

SB-0637, As Passed House, November 28, 2018
SB-0637, As Passed Senate, March 15, 2018

SUBSTITUTE FOR
SENATE BILL NO. 637

A bill to provide for the regulation by state or local government authorities and municipally owned electric utilities of the activities of wireless infrastructure providers and wireless services providers and of wireless facilities, wireless support structures, and utility poles; to regulate rates and fees concerning wireless facilities, wireless support structures, communications service provider pole attachments, and utility poles charged by state or local government authorities and municipally owned electric utilities; to provide for collocation of wireless facilities and of communications service provider pole attachments; to provide for use of public rights-of-way; to regulate certain permitting processes and zoning reviews; to prohibit certain commercially discriminatory actions by state or local government

authorities and municipally owned electric utilities; to prohibit state and local government authorities from entering into exclusive arrangements with any person for the right to attach to certain utility poles; to authorize indemnification and insurance requirements; to authorize certain bonding requirements; and to provide for charges for electricity to operate small cell wireless facilities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "small wireless communications facilities deployment act".

3 (2) The purpose of the act is to do all of the following:

4 (a) Increase investment in wireless networks that will benefit
5 the citizens of this state by providing better access to emergency
6 services, advanced technology, and information.

7 (b) Increase investment in wireless networks that will enhance
8 the competitiveness of this state in the global economy.

9 (c) Encourage the deployment of advanced wireless services by
10 streamlining the process for the permitting, construction,
11 modification, maintenance, and operation of wireless facilities in
12 the public rights-of-way.

13 (d) Allow wireless services providers and wireless
14 infrastructure providers access to the public rights-of-way and the
15 ability to attach to poles and structures in the public rights-of-
16 way to enhance their networks and provide next generation services.

17 (e) Ensure the reasonable and fair control and management of
18 public rights-of-way by governmental authorities within this state.

19 (f) Address the timely design, engineering, permitting,

1 construction, modification, maintenance, and operation of wireless
2 facilities as matters of statewide concern and interest.

3 (g) Provide for the management of public rights-of-way in a
4 safe and reliable manner that does all of the following:

5 (i) Supports new technology.

6 (ii) Avoids interference with right-of-way use by existing
7 public utilities and cable communications providers.

8 (iii) Allows for a level playing field for competitive
9 communications service providers.

10 (iv) Protects public health, safety, and welfare.

11 (h) Increase the connectivity for autonomous and connected
12 vehicles through the deployment of small cell wireless facilities
13 with full access and compatibility for connected and autonomous
14 vehicles as determined and approved by the state transportation
15 department, county road commissions, and authorities.

16 (i) Prioritize, as provided in this act, the use of existing
17 utility poles and wireless support structures for collocation over
18 the installation of new utility poles or wireless support
19 structures.

20 Sec. 3. As used in this act:

21 (a) "Affiliated transmission company" means that term as
22 defined in section 2 of the electric transmission line
23 certification act, 1995 PA 30, MCL 460.562.

24 (b) "Antenna" means communications equipment that transmits or
25 receives electromagnetic radio frequency signals used in the
26 provision of wireless services.

27 (c) "Applicable codes" means uniform building, fire,

1 electrical, plumbing, or mechanical codes adopted under the Stille-
2 DeRossett-Hale single state construction code act, 1972 PA 230, MCL
3 125.1501 to 125.1531, or adopted by the United States Occupational
4 Safety and Health Administration or by a state or national code
5 organization, including, but not limited to, the "National
6 Electrical Safety Code" published by the Institute of Electrical
7 and Electronics Engineers.

8 (d) "Applicant" means a wireless provider that submits an
9 application described in this act.

10 (e) "Attaching entity" means a public or private party or
11 entity, other than the municipally owned electric utility, that,
12 pursuant to an agreement with the municipally owned electric
13 utility, places a wire or cable attachment on a nonauthority pole
14 or related infrastructure within the communication space. Attaching
15 entity includes, but is not limited to, both of the following:

16 (i) A telecommunication provider as that term is defined in
17 section 102 of the metropolitan extension telecommunications
18 rights-of-way oversight act, 2002 PA 48, MCL 484.3102.

19 (ii) A video service provider as that term is defined in the
20 uniform video services local franchise act, 2006 PA 480, MCL
21 484.3301.

22 (f) "Authority", unless the context implies otherwise, means
23 this state, or a county, township, city, village, district, or
24 subdivision thereof if authorized by law to make legislative,
25 quasi-judicial, or administrative decisions concerning an
26 application described in this act. Authority does not include any
27 of the following:

1 (i) A municipally owned electric utility.

2 (ii) An investor-owned utility whose rates are regulated by
3 the MPSC.

4 (iii) A state court having jurisdiction over an authority.

5 (g) "Authority pole" means a utility pole owned or operated by
6 an authority and located in the ROW.

7 Sec. 5. As used in this act:

8 (a) "Colocate" means to install, mount, maintain, modify,
9 operate, or replace wireless facilities on or adjacent to a
10 wireless support structure or utility pole. "Collocation" has a
11 corresponding meaning. Colocate does not include make-ready work or
12 the installation of a new utility pole or new wireless support
13 structure.

14 (b) "Communications facility" means the set of equipment and
15 network components, including wires, cables, antennas, and
16 associated facilities, used by a communications service provider to
17 provide communications service.

18 (c) "Communication space" means that term as defined in the
19 "National Electric Safety Code" published by the Institute of
20 Electrical and Electronics Engineers.

21 (d) "Communications service" means service provided over a
22 communications facility, including cable service as defined in 47
23 USC 522, information service as defined in 47 USC 153,
24 telecommunications service as defined in 47 USC 153, or wireless
25 service.

26 (e) "Communications service provider" means any entity that
27 provides communications services.

1 (f) "FCC" means the Federal Communications Commission.

2 (g) "Fee" means a nonrecurring charge for services.

