

**As Reported by the House Government Accountability and Oversight  
Committee**

**132nd General Assembly**

**Regular Session  
2017-2018**

**Sub. H. B. No. 478**

**Representatives Smith, R., LaTourette**

**Cosponsors: Representatives Becker, Blessing, Boggs, Carfagna, Celebrezze,  
Duffey, Faber, Gavarone, Hambley, Koehler, Lang, Lipps, Miller, Patton, Pelanda,  
Perales, Reineke, Rezabek, Romanchuk, Schaffer, Seitz, Sykes, Thompson, West**

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**A BILL**

To amend sections 4939.01, 4939.02, 4939.03, 1  
4939.031, 4939.035, 4939.038, 4939.0311, 2  
4939.0313, 4939.0315, 4939.0319, 4939.0325, and 3  
4939.08; to amend, for the purpose of adopting 4  
new section numbers as indicated in parentheses, 5  
sections 4939.035 (4939.036), 4939.038 6  
(4939.037), 4939.039 (4939.038), 4939.0313 7  
(4939.0312), 4939.0315 (4939.0313), 4939.0317 8  
(4939.0315), 4939.0319 (4939.0316), 4939.0325 9  
(4939.0322), and 4939.0327 (4939.0323) and to 10  
enact new sections 4939.039 and 4939.0317 and 11  
sections 4939.0314, 4939.0329, and 4939.09, and 12  
to repeal sections 4939.032, 4939.033, 4939.037, 13  
and 4939.0321 of the Revised Code to modify the 14  
law regarding wireless service and the placement 15  
of small cell wireless facilities in the public 16  
way. 17

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4939.01, 4939.02, 4939.03, 18  
4939.031, 4939.035, 4939.038, 4939.0311, 4939.0313, 4939.0315, 19  
4939.0319, 4939.0325, and 4939.08 be amended; sections 4939.035 20  
(4939.036), 4939.038 (4939.037), 4939.039 (4939.038), 4939.0313 21  
(4939.0312), 4939.0315 (4939.0313), 4939.0317 (4939.0315), 22  
4939.0319 (4939.0316), 4939.0325 (4939.0322), and 4939.0327 23  
(4939.0323) be amended for the purpose of adopting new section 24  
numbers as indicated in parentheses; and new sections 4939.039 25  
and 4939.0317 and sections 4939.0314, 4939.0329, and 4939.09 of 26  
the Revised Code be enacted to read as follows: 27

**Sec. 4939.01.** As used in sections 4939.01 to ~~4939.08~~ 28  
4939.09 of the Revised Code: 29

(A) ~~"Accessory equipment" means any equipment used in~~ 30  
~~conjunction with a wireless facility or wireless support~~ 31  
~~structure. "Accessory equipment" includes utility or~~ 32  
~~transmission equipment, power storage, generation or control~~ 33  
~~equipment, cables, wiring, and equipment cabinets. "Abandoned"~~ 34  
means any small cell facilities or wireless support structures 35  
that are unused for a period of three hundred sixty-five days 36  
without the operator otherwise notifying the municipal 37  
corporation and receiving the municipal corporation's approval. 38

(B) "Agent" means a person that provides a municipal 39  
corporation written authorization to work on behalf of a public 40  
utility. 41

(C) "Antenna" means communications equipment that 42  
transmits or receives radio frequency signals in the provision 43  
of wireless service, ~~including associated accessory equipment.~~ 44

~~(C)~~ (D) "Cable operator," "cable service," and "franchise" 45  
have the same meanings as in the "Cable Communications Policy 46

Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522. 47

~~(D) "Distributed antenna system" means a network or facility to which all of the following apply:~~ 48  
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~~(1) It distributes radio frequency signals to provide wireless service.~~ 50  
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~~(2) It meets the height and size characteristics of a small cell facility.~~ 52  
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~~(3) It consists of all of the following:~~ 54

~~(a) Remote antenna nodes deployed throughout a desired coverage area;~~ 55  
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~~(b) A high capacity signal transport medium connected to a central hub site;~~ 57  
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~~(c) Equipment located at the hub site to process or control the radio frequency signals through the antennas.~~ 59  
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~~(4) It conforms to the size limitations specified in division (N) of this section.~~ 61  
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(E) "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure. 63  
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(F) "Decorative pole" means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: 66  
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(1) Electric lighting; 71

(2) Specially designed informational or directional signage; 72  
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<u>(3) Temporary holiday or special event attachments.</u>	74
<u>(G) "Eligible facilities request" has the same meaning as</u> in 47 U.S.C. 1455(a) (2).	75 76
<del>(F) "Micro wireless facility" includes both a distributed- antenna system and a small cell facility, and the related wireless facilities.</del>	77 78 79
<del>(G) "Micro wireless facility operator" means a public utility or cable operator that operates a micro wireless facility.</del>	80 81 82
<u>(H) "Historic district" means a building, property, or site, or group of buildings, properties, or sites that are either of the following:</u>	83 84 85
<u>(1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;</u>	86 87 88 89 90 91 92
<u>(2) A registered historic district as defined in section 149.311 of the Revised Code.</u>	93 94
<u>(I) "Micro wireless facility" means a small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.</u>	95 96 97 98 99
<u>(J) "Municipal electric utility" has the same meaning as in section 4928.01 of the Revised Code.</u>	100 101

~~(I)~~ (K) "OMUTCD" means the uniform system of traffic control devices promulgated by the department of transportation pursuant to section 4511.09 of the Revised Code. 102  
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(L) "Occupy or use" means, with respect to a public way, 105  
to place a tangible thing in a public way for any purpose, 106  
including, but not limited to, constructing, repairing, 107  
positioning, maintaining, or operating lines, poles, pipes, 108  
conduits, ducts, equipment, or other structures, appurtenances, 109  
or facilities necessary for the delivery of public utility 110  
services or any services provided by a cable operator. 111

