



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Finance)

Sens. Peterson, Eklund, Seitz

BILL SUMMARY

Pet store and dog retailer regulations

- Prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store to a person unless the dog was obtained from one of the following sources:
 - An animal rescue for dogs;
 - An animal shelter for dogs;
 - A humane society;
 - A dog retailer, provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or
 - A qualified breeder.
- Prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog to a pet store in Ohio unless the dog was obtained from one of the following sources:
 - An animal rescue for dogs;
 - An animal shelter for dogs;

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

--A humane society; or

--A qualified breeder.

- Defines "qualified breeder" for purposes of the bill and revises the definitions of "pet store" in current law.
- Prohibits an owner, manager, or employee of a pet store from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog to any person that does not meet specified criteria.
- Prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog to a pet store that does not meet specified criteria.
- Prohibits an owner, manager, or employee of a pet store or a dog retailer from recklessly altering or providing false information on a written certification required by the bill to be given to a person acquiring a dog that was originally acquired by the pet store or dog retailer from a qualified breeder.
- Requires the Director of Agriculture to adopt rules establishing requirements and procedures governing pet stores, including requirements and procedures governing the licensing of pet stores.
- Specifies the procedure by which an applicant may obtain a pet store license.
- Prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store unless a pet store license has been issued for the pet store by the Director.
- Creates the Pet Store License Fund to be used by the Director to administer the bill's provisions governing pet stores.
- Specifies that whoever violates any of the bill's prohibitions is guilty of a fourth degree misdemeanor.
- Authorizes the Director to assess a civil penalty against a person who violates any of the bill's prohibitions and revises the existing civil penalty structure that applies to high volume dog breeders and dog retailers.
- Specifies that the regulation of pet stores is a matter of general statewide interest, that the bill constitutes a comprehensive plan with respect to all aspects of the



regulation of pet stores, and that it is the intent of the General Assembly to preempt any local regulations governing dog sales from pet stores.

Department of Agriculture and County Humane Societies

- Eliminates the requirement that the Controlling Board approve the release of money from the existing High Volume Breeder Kennel Control License Fund.
- Revises the reasons for which the Director must deny an application for a dog retailer license or a high volume breeder license.
- Specifies that an applicant for the renewal of a high volume breeder license need not include with the renewal application specified photographic evidence as required under current law.
- Replaces the Director's authority to issue an order requiring a person to cease acts or practices that constitute a violation of the bill's provisions and the law governing high volume dog breeders and dog retailers with the authority to instead issue a notice requiring the person to cease such acts or practices.
- Removes a provision of current law that requires a county humane agent to reside in the county or municipal corporation for which the agent is appointed.

Sexual conduct with an animal

- Prohibits a person from knowingly: (1) engaging in, organizing, promoting, aiding, or abetting specified sex-related activities with an animal, or (2) possessing, selling, or purchasing an animal with the intent that it be subjected to those activities.
- Authorizes the seizure and impoundment of an animal that is the subject of a violation, or attempted violation, of either prohibition.
- Authorizes a court sentencing an offender for a violation of either prohibition to order the forfeiture of the animal or require the offender to undergo psychological evaluation or counseling.

Criminal activities associated with animal fighting

- Adds to the types of activities associated with animal fighting that are criminal offenses and changes the penalty for some of those activities.

Micro wireless facilities in the public way

- Establishes regulations that can apply to the construction and attachment of micro wireless facilities in a municipal corporation public way.



- Defines "micro wireless facility" as both a distributed antenna system and a small cell facility, and the related "wireless facilities," which the bill defines as an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.
- Authorizes a "micro wireless facility operator" (a public utility or a cable operator that operates a micro wireless facility) to construct and operate the facility in a municipal corporation public way.
- Requires a municipal corporation to permit a micro wireless facility attachment to a wireless support structure owned or operated by the municipal corporation and located in the public way.
- Includes as a public policy of the state (regarding the occupancy or use of a municipal corporation public way) expediting "the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state."
- Sets total annual charges and fees of a municipal corporation for a micro wireless facilities attachment to be the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the micro wireless facility operator.
- Requires the fees, charges, terms, and conditions regarding micro wireless facilities and the application and permit approval process to be nondiscriminatory.

Requests for consent for micro wireless facilities

- Permits an entity to file a single or consolidated request for consent, and requires a municipal corporation to grant or deny its consent, for the entity to do any of the following in a public way:
 - Attach micro wireless facilities to a wireless support structure;
 - Locate two or more wireless service providers' micro wireless facilities on the same wireless support structure;
 - Replace or modify a micro wireless facility on a wireless support structure; and
 - Construct, modify, or replace a wireless support structure associated with a micro wireless facility.

- Prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the attachment, location, replacement, construction, or operation of a micro wireless facility, or from imposing other prohibitions or restrictions on micro wireless facility activities.
- Specifies that no consent is required for routine maintenance of wireless facilities or for the replacement of wireless facilities with wireless facilities that are substantially similar to the existing wireless facilities or that are the same size or smaller than the existing wireless facilities.
- Specifies that a municipal corporation must approve an "eligible facilities request" (a request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station) within 60 days and may not deny such a request.

Consent request fees

- Limits the fee that a municipal corporation may charge for a micro wireless facility consent request to the lesser of \$250 per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.

Time period for consent

- Requires a municipal corporation to grant or deny micro wireless facility consent requests within 90 days, unless the period is tolled (paused), and specifies that requests are considered granted if not approved in that period when the entity requesting consent provides notice that the time period has lapsed.

Tolling the time period

- Permits the 90-day period for consent to be tolled only:
 - By mutual agreement between the entity requesting consent and the municipal corporation;
 - In cases where the municipal corporation determines that the application for consent is incomplete; or
 - Where the municipal corporation has an extraordinary number of pending consent requests.
- Establishes provisions governing the process of tolling and the resumption of the consent time period, including provisions governing when tolling is not permitted.

Denials of consent

- Requires denials of consent to occupy or use a municipal corporation public way for micro wireless facilities to be supported by "substantial, competent evidence" and prohibits denials from being unreasonably discriminatory.

Municipal authority

- Permits a municipal corporation to require a work permit for wireless activities that do not require consent.
- Specifies that the bill's micro wireless facility provisions do not preclude a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.

Restrictions on municipal authority

- Specifies that no municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent for micro wireless facilities activities.
- Specifies that no municipal corporation may have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.
- Prohibits a municipal corporation from entering into an exclusive agreement with any entity for the right to attach to the municipal corporation's wireless support structures.
- Establishes several other restrictions on municipal corporations with respect to the provision of any micro wireless facility, including, for example, preventing the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.
- Specifies that requests for consent are considered a permitted use and are exempt from local zoning review.