3 (h) "Historic district" means a historic district established
4 under section 3 of the local historic districts act, 1970 PA 169,
5 MCL 399.203, or a group of buildings, properties, or sites that are
6 either listed in the National Register of Historic Places or
7 formally determined eligible for listing by the Keeper of the
8 National Register, the individual who has been delegated the
9 authority by the federal agency to list properties and determine
10 their eligibility for the National Register, in accordance with
11 Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement
12 codified at 47 CFR Part 1, appendix C.

13 (i) "Independent transmission company" means that term as
14 defined in section 2 of the electric transmission line
15 certification act, 1995 PA 30, MCL 460.562.

16 Sec. 7. As used in this act:

17 (a) "Law" means federal, state, or local law, including common
18 law, a statute, a rule, a regulation, an order, or an ordinance.

19 (b) "Make-ready work" means work necessary to enable an
20 authority pole or utility pole to support collocation, which may
21 include modification or replacement of utility poles or
22 modification of lines.

23 (c) "Micro wireless facility" means a small cell wireless
24 facility that is not more than 24 inches in length, 15 inches in
25 width, and 12 inches in height and that does not have an exterior
26 antenna more than 11 inches in length.

27 (d) "MPSC" means the Michigan Public Service Commission

1 created in section 1 or 1939 PA 3, MCL 460.1.

2 (e) "Municipally owned electric utility" means a system owned
3 by a municipality or combination of municipalities to furnish power
4 or light and includes a cooperative electric utility that, on or
5 after the effective date of this act, acquired all or substantially
6 all of the assets of a municipal electric utility, when applying
7 this act to the former territory of the municipal electric utility.

8 (f) "Nonauthority pole" means a utility pole used for electric
9 delivery service and controlled by the governing body of a
10 municipally owned electric utility.

11 (g) "Person" means an individual, corporation, limited
12 liability company, partnership, association, trust, or other entity
13 or organization, including an authority.

14 (h) "Public right-of-way" or "ROW" means the area on, below,
15 or above a public roadway, highway, street, alley, bridge,
16 sidewalk, or utility easement dedicated for compatible uses. Public
17 right-of-way does not include any of the following:

18 (i) A private right-of-way.

19 (ii) A limited access highway.

20 (iii) Land owned or controlled by a railroad as defined in
21 section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.

22 (iv) Railroad infrastructure.

23 (i) "Rate" means a recurring charge.

24 (j) "Small cell wireless facility" means a wireless facility
25 that meets both of the following requirements:

26 (i) Each antenna is located inside an enclosure of not more
27 than 6 cubic feet in volume or, in the case of an antenna that has

1 exposed elements, the antenna and all of its exposed elements would
2 fit within an imaginary enclosure of not more than 6 cubic feet.

3 (ii) All other wireless equipment associated with the facility
4 is cumulatively not more than 25 cubic feet in volume. The
5 following types of associated ancillary equipment are not included
6 in the calculation of equipment volume: electric meters,
7 concealment elements, telecommunications demarcation boxes,
8 grounding equipment, power transfer switches, cut-off switches, and
9 vertical cable runs for the connection of power and other services.

10 Sec 9. As used in this act:

11 (a) "Utility pole" means a pole or similar structure that is
12 or may be used in whole or in part for cable or wireline
13 communications service, electric distribution, lighting, traffic
14 control, signage, or a similar function, or a pole or similar
15 structure that meets the height requirements in section 13(5) and
16 is designed to support small cell wireless facilities. Utility pole
17 does not include a sign pole less than 15 feet in height above
18 ground.

19 (b) "Wireless facility" means equipment at a fixed location
20 that enables the provision of wireless services between user
21 equipment and a communications network, including, but not limited
22 to, radio transceivers, antennas, coaxial or fiber-optic cable,
23 regular and backup power supplies, and comparable equipment,
24 regardless of technological configuration. Wireless facility
25 includes a small cell wireless facility. Wireless facility does not
26 include any of the following:

27 (i) The structure or improvements on, under, or within which

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1 the equipment is colocated.

2 (ii) A wireline backhaul facility.

3 (iii) Coaxial or fiber-optic cable between utility poles or
4 wireless support structures or that otherwise is not immediately
5 adjacent to or directly associated with a particular antenna.

6 (c) "Wireless infrastructure provider" means any person,
7 including a person authorized to provide telecommunications
8 services in this state but not including a wireless <<services>>
9 provider, that builds or installs wireless communication
10 transmission equipment, wireless facilities, or wireless support
11 structures and who, when filing an application with an authority
12 under this act, provides written authorization to perform the work
13 on behalf of a wireless services provider.

14 (d) "Wireless provider" means a wireless infrastructure
15 provider or a wireless services provider. Wireless provider does
16 not include an investor-owned utility whose rates are regulated by
17 the MPSC.

18 (e) "Wireless services" means any services, provided using
19 licensed or unlicensed spectrum, including the use of Wi-Fi,
20 whether at a fixed location or mobile.

21 (f) "Wireless services provider" means a person that provides
22 wireless services.

23 (g) "Wireless support structure" means a freestanding
24 structure designed to support or capable of supporting small cell
25 wireless facilities. Wireless support structure does not include a
26 utility pole.

27 (h) "Wireline backhaul facility" means a facility used to

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1 transport services by wire or fiber-optic cable from a wireless
2 facility to a network.

3 Sec. 11. (1) Except as provided in this act, an authority
4 shall not prohibit, regulate, or charge for the collocation of
5 small cell wireless facilities.

6 (2) The approval of a small cell wireless facility under this
7 act authorizes only the collocation of a small cell wireless
8 facility and does not authorize either of the following:

9 (a) The provision of any particular services.

10 (b) The installation, placement, modification, maintenance, or
11 operation of a wireline backhaul facility in the ROW.