~~(J)~~ (M) "Person" means any natural person, corporation, or 112  
partnership and also includes any governmental entity. 113

~~(K)~~ (N) "Public utility" means a wireless service provider as defined in division (A)(20) of section 4927.01 of the Revised Code or any company described in section 4905.03 of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code. 114  
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~~(L)~~ (O) "Public way" means the surface of, and the space 121  
within, through, on, across, above, or below, any public street, 122  
public road, public highway, public freeway, public lane, public 123  
path, public alley, public court, public sidewalk, public 124  
boulevard, public parkway, public drive, public easement, and 125  
any other land dedicated or otherwise designated for a 126  
compatible public use, which, on or after July 2, 2002, is owned 127  
or controlled by a municipal corporation. "Public way" excludes 128  
a private easement. 129

~~(M)~~ (P) "Public way fee" means a fee levied to recover the 130

costs incurred by a municipal corporation and associated with 131  
the occupancy or use of a public way. 132

~~(N)(Q)~~ "Small cell facility" means a wireless facility 133  
that meets both of the following requirements ~~of division (N)(1)~~ 134  
~~of this section and also division (N)(2) of this section:~~ 135

(1) ~~(a)~~ Each antenna is located inside an enclosure of not 136  
more than six cubic feet in volume or, in the case of an antenna 137  
that has exposed elements, the antenna and all of its exposed 138  
elements could fit within an enclosure of not more than six 139  
cubic feet in volume. 140

~~(b)(2)~~ All other wireless equipment associated with the 141  
facility is cumulatively not more than twenty-eight cubic feet 142  
in volume. The calculation of equipment volume shall not include 143  
electric meters, concealment elements, telecommunications 144  
demarcation boxes, grounding equipment, power transfer switches, 145  
cut-off switches, and vertical cable runs for the connection of 146  
power and other services. 147

~~(2)~~ ~~If the wireless facility were placed on a wireless~~ 148  
~~support structure, the increased height would be not more than~~ 149  
~~ten feet or the overall resulting height would be not more than~~ 150  
~~fifty feet.~~ 151

~~(O)(R)~~ "Small cell facility operator" or "operator" means 152  
a wireless service provider, or its designated agent, or cable 153  
operator, or its designated agent, or a video service provider, 154  
or its designated agent, that operates a small cell facility and 155  
provides wireless service as defined in division (V) of section 156  
4939.01 of the Revised Code. For the purpose of this chapter, 157  
"operator" includes a wireless service provider, cable operator, 158  
or a video service provider that provides information services 159

as defined in the "Telecommunications Act of 1996," 110 Stat. 160  
59, 47 U.S.C. 153(20), and services that are fixed in nature or 161  
use unlicensed spectrum. 162

(S) "Utility pole" means a structure that is designed for, 163  
or used for the purpose of, carrying lines, cables, or wires for 164  
electric or telecommunications service. "Utility pole" excludes 165  
street signs and decorative poles. 166

~~(P)~~(T) "Video service provider" has the same meaning as 167  
in section 1332.21 of the Revised Code. 168

(U) (1) "Wireless facility" means ~~an antenna, accessory 169~~  
equipment, or other wireless device or equipment used to provide 170  
wireless service. 171

~~(Q)~~ at a fixed location that enables wireless 172  
communications between user equipment and a communications 173  
network, including all of the following: 174

(a) Equipment associated with wireless communications; 175

(b) Radio transceivers, antennas, coaxial or fiber-optic 176  
cable, regular and backup power supplies, and comparable 177  
equipment, regardless of technological configuration. 178

(2) The term includes small cell facilities. 179

(3) The term does not include any of the following: 180

(a) The structure or improvements on, under, or within 181  
which the equipment is collocated; 182

(b) Coaxial or fiber-optic cable that is between wireless 183  
support structures or utility poles or that is otherwise not 184  
immediately adjacent to or directly associated with a particular 185  
antenna. 186

(V) "Wireless service" means any services using licensed 187  
or unlicensed wireless spectrum, whether at a fixed location or 188  
mobile, provided to the public using wireless facilities. 189

~~(R)~~(W) "Wireless service provider" means a person who 190  
provides wireless service as defined in division (A) (20) of 191  
section 4927.01 of the Revised Code. 192

(X) "Wireless support structure" means a pole, such as a 193  
monopole, either guyed or self-supporting, street light pole, 194  
traffic signal pole, a fifteen-foot or taller sign pole, or 195  
utility pole capable of supporting wireless-small cell 196  
facilities. As used in section 4939.031 of the Revised Code this 197  
chapter, "wireless support structure" excludes a-all of the 198  
following: 199

(1) A utility pole or other facility owned or operated by 200  
a municipal electric utility; 201

(2) A utility pole or other facility used to supply 202  
traction power to public transit systems, including railways, 203  
trams, streetcars, and trolleybuses. 204

(Y) "Wireline backhaul facility" is a facility used for 205  
the transport of communications service or any other electronic 206  
communications by coaxial, fiber-optic cable, or any other wire. 207

(Z) "Work permit" means a permit issued by a municipal 208  
corporation that must be obtained in order to perform any work 209  
in, on, above, within, over, below, under, or through any part 210  
of the public way, including, but not limited to, the act or 211  
process of digging, boring, tunneling, trenching, excavating, 212  
obstructing, or installing, as well as the act of opening and 213  
cutting into the surface of any paved or improved surface that 214  
is part of the public way. 215

