility on a wireless support structure; or
  - 120 days, to construct, modify, or replace a wireless support structure associated with a small cell facility.
- Eliminates from R.C. 4939.031(B) the language relating to an entity filing a completed request for consent "for any of the" actions described above (collocation,

construction, modification, or replacement) and instead requires the filing "under" those actions.<sup>1</sup>

- Subjects the approval for a request to replace or modify a small cell facility on a wireless support structure to the condition "if consent is required under this section" (despite consent appearing to be expressly required under R.C. 4939.031).
- Provides that failure to timely grant or deny a small cell facility or "work permit" (see **Definition changes**) request within the time periods described above, if the time period is not tolled, results in the request being deemed approved on the requesting entity providing notice to the municipal corporation that the time period has lapsed.
- Prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the municipal public way, other than, when applicable under the bill, a work permit is required.

### **Tolling of municipal corporation consent time period**

- Alters the consent-tolling time periods regarding a large number of requests made in a 30-day period by allowing the municipal corporation to toll the period according to complex, intricate standards using a 21-day tolling period apparently applied according to the corporation's population and the number of requests.
- Provides for an extension of the 21-day tolling period by 15 days depending on the number of requests.
- Maintains a maximum 90-day tolling limit regarding any consent request.
- Requires a municipal corporation, on request, to provide an operator written notice of the time limit for a specific consent request.

### **Consolidated applications**

- Establishes a cap of 30 small cell facilities or wireless support structure requests for a single consolidated application.
- Limits a consolidated application to substantially the same type of small cell facilities or wireless support structures.

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<sup>1</sup> Because it is unclear how a person can file a request for consent "under" to collocate, construct, modify, or replace, this could be misinterpreted and may need clarification.

- Permits a municipal corporation to separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.
- Permits a municipal corporation to reduce the fee for a consolidated application, to encourage persons to submit them.
- Provides that each small cell facility or wireless support structure constitutes a separate request for consent, for the purpose of the tolling schedule.

### **Limitations on municipal corporation authority**

- Repeals a provision that generally prohibited a municipal corporation from evaluating a request based on the availability of other potential facility locations.
- Repeals a provision limiting a municipal corporation's ability to impose requirements for bonds, escrow deposits, letters of credit, or other financial surety to ensure removal of abandoned or unused facilities.
- Repeals a provision prohibiting a municipal corporation from imposing unreasonable requirements for maintenance or appearance of facilities.
- Repeals a provision that prohibited a municipal corporation from limiting the duration of a permit that was granted.
- Repeals a provision that permitted a municipal corporation to require that construction commence within two years.
- Makes other changes to the limitations and prohibitions imposed on municipal corporations regarding the provision of small cell facilities and wireless support structures in the municipal public way.<sup>2</sup>

### **Expansion of municipal corporation authority**

- Permits municipal corporations to do the following regarding placement of small cell facilities and wireless support structures in the municipal public way:
  - Reserve municipal public way space or space on a municipally-owned wireless support structure or pole for future public safety or transportation uses, in accordance with an approved plan, if it does not preclude placement of a pole or collocation of a small cell facility.

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<sup>2</sup> The bill contains R.C. 4939.04 but does not amend that section. A technical amendment should be drafted to remove the section from the bill.

- Require reasonable and nondiscriminatory spacing requirement for new wireless support structure by ordinance, local rule, or design guidelines.
- Adopt reasonable design guidelines with objective, technically feasible criteria reasonably matching the aesthetics and character of the immediate area and apply them in a nondiscriminatory manner.
- Propose alternate locations for proposed wireless support structures consistent with certain distance requirements in the bill.
- Require collocation or a new wireless support structure to be completed within 180 days after issuance of a permit, with certain exception and extensions permitted under the bill.
- Set certain restrictions as provided in the bill for the height of a wireless support structure and the placement of a "wireless facility."
- Require an operator to comply with reasonable and nondiscriminatory requirements prohibiting structures and facilities due to an area requiring undergrounding or requiring them to be placed elsewhere.
- Require reasonable, technically feasible, and nondiscriminatory design or concealment methods in a "historic district" (see **Definition changes**).
- Resolve conflicting requests for installation due to spacing, setback, or fall zone requirements through a reasonable and nondiscriminatory manner deemed appropriate by the municipal corporation.
- Impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of "abandoned" (see **Definition changes**) or unused wireless facilities or damage to municipal property caused by an operator or its "agent" (see **Definition changes**).

## Fees

- Limits the fee imposed for granting of processing an application for consent for placement in a municipal public way to a one-time fee not to exceed \$250 per small cell facility.<sup>3</sup>

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<sup>3</sup> R.C. 4939.0316 specifies this fee is charged pursuant to R.C. 4939.031, but that section imposes no fee.