Employment law and political subdivisions

- Prohibits a political subdivision from establishing a minimum wage that is different from the wage rate required under the Ohio's Minimum Fair Wage Standards Law and the Minimum Wage Amendment to Ohio's Constitution.

- Grants private employers exclusive authority to establish policies, either on the employer's own or through agreements with employees, concerning hours and location of work, scheduling, and fringe benefits, unless otherwise expressly provided for in state or federal law.
- Maintains the authority provided to a political subdivision by case law, the Revised Code, or the Ohio Constitution to adopt a resolution or ordinance to limit the hours an employer may operate.
- Expresses the intent of the General Assembly to exclusively regulate hours of labor and fringe benefits arising from an employer-employee relationship as a matter of statewide concern.

Severability clause

- Specifies that if any provision of the bill is found to be invalid, the invalidity does not affect any other provisions of the bill because each item of law in the bill is independent and severable.

TABLE OF CONTENTS

Employment law and political subdivisions	6
Severability clause	7
Pet store and dog retailer regulations.....	8
Source of a dog sold from a pet store or from a dog retailer	8
Sale of a dog that does not meet specified criteria	10
Prohibition against providing false information	12
Application of bill	13
Pet store license.....	13
Rules.....	14
Civil penalties	14
Pet Store License Fund.....	16
Preemption.....	16
Release of money from the High Volume Breeder Kennel Control License Fund	17
Revisions to the law governing dog breeders and dog retailers.....	17
Denial of dog retailer and high volume breeder licenses	17
Photographic evidence for a high volume breeder license renewal	17
Notification of violations.....	18
Required residence location of humane agents.....	18
Sexual conduct with an animal.....	18
Seizure and impoundment, and possible outcomes	19
Authorization	19
Procedures subsequent to seizure and impoundment	19
Penalties	19
Criminal activities associated with animal fighting	20
Micro wireless facilities in the public way.....	21
Overview of use of public way.....	22
Definitions	22



State policy	25
Micro wireless facility placement	25
Annual fee limit for attachment	25
Nondiscrimination provision	26
Micro wireless facility placements on public-utility-owned poles	26
Requests for consent for micro wireless facilities	26
Consent request fees	27
Time period for consent.....	27
Tolling the consent time period.....	28
Tolling procedure.....	28
Resuming the time period.....	28
Tolling after second or subsequent submissions	28
When time period may not be tolled	29
Denial of consent.....	29
Eligible facilities request	29
Consent exception.....	29
Restrictions on municipal authority.....	29
Exemption from local zoning review	32
Municipal authority	32
Existing agreements.....	32
Employment law and political subdivisions.....	33
Minimum wage.....	33
Private employer authority to regulate employment matters	33
Political subdivisions	35
General Assembly's intent.....	35
Severability clause	35

CONTENT AND OPERATION

Pet store and dog retailer regulations

Source of a dog sold from a pet store or from a dog retailer

The bill prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store to a person unless the dog was obtained from one of the following sources:

- (1) An animal rescue for dogs;
- (2) An animal shelter for dogs;
- (3) A humane society;
- (4) A dog retailer, provided that, if the dog retailer originally obtained the dog from a breeder, the breeder is a qualified breeder; or



(5) A qualified breeder.¹

A pet store owner, manager, or employee who violates this provision is guilty of a fourth degree misdemeanor.²

The bill prohibits a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a live dog to a pet store in Ohio unless the dog was obtained from one of the following sources:

(1) An animal rescue for dogs;

(2) An animal shelter for dogs;

(3) A humane society; or

(4) A qualified breeder.³

A dog retailer who violates this provision is guilty of a fourth degree misdemeanor.⁴

Under the bill, a pet store is an individual retail store to which both of the following apply: (1) the store sells dogs to the public, and (2) with regard to the sale of a dog from the store, the sales person, the buyer of a dog, and the dog for sale are physically present during the sales transaction so that the buyer may personally observe the dog and help ensure its health prior to taking custody. A pet store does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a medical kennel for dogs, or a research kennel for dogs. Under current law, a pet store is a retail store that sells dogs to the public.⁵

A "qualified breeder" is a breeder that keeps, houses, and maintains female adult dogs that is not a high volume breeder.⁶ A "qualified breeder" also is a high volume breeder located in or out of Ohio that meets all of the following requirements:

¹ R.C. 956.20(A).

² R.C. 956.99.

³ R.C. 956.051(A).

⁴ R.C. 956.99.

⁵ R.C. 956.01.

⁶ R.C. 956.19(A).



(1) The breeder is licensed by the United States Department of Agriculture (USDA) under federal law and, if applicable, a state agency;

(2) The breeder has not been issued a report of a direct noncompliance violation by the USDA under the federal Animal Welfare Act for a period of three years prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog;

(3) The breeder has not had three or more noncompliance violations documented in any report issued by the USDA under the federal Animal Welfare Act for a period of 12 months prior to offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling a dog; and

(4) The breeder has been issued a dog retailer license under Ohio law.⁷

The bill retains current law that states that a high volume breeder is an establishment that keeps, houses, and maintains adult breeding dogs that produce at least nine litters of puppies in any given calendar year and, in return for a fee or other consideration, sells 60 or more adult dogs or puppies per calendar year. The bill also retains current law that states that a dog retailer is a person who buys, sells, or offers to sell dogs at wholesale for resale to another or who sells or gives one or more dogs to a pet store annually. A dog retailer does not include an animal rescue for dogs, an animal shelter for dogs, a humane society, a medical kennel for dogs, a research kennel for dogs, a pet store, or a veterinarian.⁸

Sale of a dog that does not meet specified criteria

The bill prohibits an owner, manager, or employee of a pet store or a dog retailer from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring any of the following:

(1) A dog that is less than eight weeks old;

(2) A dog without a certificate of veterinarian inspection signed by an accredited veterinarian;

(3) A dog that does not have a permanent implanted identification microchip that is approved for use by the Director of Agriculture; or

⁷ R.C. 956.19(B).

⁸ R.C. 956.01.