<b>Sec. 4939.02.</b> (A) It is the public policy of this state to	216
do all of the following:	217
(1) Promote the public health, safety, and welfare	218
regarding access to and the occupancy or use of public ways, to	219
protect public and private property, and to promote economic	220
development in this state;	221
(2) Promote the availability of a wide range of utility,	222
communication, and other services to residents of this state at	223
reasonable costs, including the rapid implementation of new	224
technologies and innovative services;	225
(3) <u>Promote the rapid deployment of small cell facility</u>	226
<u>infrastructure and related capital investment in this state by</u>	227
<u>ensuring that municipal corporations grant or deny consent to</u>	228
<u>install, operate, modify, or replace wireless facilities in a</u>	229
<u>timely manner;</u>	230
(4) Ensure that access to and occupancy or use of public	231
ways advances the state policies specified in sections 4927.02,	232
4928.02, and 4929.02 of the Revised Code;	233
<del>(4)</del> (5) Recognize the authority of a municipal corporation	234
to manage access to and the occupancy or use of public ways to	235
the extent necessary with regard to matters of local concern,	236
and to receive cost recovery for the occupancy or use of public	237
ways in accordance with law;	238
<del>(5)</del> (6) Ensure in accordance with law the recovery by a	239
public utility of public way fees and related costs;	240
<del>(6)</del> (7) Promote coordination and standardization of	241
municipal management of the occupancy or use of public ways, to	242
enable efficient placement and operation of structures,	243
appurtenances, or facilities necessary for the delivery of	244

public utility or cable services;	245
<del>(7)</del> <u>(8)</u> Encourage agreement among parties regarding public way fees and regarding terms and conditions pertaining to access to and the occupancy or use of public ways, and to facilitate the resolution of disputes regarding public way fees;	246 247 248 249
<del>(8) Expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state</del> <u>(9)</u> <u>Protect the integrity of the residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.</u>	250 251 252 253 254 255
(B) This policy establishes fair terms and conditions for the use of public ways and does not unduly burden persons occupying or using public ways or persons that benefit from the services provided by such occupants or users.	256 257 258 259
<b>Sec. 4939.03.</b> (A) No person shall occupy or use a public way except in accordance with law.	260 261
(B) In occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.	262 263
(C) (1) No person shall occupy or use a public way without first obtaining, under this section or section 1332.24 or 4939.031 of the Revised Code, any requisite consent of the municipal corporation owning or controlling the public way.	264 265 266 267
(2) Except as otherwise provided in division (C) <del>(5)</del> <u>(6)</u> of this section and sections 4939.031 and <del>4939.035</del> <u>4939.036</u> of the Revised Code, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent.	268 269 270 271 272

(3) A municipal corporation shall not unreasonably withhold or deny consent.

(4) If a request by a person for consent is denied, the municipal corporation shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent. If a request for consent is denied for an activity described in section 4939.031 of the Revised Code, the reasons required under this division shall be supported by substantial, competent evidence and the denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(5) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(6) Initial consent for occupancy or use of a public way shall be conclusively presumed for all lines, poles, pipes, conduits, ducts, equipment, or other appurtenances, structures, or facilities of a public utility or cable operator that, on July 2, 2002, lawfully so occupy or use a public way. However, such presumed consent does not relieve the public utility or cable operator of compliance with any law related to the ongoing occupancy or use of a public way.

**Sec. 4939.031.** (A) Subject to section 4939.0314 of the Revised Code and approval of an application under this section,

an operator may, as a permitted use not subject to zoning review 303  
or approval, collocate a small cell facility and construct, 304  
maintain, modify, operate, or replace wireless support 305  
structures in, along, across, upon, and under the public way. An 306  
operator shall comply with generally applicable standards that 307  
are consistent with this chapter and adopted by a municipal 308  
corporation for construction and public safety in a public way. 309  
All structures and facilities shall be constructed and 310  
maintained so as not to impede or impair public safety or the 311  
legal use of the public way by the municipal corporation, the 312  
traveling public, or other public utilities. 313

(B) A municipal corporation, not later than ninety days 314  
after the date of filing by an entity of a completed request for 315  
consent for any of the following, under divisions (B) (1) and (2) 316  
of this section or one hundred twenty days under division (B) (3) 317  
of this section to be done in a public way, shall, subject 318  
to sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 319  
4939.0319 of the Revised Code this chapter, grant or deny its 320  
consent to: 321

(1) Attaching micro wireless- Collocate small cell 322  
facilities to on a wireless support structure; 323

(2) Locating two or more wireless service providers' micro- 324  
wireless facilities on the same wireless support structure; 325

(3) Replacing or modifying a micro wireless- Replace or 326  
modify a small cell facility on a wireless support structure, if 327  
consent is required under this section; 328

(4) Constructing, modifying, or replacing (3) Construct, 329  
modify, or replace a wireless support structure associated with 330  
a micro wireless- small cell facility. 331

~~(B)~~ (C) If a municipal corporation fails to approve or 332  
deny a request for consent under this section or a request for a 333  
relevant work permit within the required time period, provided 334  
the time period is not tolled under section 4939.036 of the 335  
Revised Code, the request shall be deemed granted upon the 336  
requesting entity providing notice to the municipal corporation 337  
that the time period for acting on the request has lapsed. 338

(D) Except as provided in this chapter as well as any 339  
franchise, pole attachment, or other agreements between a 340  
municipal corporation and a cable operator or public utility, a 341  
municipal corporation shall not require any zoning or other 342  
approval, consent, permit, certificate, or condition for the 343  
construction, replacement, location, attachment, or operation of 344  
a ~~micro wireless~~ small cell facility in the public way, or 345  
otherwise prohibit or restrain the activities as described in 346  
this section, except as otherwise provided in division (B) of 347  
section 4939.0311 of the Revised Code. 348

**Sec. ~~4939.035~~ 4939.036.** (A) The ~~ninety-day~~ time period 349  
required in section 4939.031 of the Revised Code may be tolled 350  
only: 351