12 Sec. 13. (1) This section applies only to activities of a
13 wireless provider within the public right-of-way for the deployment
14 of small cell wireless facilities and associated new or modified
15 utility poles.<<

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18 (2) An authority shall not enter into an exclusive arrangement
19 with any person for use of the ROW for the construction, operation,
20 or maintenance of utility poles or the collocation of small cell
21 wireless facilities.

22 (3) An authority shall not charge a wireless provider a rate
23 for each utility pole or wireless support structure in the ROW in
24 the authority's geographic jurisdiction on which the wireless
25 provider has collocated a small cell wireless facility that exceeds
26 the following:

27 (a) \$20.00 annually, unless subdivision (b) applies.

1 (b) \$125.00 annually, if the utility pole or wireless support
2 structure was erected by or on behalf of the wireless provider on
3 or after the effective date of this act. This subdivision does not
4 apply to the replacement of a utility pole that was not designed to
5 support small cell wireless facilities.

6 Every 5 years after the effective date of this act, the maximum
7 rates then authorized under subdivisions (a) and (b) are increased
8 by 10% and rounded to the nearest dollar.

9 (4) If, on the effective date of this act, an authority has a
10 rate or fee in an ordinance or in an agreement with a wireless
11 provider for the use of the ROW to colocate a small cell wireless
12 facility or to construct, install, mount, maintain, modify,
13 operate, or replace a utility pole, and the rate or fee does not
14 comply with subsection (3), the authority shall, not later than 90
15 days after the effective date of this act, revise the rate or fee
16 to comply with subsection (3). Both of the following apply:

17 (a) For installations of utility poles designed to support
18 small cell wireless facilities or collocations of small cell
19 wireless facilities installed and operational in the ROW before the
20 effective date of this act, the fees, rates, and terms of an
21 agreement or ordinance for use of the ROW remain in effect subject
22 to the termination provisions contained in the agreement or
23 ordinance.

24 (b) For installations of utility poles designed to support
25 small cell wireless facilities or collocations of small cell
26 wireless facilities installed and operational in the ROW after the
27 effective date of this act, the fees, rates, and terms of an

1 agreement or ordinance for use of the ROW shall comply with
2 subsection (3).

3 (5) A wireless provider may, as a permitted use not subject to
4 zoning review or approval, except that an application for a
5 permitted use is still subject to approval by the authority under
6 section 15, collocate small cell wireless facilities and construct,
7 maintain, modify, operate, or replace utility poles in, along,
8 across, upon, and under the ROW. Such structures and facilities
9 shall be constructed and maintained so as not to obstruct or hinder
10 the usual travel or public safety on the ROW or obstruct the legal
11 use of the authority's ROW or uses of the ROW by other utilities
12 and communications service providers. Both of the following apply:

13 (a) A utility pole in the ROW installed or modified on or
14 after the effective date of this act shall not exceed 40 feet above
15 ground level, unless a taller height is agreed to by the authority.

16 (b) A small cell wireless facility in the ROW installed or
17 modified after the effective date of this act shall not extend more
18 than 5 feet above a utility pole or wireless support structure on
19 which the small cell wireless facility is collocated.

20 (6) Subject to this section, section 17, and applicable zoning
21 regulations, a wireless provider may collocate a small cell wireless
22 facility or install, construct, maintain, modify, operate, or
23 replace a utility pole that exceeds the height limits under
24 subsection (5), or a wireless support structure, in, along, across,
25 upon, and under the ROW.

26 (7) A wireless provider shall comply with reasonable and
27 nondiscriminatory requirements otherwise provided that prohibit

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1 communications service providers from installing structures on or
2 above ground in the ROW in an area designated solely for
3 underground or buried cable and utility facilities if all of the
4 following apply:

5 (a) The authority has required all cable and utility
6 facilities<<, other than authority poles, along with any attachments,
or poles used for street lights, traffic signals, or other attachments
necessary for public safety,>> to be placed
7 underground by a date that is not less than 90 days before the
8 submission of the application.

9 (b) The authority does not prohibit the replacement of
10 authority poles by a wireless provider in the designated area.

11 (c) The authority allows wireless providers to apply for a
12 waiver of the undergrounding requirements for the placement of a
13 new utility pole to support small cell wireless facilities, and the
14 waiver applications are addressed in a nondiscriminatory manner.

15 (8) Subject to section 15(2), and except for facilities
16 excluded from evaluation for effects on historic properties under
17 47 CFR 1.1307(a)(4)(ii), an authority may adopt written, objective
18 requirements for reasonable, technically feasible,
19 nondiscriminatory, and technologically neutral design or
20 concealment measures in a historic district, downtown district, or
21 residential zoning district. Any such requirement shall not have
22 the effect of prohibiting any wireless provider's technology. Any
23 such design or concealment measures are not considered a part of
24 the small wireless facility for purposes of the size restrictions
25 in the definition of small wireless facility in section 7.

26 (9) An authority's administration and regulation of activities
27 of wireless providers in the ROW shall be reasonable,

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1 nondiscriminatory, and competitively neutral and shall comply with
2 applicable law.

3 (10) An authority may require a wireless provider to repair
4 all damage to the ROW directly caused by the activities of the
5 wireless provider while occupying, constructing, installing,
6 mounting, maintaining, modifying, operating, or replacing small
7 cell wireless facilities, utility poles, or wireless support
8 structures in the ROW and to return the ROW to its functional
9 equivalent before the damage. If the wireless provider fails to
10 make the repairs required by the authority within 60 days after
11 written notice, the authority may make those repairs and charge the
12 wireless provider the reasonable, documented cost of the repairs.

13 Sec. 15. (1) This section applies to activities of a wireless
14 provider within the public right-of-way.

15 (2) Except as otherwise provided in subsection <<(5)>>, an
16 authority may require a permit to colocate a small cell wireless
17 facility or install, modify, or replace a utility pole on which a
18 small cell wireless facility will be colocated if the permit is of
19 general applicability. The processing of an application for such a
20 permit is subject to all of the following:

21 (a) The authority shall not directly or indirectly require an
22 applicant to perform services unrelated to the collocation for
23 which a permit is sought, such as reserving fiber, conduit, or pole
24 space for the authority or making other in-kind contributions to
25 the authority.