(4) A dog to a person who is younger than 18 years of age as verified by valid photo identification.⁹

In the case of a dog retailer, the above prohibition applies only with regard to the sale, delivery, bartering, auction, brokering, giving away, or transfer of a dog to a pet store.¹⁰

The bill defines "accredited veterinarian" to mean a veterinarian accredited by the USDA. The bill also expands the definition of "veterinarian" to include a veterinarian licensed out of Ohio by an applicable state entity, in addition to a veterinarian licensed in Ohio as in current law.¹¹

The bill prohibits an owner, manager, or employee of a pet store from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer unless all of the following information regarding the dog is available to the general public at the pet store:

- The name of the breeder that bred the dog;
- The address, if available, of the breeder that bred the dog;
- The USDA license number of the breeder that bred the dog, if applicable;
- The dog's birth date, if known; and
- The breed of the dog.¹²

An owner, manager, or employee of a pet store also is prohibited from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder or a dog retailer, unless the owner, manager, or employee provides to the person acquiring the dog, at a time prior to the transaction for the acquisition of the dog, a written certification that includes the following information:

- The name of the breeder that bred the dog;

⁹ R.C. 956.20(B) and 956.051(B)(1) to (4).

¹⁰ R.C. 956.051(B).

¹¹ R.C. 959.01.

¹² R.C. 956.20(B)(6).

- The address, if available, of the breeder that bred the dog;
- The USDA license number of the breeder that bred the dog, if applicable, and a copy of the most current USDA inspection report for the breeder;
- The dog's birth date, if known;
- The date that the pet store took possession of the dog;
- The breed, gender, color, and any identifying marks of the dog;
- A document signed by an accredited veterinarian that describes any known disease, illness, or congenital or hereditary condition that adversely affects the health of the dog at the time of examination; and
- A document signed by the owner, manager, or employee of the pet store certifying that all information required to be provided to the person acquiring the dog is accurate. A pet store must keep a copy of the certification for at least two years from the date of the acquisition. The owner, manager, or an employee of the pet store must make the copy of the certification available for inspection or duplication by the Department of Agriculture.¹³

A dog retailer is also prohibited from negligently selling, delivering, bartering, auctioning, brokering, giving away, or transferring a dog acquired from a qualified breeder to a pet store unless it provides the written certification described above.¹⁴

A violation of any of the above prohibitions is a fourth degree misdemeanor.¹⁵

Prohibition against providing false information

The bill prohibits an owner, manager, or employee of a pet store or a dog retailer from recklessly altering or providing false information on a written certification required to be given to a person acquiring a dog from the pet store or dog retailer, as applicable, when the dog was originally acquired from a qualified breeder.¹⁶

¹³ R.C. 956.20(B)(5).

¹⁴ R.C. 956.051(B).

¹⁵ R.C. 956.99.

¹⁶ R.C. 956.051(C) and 956.20(C).

A pet store owner, manager, or employee or a dog retailer who violates this provision is guilty of a fourth degree misdemeanor.¹⁷

Application of bill

The bill specifies that the prohibitions regarding dog sales by pet stores and dog retailers do not apply to any dog that is being sold, delivered, bartered, auctioned, given away, brokered, or transferred from the premises where the dog was bred and reared.¹⁸

Pet store license

The bill prohibits an owner, manager, or employee of a pet store from negligently displaying, offering for sale, delivering, bartering, auctioning, brokering, giving away, transferring, or selling any live dog from a pet store in Ohio unless a pet store license has been issued for the pet store by the Director of Agriculture.¹⁹ The Director may issue a pet store license to a pet store owner or operator when the owner or operator does all of the following:

(1) Applies for a license in accordance with the bill's provisions and rules adopted under it;

(2) Affirms in writing that the owner or operator will maintain compliance with the bill's requirements; and

(3) Submits a \$500 fee along with the application for a pet store license.²⁰ The fee must be deposited into the Pet Store License Fund, which is created by the bill (see below).²¹

Under the bill, the Director may deny, suspend, or revoke a pet store license for a violation of the bill's prohibitions regarding pet store dog sales. However, the denial, suspension, or revocation of a license is not effective until the licensee is given a written notice of the violation, a reasonable amount of time to correct the violation, if possible, and an opportunity for a hearing. The Director also may refuse to issue a pet store

¹⁷ R.C. 956.99.

¹⁸ R.C. 956.20(D) and 956.051(D).

¹⁹ R.C. 956.21(E).

²⁰ R.C. 956.21(A).

²¹ R.C. 956.21(D).



license if the applicant has violated the bill's prohibitions regarding pet store dog sales during the 36-month period prior to submitting an application for the license.²²

A pet store license is valid for one year from the date of issuance and must be renewed annually.²³

A person who negligently operates a pet store in Ohio without a pet store license issued by the Director is guilty of a fourth degree misdemeanor.²⁴

Rules

The bill requires the Director of Agriculture to adopt rules establishing all of the following:

(1) Requirements and procedures governing pet stores, including requirements and procedures governing the initial licensing of pet stores and the renewal of pet store licenses;

(2) The application form for a pet store license and the information that is required to be submitted in the application; and

(3) Requirements governing permanent implanted identification microchips for dogs to be sold at a pet store and by a dog retailer.²⁵

The bill also authorizes the Director to adopt rules establishing disease testing protocols and vaccination requirements for dogs to be sold at a pet store.²⁶

Civil penalties

The bill authorizes the Director to assess a civil penalty against a person who violates any of the bill's prohibitions governing the sale of a dog from a pet store or the sale of a dog from a dog retailer. A person is liable for a civil penalty as follows:²⁷

²² R.C. 956.21(B).

²³ R.C. 956.21(C).

²⁴ R.C. 956.99.

²⁵ R.C. 956.03(A)(11) to (13).

²⁶ R.C. 956.03(B).

²⁷ R.C. 956.22(A).



Number of violations	Civil penalty
First violation	\$500 or less
Second violation	\$2,500 or less
Third or subsequent violation	\$10,000 or less

Any person assessed a civil penalty must pay the amount prescribed to the Department of Agriculture. The Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the Pet Store License Fund (see below) for violations involving a pet store.²⁸ For violations involving a dog retailer, the Department must remit all money collected from civil penalties to the Treasurer of State for deposit in the existing High Volume Breeder Kennel Control License Fund.²⁹ However, a civil penalty for both pet store and dog retailer violations may be assessed by the Director only if all of the following occur:

(1) The person has received a notice and been notified of the violation by certified mail or personal service;

(2) After the time period for correcting the violation specified in the notice has elapsed, the Director or the Director's authorized representative has inspected the premises where the violation has occurred and determined that the violation has not been corrected, and the Director has issued a notice of an adjudication hearing;

(3) The Director affords the person an opportunity for an adjudication hearing to challenge the Director's determination that the person is not in compliance with the bill's provisions, the imposition of the civil penalty, or both. A person may waive the opportunity for an adjudication hearing.³⁰

If the opportunity for an adjudication hearing is waived or if, after an adjudication hearing, the Director determines that a violation of the bill has occurred or is occurring, the Director may assess a civil penalty. The civil penalty may be appealed in accordance with Ohio's Administrative Procedure Law, except that the civil penalty may be appealed only to the Environmental Division of the Franklin County Municipal Court.³¹

²⁸ R.C. 956.22(D).