(1) By mutual agreement between the entity requesting 352  
consent and the municipal corporation; 353

(2) In cases where the municipal corporation determines 354  
that the application is incomplete; or 355

(3) By the municipal corporation in the event it has an 356  
extraordinary number of wireless facilities contained in pending 357  
requests, in which case If the number of requests for consent 358  
for small cell facilities or wireless support structures 359  
received is likely to result in difficulty processing 360

applications within the time limits set forth in section 361  
4939.031 of the Revised Code due to the lack of resources of the 362  
municipal corporation, then the municipal corporation may toll 363  
the ninety day period for a reasonable amount of days not 364  
exceeding an additional ninety days time limits as follows: 365

(a) The time period may be tolled for up to twenty-one 366  
days for the first fifteen small cell facility or wireless 367  
support structure requests received by a municipal corporation 368  
above the thresholds provided in divisions (A)(3)(a)(i) to (v) 369  
of this section and for the first thirty small cell facility or 370  
wireless support structure requests received by a municipal 371  
corporation above the thresholds provided in division (A)(3)(a) 372  
(vi) of this section, within any consecutive thirty-day period: 373

(i) For a municipal corporation having a population of 374  
thirty thousand persons or less when it receives applications 375  
for at least fifteen small cell facility or wireless support 376  
structure requests; 377

(ii) For a municipal corporation having a population of 378  
thirty thousand one to forty thousand persons when it receives 379  
applications for at least twenty small cell facility or wireless 380  
support structure requests; 381

(iii) For a municipal corporation having a population of 382  
forty thousand one to fifty thousand persons when it receives 383  
applications for at least twenty-five small cell facility or 384  
wireless support structure requests; 385

(iv) For a municipal corporation having a population of 386  
fifty thousand one to sixty thousand persons when it receives 387  
applications for at least thirty small cell facility or wireless 388  
support structure requests; 389

(v) For a municipal corporation having a population of 390  
sixty thousand one to one hundred thousand persons when it 391  
receives applications for at least sixty small cell facility or 392  
wireless support structure requests; 393

(vi) For a municipal corporation having a population of 394  
one hundred thousand one persons or more when it receives 395  
applications for at least ninety small cell facility or wireless 396  
support structure requests. 397

(b) Further, for every additional fifteen requests that 398  
the municipal corporation receives above the thresholds provided 399  
in divisions (A)(3)(a)(i) to (v) of this section, and every 400  
additional thirty requests that the municipal corporation 401  
receives above the threshold provided in division (A)(3)(a)(vi) 402  
of this section within any consecutive thirty-day period, the 403  
municipal corporation may toll the time period for those 404  
requests for up to fifteen days in addition to the time period 405  
provided in division (A)(3)(a) of this section. 406

(c) In no instance shall a municipal corporation toll the 407  
time period for any small cell facility or wireless support 408  
structure request by more than ninety consecutive days. Upon 409  
request, a municipal corporation shall provide an operator 410  
written notice of the time limit for a small cell facility or 411  
wireless support structure request. 412

(B) To toll the time period for incompleteness, the 413  
municipal corporation shall provide written notice to the ~~entity~~ 414  
person requesting consent not later than thirty days after 415  
receiving the request, clearly and specifically delineating all 416  
missing documents or information. The missing documents or 417  
information shall be reasonably related to determining whether 418  
the request meets the requirements of applicable federal and 419

state law. Any notice of incompleteness requiring other 420  
information or documentation, including information of the type 421  
described in section ~~4939.0315~~ 4939.0313 of the Revised Code or 422  
documentation intended to illustrate the need for the request or 423  
to justify the business decision for the request, does not toll 424  
the time period. 425

(C) The time period ~~begins running again~~ resumes when the 426  
entity makes a supplemental submission in response to the 427  
municipal corporation's notice of incompleteness. 428

(D) If a supplemental submission is inadequate, the 429  
municipal corporation shall notify the entity not later than ten 430  
days after receiving the supplemental submission that the 431  
supplemental submission did not provide the information 432  
identified in the original notice delineating missing documents 433  
or information. The time period may be tolled in the case of 434  
second or subsequent notices under the procedures identified in 435  
divisions (A) to (C) of this section. Second or subsequent 436  
notices of incompleteness may not specify missing documents or 437  
information that ~~were was~~ not delineated in the original notice 438  
of incompleteness. 439

**Sec. ~~4939.038~~ 4939.037.** Nothing in this chapter precludes 440  
a municipal corporation from applying its generally applicable 441  
health, safety, and welfare regulations when granting consent 442  
for a ~~micro wireless~~ small cell facility or wireless support 443  
structure. 444

**Sec. ~~4939.039~~ 4939.038.** Notwithstanding sections 4939.031 445  
to 4939.037 of the Revised Code, a municipal corporation shall 446  
approve within sixty days, and may not deny, an eligible 447  
facilities request under 47 C.F.R. 1.40001. 448

Sec. 4939.039. Any operator who owns or operates small 449  
cell facilities or wireless support structures in the public way 450  
shall indemnify, protect, defend, and hold the municipal 451  
corporation and its elected officials, officers, employees, 452  
agents, and volunteers harmless against any and all claims, 453  
lawsuits, judgments, costs, liens, losses, expenses, fees to 454  
include reasonable attorney fees and costs of defense, 455  
proceedings, actions, demands, causes of action, liability and 456  
suits of any kind and nature, including personal or bodily 457  
injury or death, property damage or other harm for which 458  
recovery of damages is sought, to the extent that it is caused 459  
by the negligence of the operator who owns or operates small 460  
cell facilities and wireless service in the public way, any 461  
agent, officer, director, representative, employee, affiliate, 462  
or subcontractor of the operator, or their respective officers, 463  
agents, employees, directors, or representatives while 464  
installing, repairing, or maintaining facilities in a public 465  
way. 466