26 (b) An authority may require an applicant to provide
27 information and documentation to enable the authority to make a

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1 decision with regard to the criteria in subdivision (i). An
2 authority may also require a certificate of compliance with FCC
3 rules related to radio frequency emissions from a small cell
4 wireless facility.

5 (c) If the proposed activity will occur within a shared ROW or
6 an ROW that overlaps another ROW, a wireless provider shall
7 provide, to each affected authority to which an application for the
8 activity is not << >>submitted, notification of the
9 wireless provider's intent to locate a small cell wireless facility
10 within the ROW. An authority may require proof of other necessary
11 permits, permit applications, or easements to ensure all necessary
12 permissions for the proposed activity are obtained.

13 (d) Within 25 days after receiving an application, an
14 authority shall notify the applicant in writing whether the
15 application is complete. If the application is incomplete, the
16 notice shall clearly and specifically delineate all missing
17 documents or information. The notice tolls the running of the time
18 for approving or denying an application under subdivision (h).

19 (e) The running of time period tolled under subdivision (d)
20 resumes when the applicant makes a supplemental submission in
21 response to the authority's notice of incompleteness. If a
22 supplemental submission is inadequate, the authority shall notify
23 the applicant in writing not later than 10 days after receiving the
24 supplemental submission that the supplemental submission did not
25 provide the information identified in the original notice
26 delineating missing documents or information. The time period may
27 be tolled in the case of second or subsequent notices under the

1 procedures identified in subdivision (d). Second or subsequent
2 notices of incompleteness may not specify missing documents or
3 information that was not delineated in the original notice of
4 incompleteness.

5 (f) The authority may require an applicant to include an
6 attestation that the small cell wireless facilities will be
7 operational for use by a wireless services provider within 1 year
8 after the permit issuance date, unless the authority and the
9 applicant agree to extend this period or delay is caused by lack of
10 commercial power or communications transport facilities to the
11 site.

12 (g) The application shall be processed on a nondiscriminatory
13 basis.

14 (h) The authority shall approve or deny the application and
15 notify the applicant in writing within the following period of time
16 after the application is received:

17 (i) For an application for the collocation of small cell
18 wireless facilities on a utility pole, 60 days, subject to the
19 following adjustments:

20 (A) Add 15 days if an application from another wireless
21 provider was received within 1 week of the application in question.

22 (B) Add 15 days if, before the otherwise applicable 60-day or
23 75-day time period under this subparagraph elapses, the authority
24 notifies the applicant in writing that an extension is needed and
25 the reasons for the extension.

26 (ii) For an application for a new or replacement utility pole
27 that meets the height requirements of section 13(5)(a) and

1 associated small cell facility, 90 days, subject to the following
2 adjustments:

3 (A) Add 15 days if an application from another wireless
4 provider was received within 1 week of the application in question.

5 (B) Add 15 days if, before the otherwise applicable 90-day or
6 105-day time period under this subparagraph elapses, the authority
7 notifies the applicant in writing that an extension is needed and
8 the reasons for the extension.

9 If the authority fails to comply with this subdivision, the
10 completed application is considered to be approved subject to the
11 condition that the applicant provide the authority not less than 7
12 days' advance written notice that the applicant will be proceeding
13 with the work pursuant to this automatic approval.

14 (i) An authority may deny a completed application for a
15 proposed collocation of a small cell wireless facility or
16 installation, modification, or replacement of a utility pole that
17 meets the height requirements in section 13(5) (a) only if the
18 proposed activity would do any of the following:

19 (i) Materially interfere with the safe operation of traffic
20 control equipment.

21 (ii) Materially interfere with sight lines or clear zones for
22 transportation or pedestrians.

23 (iii) Materially interfere with compliance with the Americans
24 with Disabilities Act of 1990, Public Law 101-336, or similar
25 federal, state, or local standards regarding pedestrian access or
26 movement.

27 (iv) Materially interfere with maintenance or full

1 unobstructed use of public utility infrastructure under the
2 jurisdiction of an authority.

3 (v) With respect to drainage infrastructure under the
4 jurisdiction of an authority, either of the following:

5 (A) Materially interfere with maintenance or full unobstructed
6 use of the drainage infrastructure as it was originally designed.

7 (B) Not be located a reasonable distance from the drainage
8 infrastructure to ensure maintenance under the drain code of 1956,
9 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage
10 infrastructure.

11 (vi) Fail to comply with reasonable, nondiscriminatory,
12 written spacing requirements of general applicability adopted by
13 ordinance or otherwise that apply to the location of ground-mounted
14 equipment and new utility poles and that do not prevent a wireless
15 provider from serving any location.

16 (vii) Fail to comply with applicable codes.

17 (viii) Fail to comply with section 13(7) or (8).

18 (ix) Fail to meet reasonable, objective, written stealth or
19 concealment criteria for small cell wireless facilities applicable
20 in a historic district or other designated area, as specified in an
21 ordinance or otherwise and nondiscriminatorily applied to all other
22 occupants of the ROW, including electric utilities, incumbent or
23 competitive local exchange carriers, fiber providers, cable
24 television operators, and the authority.

25 (j) If the completed application is denied, the notice under
26 subdivision (h) shall explain the reasons for the denial and, if
27 applicable, cite the specific provisions of applicable codes on

1 which the denial is based. The applicant may cure the deficiencies
2 identified by the authority and resubmit the application within 30
3 days after the denial without paying an additional application fee.
4 The authority shall approve or deny the revised application within
5 30 days. The authority shall limit its review of the revised
6 application to the deficiencies cited in the denial.