²⁹ R.C. 956.13(C).

³⁰ R.C. 956.13(A) and 956.22(A).

³¹ R.C. 956.13(B) and 956.22(B).

The bill also revises the civil penalty structure for any violation of the existing law governing high volume dog breeders and dog retailers. Under current law, if a person operates as a high volume breeder without first obtaining a license or if a person acts as or performs the functions of a dog retailer without a dog retailer license, that person must be assessed a civil penalty in an amount that is established in rules, which is currently \$100 for the first offense and \$500 for each subsequent offense.³² A person who has violated any other existing provision of that Law must pay a civil penalty of \$100.³³

Under the bill, the civil penalty structure for these existing provisions is identical to the civil penalty structure for violations of the bill's prohibitions regarding sales of a dog from a pet store or by a dog retailer (see table, above).³⁴

Pet Store License Fund

As indicated above, the bill creates the Pet Store License Fund that consists of all of the following:

- (1) All money collected by the Director from pet store license fees;
- (2) All money collected by the Director from civil penalties assessed under the bill's provisions; and
- (3) Money appropriated to the Fund.

The Director must use the money in the Fund to administer the bill's provisions governing the sale of dogs from pet stores.³⁵

Preemption

The bill specifies that the regulation of pet stores is a matter of general statewide interest that requires statewide regulation and that the bill constitutes a comprehensive plan with respect to all aspects of the regulation of pet stores. Accordingly, the bill specifies that it is the intent of the General Assembly to preempt any local ordinance,

³² R.C. 956.13(C)(1) and O.A.C. 901:1-6-10.

³³ R.C. 956.13(C)(2).

³⁴ R.C. 956.13(C).

³⁵ R.C. 956.181.

resolution, or other law adopted to regulate the sale, delivery, barter, auction, broker, or transfer of a dog to a person from a pet store (see **COMMENT 1**, below).³⁶

Release of money from the High Volume Breeder Kennel Control License Fund

The bill eliminates the requirement that the Controlling Board approve the release of money from the existing High Volume Breeder Kennel Control License Fund. The bill also eliminates the cap on the amount of money that the Director of Agriculture may request the Controlling Board to release from the Fund in any biennium. Currently, the cap is \$2,500,000. Under current law, the Director must use money in the Fund to administer the laws governing dog breeders.³⁷ The bill does not eliminate any other provision of current law that requires the Controlling Board to approve expenditures made by a state agency.³⁸

Revisions to the law governing dog breeders and dog retailers

Denial of dog retailer and high volume breeder licenses

The bill revises the reasons for which the Director of Agriculture must deny an application for a dog retailer license or a high volume breeder license by removing the requirement that the Director deny such a license to an applicant that, in the past 20 years, has been convicted of or pleaded guilty to certain federal animal cruelty or domestic violence violations or certain animal cruelty or domestic violence violations in another state. The bill retains provisions of current law that require the Director of Agriculture to deny an application for a dog retailer license or a high volume breeder license to an applicant that, in the past 20 years, has been convicted of or pleaded guilty to certain state or equivalent municipal animal cruelty or domestic violence violations.³⁹

Photographic evidence for a high volume breeder license renewal

Current law requires a person applying for the renewal of a high volume breeder license to submit along with the application photographic evidence documenting the facilities where the dogs will be kept, housed, and maintained by the applicant. The bill eliminates this requirement.⁴⁰

³⁶ R.C. 956.23.

³⁷ R.C. 956.18.

³⁸ See, e.g., R.C. 127.16(B)(1), not in the bill.

³⁹ R.C. 956.15(A).

⁴⁰ R.C. 956.04(D).



Notification of violations

The bill replaces the Director of Agriculture's authority to issue an order requiring a person to cease acts or practices that constitute a violation of the bill and the existing law governing high volume dog breeders and dog retailers or requiring the person to take corrective actions to eliminate the violation with the authority to instead issue a notice requiring the person to cease such acts or practices.⁴¹ The bill also makes conforming changes.⁴²

Required residence location of humane agents

The bill repeals a provision of current law that requires a county humane agent to reside in the county or municipal corporation for which the agent is appointed.

Under current law, a county humane society may appoint agents, who are residents of the county or municipal corporation for which the appointment is made, for the purpose of prosecuting any person guilty of an act of cruelty to persons or animals. All appointments of agents must be approved by the mayor of the municipal corporation for which they are made. If the society exists outside a municipal corporation, the appointments must be approved by the probate judge of the county for which they are made.⁴³

Sexual conduct with an animal

The bill prohibits a person from knowingly (1) engaging in sexual conduct with an animal, (2) possessing, selling, or purchasing an animal with the intent that it be subjected to sexual conduct, or (3) organizing, promoting, aiding, or abetting in the conduct of an act involving any sexual conduct with an animal.⁴⁴

As used in the bill, "sexual conduct" means either of the following committed for the purpose of sexual gratification: (1) any act done between a person and animal that involves contact of the penis of one and the vulva of the other, the penis of one and the penis of the other, the penis of one and the anus of the other, the mouth of one and the penis of the other, the mouth of one and the anus of the other, the vulva of one and the vulva of the other, the mouth of one and the vulva of the other, any other contact between a reproductive organ of one and a reproductive organ of the other, or any

⁴¹ R.C. 956.12.

⁴² R.C. 956.13(A) and 956.14.

⁴³ R.C. 1717.06.

