



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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(As Passed by the House)

**Reps.** R. Smith and LaTourette, Becker, Blessing, Boggs, Carfagna, Celebrezze, Duffey, Faber, Gavarone, Hambley, Koehler, Lang, Lipps, Miller, Patton, Pelanda, Perales, Reineke, Rezabek, Romanchuk, Schaffer, Seitz, Sykes, Thompson, West, Anielski, Craig, DeVitis, Greenspan, Johnson, Kent, Ryan, Scherer, Schuring, Stein, Wiggam, Young, Rosenberger

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## **BILL SUMMARY**

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

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

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

- Changes municipal public way usage state policy to do the following:
  - Promote the rapid deployment of small cell facility infrastructure and related capital investment in Ohio by ensuring that municipal corporations grant or deny consent to install, operate, modify, or replace wireless facilities in a timely manner;
  - Protect the integrity of residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.
- Repeals an existing municipal public way usage policy seeking to expedite the installation and operation of facilities to deploy advanced wireless service throughout Ohio.

## **Consent for placement**

- Requires a municipal corporation to grant or deny the following requests for consent to do the following in a municipal public way not later than:
  - 90 days, to collocate small cell facilities on a wireless support structure;
  - 90 days, to replace or modify a small cell facility on a wireless support structure; or
  - 120 days, to construct, modify, or replace a wireless support structure associated with a small cell facility.
- Provides that failure to timely grant or deny a small cell facility or "work permit" request within the time periods described above, if the time period is not tolled, results in the request being deemed granted upon the requesting entity providing notice to the municipal corporation that the time period has lapsed.
- Prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the municipal public way, other than, when applicable under the bill, a work permit is required.

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

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

## **Consolidated applications**

- Establishes a cap of 30 small cell facilities or wireless support structure requests for a single consolidated application.



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

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

- Applies, generally, the limitations and prohibitions imposed on municipal corporations under current law for micro wireless facilities to placements of small cell facilities and wireless support structures.
- Refrains from imposing the following limitations and prohibitions imposed on municipal corporations under current law for micro wireless facilities on placements of small cell facilities and wireless support structures:
  - A prohibition against evaluating a request based on the availability of other potential facility locations.
  - A limitation on imposing requirements for bonds, escrow deposits, letters of credit, or other financial surety to ensure removal of abandoned or unused facilities.
  - A prohibition against imposing unreasonable requirements for maintenance or appearance of facilities.
  - A prohibition against limiting the duration of a permit that was granted but permitting a municipal corporation to require construction to commence within two years.
  - A prohibition against preventing the location of structures in a residential area or within a specific distance from a residence or other structures.

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

- Permits municipal corporations to do the following regarding placement of small cell facilities and wireless support structures in the municipal public way:



- Reserve municipal public way space or space on a municipally-owned wireless support structure or pole for future public safety or transportation uses, in accordance with an approved plan, if it does not preclude placement of a pole or collocation of a small cell facility.
- Require reasonable and nondiscriminatory spacing requirement for new wireless support structure, if the requirements do not prohibit or have the effect of prohibiting the provision of wireless service to any location.
- Adopt reasonable design guidelines with objective, technically feasible criteria reasonably matching the aesthetics and character of the immediate area and apply them in a nondiscriminatory manner.
- Propose alternate locations for proposed wireless support structures consistent with certain distance requirements in the bill.
- Require collocation or a new wireless support structure to be completed within 180 days after issuance of a permit, with certain exception and extensions permitted under the bill.
- Set certain restrictions as provided in the bill for the height of a wireless support structure and the placement of a wireless facility.
- Require an operator to comply with reasonable and nondiscriminatory requirements prohibiting structures and facilities due to an area requiring undergrounding or requiring them to be placed elsewhere.
- Require reasonable, technically feasible, and nondiscriminatory design or concealment methods in a "historic district."
- Resolve conflicting requests for installation due to spacing, setback, or fall zone requirements through a reasonable and nondiscriminatory manner deemed appropriate by the municipal corporation.
- Impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to municipal property caused by an operator or its agent.