7 (k) An applicant may at the applicant's discretion file a
8 consolidated application and receive a single permit for the
9 collocation of up to 20 small cell wireless facilities within the
10 jurisdiction of a single authority or, in the case of the state
11 transportation department, a single designated control section as
12 identified on the department's website. The small cell wireless
13 facilities within a consolidated application must consist of
14 substantially similar equipment and be placed on similar types of
15 utility poles or wireless support structures. An authority may
16 approve a permit for 1 or more small cell wireless facilities
17 included in a consolidated application and deny a permit for the
18 remaining small cell facilities. An authority shall not deny a
19 permit for a small cell wireless facility included in a
20 consolidated application on the basis that a permit is being denied
21 for 1 or more other small cell facilities included in that
22 application.

23 (l) Within 1 year after a permit is granted, a wireless
24 provider shall complete collocation of a small cell wireless
25 facility that is to be operational for use by a wireless services
26 provider, unless the authority and the applicant agree to extend
27 this period or the delay is caused by the lack of commercial power

1 or communications facilities at the site. If the wireless provider
2 fails to complete the collocation within the applicable time, the
3 permit is void, and the wireless provider may reapply for a permit.

4 A permittee may voluntarily request that a permit be terminated.

5 (m) Approval of an application authorizes the wireless
6 provider to do both of the following:

7 (i) Undertake the installation or collocation.

8 (ii) Subject to relocation requirements that apply to
9 similarly situated users of the ROW and the applicant's right to
10 terminate at any time, maintain the small cell wireless facilities
11 and any associated utility poles or wireless support structures
12 covered by the permit for so long as the site is in use and in
13 compliance with the initial permit under this act.

14 (n) An authority shall not institute a moratorium on filing,
15 receiving, or processing applications or issuing permits for the
16 collocation of small cell wireless facilities or the installation,
17 modification, or replacement of utility poles on which small cell
18 wireless facilities will be colocated.

19 (o) The authority and an applicant may extend a time period
20 under this subsection by mutual agreement.

21 (3) An application fee for a permit under subsection (2) shall
22 not exceed the lesser of the following:

23 (a) \$200.00 for each small cell wireless facility alone.

24 (b) \$300.00 for each small cell wireless facility and a new
25 utility pole to which it will be attached.

26 Every 5 years after the effective date of this act, the maximum
27 fees then authorized under this subsection are increased by 10% and

1 rounded to the nearest dollar.

2 (4) An authority may revoke a permit, upon 30 days' notice and
3 an opportunity to cure, if the permitted small cell wireless
4 facilities and any associated utility pole fail to meet the
5 requirements of subsection (2) (i).

6 (5) An authority shall not require a permit or any other
7 approval or require fees or rates for any of the following:

8 (a) The replacement of a small cell wireless facility with a
9 small cell wireless facility that is not larger or heavier, in
10 compliance with applicable codes.

11 (b) Routine maintenance of a small cell wireless facility,
12 utility pole, or wireless support structure.

13 (c) The installation, placement, maintenance, operation, or
14 replacement of a micro wireless facility that is suspended on
15 cables strung between utility poles or wireless support structures
16 in compliance with applicable codes.

17 (6) An authority that receives an application to place a new
18 utility pole may propose an alternate location within the ROW or on
19 property or structures owned or controlled by an authority within
20 75 feet of the proposed location to either place the new utility
21 pole or collocate on an existing structure. The applicant shall use
22 the alternate location if, as determined by the applicant, the
23 applicant has the right to do so on reasonable terms and conditions
24 and the alternate location does not impose unreasonable technical
25 limits or significant additional costs.

26 (7) Before discontinuing its use of a small cell wireless
27 facility, utility pole, or wireless support structure, a wireless

1 provider shall notify an authority in writing. The notice shall
2 specify when and how the wireless provider intends to remove the
3 small cell wireless facility, utility pole, or wireless support
4 structure. The authority may impose reasonable and
5 nondiscriminatory requirements and specifications for the wireless
6 provider to return the property to its preinstallation condition.
7 If the wireless provider does not complete the removal within 45
8 days after the discontinuance of use, the authority may complete
9 the removal and assess the costs of removal against the wireless
10 provider. A permit under this section for a small cell wireless
11 facility expires upon removal of the small cell wireless facility.

12 (8) This section does not prohibit an authority from requiring
13 a permit for work that will unreasonably affect traffic patterns or
14 obstruct vehicular or pedestrian traffic in the ROW.

15 Sec. 17. (1) The activities set forth in section 15(5) are
16 exempt from zoning review. Subsections (2) to (4) apply to zoning
17 reviews for the following activities that are subject to zoning
18 review and approval, that are not a permitted use under section
19 13(5), and that take place within or outside the public right-of-
20 way:

21 (a) The modification of existing or installation of new small
22 cell wireless facilities.

23 (b) The modification of existing or installation of new
24 wireless support structures used for such small cell wireless
25 facilities.

26 (2) The processing of an application for a zoning approval is
27 subject to all of the following requirements:

1 (a) Within 30 days after receiving an application under this
2 section, an authority shall notify the applicant in writing whether
3 the application is complete. If the application is incomplete, the
4 notice shall clearly and specifically delineate all missing
5 documents or information. The notice tolls the running of the 30-
6 day period.

7 (b) The running of the time period tolled under subdivision
8 (a) resumes when the applicant makes a supplemental submission in
9 response to the authority's notice of incompleteness. If a
10 supplemental submission is inadequate, the authority shall notify
11 the applicant not later than 10 days after receiving the
12 supplemental submission that the supplemental submission did not
13 provide the information identified in the original notice
14 delineating missing documents or information. The time period may
15 be tolled in the case of second or subsequent notices under the
16 procedures identified in subdivision (a). Second or subsequent
17 notices of incompleteness may not specify missing documents or
18 information that was not delineated in the original notice of
19 incompleteness.