⁴⁴ R.C. 959.21(B) and (C).



other insertion of a reproductive organ of one into an orifice of the other, (2) without a *bona fide* veterinary or animal husbandry purpose to do so, the insertion, however slight, of any part of a person's body or any instrument, apparatus, or other object into the vaginal, anal, or reproductive opening of an animal. An animal is defined as a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.⁴⁵

Seizure and impoundment, and possible outcomes

Authorization

An officer may seize and cause to be impounded at an impounding agency an animal that the officer has probable cause to believe is the subject of a violation of the bill's provisions or an attempt to commit such a violation (an "offense"). The officers authorized to enforce the prohibitions are law enforcement officers, agents of a county humane society, or other persons appointed to act as an animal control officer for a municipal corporation or township in accordance with state law, an ordinance, or a resolution.⁴⁶

Procedures subsequent to seizure and impoundment

The bill specifies that all procedures and requirements established under existing law for the seizure, impoundment, and disposition of seized companion animals apply to an animal seized and impounded by an officer for a violation of the sexual conduct prohibition. Some of the existing procedures include providing written notice of the seizure and impoundment to the owner or keeper of the animal; humane destruction of the animal if a licensed veterinarian determines it is necessary because the animal is suffering; a court hearing to determine whether the officer impounding the animal had probable cause to seize it; and a determination of whether the animal will be returned to the person.⁴⁷

Penalties

A violation of any of the bill's prohibitions is a second degree misdemeanor. In addition, the court may order the offender to forfeit the animal and may provide for its disposition, including its sale. If an animal is forfeited and sold, the proceeds from the sale first must be applied to pay the expenses incurred with regard to the care of the

⁴⁵ R.C. 959.21(A).

⁴⁶ R.C. 959.21(D).

⁴⁷ R.C. 959.21(D).



animal from the time it was taken from the custody of the former owner. The balance of the proceeds from the sale, if any, must be paid to the former owner of the animal.⁴⁸

Also, if the court has reason to believe that the offender suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling. The court must order the offender to pay the costs of the evaluation or counseling.⁴⁹

Criminal activities associated with animal fighting

The bill adds to the types of activities associated with animal fighting that are criminal offenses and changes the penalty for some of those activities.

Existing law prohibits a person from knowingly doing any of the following:

- Engaging in or being employed at cockfighting, bearbaiting, or pitting an animal against another;
- Receiving money for the admission of another to a place kept for such a purpose;
- Using, training, or possessing any animal for seizing, detaining, or mistreating a domestic animal.

Any person who knowingly purchases a ticket of admission to such a place, or is present there or witnesses such a spectacle, is an aider and abettor. (A person who aids or abets another in committing an offense is guilty of complicity and is subject to the same penalty as a principal.) A violation is a misdemeanor of the fourth degree, for which a court may impose a variety of sanctions, including a definite jail term of not more than 30 days, a fine of up to \$250, or both.⁵⁰

The bill retains as fourth degree misdemeanors the prohibitions against (1) engaging in cockfighting, bearbaiting, or pitting one animal against another and

⁴⁸ R.C. 959.99(D).

⁴⁹ R.C. 959.99(E)(6).

⁵⁰ R.C. 959.15, 959.99(C), 2923.03, not in the bill; 2929.24(A)(4), not in the bill; and 2929.28(A)(2)(a)(iv), not in the bill.

(2) using, training, or possessing an animal for mistreating another animal.⁵¹ The bill also prohibits a person from knowingly doing any of the following:

- Being employed at cockfighting, bearbaiting, or pitting one animal against another;
- Betting on the results;
- Paying for admission to the event;
- Receiving anything of value in exchange for the admission of another person to the event;
- Using, possessing, or permitting or causing to be present at the event any device or substance intended to enhance an animal's ability to fight;
- Permitting or causing a minor to be present at the event if anyone present at or involved with the event is doing any of the above.⁵²

Under the bill, a violation of any of the prohibitions in this list is an unclassified felony punishable by a fine of up to \$10,000.⁵³ A person who knowingly witnesses cockfighting, bearbaiting, or an event in which one animal is pitted against another when a violation of any of the prohibitions in the above list is occurring is an aider and abettor and commits an unclassified felony punishable by a fine of up to \$10,000.⁵⁴

Micro wireless facilities in the public way

The bill establishes a regulatory scheme that can be applied to the construction and attachment of micro wireless facilities in the public way of a municipal corporation. The bill inserts this scheme into continuing law governing the occupation and use of municipal corporation public ways. The bill specifically provides that "no person shall occupy or use a public way without first obtaining, under [existing municipal corporation public way law and video service authorization law or the provisions of the bill regarding micro wireless facilities] any requisite consent of the municipal corporation."⁵⁵

⁵¹ R.C. 959.15(A) and 959.99(C).

⁵² R.C. 959.15(B).

⁵³ R.C. 959.99(I).

⁵⁴ R.C. 959.15(C) and 959.99(I).

⁵⁵ R.C. 4939.03(C)(1).



Overview of use of public way

Current law prohibits a person (any natural person, corporation, or partnership and any governmental entity⁵⁶) from occupying or using a public way without first obtaining any consent required by the municipal corporation that owns or controls the public way.⁵⁷ A "public way" means any municipally owned or controlled public street, road, highway, freeway, lane, path, alley, court, sidewalk, boulevard, parkway, drive, and other land dedicated or designated for a compatible public use. It includes their surface, and the space within, through, on, across, above, or below them.⁵⁸ To "occupy or use" the public way is to place a tangible thing in a public way for any purpose such as constructing, repairing, or operating lines, poles, conduits, ducts, equipment or other structures, appurtenances, or facilities necessary for the delivery of public utility services or cable operator services.⁵⁹

A municipal corporation must grant or deny a request for its consent within 60 days after the filing of a completed request but must not unreasonably withhold or deny its consent. If a municipal corporation denies its consent, it must provide, to the person submitting the request, its written reasons for denial and information the person may request to obtain consent.⁶⁰

Definitions

The bill defines new terms (listed in the table below) within the municipal corporation public way law that are associated with micro wireless facilities and their construction and attachment.

Term	Definition
"Accessory equipment"	Any equipment used in conjunction with a wireless facility or wireless support structure, including utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets. ⁶¹

⁵⁶ R.C. 4939.01(J).

⁵⁷ R.C. 4939.03(C)(1).

⁵⁸ R.C. 4939.01(L).

⁵⁹ R.C. 4939.01(I).

⁶⁰ R.C. 4939.03(C)(2) to (4).

⁶¹ R.C. 4939.01(A).

Term	Definition
"Antenna"	Communications equipment that transmits or receives radio frequency signals in the provision of wireless service, including associated accessory equipment. ⁶²
"Distributed antenna system"	A network or facility that distributes radio frequency signals to provide wireless service, that meets the height and size characteristics of a small cell facility and conforms to the size limitations for such a facility as specified in the bill, and that consists of (1) remote antenna nodes deployed throughout a desired coverage area, (2) a high-capacity signal transport medium connected to a central hub site, and (3) equipment located at the hub site to process or control the radio frequency signals through the antenna. ⁶³
"Eligible facilities request"	As defined in federal law, any request for modification of an existing wireless tower or base station that involves (1) collocation of new transmission equipment, (2) removal of transmission equipment, or (3) replacement of transmission equipment. Collocation is the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. ⁶⁴
"Micro wireless facility"	Both a distributed antenna system and a small cell facility, and the related wireless facilities. ⁶⁵
"Micro wireless facility operator"	A public utility or cable operator that operates a micro wireless facility. ⁶⁶
"Municipal electric utility"	A municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity. ⁶⁷

⁶² R.C. 4939.01(B).