## **Fees**

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



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

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

- Provides that a municipal corporation's approval term for an attachment to a wireless support structure is at least ten years, with a presumption of renewal for successive five-year terms, except as terminated under conditions and requirements described in the bill.
- Permits an operator to remove its small cell facilities at any time.
- Requires an operator who owns or operates small cell facilities or wireless support structures in the public way to indemnify, protect, defend, and hold the municipal corporation and its representative harmless to the extent that the harm is caused by the negligence of the owner or operator of the small cell facility and wireless service in the public way.
- Provides that consent of a municipal corporation is not required for the replacement of wireless facilities with wireless facilities that are consistent with the municipal corporation's current design guidelines and that are substantially similar to, and of the same size or smaller than, the existing facilities.
- Provides that, for certain investor-owned electric utilities and their affiliates, electric cooperatives, and independent transmission companies, the municipal public way usage law does not affect tariffs, contracts, or federal and state laws or regulations regarding their utility poles, similar structures, or other types of equipment.

- Permits a person to construct, modify, or maintain a utility pole or wireless support structure along, across, and under a public way in excess of the size limits, to the extent permitted by the municipal corporation's applicable regulations.
- Requires an operator, on request of a municipal corporation, and in order to accomplish construction or maintenance directly related to health, safety, and public welfare improvements, to relocate or adjust its facilities in the municipal public way at no cost to the municipal corporation if the request is not discriminatory.
- Provides that a cable or video service provider is not required to obtain permits from a municipal corporation or pay fees, except for work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities under an existing franchise or video service authorization.
- Provides that a holder of an existing franchise or video service authorization is not required to obtain additional authorizations or pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under Ohio's Fair Competition in Cable Operations law.
- Provides that the permitting procedures and authorizations set forth in the bill apply only to the placement of small cell facilities and wireless support structures in the public way, and do not authorize the construction and operation of a wireline backhaul facility.
- Creates, amends, and repeals numerous definitions for the Chapter governing municipal public way usage law in conjunction with the bill's change of focus to small cell facilities.

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## CONTENT AND OPERATION

### **Overview: *small cell facility replacing micro wireless facility***

The bill generally replaces *micro wireless facilities* with *small cell facilities* regarding regulation of their placement under the municipal public way usage law. To effectuate this change, the bill amends, renumbers, repeals, and repeals and re-enacts several portions of R.C. Chapter 4939.<sup>1</sup> To help understand these changes and the new regulatory structure, this analysis will occasionally treat provisions in current law as new law and discuss amendments and repeals of existing law only as needed.

Continuing law prohibits a "person" (any natural person, corporation, or partnership, and any governmental entity<sup>2</sup>) from occupying or using a public way without first obtaining any consent required by the municipal corporation that owns or controls the public way.<sup>3</sup> 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 (the bill adds public easement to this list). It includes their surface, and the space within,

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<sup>1</sup> For example, R.C. 4939.032, 4939.033, and 4939.037 are repealed and re-enacted into R.C. 4939.031, but are made applicable to small cell facilities only.

<sup>2</sup> R.C. 4939.01(M).

<sup>3</sup> R.C. 4939.03(C)(1).



through, on, across, above, or below them.<sup>4</sup> 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, pipes, conduits, ducts, equipment or other structures, appurtenances, or facilities necessary for the delivery of public utility services or cable operator services.<sup>5</sup>

## State policy changes

The bill adds the following to the list of state public policies regarding the access or use of a public way, stating Ohio policy is to:

- Promote the rapid deployment of small cell facility infrastructure and related capital investment in Ohio by ensuring that municipal corporations grant or deny consent to install, operate, modify, or replace wireless facilities in a timely manner;<sup>6</sup> and
- Protect the integrity of residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.<sup>7</sup>

The bill also repeals an existing policy statement on the state's role in expediting the installation and operation of micro, and smaller, wireless facilities to facilitate the deployment of advanced wireless service throughout Ohio.<sup>8</sup>

## Consent for placement

The bill provides for consent for placement of small cell facilities in the municipal public way and on municipally owned or operated wireless support structures in the public way.

### Consent for placement in the public way

#### Exemption from zoning approval

The bill provides that small cell facility "collocation" and "wireless support structure" (see "**Definition changes**") construction, maintenance, modification,

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<sup>4</sup> R.C. 4939.01(O).

<sup>5</sup> R.C. 4939.01(L).

<sup>6</sup> R.C. 4939.02(A)(3).

<sup>7</sup> R.C. 4939.02(A)(9).