20 (c) The application shall be processed on a nondiscriminatory
21 basis.

22 (d) The authority shall approve or deny the application and
23 notify the applicant in writing within 90 days after an application
24 for a modification of a wireless support structure or installation
25 of a small cell wireless facility is received or 150 days after an
26 application for a new wireless support structure is received. The
27 time period for approval may be extended by mutual agreement

1 between the applicant and authority. If the authority fails to
2 comply with this subdivision, the application is considered to be
3 approved subject to the condition that the applicant provide the
4 authority not less than 15 days' advance written notice that the
5 applicant will be proceeding with the work pursuant to this
6 automatic approval.

7 (e) An authority shall not deny an application unless all of
8 the following apply:

9 (i) The denial is supported by substantial evidence contained
10 in a written record that is publicly released contemporaneously.

11 (ii) There is a reasonable basis for the denial.

12 (iii) The denial would not discriminate against the applicant
13 with respect to the placement of the facilities of other wireless
14 providers.

15 (3) An authority's review of an application for a zoning
16 approval is subject to all of the following requirements:

17 (a) An applicant's business decision on the type and location
18 of small cell wireless facilities, wireless support structures, or
19 technology to be used is presumed to be reasonable. This
20 presumption does not apply with respect to the height of wireless
21 facilities or wireless support structures. An authority may
22 consider the height of such structures in its zoning review, but
23 shall not discriminate between the applicant and other
24 communications service providers.

25 (b) An authority shall not evaluate or require an applicant to
26 submit information about an applicant's business decisions with
27 respect to any of the following:

1 (i) The need for a wireless support structure or small cell
2 wireless facilities.

3 (ii) The applicant's service, customer demand for the service,
4 or the quality of service.

5 (c) Any requirements regarding the appearance of facilities,
6 including those relating to materials used or arranging, screening,
7 or landscaping, shall be reasonable.

8 (d) Any spacing, setback, or fall zone requirement shall be
9 substantially similar to a spacing, setback, or fall zone
10 requirement imposed on other types of commercial structures of a
11 similar height.

12 (4) An application fee for a zoning approval shall not exceed
13 the following:

14 (a) \$1,000.00 for a new wireless support structure or
15 modification of an existing wireless support structure.

16 (b) \$500.00 for a new small cell wireless facility or
17 modification of an existing small cell wireless facility.

18 (5) Within 1 year after a zoning approval is granted, a
19 wireless provider shall commence construction of the approved
20 structure or facilities that are to be operational for use by a
21 wireless services provider, unless the authority and the applicant
22 agree to extend this period or the delay is caused by a lack of
23 commercial power or communications facilities at the site. If the
24 wireless provider fails to commence the construction of the
25 approved structure or facilities within the time required pursuant
26 to section 15(2) (l), the zoning approval is void, and the wireless
27 provider may reapply for a zoning approval. However, the wireless

1 provider may voluntarily request that the zoning approval be
2 terminated.

3 (6) An authority shall not institute a moratorium on either of
4 the following:

5 (a) Filing, receiving, or processing applications for zoning
6 approval.

7 (b) Issuing approvals for installations that are not a
8 permitted use.

9 (7) An authority may revoke a zoning approval, upon 30 days'
10 notice and an opportunity to cure, if the permitted small cell
11 wireless facilities and any associated wireless support structure
12 fail to meet the requirements of the approval, applicable codes, or
13 applicable zoning requirements.

14 Sec. 19. (1) An authority shall not enter into an exclusive
15 arrangement with any person for the right to attach to authority
16 poles. A person who purchases, controls, or otherwise acquires an
17 authority pole is subject to the requirements of this section.

18 (2) The rate for the collocation of small cell wireless
19 facilities on authority poles shall be nondiscriminatory regardless
20 of the services provided by the collocating person. The rate shall
21 not exceed \$30.00 per year per authority pole. Every 5 years after
22 the effective date of this act, the maximum rate then authorized
23 under this subsection is increased by 10% and rounded to the
24 nearest dollar. This rate for the collocation of small cell
25 wireless facilities on authority poles is in addition to any rate
26 charged for the use of the ROW under section 13.

27 (3) If, on the effective date of this act, an authority has a

1 rate, fee, or other term in an ordinance or in an agreement with a
2 wireless provider that does not comply with this section, the
3 authority shall, not later than 90 days after the effective date of
4 this act, revise the rate, fee, or term to comply with this
5 section. Both of the following apply:

6 (a) An ordinance or an agreement between an authority and a
7 wireless provider that is in effect on the effective date of this
8 act and that relates to the collocation on authority poles of small
9 cell wireless facilities installed and operational before the
10 effective date of this act remains in effect as it relates to those
11 collocations, subject to termination provisions in the ordinance or
12 agreement.

13 (b) The rates, fees, and terms established under this section
14 apply to the collocation on authority poles of small cell wireless
15 facilities that are installed and operational after the rates,
16 fees, and terms take effect.

17 (4) Within 90 days after receiving the first request to
18 collocate a small cell wireless facility on an authority pole, the
19 authority shall make available, through ordinance or otherwise, the
20 rates, fees, and terms for the collocation of small cell wireless
21 facilities on the authority poles. The rates, fees, and terms shall
22 comply with all of the following:

23 (a) The rates, fees, and terms shall be nondiscriminatory,
24 competitively neutral, and commercially reasonable and shall comply
25 with this act.

26 (b) The authority shall provide a good-faith estimate for any
27 make-ready work within 60 days after receipt of a complete

1 application. Make-ready work shall be completed within 60 days of
2 written acceptance of the good-faith estimate by the applicant.

3 (c) The person owning or controlling the authority pole shall
4 not require more make-ready work than required to comply with law
5 or industry standards.

6 (d) Fees for make-ready work shall not do any of the
7 following:

8 (i) Include costs related to preexisting or prior damage or
9 noncompliance unless the damage or noncompliance was caused by the
10 applicant.