⁶³ R.C. 4939.01(D).

⁶⁴ R.C. 4939.01(E); 47 U.S.C. 1455(a)(2) and 47 C.F.R. 1.40001, neither federal provision is in the bill.

⁶⁵ R.C. 4939.01(F).

⁶⁶ R.C. 4939.01(G).

⁶⁷ R.C. 4939.01(H).



Term	Definition
"Small cell facility"	A wireless facility that meets the following requirements: (1) each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna with exposed elements, could fit (antenna and all exposed elements) within an enclosure of that size; and all other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume, not including 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, and (2) if the wireless facility were placed on a wireless support structure, the increased height would not be more than 10 feet or the overall resulting height would not be more than 50 feet. ⁶⁸
"Utility pole"	A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. ⁶⁹
"Wireless facility"	An antenna, accessory equipment, or other wireless device or equipment used to provide wireless service. ⁷⁰
"Wireless service"	Any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided using wireless facilities. ⁷¹
"Wireless support structure"	A pole, such as a monopole, either guyed or self-supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities, but for purposes of requesting consent for micro wireless facility activity, "wireless support structure" excludes a utility pole or other facility that is owned or operated by a municipal electric utility. ⁷²

⁶⁸ R.C. 4939.01(N).

⁶⁹ R.C. 4939.01(O).

⁷⁰ R.C. 4939.01(P).

⁷¹ R.C. 4939.01(Q).

⁷² R.C. 4939.01(R).

State policy

The bill adds to the list of state public policies regarding the access or use of a public way. Under the bill, it is a public policy of Ohio to "expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service" throughout Ohio.⁷³ The bill does not provide a definition of what is a "smaller wireless facility" or "micro, and smaller, wireless facility." Current law includes such policies as (1) promoting the public, health, safety, and welfare regarding access to and the occupancy or use of public ways, to protect public and private property, and to promote economic development in Ohio, (2) promoting the availability of a wide range of utility, communication, and other services to residents of this state at reasonable costs, including the rapid implementation of new technologies and innovative services, and (3) ensuring that access to and occupancy or use of public ways advances the state policies regarding telecommunications, competitive retail electric service, and natural gas service.⁷⁴

Micro wireless facility placement

The bill authorizes a micro wireless facility operator to construct and operate the facility in a public way.⁷⁵ The bill also requires a municipal corporation to permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way.⁷⁶

Annual fee limit for attachment

The bill requires the total annual charges and fees charged for the attachment (and any activities related to the attachment) by the micro wireless facility operator to be the lesser of \$200 per attachment or the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator. If there is any controversy concerning the appropriateness of the charge or fee, the municipal corporation has the burden of proving that the charge or fee is reasonably related to its costs.⁷⁷ Under continuing law, a "public way fee" already may be levied to recover the costs incurred

⁷³ R.C. 4939.02(A)(8).

⁷⁴ R.C. 4939.02.

⁷⁵ R.C. 4939.032.

⁷⁶ R.C. 4939.0325(A).

⁷⁷ R.C. 4939.0325(B).



by a municipal corporation and that are associated with the occupancy or use of a public way. There is no monetary limit as under the bill.⁷⁸

Nondiscrimination provision

Under the bill, the charges, fees, terms, and conditions for micro wireless facility attachments must be nondiscriminatory as to all attaching operators regardless of the types of services provided by the micro wireless facility operator. The processes and time for approval of applications and permits for the attachments also must be nondiscriminatory.⁷⁹

Micro wireless facility placements on public-utility-owned poles

The bill does not affect 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.⁸⁰ Current law provides for telephone or electric light companies that are public utilities and incumbent local exchange carriers to permit a person or entity to attach wires, cable, facilities, or apparatus to its poles upon reasonable terms and conditions and the payment of reasonable charges.⁸¹

Requests for consent for micro wireless facilities

The bill permits an entity to file a completed request for consent, and requires a municipal corporation to grant or deny its consent, for the entity to do any of the following in a public way:

- Attach micro wireless facilities to a wireless support structure;
- Locate two or more wireless service providers' micro wireless facilities on the same wireless support structure;
- Replace or modify a micro wireless facility on a wireless support structure; and

⁷⁸ R.C. 4939.01(M) and 4939.05.

⁷⁹ R.C. 4939.032(C).

⁸⁰ R.C. 4939.0325(D).

⁸¹ R.C. 4905.71, not in the bill.



- Construct, modify, or replace a wireless support structure associated with a micro wireless facility.⁸²

If an entity is seeking to construct, modify, or replace more than one micro wireless facility within the jurisdiction of a single municipal corporation, the entity may file, at its discretion, a consolidated request and receive a single permit for the construction, modification, or replacement of the micro wireless facilities or associated wireless support structures.⁸³

The bill specifies that the municipal corporation may not require any zoning or other approval, consent, permit, certificate, or condition for the attachment, location, replacement, construction, or operation of a micro wireless facility, except as provided in the municipal corporation public way law as well as any franchise, pole attachment, or other agreements between the municipal corporation and a cable operator or public utility. In addition, the municipal corporation may not impose other prohibitions or restrictions on these activities.⁸⁴

Consent request fees

The bill permits a municipal corporation to charge for a request for consent for micro wireless facility activities. Under the bill, any such fee may not exceed the lesser of \$250 per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.⁸⁵ If an entity consolidates its requests for consent for more than one micro wireless facility, the fees may be cumulative.⁸⁶

Time period for consent

If an entity files a request for consent regarding a micro wireless facility, the municipal corporation must grant or deny its consent within 90 days after the filing.⁸⁷ If a municipal corporation fails to approve a request for consent (or for a relevant construction permit) within the required time period, the request is considered granted when the requesting entity provides notice to the municipal corporation that the time

⁸² R.C. 4939.031(A).

⁸³ R.C. 4939.0313(A).

⁸⁴ R.C. 4939.031(B).

⁸⁵ R.C. 4939.0319.

⁸⁶ R.C. 4939.0313(B).