**Sec. 4939.0311.** (A) Consent of a municipal corporation 467  
shall not be required for either of the following activities 468  
conducted in the public way: 469

(1) Routine maintenance of wireless facilities; 470

(2) The replacement of wireless facilities with wireless 471  
facilities that are consistent with the municipal corporation's 472  
current design guidelines and that are either of the following: 473

(a) Substantially similar to the existing wireless 474  
facilities; 475

(b) The same size or smaller than the existing wireless 476  
facilities. 477

(B) A municipal corporation may require a work permit for 478  
~~an any activity~~ described in division (A) of this section and 479  
for any activity for which consent is authorized under section 480  
4939.031 of the Revised Code. Any such permit shall be subject 481  
to any applicable law in this chapter. 482

(C) Notwithstanding the amendments made to sections 483  
4939.01 to 4939.09 of the Revised Code by H.B. 478 of the 132nd 484  
General Assembly, a cable or video service provider shall not be 485  
required to obtain permits from a municipal corporation or to 486  
pay fees, with the exception of work permits and associated 487  
fees, to place, operate, maintain, or replace micro wireless 488  
facilities pursuant to an existing franchise or video service 489  
authorization under Chapter 1332. of the Revised Code; nor shall 490  
a holder of an existing franchise or video service authorization 491  
be required to obtain additional authorizations or to pay 492  
additional fees for the placement of micro wireless facilities 493  
already covered under an existing franchise or video service 494  
authorization under Chapter 1332. of the Revised Code. 495

(D) The permitting procedures and authorizations set forth 496  
in the amendments made to sections 4939.01 to 4939.09 of the 497  
Revised Code by H.B. 478 of the 132nd General Assembly shall 498  
apply only to the placement of small cell facilities and 499  
wireless support structures in the public way, and do not 500  
authorize the construction and operation of a wireline backhaul 501  
facility. 502

**Sec. ~~4939.0313~~ 4939.0312.** (A) ~~An entity~~ A municipal 503  
corporation shall permit a person seeking to construct, modify, 504  
collocate, or replace more than one ~~micro~~ small cell facility or 505  
more than one wireless facility support structure within the 506  
jurisdiction of a single municipal corporation ~~may to~~ file, at 507

the ~~entity's~~ person's discretion, a consolidated ~~request~~ request application for consent under ~~division (A)(4) of section~~ division (A)(4) of section 4939.031 of the Revised Code for up to thirty small cell facilities requests in a single application or up to thirty wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the micro wireless small cell facilities or associated wireless support structures. However, this single application may only address multiple small cell facilities or multiple wireless support structures if they each involve substantially the same type of small cell facilities or substantially the same type of wireless support structures. A municipal corporation may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(B) In the case of a consolidated ~~request~~ request application, the fees provided for in section ~~4927.0319~~ 4939.0316 of the Revised Code may be cumulative. However, a municipal corporation, at its discretion, may opt to reduce such fees in order to encourage persons to submit consolidated applications.

(C) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section 4939.036 of the Revised Code. A request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.

**Sec. ~~4939.0315~~ 4939.0313.** With respect to the provision of any ~~micro wireless~~ small cell facility or the associated

wireless support structure in a public way, a municipal 538  
corporation shall not do any of the following: 539

(A) Require ~~the requestor a person~~ to submit information 540  
about, or evaluate a ~~requestor's person's~~ business decisions 541  
with respect to, the ~~requestor's person's~~ service, customer 542  
demand, or quality of service to or from a particular area or 543  
site as a condition for approval of the request; 544

(B) Require ~~the requestor a person~~ to submit information 545  
about the need for the ~~micro wireless small cell~~ facility or the 546  
associated wireless support structure, including additional 547  
wireless coverage, capacity, or increased speeds, as a condition 548  
for approval of the request; 549

(C) Require ~~the requestor a person~~ to justify the need for 550  
the new ~~micro wireless small cell~~ facility or associated 551  
wireless support structure, or to submit business information, 552  
including strategy documents, propagation maps, or 553  
telecommunications traffic studies as a condition for approval 554  
of the request; 555

(D) ~~Evaluate the request based on the availability of~~ 556  
~~other potential locations for the placement of the micro~~ 557  
~~wireless facility or associated wireless support structure,~~ 558  
~~including the options to submit a request under division (A)(1)~~ 559  
~~or (2) of section 4939.031 of the Revised Code or under division~~ 560  
~~(A)(4) of that section to modify an existing micro wireless~~ 561  
~~facility or associated wireless support structure except that a~~ 562  
~~municipal corporation may propose an alternate location within~~ 563  
~~fifty feet of the proposed location, which the requestor shall~~ 564  
~~use if it has the right to use the alternate structure on~~ 565  
~~reasonable terms and conditions and the alternate location does~~ 566  
~~not impose technical limits or additional costs;~~ 567

~~(E)~~ Require the removal of existing wireless support structures or ~~wireless-small cell facilities~~, wherever located, as a condition for approval of the request, unless the existing wireless support structures or small cell facilities have been unused or abandoned. This division shall not preclude a municipal corporation from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless ~~facilities~~ facility.