11 (ii) Include any unreasonable consultant fees or expenses.

12 (iii) Exceed actual costs imposed on a nondiscriminatory
13 basis.

14 (5) This section does not require an authority to install or
15 maintain any specific authority pole or to continue to install or
16 maintain authority poles in any location if the authority makes a
17 nondiscriminatory decision to eliminate aboveground poles of a
18 particular type generally, such as electric utility poles, in a
19 designated area of its geographic jurisdiction. For authority poles
20 with colocated small cell wireless facilities in place when an
21 authority makes a decision to eliminate aboveground poles of a
22 particular type, the authority shall do 1 of the following:

23 (a) Continue to maintain the authority pole.

24 (b) Install and maintain a reasonable alternative pole or
25 wireless support structure for the collocation of the small cell
26 wireless facility.

27 (c) Offer to sell the pole to the wireless provider at a

1 reasonable cost.

2 (d) Allow the wireless provider to install its own utility
3 pole so it can maintain service from that location.

4 (e) Proceed as provided by an agreement between the authority
5 and the wireless provider.

6 Sec. 21. (1) The governing body of a municipally owned
7 electric utility shall not enter into an exclusive arrangement with
8 any person for the right to attach to nonauthority poles.

9 (2) The governing body of a municipally owned electric utility
10 shall allow the collocation of small cell wireless facilities on
11 nonauthority poles on a nondiscriminatory basis.

12 (3) The collocation of small cell wireless facilities on
13 nonauthority poles by a wireless provider shall comply with the
14 applicable, nondiscriminatory safety and reliability standards
15 adopted by the governing body of a municipally owned electric
16 utility and with the "National Electric Safety Code" published by
17 the Institute of Electrical and Electronics Engineers. The
18 governing body of a municipally owned electric utility may require
19 a wireless provider to execute an agreement for nonauthority pole
20 attachments if such an agreement is required of all other
21 nonauthority pole attachments.

22 (4) The governing body of a municipally owned electric utility
23 shall adopt a process for requests by wireless providers to
24 collocate small cell wireless facilities on nonauthority poles that
25 is nondiscriminatory and competitively neutral. If such a process
26 has not been adopted within 90 days after the effective date of
27 this act, the application process in section 15 applies to such

1 requests. The governing body of a municipally owned electric
2 utility shall not impose a moratorium on the processing of
3 nonauthority pole collocation requests, or require a wireless
4 provider to perform any service not directly related to the
5 collocation. The governing body of a municipally owned electric
6 utility may charge a fee not to exceed \$100.00 per nonauthority
7 pole for processing the request. The governing body of a
8 municipally owned electric utility may charge an additional fee not
9 to exceed \$100.00 per nonauthority pole for processing the request,
10 if a modification or maintenance of the collocation requires an
11 engineering analysis. Every 5 years after the effective date of
12 this act, the maximum fees then authorized under this subsection
13 are increased by 10% and rounded to the nearest dollar.

14 (5) The rate for a wireless provider to colocate on a
15 nonauthority pole in the ROW shall not exceed \$50.00 annually per
16 nonauthority pole. Every 5 years after the effective date of this
17 act, the maximum rate then authorized under this subsection is
18 increased by 10% and rounded to the nearest dollar.

19 (6) A wireless provider shall comply with the process for
20 make-ready work that the governing body of a municipally owned
21 electric utility has adopted for other parties under the same or
22 similar circumstances that attach facilities to nonauthority poles.
23 If such a process has not been adopted, the wireless provider and
24 the governing body of a municipally owned electric utility shall
25 comply with the process for make-ready work under 47 USC 224 and
26 implementing orders and regulations. A good-faith estimate
27 established by the governing body of a municipally owned electric

1 utility for any make-ready work for nonauthority poles shall
2 include pole replacement if necessary. All make-ready costs shall
3 be based on actual costs, with detailed documentation provided.

4 (7) If a wireless provider is required to relocate small cell
5 wireless facilities colocated on a nonauthority pole, it shall do
6 so in accordance with the nondiscriminatory terms adopted by the
7 governing body of a municipally owned electric utility.

8 Sec. 23. (1) An attaching entity, and all contractors or
9 parties under its control, shall comply with reliability, safety,
10 and engineering standards adopted by the governing body of a
11 municipally owned electric utility, including, but not limited to,
12 the following:

13 (a) Applicable engineering and safety standards governing
14 installation, maintenance, and operation of facilities and the
15 performance of work in or around the municipally owned electric
16 utility nonauthority poles and facilities.

17 (b) The "National Electric Safety Code" published by the
18 Institute of Electrical and Electronics Engineers.

19 (c) Regulations of the United States Occupational Safety and
20 Health Administration.

21 (d) Other reasonable safety and engineering requirements to
22 which municipally owned electric utility facilities are subject by
23 law.

24 (2) The governing body of a municipally owned electric utility
25 may require an attaching entity to execute an agreement for wire or
26 cable attachments to nonauthority poles or related infrastructure.

27 (3) The governing body of a municipally owned electric utility

1 shall not charge an attaching entity a rate for wire or cable pole
2 attachments within the communication space on a nonauthority pole
3 greater than the maximum allowable rate pursuant to 47 USC 224(d)
4 and (e) as established in Federal Communications Commission Order
5 on Reconsideration 15-151.

6 (4) Subject to section 27, an attaching entity may commence a
7 civil action for injunctive relief for a violation of this section.
8 The attaching entity shall not file an action under this subsection
9 unless the attaching entity has first provided the municipally
10 owned electric utility with a written notice of the intent to sue.
11 Within 30 days after the municipally owned electric utility
12 receives written notice of intent to sue, the municipally owned
13 electric utility and the attaching entity shall meet and make a
14 good-faith attempt to determine if there is a credible basis for
15 the action. If the parties agree that there is a credible basis for
16 the action, the governing body of the municipally owned electric
17 utility shall take all reasonable and prudent steps necessary to
18 comply with the applicable requirements of this section within 90
19 days after the meeting.