⁸⁷ R.C. 4939.031(A).

period for taking action on the request has lapsed. This provision does not apply if the time period is tolled.⁸⁸

Tolling the consent time period

Under the bill, the 90-day period may be tolled (paused) only under certain circumstances. It may be tolled by mutual agreement between the entity requesting consent and the municipal corporation or in cases where the municipal corporation determines that the application for consent is incomplete. The time period may also be tolled by the municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests. In this case, the municipal corporation may toll the 90-day period for a reasonable amount of days not exceeding an additional 90 days.⁸⁹

Tolling procedure

To toll the time period for incompleteness, the municipal corporation, within 30 days after it receives the request, must provide written notice to the entity requesting consent that clearly and specifically delineates all missing documents or information. The missing documents or information must be reasonably related to determining whether the request meets the requirements of applicable federal and state law.⁹⁰

Resuming the time period

The time period for consent resumes when the entity responds to the notice of incompleteness by making a supplemental submission. If the supplemental submission is inadequate, the municipal corporation must notify the entity within ten days after receiving the submission that the submission did not provide the information identified in the original notice of incompleteness delineating missing documents or information.⁹¹

Tolling after second or subsequent submissions

The bill permits the time period to be tolled again in the case of second or subsequent notices due to mutual agreement between the entity and the municipal corporation, to incompleteness, or to a municipal corporation's extraordinary number of pending wireless facilities requests. But, the bill specifies that the second or subsequent

⁸⁸ R.C. 4939.037.

⁸⁹ R.C. 4939.035(A).

⁹⁰ R.C. 4939.035(B).

⁹¹ R.C. 4939.035(C) and (D).

notices may not specify missing documents or information that was not delineated in the original notice of incompleteness.⁹²

When time period may not be tolled

The 90-day time period may not be tolled for any notice of incompleteness that requires other information or documentation, including documentation intended to illustrate the need for the request, to justify the business decision for the request, or information described below in "**Restrictions on municipal authority**."⁹³

Denial of consent

Under the bill, if a municipal corporation denies consent to occupy or use a public way for micro wireless facilities, the denial must be supported by "substantial, competent evidence" The bill also prohibits denials from unreasonably discriminating against the entity requesting the consent.⁹⁴

Eligible facilities request

The bill specifies that a municipal corporation must approve an eligible facilities request within 60 days and may not deny such a request. Under federal regulations, a state or local government must approve any eligible facilities request.⁹⁵

Consent exception

The bill provides an exemption from the requirement for consent for two types of activities conducted in the public way. First, no consent is required for routine maintenance of wireless facilities. Second, consent is not required for the replacement of wireless facilities with wireless facilities that are substantially similar to the existing wireless facilities or that are the same size or smaller than the existing wireless facilities.⁹⁶

Restrictions on municipal authority

Under the bill, no municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent regarding

⁹² R.C. 4939.035(D).

⁹³ R.C. 4939.035(B) and 4939.0315.

⁹⁴ R.C. 4939.03(C)(4).

⁹⁵ R.C. 4939.039; 47 C.F.R.1.40001(c), not in the bill.

⁹⁶ R.C. 4939.0311(A).



micro wireless facilities, and no municipal corporation is permitted to have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.⁹⁷ In addition, a municipal corporation is not permitted to enter into an exclusive agreement with any entity for the right to attach to the municipal corporation's wireless support structures.⁹⁸

The bill also prohibits a municipal corporation from doing any of the following with respect to the provision of any micro wireless facility:

- Requiring the requestor to submit information about, or evaluate a requestor's business decisions with respect to, the requestor's service, customer demand, or quality of service to or from a particular area or site;
- Requiring the requestor to submit information about the need for the micro wireless facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds;
- Requiring the requestor to justify the need for the new micro wireless facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies;
- Evaluating the request based on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure, including the options to submit a request for consent to modify an existing micro wireless facility or associated wireless support structure, except that the bill permits a municipal corporation to propose an alternate location within 50 feet of the proposed location, which the requestor must use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;
- Requiring the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of the request, except that a municipal corporation may adopt reasonable rules that are intended to ensure the public health, safety, and welfare with respect to

⁹⁷ R.C. 4939.0317 and 4939.0321.

⁹⁸ R.C. 4939.0327.

the removal of an abandoned wireless support structure or abandoned wireless facilities;

- Imposing restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the Federal Aviation Administration;
- Imposing 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;
- Unreasonably discriminating among providers of functionally equivalent services;
- Imposing 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;
- Requiring that the requestor purchase, lease, or use 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;
- Conditioning the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure;
- Limiting the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;
- Imposing setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other types of structures in the public way;
- Imposing environmental testing, sampling, or monitoring requirements that exceed federal law or that are not imposed on other types of construction or elements of the construction;



- Imposing any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the Federal Communications Commission;
- Imposing separation requirements that require any space to be maintained between wireless facilities or wireless support structures;
- Preventing the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.⁹⁹

Exemption from local zoning review

The bill specifies that requests for consent are considered a permitted use and are exempt from local zoning review.¹⁰⁰

Municipal authority

Under the bill, a municipal corporation may require a work permit for wireless activities that do not require consent (see "**Consent exception**," above). However, a work permit is subject to any applicable requirements of the municipal corporation public way law.¹⁰¹ The bill also specifies that nothing in the micro wireless facility provisions precludes a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a micro wireless facility.¹⁰²

Existing agreements

The bill and continuing law regarding occupation or use of municipal corporation public ways do not apply to a micro wireless facility operator agreement, for the balance of its term, if (1) the agreement was authorized by ordinance or otherwise and was entered into by a municipal corporation and the micro wireless facility operator before the effective date of the bill, (2) the agreement authorizes the occupation or use of public ways, and (3) the micro wireless facility operator agrees with the applicable public way fees, or nonmonetary compensation, if any. The bill also specifies that, with respect to micro wireless facility operators and their facilities, the provision that gives municipal ordinances governing public ways enacted prior to

⁹⁹ R.C. 4939.0315.

¹⁰⁰ R.C. 4939.033.

¹⁰¹ R.C. 4939.0311(B).

¹⁰² R.C. 4939.038.



September 29, 1999 primacy over the bill and continuing law, does not apply. The bill, as a result, makes micro wireless facility operators and their facilities fully subject to the requirements of the bill and continuing law regarding the occupation and use of municipal corporation public ways.¹⁰³

Employment law and political subdivisions

Minimum wage

The bill prohibits a political subdivision from establishing a minimum wage that is different from the wage rate required under Ohio's Minimum Fair Wage Standards Law¹⁰⁴ and the Minimum Wage Amendment to Ohio's Constitution (MWA) (see **COMMENT 2**, below).¹⁰⁵

The basic state minimum wage is currently set pursuant to the MWA. The MWA requires the basic state minimum wage to be increased annually according to the Consumer Price Index or its successor index for all urban wage earners and clerical workers for all items as calculated by the federal government, rounded to the nearest five cents. Currently, the basic state minimum wage is \$8.10 per hour and will rise to \$8.15 per hour beginning January 1, 2017.¹⁰⁶ For employees who are under 16 years of age or who are employed by a business with gross annual receipts of \$297,000 (\$299,000 in 2017), the minimum wage is the federal minimum wage, which is \$7.25 per hour.