<sup>8</sup> R.C. 4939.02(A)(8).





operation, or replacement in, along, across, upon, and under the public way is a permitted use not subject to zoning review or approval. Additionally, a small cell facility "operator" (see "**Definition changes**") must comply with generally applicable standards that are consistent with the municipal public way usage law and adopted by a municipal corporation for construction and public safety in a public way. All structures and facilities to be constructed and maintained may not impede or impair public safety or the legal use of the public way by the municipal corporation, the traveling public, or other public utilities.<sup>9</sup>

The bill also prohibits a municipal corporation from requiring any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a small cell facility in the municipal public way, except to allow a municipal corporation to require a work permit.<sup>10</sup>

#### **Time period for approval**

The bill provides requirements regarding the timing for a municipal corporation to grant or deny a request regarding placement in the public way, as follows:

- 90 days, to collocate small cell facilities on a wireless support structure;
- 90 days, to replace or modify a small cell facility on a wireless support structure, "if consent is required under this section;"<sup>11</sup> or
- 120 days, to construct, modify, or replace a wireless support structure associated with a small cell facility.<sup>12</sup>

Additionally, the bill requires an entity filing a completed request for consent to make the filing under to collocate, construct, modify, or replace small cell facilities or wireless support structures.<sup>13</sup>

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<sup>9</sup> R.C. 4939.031(A).

<sup>10</sup> R.C. 4939.031(D).

<sup>11</sup> It is unclear what effect the phrase "if consent is required under this section" has in the section regarding consent.

<sup>12</sup> R.C. 4939.031(B).

<sup>13</sup> Because it is unclear how a person can file a request for consent "under" to collocate, construct, modify, or replace, this could be misinterpreted and may need clarification.



### Failure to approve within the time period

The bill provides that failure to timely grant or deny a small cell facility or "work permit" (see "**Definition changes**") request within the time periods described above, if the time period is not tolled, results in the request being deemed granted upon the requesting entity providing notice to the municipal corporation that the time period has expired.<sup>14</sup>

### Tolling of municipal corporation consent time period

The bill provides that if the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time periods described above due to a municipal corporation's lack of resources, then the municipal corporation may toll time limits. The time periods may be tolled based on the number of requests received in any consecutive 30-day time period as described in the following table (see **COMMENT 1**):<sup>15</sup>

Population threshold	Application threshold	1st tolling period (21 days) for applications	2nd tolling period (15 days) for applications	3rd tolling period (15 days) for applications
30,000 or less	15	16-30	31-45	46-60
30,001-40,000	20	21-35	36-50	51-65
40,001-50,000	25	26-40	41-55	56-70
50,001-60,000	30	31-45	46-60	61-75
60,001-100,000	60	61-75	76-90	91-105
100,000 or more	90	91-120	121-150	151-180

The table lists only two additional tolling periods. But, the number of additional tolling periods under the bill is limited only by the number of requests received with any consecutive 30-day time period. In no instance, however, is a municipal corporation to toll the time period for any small cell facility or wireless support structure for more than 90 days.<sup>16</sup>

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<sup>14</sup> R.C. 4939.031(C).

<sup>15</sup> R.C. 4939.036(A)(3).

<sup>16</sup> R.C. 4939.036(A)(3)(c).



### **Notice of time limit**

The bill requires a municipal corporation, on request, to provide an operator written notice of the time limit for a specific small cell facility or wireless support structure request.<sup>17</sup>

### **Consolidated application for consent**

The bill grants a municipal corporation the authority to permit a person seeking to construct, modify, collocate, or replace more than one small cell facility or wireless support structure to file, as the person determines, up to 30 small cell facilities requests or up to 30 wireless support structure requests in one consolidated application. The 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, however, may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.<sup>18</sup>

### *Consolidated applications and tolling*

The bill provides how to count consolidated applications for tolling calculations. Each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced constitutes a separate request for consent, for the purposes of calculating the tolling response deadline described above. However, a request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.<sup>19</sup>

### *Consolidated applications and fee reductions*

Finally, the bill explicitly permits a municipal corporation to reduce the fee for a consolidated application, to encourage persons to submit them.<sup>20</sup>

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<sup>17</sup> R.C. 4939.036(A)(3)(c).

<sup>18</sup> R.C. 4939.0312(A).

<sup>19</sup> R.C. 4939.0312(C).

<sup>20</sup> R.C. 4939.0312(B).



## **Collocation on municipally owned/operated wireless support structures**

### **Conditions for collocation, generally**

The bill requires a municipal corporation to permit collocation of a small cell facility by an operator to a wireless support structure owned by a municipal corporation and located in the public way, if the collocation is:

- Consistent with the municipal public way usage law (which means, presumably, consistency with the provisions of the bill and those discussed above under "**Consent for placement in the public way,**" including, for example the approval timelines);
- For the purpose of providing wireless service;
- In compliance with reasonable, written design guidelines adopted by the municipal corporation; and
- In compliance with reasonable terms and conditions adopted by the municipal corporation that are consistent with the design guidelines.