~~(F)~~ (E) Impose restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the federal aviation administration;

~~(G)~~ ~~Impose requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;~~

~~(H)~~ (F) Unreasonably discriminate among providers of functionally equivalent services;

~~(I)~~ ~~Impose unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;~~

~~(J)~~ ~~Require that the requestor purchase, lease, or use~~ (G) Condition the grant of consent on the requirement that a person purchase or lease facilities, networks, or services owned or operated by the municipal corporation, in whole or in part, or owned or operated, in whole or in part, by any entity in which

the municipal corporation has an economic governance interest; 597

~~(K)~~ (H) Condition the grant of consent on the requestor's 598  
agreement to permit other wireless facilities to be placed at, 599  
attached to, or located on the associated wireless support 600  
structure; 601

~~(L)~~ Limit the duration of any permit that is granted, 602  
~~except that a municipal corporation may require that~~ 603  
~~construction commence within two years;~~ 604

~~(M)~~ (I) Impose setback or fall-zone requirements for the 605  
associated wireless support structure that are different from 606  
requirements imposed on other similar types of structures in the 607  
public way; 608

~~(N)~~ (J) Impose environmental testing, sampling, or 609  
monitoring requirements that exceed rules and regulations 610  
established under state or federal law or that are not imposed 611  
on other types of construction or elements of the construction; 612

~~(O)~~ (K) Impose any regulations pertaining to radio 613  
frequency emissions or exposure to such emissions that are 614  
contrary to or exceed rules of the federal communications 615  
commission; 616

~~(P)~~ Impose (L) Except as set forth in section 4939.0314 of 617  
the Revised Code, impose separation requirements that require 618  
any space to be maintained regarding spacing between an 619  
operator's facilities and other wireless facilities or, 620  
wireless support structures; 621

~~(Q)~~ Prevent the requestor from locating the micro wireless 622  
facility or wireless support structure in a residential area or 623  
within a specific distance from a residence or other structure, 624  
utility poles, ground-mounted equipment, or other utility 625

facilities within the public way. 626

Sec. 4939.0314. With respect to the placement of any small 627  
cell facility or wireless support structure in a public way, a 628  
municipal corporation may do any of the following: 629

(A) Reserve space for future public safety or 630  
transportation uses in the public way or on a wireless support 631  
structure or pole owned by a municipal corporation in a 632  
documented and approved plan in place at the time an application 633  
is filed. A reservation of space shall not preclude placement of 634  
a pole or collocation of a small cell facility. If replacement 635  
of the municipal corporation's pole or wireless support 636  
structure is necessary to accommodate the collocation of the 637  
small cell facility and the future use, the operator shall pay 638  
for the replacement of the pole or wireless support structure, 639  
and the replaced pole or wireless support structure must 640  
accommodate the future use. 641

(B) Require reasonable and nondiscriminatory spacing 642  
requirements for the location of new wireless support structures 643  
set forth in an ordinance, local rule, or design guidelines. 644  
Such spacing requirements shall not prohibit, or have the effect 645  
of prohibiting, the provision of wireless service to any 646  
location. 647

(C) Adopt reasonable written design guidelines with 648  
objective, technologically feasible criteria that reasonably 649  
match the aesthetics and character of the immediate area 650  
regarding all of the following: 651

(1) The location of any ground-mounted small cell 652  
facilities; 653

(2) The location of a small cell facility on a wireless 654

support structure; 655

(3) The appearance and concealment of small cell 656  
facilities, including those relating to materials used for 657  
arranging, screening, or landscaping; 658

(4) The design and appearance of a wireless support 659  
structure including any height requirements adopted by a 660  
municipality in accordance with division (F) of this section. 661

Any such guidelines shall be applied in a 662  
nondiscriminatory manner. Materials utilized to comply with the 663  
appearance and concealment criteria established in the 664  
guidelines shall not be considered part of the small cell 665  
facility for purposes of facility size restrictions in this 666  
chapter. 667

(D) Propose an alternate location to the proposed location 668  
of a new wireless support structure that is within one hundred 669  
feet of the proposed location or within a distance that is 670  
equivalent to the width of the public way in or on which the new 671  
wireless support structure is proposed, whichever is greater, 672  
which the operator shall use if it has the right to use the 673  
alternate location on reasonable terms and conditions and the 674  
alternate location does not impose technical limits or 675  
additional costs. 676

(E) Require that a collocation or a new wireless support 677  
structure for which a permit is granted shall be completed 678  
within one hundred eighty days after issuance of the permit, 679  
unless the municipal corporation and the operator agree to 680  
extend this period or a delay is caused by make-ready work for a 681  
municipally owned wireless support structure or decorative pole 682  
or by the lack of commercial power or backhaul availability at 683

the site, provided that the operator has made a timely request 684  
within sixty days after the issuance of the permit for 685  
commercial power or backhaul services, and the additional time 686  
to complete installation does not exceed three hundred sixty 687  
days after issuance of the permit. Otherwise, the permit shall 688  
be void unless the municipal corporation grants an extension in 689  
writing to the operator. 690

(F) Set restrictions for the height of a wireless support 691  
structure and the placement of a wireless facility as follows: 692

(1) For a new wireless support structure, the overall 693  
height of the wireless support structure and any collocated 694  
antennas shall not be more than forty feet in height above 695  
ground level. 696

(2) Notwithstanding division (F) of this section, and 697  
except that the cap shall not be below thirty-five feet in 698  
height above ground level, a municipal corporation may adopt 699  
design guidelines under division (C) of this section to cap the 700  
permissible height of small cell facilities in areas meeting the 701  
following criteria: 702

(a) The area is within three hundred feet of the proposed 703  
site for a new wireless support structure in the same public way 704  
or a connecting public way, and there are no wireless support 705  
structures or utility poles taller than thirty feet in height 706  
above ground level; 707

(b) The maximum allowable height for building construction 708  
in the underlying zoning district is thirty-five feet in height 709  
above ground level or less. 710

(3) For an existing wireless support structure, the 711  
antenna and any associated shroud or concealment material are 712

permitted to be collocated at the top of the existing wireless 713  
support structure and shall not increase the height of the 714  
existing wireless support structure by more than five feet. 715