The MWA allows laws to be passed that set the state minimum wage at a rate higher, but not lower, than the rate calculated pursuant to the MWA.¹⁰⁷

Private employer authority to regulate employment matters

Under the bill, the following matters are exclusively the result of a private employer's policy or an agreement, contract, or collective bargaining agreement between a private employer and the employer's employees, unless those matters are expressly provided in state or federal law:

¹⁰³ R.C. 4939.08.

¹⁰⁴ R.C. Chapter 4111.

¹⁰⁵ R.C. 4111.02.

¹⁰⁶ Ohio Department of Commerce, Ohio Minimum Wage Laws, <http://www.com.ohio.gov/dico/MinimumWageLaws.aspx> (accessed December 5, 2016); and Ohio Department of Commerce Division of Industrial Compliance, State of Ohio 2017 Minimum Wage, http://www.com.ohio.gov/documents/dico_2017MinimumWageposter.pdf (accessed December 5, 2016).

¹⁰⁷ Ohio Const., Art. II, Sec. 34a. and R.C. 4111.02.



- The number of hours and time when an employee is required to work or be on call for work;
- The location where an employee is required to work;
- The amount of notification an employee receives of work schedule assignments or changes to assignments, including any addition or reduction of hours, cancellation of a shift, or change in the date or time of a shift;
- Minimizing fluctuations in the number of hours an employee is scheduled to work on a daily, weekly, or monthly basis;
- Additional payment for reporting time when work is or becomes unavailable, for being on call for work, or for working a split shift;
- Whether an employer will provide advance notice of an employee's initial work or shift schedule, notice of new schedules, or notice of changed schedules, including whether an employer will provide employees with predictive schedules;
- Whether an employer will provide additional hours of work to the employer's current employees before employing additional workers;
- Whether an employer will provide employees with fringe benefits and the type and amount of those benefits.

An employer is not required to adopt a policy concerning any of the matters listed above. For purposes of the bill, a "fringe benefit" means any benefit for which the employer would incur an expense, including health, welfare, or retirement benefits, whether paid for entirely by the employee or on the basis of a joint employer-employee contribution. "Fringe benefit" also includes leaves of absence or vacation, separation, sick, or holiday pay. Additionally, the bill requires a court to give due consideration and great weight to the U.S. Department of Labor's and the federal courts' interpretations of "reporting time," "on call," and "split shift" under the Fair Labor Standards Act (the federal minimum wage, overtime, and child labor law) and the regulations adopted pursuant to it.¹⁰⁸

¹⁰⁸ R.C. 4113.85(A), (B), and (C), by reference to 29 United States Code 201 *et seq.*

Political subdivisions

The bill does not affect the authority provided by case law, the Revised Code, or the Home Rule Amendment of the Ohio Constitution for a political subdivision to adopt a resolution or ordinance to limit the hours an employer operates.¹⁰⁹

General Assembly's intent

The bill expresses the intent of the General Assembly to exclusively regulate the hours of labor and fringe benefits arising from an employer-employee relationship, pursuant to the General Assembly's exclusive authority under Section 34 of Article II of the Ohio Constitution, to fix and regulate the hours of labor and provide for the comfort, health, safety, and general welfare of employees. Under the bill, the General Assembly finds that regulating an employment relationship as it pertains to hours of labor and fringe benefits is a matter of statewide concern that requires uniform statewide regulation.¹¹⁰ (See **COMMENT 2**, below.)

Severability clause

The bill specifies that if any provision of the bill is found to be invalid, the invalidity does not affect any other provisions of the bill because each item of law in the bill is independent and severable.¹¹¹

COMMENT

1. Under Article XVIII, Section 3 of the Ohio Constitution, municipal corporations "have the authority to exercise all powers of local self-government and adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws." Accordingly, a provision enacted by the General Assembly that purports to preempt a municipal corporation's constitutional authority may be invalid. See *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005.

2. It is unclear whether a political subdivision has the authority to adopt an ordinance or resolution setting a minimum wage or otherwise regulating hours and location of work, scheduling, or fringe benefits for the private sector. Under Article XVIII, Section 3 of the Ohio Constitution (the "Home Rule Amendment), municipal

¹⁰⁹ R.C. 4113.85(D), by reference to Ohio Const., Art. XVIII, Sec. 3.

¹¹⁰ Section 5, by reference to Ohio Const., Art. II, Sec. 34.

¹¹¹ Section 6.



corporations have the authority to adopt and enforce, within their limits, local police, sanitary, and similar regulations that do not conflict with general laws. Under Section 34, Article II of the Ohio Constitution ("Section 34"), the General Assembly may pass laws fixing and regulating the hours of labor, establishing a minimum wage, and providing for the general welfare of all employees. Under Section 34, no other provision of the Constitution may impair or limit the General Assembly's power under Section 34.

Section 34 appears to require some regulatory action by the General Assembly. It is unclear whether the bill, by designating employers as having the exclusive authority regarding the matters listed in the bill, actually regulates these matters. However, only a court can determine whether a state law is passed pursuant to Section 34, and thus prevails over a municipal corporation's home rule authority.¹¹²

As noted above, municipal corporations have the authority to adopt and enforce legislation under the Home Rule Amendment. Section 34 and the Minimum Wage Amendment (MWA) establish the General Assembly's authority to pass state laws pertaining to the minimum wage. The MWA, however, states:

Laws may be passed to implement its provisions and create additional remedies, increase the minimum wage rate and extend the coverage of the section, but in no manner restricting any provision of the section or *the power of municipalities under Article XVIII of this constitution with respect to the same.*¹¹³

Because no court case appears to have determined how the Home Rule Amendment, Section 34, and the MWA interact, the constitutionality of a state law that prohibits a political subdivision from adopting its own minimum wage is unclear.

HISTORY

ACTION	DATE
Introduced	05-17-16
Reported, S. Finance	05-25-16
Passed Senate (21-11)	05-25-16
Reported, H. Finance	---

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¹¹² See *City of Lima v. State*, 122 Ohio St.3d 155 (2009).

¹¹³ Ohio Const., Art. II, Sec. 34a.