### **Collocation after replacement/modification**

The municipal corporation may require replacement or modification of its wireless support structure, at the operator's cost, as a condition for collocation on that structure, if the municipal corporation determines it is necessary for compliance with the municipal corporation's construction or safety standards. The replacement or modification must conform to the applicable design guidelines and the municipal corporation's specifications for the structure type being replace or modified. The bill permits the municipal corporation to retain ownership of the wireless support structure after its replacement.<sup>21</sup>

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

### **Small cell/wireless support structure limitations**

With regard to small cell facilities or associated wireless support structures in a public way, the bill provides that a municipal corporation cannot do the following:<sup>22</sup>

- Require a person to submit information about, or evaluate the person's business decisions with respect to, the person's service, customer demand,

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<sup>21</sup> R.C. 4939.0322(A).

<sup>22</sup> R.C. 4939.0313.



or quality of service to or from a particular area or site as a condition for approval of the request.

- Require a person to submit information about the need for the small cell facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds, as a condition for approval of the request.
- Require a person to justify the need for the new small cell facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies as a condition for approval of the request.
- Require the removal of existing wireless support structures or 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 (or pursuant to reasonable rules to protect the public health, safety, and welfare).
- 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.
- Unreasonably discriminate among providers of functionally equivalent services.
- 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.
- Condition the grant of consent on the requestor's<sup>23</sup> agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure.
- Impose setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other similar types of structures in the public way.

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<sup>23</sup> Consistent with other amendments to R.C. 4939.0313, "requestor's" might need to be amended to "person's."



- Impose environmental testing, sampling, or monitoring requirements that exceed rules and regulations established under state or federal law or that are not imposed on other types of construction or elements of the construction.
- Impose any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the federal communications commission.
- Except as provided under "**Authority granted to municipal corporations**," discussed below, impose separation requirements regarding spacing between an operator's facilities and other wireless facilities, wireless support structures, utility poles, ground-mounted equipment, or other utility facilities within the public way.

### **Micro wireless limitations not applied**

The bill does not impose the following limitations that currently apply regarding municipal authority over micro wireless facilities:

- A prohibition against imposing requirements for bonds, escrow deposits, letters of credit, or other financial surety to ensure removal of abandoned or unused facilities.<sup>24</sup> Rather, the bill explicitly grants permission to impose reasonable requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of "abandoned" or unused wireless facilities or damage to municipal property caused by an operator or its "agent" (see "**Definition changes**").<sup>25</sup>
- A prohibition against imposing unreasonable requirements for maintenance or appearance of facilities.<sup>26</sup> Here too, the bill explicitly grants a municipal corporation the authority to adopt reasonable design guidelines (see "**Authority granted to municipal corporations**").<sup>27</sup>
- A prohibition against limiting the duration of a permit that was granted, but permitting a municipal corporation to require construction to commence within two years.

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<sup>24</sup> R.C. 4939.0315(G) (as codified under current law).

<sup>25</sup> R.C. 4939.0314(J).

<sup>26</sup> R.C. 4939.0315(I) (as codified under current law).

<sup>27</sup> R.C. 4939.0314(C).



- A provision that prohibited evaluating requests based on the availability of other potential locations for placement.
- A provision that prevents requestors from locating structures in a residential area or within a specific distance from a residence or other structures.<sup>28</sup>

## Authority granted to municipal corporations

The bill permits municipal corporations to do the following regarding placement of small cell facilities and wireless support structures in the municipal public way.

### Completion within 180 days

A municipal corporation may require collocation or a new wireless support structure to be completed within 180 days after issuance of a permit, unless extended by agreement or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site. Regarding the extension due to delay regarding commercial power or backhaul availability, the operator must have made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services and the additional time to complete installation cannot exceed 360 days after issuance of the permit. Otherwise, the permit is void unless the municipal corporation grants the operator a written extension.<sup>29</sup>

### Height restrictions

A municipal corporation may set certain restrictions for the height of a wireless support structure and the placement of a wireless facility as follows:

- For an existing wireless support structure, the antenna and any associated shroud or concealment material may be collocated at the top of the existing structure, but may not increase the height by more than five feet;
- For a new wireless support structure and any collocated antennas, the height must not be more than 40 feet above ground level;
- Notwithstanding these provisions granting municipal corporations authority to set height restrictions (see **COMMENT 2**), and except that the cap must not be below 35 feet in height above ground level, a municipal

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<sup>28</sup> R.C. 4939.0315(Q) (as codified under current law).