20 Sec. 25. An authority does not have jurisdiction or authority
21 over the design, engineering, construction, installation, or
22 operation of a small cell wireless facility located in an interior
23 structure or upon a campus of an institution of higher education
24 including any stadiums or athletic facilities associated with the
25 institution of higher education, a professional stadium, or a
26 professional athletic facility, other than to enforce applicable
27 codes. This act does not authorize this state or any other

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1 authority to require wireless facility deployment or to regulate
2 wireless services.

3 Sec. 27. The circuit court has jurisdiction to determine all
4 disputes arising under this act. Venue lies in the judicial circuit
5 where the authority or municipally owned electric utility is
6 located. In addition to its right to appeal to the circuit court,
7 an applicant may elect, at its sole discretion, to appeal a
8 determination under the act to an authority, if the authority has
9 an appeal process to render a decision expeditiously.

10 Sec. 29. As part of the permit process under section 15<<, a zoning
11 approval process under section 17,>> or a
12 request process under section 21, an authority or the governing
13 body of a municipally owned electric utility may require a wireless
14 provider to do the following with respect to a small cell wireless
15 facility, a wireless support structure, or a utility pole:

16 (a) Defend, indemnify, and hold harmless the authority or the
17 governing body of a municipally owned electric utility and its
18 officers, agents, and employees against any claims, demands,
19 damages, lawsuits, judgments, costs, liens, losses, expenses, and
20 attorney fees resulting from the installation, construction,
21 repair, replacement, operation, or maintenance of any wireless
22 facilities, wireless support structures, or utility poles to the
23 extent caused by the applicant, its contractors, its
24 subcontractors, and the officers, employees, or agents of any of
25 these. A wireless provider has no obligation to defend, indemnify,
26 or hold harmless an authority or the governing body of a
27 municipally owned electric utility, or the officers, agents, or
employees of the authority or governing body against any

1 liabilities or losses due to or caused by the sole negligence of
2 the authority or the governing body of a municipally owned electric
3 utility or its officers, agents, or employees.

4 (b) Obtain insurance naming the authority or the governing
5 body of a municipally owned electric utility and its officers,
6 agents, and employees as additional insureds against any claims,
7 demands, damages, lawsuits, judgments, costs, liens, losses,
8 expenses, and attorney fees. A wireless provider may meet all or a
9 portion of the authority's insurance coverage and limit
10 requirements by self-insurance. To the extent it self-insures, a
11 wireless provider is not required to name additional insureds under
12 this section. To the extent a wireless provider elects to self-
13 insure, the wireless provider shall provide to the authority
14 evidence demonstrating, to the authority's satisfaction, the
15 wireless provider's financial ability to meet the authority's
16 insurance coverage and limit requirements.

17 Sec. 31. An authority may establish a fee or rate less than
18 the maximum specified in section 13(3), 15(3), 17(4), or 19(2),
19 subject to other requirements of this act.

20 Sec. 33. (1) As a condition of a permit described in this act,
21 an authority may adopt bonding requirements for small cell wireless
22 facilities if both of the following requirements are met:

23 (a) The authority imposes similar requirements in connection
24 with permits issued for similarly situated users of the ROW.

25 (b) The purpose of the bonds is 1 or more of the following:

26 (i) To provide for the removal of abandoned or improperly
27 maintained small cell wireless facilities, including those that an

1 authority determines should be removed to protect public health,
2 safety, or welfare.

3 (ii) To repair the ROW as provided under section 13(10).

4 (iii) To recoup rates or fees that have not been paid by a
5 wireless provider in more than 12 months, if the wireless provider
6 has received 60-day advance notice from the authority of the
7 noncompliance.

8 (2) An authority shall not require either of the following
9 under subsection (1):

10 (a) A cash bond, unless any of the following apply:

11 (i) The wireless provider has failed to obtain or maintain a
12 bond required under this section.

13 (ii) The surety has defaulted or failed to perform on a bond
14 given to the authority on behalf of the wireless provider.

15 (b) A bond in an amount exceeding \$1,000.00 per small cell
16 wireless facility.

17 Sec. 35. A small cell wireless facility for which a permit is
18 issued shall be labeled with the name of the wireless provider,
19 emergency contact telephone number, and information that identifies
20 the small cell wireless facility and its location.

21 Sec. 37. A wireless provider is responsible for arranging and
22 paying for the electricity used to operate a small cell wireless
23 facility.

24 Sec. 39. (1) This act does not add to, replace, or supersede
25 any law regarding poles or conduits, similar structures, or
26 equipment of any type owned or controlled by an investor-owned
27 utility whose rates are regulated by the MPSC, an affiliated

1 transmission company, an independent transmission company, or,
2 except as provided in section 7(e), a cooperative electric utility.

3 (2) This act does not impose or otherwise affect any rights,
4 controls, or contractual obligations of an investor-owned utility
5 whose rates are regulated by the MPSC, an affiliated transmission
6 company, an independent transmission company or, except as provided
7 in section 7(e), a cooperative electric utility with respect to its
8 poles or conduits, similar structures, or equipment of any type.

9 (3) Except for purposes of a wireless provider obtaining a
10 permit to occupy a right-of-way, this act does not affect an
11 investor-owned utility whose rates are regulated by the MPSC.
12 Notwithstanding any other provision of this act, pursuant to and
13 consistent with section 6g of 1980 PA 470, MCL 460.6g, the MPSC has
14 sole jurisdiction over attachment of wireless facilities on the
15 poles, conduits, and similar structures or equipment of any type or
16 kind owned or controlled by an investor-owned utility whose rates
17 are regulated by the MPSC.

18 Enacting section 1. This act takes effect 90 days after the
19 date it is enacted into law.