(G) Require an operator to comply with reasonable and 716  
nondiscriminatory requirements that prohibit public utilities or 717  
cable operators from installing structures and facilities in the 718  
public way because an area is either designated solely for 719  
undergrounding or structures and facilities are required to be 720  
placed elsewhere in the public way, if the following apply: 721

(1) The municipal corporation has required all structures 722  
and facilities, including structures and facilities owned by a 723  
municipal electric company, but not including structures and 724  
facilities owned by a municipal corporation or a transit 725  
authority, to be placed underground or elsewhere in the public 726  
way or a utility easement by a date certain that is three months 727  
prior to the submission of the application; 728

(2) Subject to the provisions of this chapter, the 729  
municipal corporation does not prohibit the replacement of 730  
wireless support structures or the collocation of small cell 731  
facilities on wireless support structures in the designated 732  
area; 733

(3) The municipal corporation permits operators to seek a 734  
waiver of the undergrounding or alternative location 735  
requirements for the placement of a new wireless support 736  
structure to support small cell facilities if the operator is 737  
unable to achieve its service objective using a small cell 738  
facility under the following circumstances: 739

(a) From a location in the public way where the 740  
prohibition does not apply; 741

(b) In a utility easement the operator has the right to 742  
access; or 743

(c) In or on other suitable locations or structures made 744  
available by the municipal corporation at reasonable rates, 745  
fees, and terms. A municipal corporation shall process waivers 746  
in a reasonable and nondiscriminatory manner that does not have 747  
the effect of prohibiting the provision of wireless service. 748

(H) Subject to section 4939.0313 of the Revised Code, and 749  
except for facilities excluded from evaluation for effects on 750  
historic properties under 47 C.F.R. 1.1307(a)(4) of the federal 751  
communications commission's rules, a municipal corporation may 752  
require reasonable, technically feasible, and nondiscriminatory 753  
design or concealment measures in an historic district. Any such 754  
design or concealment measures may not have the effect of 755  
prohibiting any operator's technology, nor may any such measures 756  
be considered a part of the small cell facility for purposes of 757  
the size restrictions in the definition of small cell facility. 758

(I) If multiple requests are received by the municipal 759  
corporation to install two or more poles that would violate 760  
applicable spacing requirements under division (B) of this 761  
section, or to collocate two or more small cell facilities on 762  
the same wireless support structure, notwithstanding division 763  
(I) of section 4939.0313 of the Revised Code, the municipal 764  
corporation may resolve conflicting requests through whatever 765  
reasonable and nondiscriminatory manner the municipal 766  
corporation deems appropriate. 767

(J) Impose reasonable requirements for bonds, escrow 768  
deposits, letters of credit, or any other type of financial 769  
surety to ensure removal of abandoned or unused wireless 770  
facilities or damage to municipal property caused by an operator 771

or its agent. 772

**Sec. ~~4939.0317~~ 4939.0315.** No municipal corporation may 773  
institute a moratorium on the filing, acceptance of filings, 774  
consideration, or approval of requests for consent described in 775  
section 4939.031 of the Revised Code. 776

**Sec. ~~4939.0319~~ 4939.0316.** Any fee charged by a municipal 777  
corporation ~~for a request for consent~~ under section 4939.031 of 778  
the Revised Code for granting or processing an application for 779  
consent shall not exceed ~~the lesser~~ a one-time fee of two 780  
hundred fifty dollars per ~~micro wireless~~ small cell facility ~~or~~ 781  
~~the amount charged by the~~. A municipal corporation for a 782  
building permit for any other type of commercial development or 783  
land use development may adjust this fee ten per cent every five 784  
years, rounded to the nearest five dollars. 785

**Sec. 4939.0317.** A municipal corporation's approval term of 786  
an attachment to a wireless support structure shall be for a 787  
period of not less than ten years, with presumption of renewal 788  
for successive five-year terms, subject to terms providing for 789  
early termination or nonrenewal for cause or by mutual agreement 790  
and unless otherwise agreed to by both the operator and the 791  
municipal corporation, except for generally applied permitting 792  
to safeguard the public health, safety, and welfare. An operator 793  
may remove its small cell facilities at any time subject to 794  
applicable work permit requirements and may stop paying annual 795  
charges or fees under division (B) of section 4939.0322 of the 796  
Revised Code. 797

**Sec. ~~4939.0325~~ 4939.0322.** (A) A municipal corporation 798  
shall permit, ~~for the purpose of providing wireless service, an~~ 799  
~~attachment by a micro wireless facility operator to~~ consistent 800  
with this chapter and for the purpose of providing wireless 801

service, a collocation of a small cell facility by an operator 802  
to a wireless support structure owned by the municipal 803  
corporation and located in the public way, provided that the 804  
operator comply with any applicable design guidelines under 805  
division (C) of section 4939.0314 of the Revised Code and 806  
reasonable terms and conditions for such collocations adopted by 807  
the municipal corporation that are consistent with the design 808  
guidelines and this chapter. The municipal corporation may 809  
condition approval of the collocation on replacement or 810  
modification of the wireless support structure at the operator's 811  
cost if the municipal corporation determines that replacement or 812  
modification is necessary for compliance with its written 813  
construction or safety standards. A replacement or modification 814  
of the wireless support structure shall conform to the 815  
applicable design guidelines and the municipal corporation's 816  
applicable specifications for the type of structure being 817  
replaced. The municipal corporation may retain ownership of a 818  
replacement wireless support structure. 819

(B) The total annual charges to reimburse the municipal 820  
corporation for the attachment shall not exceed two hundred 821  
dollars per small cell facility collocated on a wireless support 822  
structure owned or operated by the municipal corporation and 823  
located in the public way. A municipal corporation may adjust 824  
this charge ten per cent every five years, rounded to the 825  
nearest five dollars. 826