<sup>29</sup> R.C. 4939.0314(E).



corporation may adopt design guidelines to cap the height of small cell facilities in areas meeting the following criteria below:

- The area is within 300 feet of the proposed site for a new wireless support structure and there are no wireless support structures or utility poles taller than 30 feet above ground level;
- The maximum allowable height for building construction in the underlying zoning district is 35 feet above ground level or less.<sup>30</sup>

#### **Other authority**

A municipal corporation may also do any of the following:

- Reserve municipal public way space or space on a municipally owned wireless support structure or pole for future public safety or transportation uses, in accordance with an approved plan, if reservation does not preclude placement of a pole or collocation of a small cell facility;
- Require an operator to pay for the replacement of a municipally owned pole or wireless support structure if (1) replacement is necessary to accommodate small cell facility collocation and future public safety or transportation use and (2) the replaced pole and structure accommodates the future use;
- Require reasonable and nondiscriminatory spacing requirements for new wireless support structures, if the requirements do not prohibit or have the effect of prohibiting the provision of wireless service to any location;
- Adopt reasonable design guidelines with objective, technically feasible criteria reasonably matching the aesthetics and character of the immediate area regarding the following and apply them in a nondiscriminatory manner:
  - The location of ground-mounted small cell facilities;
  - The location of a small cell facility on a wireless support structure;
  - The appearance and concealment of small cell facilities; and
  - The design and appearance of a wireless support structure.

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<sup>30</sup> R.C. 4939.0314(F).



- Propose alternate locations for proposed wireless support structures within 100 feet or within a distance that is equivalent to the width of the public way in or on which the new wireless support structure is proposed, whichever is greater, which the operator must use if it has the right to use the location on reasonable terms and conditions and if the location does not impose technical limits or additional costs.
- Require an operator to comply with reasonable and nondiscriminatory requirements prohibiting structures and facilities because an area (1) is designed solely for undergrounding or (2) facilities or structures are required to be placed elsewhere, if the following apply regarding the prohibitory requirements:
  - The municipal corporation has required all structures and facilities (including those owned by a municipal electric company, but except for those owned by a municipal corporation or a transit authority) to be placed underground or elsewhere in the public way or a utility easement by a date that is three months prior to the submission of the application;
  - Subject to the municipal public way usage law, the municipal corporation does not prohibit the replacement of wireless support structures or the collocation of small cell facilities on wireless support structures in the designated area;
  - The municipal corporation permits operators to seek a waiver of the undergrounding or alternative location requirements for a new wireless support structure to support small cell facilities (provided that waivers are processed in a reasonable and nondiscriminatory manner that does not effectively prohibit wireless service) if the operator is unable to achieve its service objective using a small cell facility (1) from a location in the public way where the prohibition does not apply, (2) in a utility easement the operator has the right to access, or (3) in or on other suitable locations or structures made available by the municipal corporation at reasonable rates, fees, and terms.
- Require reasonable, technically feasible, and nondiscriminatory design or concealment measures in a "historic district" (see "**Definition changes**"), provided that the measures do not have the effect of prohibiting any operator's technology and that they are not considered a part of the size restrictions for a small cell facility.

- Resolve conflicting requests for installation due to spacing, setback, or fall zone requirements through a reasonable and nondiscriminatory manner deemed appropriate by the municipal corporation.<sup>31</sup>

## **Fees**

Under the bill, the fee imposed for granting of processing an application for consent for placement of a small cell facility in a municipal public way may not exceed a one-time fee of \$250 per small cell facility.<sup>32</sup> Similarly, the total annual charges for a collocation attachment on a wireless support structure owned by the municipal corporation may not exceed \$200.<sup>33</sup>

### **Adjustment every five years**

The bill permits the municipal corporation to adjust the above amounts by 10% every five years, rounded to the nearest \$5 (see **COMMENT 3**).<sup>34</sup>

### **Other placement fees prohibited**

The bill prohibits a municipal corporation from charging any fees for a small cell facility or associated wireless support structure other than those described above, work permit fees, and financial sureties. The bill also states that these fees are not public way fees.<sup>35</sup> Under continuing law, a municipal corporation may levy public way fees based on costs that the municipal corporation has actually incurred and can clearly demonstrate are or can be properly allocated and assigned to the occupancy or use of a public way.<sup>36</sup>

### **No tax liability for a municipal corporation**

The bill provides that a municipal corporation is not subject to any state or local tax liabilities or assessments for (1) the placement of small cell facilities in the public

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<sup>31</sup> R.C. 4939.0314.