- Limits the amount a municipal corporation may charge annually for attachment to a municipally-owned wireless support structure to an amount not to exceed \$200 per small cell facility.
- Permits the municipal corporation to adjust the above amounts by 10% every five years, rounded to the nearest five dollars.
- Prohibits a municipal corporation from charging any fees other than those described above and, as described in the bill, work permit fees and financial sureties.
- Provides that the placement or attachment of small cell facilities and any associated fees, do not subject a municipal corporation to state or local tax liabilities or assessments.
- Permits an operator to stop paying annual charges or fees if the operator removes its small cell facility from a municipally-owned wireless support structure.

### **Other municipal public way changes**

- Provides that the approval term for an attachment to a wireless support structure is at least 10 years, with a presumption of renewal for successive five-year terms, except as terminated under conditions and requirements described in the bill.
- Permits an operator to remove its small cell facilities at any time.
- Requires a person who owns or operates small cell facilities or wireless support structures in the public way to indemnify, protect, defend, and hold the municipal corporation and its elected officials, officers, employees, and volunteers harmless to the extent that the harm is caused by the negligence of the owner or operator of the small cell facility and wireless service in the public way.
- Provides that consent is not required for the replacement of wireless with wireless facilities that are consistent with the municipal corporation's current design guidelines and that are substantially similar to, and of the same size or smaller than, the existing facilities.
- Provides that nothing in the municipal public way law affects the need for an operator seeking to collocate a small cell facility on a public-utility-owned utility pole to obtain authority to collocate from that "public utility" (see **Definition changes**).
- Permits a person to construct, modify, or maintain a "utility pole" (see **Definition changes**) or wireless support structure along, across, and under a public way in

excess of the size limits, to the extent permitted by the municipal corporation's applicable regulations.

- Requires an operator, on request of a municipal corporation, and in order to accomplish construction or maintenance directly related to health, safety, and public welfare improvement, to relocate or adjust its facilities in the municipal public way at no cost to the corporation if the request is not discriminatory.

## **Definition changes**

- Creates the following new definitions:
  - "Abandoned" means any small cell facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the municipal corporation and receiving the municipal corporation's approval.
  - "Agent" means a person that provides a municipal corporation written authorization to work on behalf of a public utility.
  - "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure or utility pole.
  - "Decorative poles" are structures, other than street lights, placed in the public way specifically designed and placed for aesthetic purposes and on which there are limited attachments.
  - "Historic district" means a building, property, or site, or group of buildings, properties, or sites that are either (1) listed or formally determined to be eligible to be listed in the National Register of Historic Places, or (2) a Registered Historic District under Ohio law.
  - "OMUTCD" means the uniform system of traffic control devices promulgated by the Ohio Department of Transportation under Ohio law.
  - "Small cell facility operator" or "operator" means a wireless service provider, cable operator, or their agents, that operate a small cell facility and provide wireless service, information services, or services that are fixed in nature of use unlicensed spectrum.
  - "Work permit" is issued by a municipal corporation and must be obtained in order to perform any work in, on, above, within, over, below, under, or

through any part of a public way, including, for example, digging, obstructing, or installing.

- Amends the following current law definitions as described below:
  - "Public utility" means companies defined as public utilities under Ohio's public utility laws, electric suppliers, and, as amended by the bill, wireless service providers.
  - "Public way" means the surface of, and space within, through, on, across, above, or below public ways such as streets, roads, and paths, and is amended by the bill to include public easements.
  - "Small cell facility" is amended to remove the 50-foot height limitation (if the facility were placed on a wireless support structure) so that the term is defined to mean a wireless facility that:
    - Has antenna in an enclosure not exceeding six cubic feet in volume or, in case of an antenna with exposed elements, the antenna and its elements could fit within such an enclosure; and
    - Has associated wireless equipment (excluding such items as electric meters and power connections) that is cumulatively not more than 28 cubic feet in volume.
  - "Utility pole" is amended to mean a structure designed for or used to carry lines, cables, or wires for electric distribution or telecommunications service and excludes street signs and decorative poles.
  - "Wireless facility" means, as amended by the bill:
    - Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications;
    - Radio transceivers, antennas, cables, power supplies, and comparable equipment;
    - Small cell facilities; and
    - Excludes the structure or improvements on, under, or within which the equipment is collocated; and cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

- "Wireless support structure" means, as amended by the bill, a pole, street light pole, traffic signal pole, a 15-foot or taller sign pole, or utility pole capable of supporting small cell facilities, and excludes a utility pole or other facility:
  - Owned or operated by a municipal electric utility; or
  - Used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.
- Repeals the definitions for "accessory equipment," "distributed antenna system," "micro wireless facility," and "micro wireless facility operator" in conjunction with the bill's change of focus to small cell facilities and makes conforming changes to other amendments to address the repeal definitions.

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