~~(B) (1) The total annual charges and fees for the~~ 827  
~~attachment and any activities related to the attachment shall be~~ 828  
~~the lesser of the actual, direct, and reasonable costs related~~ 829  
~~to the use of the wireless support structure by the operator or~~ 830  
~~two hundred dollars per attachment.~~ 831

~~(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.~~ 832  
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~~(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators. Except for any applicable work permit under division (B) of section 4939.0311 of the Revised Code and financial surety under division (J) of section 4939.0314 of the Revised Code, a municipal corporation may not charge an operator any other charge or fee for a small cell facility or associated wireless support structure except as set forth in section 4939.0316 and division (B) of section 4939.0322 of the Revised Code. The fees set forth in sections 4939.0316 and 4939.0322 of the Revised Code are not public way fees.~~ 836  
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~~(D) Nothing in this chapter affects the need for an entity seeking to place a micro wireless facility on a public utility owned utility pole to obtain from the public utility any necessary authority to place the facility. Placement of small cell facilities in the public way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject a municipal corporation to any state or local tax liabilities or assessments.~~ 850  
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~~(E) To the extent that an investor-owned electric utility whose rates are regulated by the public utilities commission, its affiliate, an electric cooperative, or an independent transmission company is not an operator as defined by this~~ 858  
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chapter, nothing in sections 4939.031 to 4939.039 of the Revised 862  
Code shall be construed to add to, replace, or supersede any 863  
tariff, contractual obligation or right, or federal or state law 864  
or regulation regarding utility poles, similar structures, or 865  
equipment of any type owned or controlled by that investor-owned 866  
electric utility, affiliate, electric cooperative, or 867  
independent transmission company. 868

**Sec. ~~4939.0327~~ 4939.0323.** A municipal corporation shall 869  
not enter into an exclusive arrangement with any entity for the 870  
right to attach to the municipal corporation's wireless support 871  
structures. 872

**Sec. 4939.0329.** A person may construct, modify, or 873  
maintain a utility pole or wireless support structure along, 874  
across, and under a public way in excess of the size limits, to 875  
the extent permitted by the municipal corporation's applicable 876  
regulations. 877

**Sec. 4939.08.** (A) Nothing in sections 4939.01 to 4939.07 878  
of the Revised Code applies to a franchise or to any agreement 879  
with a public utility, cable operator, or ~~micro wireless~~ small 880  
cell facility operator, for the balance of its term, if the 881  
franchise or agreement meets all of the following, as 882  
applicable: 883

(1) (a) With respect to a public utility or cable operator, 884  
the franchise was granted, or the agreement was authorized by 885  
ordinance or otherwise and was entered into, by a municipal 886  
corporation prior to July 2, 2002. 887

(b) With respect to a ~~micro wireless~~ small cell facility 888  
operator, the agreement was authorized by ordinance or otherwise 889  
and was entered into by a municipal corporation and the ~~micro-~~ 890

~~wireless-small cell~~ facility operator prior to the effective 891  
date of the amendments to this section by S.B. 331 of the 131st 892  
general assembly. 893

(2) The franchise or agreement authorizes the occupation 894  
or use of public ways. 895

(3) The public utility or ~~micro-wireless-small cell~~ 896  
facility operator agrees with the applicable public way fees, or 897  
nonmonetary compensation, if any, or the cable operator pays the 898  
applicable fee or utilizes the credit, offset, or deduction 899  
specified in division (B) (4) of section 4939.05 of the Revised 900  
Code. 901

(B) (1) Except as otherwise provided in division (A) of 902  
section 4939.06 of the Revised Code, nothing in sections 4939.01 903  
to 4939.07 of the Revised Code applies to an ordinance both 904  
governing public ways and enacted by a municipal corporation 905  
prior to September 29, 1999, unless, on or after that date, the 906  
ordinance is materially modified. 907

(2) Division (B) (1) of this section does not apply to 908  
~~micro-wireless-small cell~~ facility operators and their 909  
facilities. 910

(C) Nothing in sections 4939.01 to 4939.07 of the Revised 911  
Code authorizes a municipal corporation to levy a fee, other 912  
than a public way fee authorized by section 4939.05 of the 913  
Revised Code, on a pipeline company or an operator of a pipeline 914  
facility regulated under the "Accountable Pipeline Safety and 915  
Partnership Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or 916  
on an operating partner or affiliated business unit operating 917  
under guidelines of the federal energy regulatory commission as 918  
they relate to the construction and operation of a pipeline. 919

(D) Nothing in sections 4939.01 to 4939.07 and this 920  
section of the Revised Code prohibits a municipal corporation 921  
from doing either of the following: 922

(1) Charging a cable operator a franchise fee in 923  
accordance with the "Cable Communications Policy Act of 1984," 924  
98 Stat. 2779, 47 U.S.C.A. 542; 925

(2) Allowing a credit, offset, or deduction against the 926  
payment of a construction permit fee for any franchise fee a 927  
cable operator pays to the municipal corporation. 928

Sec. 4939.09. If requested by a municipal corporation, in 929  
order to accomplish construction and maintenance activities 930  
directly related to improvements for the health, safety, and 931  
welfare of the public, an operator shall relocate or adjust its 932  
facilities within the public way at no cost to the municipal 933  
corporation, as long as such request similarly binds all users 934  
in or on such public way. Such relocation or adjustment shall be 935  
completed in accordance with local law. 936

**Section 2.** That existing sections 4939.01, 4939.02, 937  
4939.03, 4939.031, 4939.035, 4939.038, 4939.039, 4939.0311, 938  
4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0325, 939  
4939.0327, and 4939.08 and sections 4939.032, 4939.033, 940  
4939.037, and 4939.0321 of the Revised Code are hereby repealed. 941