<sup>32</sup> R.C. 4939.0316 specifies this fee is charged pursuant to R.C. 4939.031, but that section imposes no fee.

<sup>33</sup> R.C. 4939.0322(B).

<sup>34</sup> R.C. 4939.0316 and 4939.0322(B).

<sup>35</sup> R.C. 4939.0322(C).

<sup>36</sup> R.C. 4939.05, not in the bill.

way or attachment of small cell facilities to a wireless support structure and (2) any associated fees imposed.<sup>37</sup>

### **Attachment terms and termination**

Under the bill, a municipal corporation's approval term of an attachment to a wireless support structure must be at least ten years, with a presumption of renewal for successive five-year terms. The renewal is subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the municipal corporation, except for generally applied permitting to safeguard the public health, safety, and welfare. However, at any time an operator may (1) remove its small cell facilities, subject to work requirements and (2) stop paying annual charges or fees imposed for collocation/attachment on a municipally owned or operated wireless support structure.<sup>38</sup>

### **Indemnification**

The bill requires an operator who owns or operates small cell facilities or wireless support structures in the public way to indemnify, protect, defend, and hold the municipal corporation and its elected officials, officers, employees, agents (see **COMMENT 4**), and volunteers harmless against all claims, lawsuits, judgments, costs, liens, losses, expenses, fees, and suits of any kind and nature to the extent that the harm is caused by the negligence of the owner or operator (or their agents, representatives, employees, etc.) of the small cell facility and wireless service in the public way.<sup>39</sup>

### **Consent not required**

The bill restricts a provision in continuing law, providing that consent of a municipal corporation is not required for the replacement of wireless facilities with certain other wireless facilities. Under the bill, the replacement facilities must be consistent with the municipal corporation's current design guidelines to avoid consent.<sup>40</sup>

### **Other provisions**

The bill also does the following:

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<sup>37</sup> R.C. 4939.0322(D).

<sup>38</sup> R.C. 4939.0317.

<sup>39</sup> R.C. 4939.039.

<sup>40</sup> R.C. 4939.0311(A).



- Provides that, to the extent that any of the following are not small cell facility operators, the municipal public way usage law is not to be construed to add to, replace, or supersede any tariff, contractual obligation or right, or federal or state law or regulation regarding utility poles, similar structures, or any type of equipment that is owned or controlled by them: (1) investor-owned electric utilities or their affiliates, (2) electric cooperatives, or (3) independent transmission companies.<sup>41</sup>
- Permits a person to construct, modify, or maintain a "utility pole" (see "**Definition changes**") or wireless support structure along, across, and under a public way in excess of the size limits, to the extent permitted by the municipal corporation's applicable regulations.<sup>42</sup>
- Requires an operator, on request of a municipal corporation, and in order to accomplish construction and maintenance directly related to health, safety, and public welfare improvements, to relocate or adjust its facilities in the municipal public way at no cost to the municipal corporation if the request is not discriminatory.<sup>43</sup>

### **Applicability of the bill**

The bill provides that, notwithstanding the amendments made in the bill to the municipal public way usage law, a cable or video service provider is not required to obtain permits from a municipal corporation or pay fees. However, the cable or video service provider is still required to obtain work permits and pay associated fees to place, operate, maintain, or replace micro wireless facilities under an existing franchise or video service authorization under the Fair Competition in Cable Operations law.

A holder of an existing franchise or video service authorization is also not required to obtain additional authorizations or pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under the Fair Competition in Cable Operations law.<sup>44</sup>

The permitting procedures and authorizations set forth by the amendments made to this bill, however, apply only to the placement of small cell facilities and wireless support structures in the public way, and do not authorize the construction

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<sup>41</sup> R.C. 4939.0322(E).

<sup>42</sup> R.C. 4939.0329.

<sup>43</sup> R.C. 4939.09.

<sup>44</sup> R.C. 4939.0311(C).



and operation of a wireline backhaul facility (see "**Definition changes**" below) (see "**COMMENT**" 5).<sup>45</sup>

## Definition changes

### New terms

The bill defines, within ongoing municipal corporation public way usage law, new terms described below that are associated with small cell facilities and their construction and attachment.

Term	Definition
Abandoned	Any small cell facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the municipal corporation and receiving the municipal corporation's approval. <sup>46</sup>
Agent	A person that provides a municipal corporation written authorization to work on behalf of a public utility. <sup>47</sup>
Collocation or collocate	To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure. <sup>48</sup>
Decorative poles	Structures, other than street lights, placed in the public way specifically designed and placed for aesthetic purposes and on which there are limited attachments. <sup>49</sup>
Historic district	A building, property, or site, or group of buildings, properties, or sites that are either (1) listed or formally determined to be eligible to be listed in the National Register of Historic Places, or (2) a Registered Historic District under Ohio law. <sup>50</sup>
OMUTCD	The uniform system of traffic control devices promulgated by the Ohio Department of Transportation. <sup>51</sup>
Micro wireless facility	A small cell facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length suspended on cable strung between wireless support structures. <sup>52</sup>

<sup>45</sup> R.C. 4939.0311(D).

<sup>46</sup> R.C. 4939.01(A).

<sup>47</sup> R.C. 4939.01(B).

<sup>48</sup> R.C. 4939.01(E).

<sup>49</sup> R.C. 4939.01(F).

<sup>50</sup> R.C. 4939.01(H).

<sup>51</sup> R.C. 4939.01(K).

<sup>52</sup> R.C. 4939.09(I).



<b>Term</b>	<b>Definition</b>
Small cell facility operator or operator	A wireless service provider, cable operator, video service provider, or their agents, that operate a small cell facility and provide wireless service, information services, or services that are fixed in nature of use unlicensed spectrum. <sup>53</sup>
Video service provider	Has the same meaning as in current law, which means a person granted a video service authorization under Fair Competition in Cable Operations law. <sup>54</sup>
Wireless service provider	Is a person who provides federally licensed commercial mobile service and commercial mobile radio service, as defined in federal law and rules. "Commercial mobile radio service" is limited to mobile telephone, mobile cellular telephone, paging, personal communications service, and specialized mobile radio service provided by a common carrier in Ohio and excludes fixed wireless service (see <b>COMMENT 6</b> ). <sup>55</sup>
Wireline backhaul facility	A facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire. <sup>56</sup>
Work permit	A permit issued by a municipal corporation that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of a public way, including, for example, digging, obstructing, or installing. <sup>57</sup>

### **Amended terms**

The bill amends the following current law definitions as described below:

<b>Term</b>	<b>Definition</b>
Public utility	Companies defined as public utilities under Ohio's public utility laws, electric suppliers, and, as amended by the bill and defined in Ohio law governing Alternative Regulation of Telecommunications, wireless service providers. <sup>58</sup>
Public way	The surface of, and space within, through, on, across, above, or below public ways such as streets, roads, and paths, and is amended by the bill to include public easements. <sup>59</sup>
Small cell facility	Is amended to remove the 50-foot height limitation (if the facility were placed on a wireless support structure) so that the term is defined to mean a wireless

<sup>53</sup> R.C. 4939.01(R).

<sup>54</sup> R.C. 4939.01(T) and 1332.21, not in the bill.

<sup>55</sup> R.C. 4939.01(W); R.C. 4927.01, not in the bill.

<sup>56</sup> R.C. 4939.01(Y).

<sup>57</sup> R.C. 4939.01(Z).

<sup>58</sup> R.C. 4939.01(N).

<sup>59</sup> R.C. 4939.01(O).



Term	Definition
	facility that: <ul style="list-style-type: none"> <li>• Has antenna in an enclosure not exceeding six cubic feet in volume or, in case of an antenna with exposed elements, the antenna and its elements could fit within such an enclosure; and</li> <li>• Has associated wireless equipment (excluding such items as electric meters and power connections) that is cumulatively not more than 28 cubic feet in volume.<sup>60</sup></li> </ul>
Utility pole	Is amended to mean a structure designed for or used to carry lines, cables, or wires for electric or telecommunications service and excludes street signs and decorative poles. <sup>61</sup>
Wireless facility	As amended by the bill means: <ul style="list-style-type: none"> <li>• Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications, radio transceivers, antennas, cables, power supplies, and comparable equipment;</li> <li>• Small cell facilities; and</li> <li>• Excludes the structure or improvements on, under, or within which the equipment is collocated; and cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.<sup>62</sup></li> </ul>
Wireless support structure	As amended by the bill, a pole, street light pole, traffic signal pole, a 15-foot or taller sign pole, or utility pole capable of supporting small cell facilities, and excludes a utility pole or other facility: <ul style="list-style-type: none"> <li>• Owned or operated by a municipal electric utility; or</li> <li>• Used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.<sup>63</sup></li> </ul>

### Repealed terms

The bill also repeals the definitions for "accessory equipment," "distributed antenna system," "micro wireless facility," and "micro wireless facility operator" in conjunction with the bill's change of focus to small cell facilities.<sup>64</sup>

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<sup>60</sup> R.C. 4939.01(Q).

<sup>61</sup> R.C. 4939.01(S).

<sup>62</sup> R.C. 4939.01(U).

<sup>63</sup> R.C. 4939.01(X).

<sup>64</sup> R.C. 4939.01.

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## COMMENT

1. The new provisions governing tolling of the consent time period for small cell facility and wireless support structure requests may contain some ambiguities. First, it is not clear what is meant by the "thresholds provided" for each municipal corporation. It could be the population or the number of requests. Logically, the reference is likely to the number of requests. But, it takes more than a plain reading to determine that. Using "application thresholds provided" could clarify this.<sup>65</sup> Second, it is not clear how the additional tolling periods after the initial 21-day period are calculated. The bill provides that additional applications may be tolled "up to [15] days in addition to the [21-day] time period . . ." This would result in each subsequent tolling period being limited to 36 days (21+15) for the applications subject to that additional tolling period.<sup>66</sup> If this is what the bill means, there would be no need for the bill to impose, as it does, the limitation that a time period not be tolled "more than [90] consecutive days."<sup>67</sup> This limitation would apply if additional tolling periods could be added to preceding tolling periods, but the bill does not appear to provide for that.

2. With respect to the authority granted to municipal corporations to set height restrictions, it is not clear how "notwithstanding" is supposed to be interpreted since the authority apparently being notwithstanding is discretionary.<sup>68</sup> Modification may be necessary to clarify what is intended.

3. Under the bill, a municipal corporation may adjust fees 10% every five years, rounded to the nearest \$5.<sup>69</sup> It is unclear, however, when the initial, and therefore, subsequent, five-year periods begin. It is also unclear whether the fee increase may be gradual, over a five-year span, or simply one time during each five-year period.

4. The bill provides for indemnification of municipal corporation agents for loss or liability caused by a small cell facility and wireless service owner or operator.<sup>70</sup> But, the bill defines "agent" to mean a "person that provides a municipal corporation authorization to work on behalf of a public utility."<sup>71</sup> Since an agent, apparently, cannot

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<sup>65</sup> R.C. 4939.036(A)(3)(a) and (b).

<sup>66</sup> R.C. 4939.036(A)(3)(b).

<sup>67</sup> R.C. 4939.036(A)(3)(c).

<sup>68</sup> R.C. 4939.0314(F)(2).

<sup>69</sup> R.C. 4939.0316 and 4939.0322(B).

<sup>70</sup> R.C. 4939.039.

<sup>71</sup> R.C. 4939.01(B).





exist under the bill for a municipal corporation, it is not clear what this provision means.

5. The bill provides that a cable or video service provider is not required to obtain permits or pay fees from a municipal corporation (except work permits and associated fees) for micro wireless facilities, and that a holder of an existing franchise or video service authorization is not required to obtain additional authorizations or pay fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization.<sup>72</sup> The bill also provides that the permitting procedures and authorizations in the bill apply to small cell facilities.<sup>73</sup> A micro wireless facility, however, is also a small cell facility, under the bill.<sup>74</sup> Therefore, it may be ambiguous as to how these provisions applying the bill and creating exceptions to it operate with respect to cable and video service provider's micro wireless facilities.

6. The bill defines "wireless service provider" as a person who provides "wireless service" as defined in Ohio law governing Alternative Regulation of Telecommunications.<sup>75</sup> But, the bill already provides a different definition of "wireless service" and the term is defined differently.<sup>76</sup> This may lead to misinterpretation, especially when the terms are both used referring to the same entity. An example of this is the definition of "small cell facility operator."<sup>77</sup>

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## HISTORY

ACTION	DATE
Introduced	01-23-18
Reported, H. Government Accountability & Oversight	02-13-18
Passed House (79-15)	02-14-18

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<sup>72</sup> R.C. 4939.0311(C).

<sup>73</sup> R.C. 4939.0311(D).

<sup>74</sup> R.C. 4939.01(I).

<sup>75</sup> R.C. 4939.01(W).

<sup>76</sup> R.C. 4939.01(V).

<sup>77</sup> R.C. 4939.01(R).

