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SMALL WIRELESS COMMUNICATIONS FACILITIES DEPLOYMENT ACT

Senate Bill 637 (S-2) as reported from House committee
Sponsor: Sen. Joe Hune

Senate Bill 894 (S-1) as reported from House committee
Sponsor: Sen. Michael Nofs

(Enacted as Public Acts 365 and 366 of 2018)

House Committee: Energy Policy
Senate Committee: Energy and Technology

Complete to 11-28-18

BRIEF SUMMARY: Senate Bill 637 would create the Small Wireless Communications Facilities Deployment Act, and Senate Bill 894 would amend the Michigan Zoning Enabling Act to subject zoning ordinances to the proposed new act. Senate Bill 637 would, briefly, do the following:

- Prioritize, as provided in the act, the use of existing utility poles and wireless support structures for collocation over the installation of new utility poles or wireless support structures.
- Prohibit an authority (the state and local government authorities) from prohibiting, regulating, or charging for the collocation of small cell wireless facilities.
- Regulate wireless providers within public rights-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.
- Cap allowable rates for the collocations of small cell wireless facilities on authority poles.
- Allow an authority to require a permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility would be colocated if the permit were of general applicability. The processing and review of an application for such a permit would be subject to specific standards under the proposed Act.
- Prohibit an authority from entering into an exclusive arrangement with any person, including a governing body of a municipally owned electric utility, for the right to attach to authority poles.
- Allow an authority to adopt bonding requirements, so long as specific requirements are met.

FISCAL IMPACT: Senate Bill 637 would have an indeterminate fiscal impact on both the state and local units of government. The bill would increase costs by creating regulatory functions for authorities—defined in the bill as the state, or a county, township, city, or village—with regard to wireless providers. It is unclear what the magnitude of the increased costs will be, and whether the rent fees and application fees that authorities could charge would be sufficient to cover costs. Authorities would be unable to charge fees in excess of what is permitted under the bill.

By itself, Senate Bill 894 would have no direct fiscal impact on state or local government. The bill would subject local zoning ordinances to the provisions specified in SB 637. Any fiscal impact would be the result of the requirements and provisions of SB 637.

THE APPARENT PROBLEM:

Small cells are low-powered cellular radio access nodes that operate as base stations and receive and send signals. Small cells typically support a single carrier, operate on one or two frequency bands, and require minimal power to operate. However, because small cells have a range of only 10 meters to a few kilometers (less than two miles) and transmit less power than a remote radio unit or digital antenna system, a large number of small cells are needed in order for them to be effective. It is believed that creating a dense network of small cells that are placed on existing infrastructure (e.g., telephone poles) would ultimately eliminate the need for further cell tower construction. According to committee testimony, the use of small cell wireless technology is important for the deployment of advanced, or "fifth generation," wireless systems, called 5G networks, as well as for the development and implementation of autonomous vehicles and the development of "smart cities" (urban areas that use different types of electronic data collection sensors for various purposes, such as managing traffic lights or monitoring water systems, which would modernize the power grid and help alleviate overuse of electricity). Further testimony claimed that 5G networks will be up to a hundred times faster than current networks and support up to a hundred times more devices.

Because a large number of small cells would be needed in order for them to be effective and would be placed on existing infrastructure in public rights-of-way, legislation was proposed to create a uniform regulatory framework regarding the permitting process and fees for the use of existing infrastructure and public rights-of-way in municipalities across the state.

THE CONTENT OF THE BILLS:

Senate Bill 637

Definitions

For purposes of the provisions of the bill, the following words and phrases would have the following meanings:

Small cell wireless facility would mean a wireless facility that meets both of the following requirements:

- Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than six cubic feet.
- All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume.

Authority, unless the context implies otherwise, would refer to the state, or a county, township, city, village, district, or subdivision thereof authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application described in the proposed Act. The term would not include a municipally owned

electric utility, an investor-owned utility whose rates are regulated by the Michigan Public Service Commission (MPSC), or a state court having jurisdiction over an authority.

Authority pole would mean a utility pole owned or operated by an authority and located in the right-of-way.

Public right-of-way or ***ROW*** would include the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement designated for compatible uses, but would *not include* a private right-of-way, limited access highway, land owned or controlled by a railroad, or a railroad infrastructure.

Colocate or ***collocation*** would mean to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. The term would not include ***make-ready work*** or the installation of a new utility pole or new wireless support structure.

Make-ready work would refer to work necessary to enable an authority pole or utility pole to support collocation, which may include modification or replacement of utility poles or modification of lines.

Collocation of Small Cell Wireless Facilities

Except as otherwise provided in the proposed act, an authority could not prohibit, regulate, or charge for the collocation of small cell wireless facilities.

The approval of a small cell wireless facility would authorize only the collocation of a small cell wireless facility and would not authorize either of the following:

- The provision of any particular services.
- The installation, placement, modification, maintenance, or operation of a wireline backhaul facility in an ROW.

Public Right-of-Way (ROW) Use

The following provisions would apply only to activities of a wireless provider within a public right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.

An authority could not enter into an exclusive arrangement with any person for use of an ROW for the construction, operation, marketing, or maintenance of utility poles or the collocation of small cell wireless facilities.

An authority could not charge a wireless provider a rate for each utility pole or wireless support structure in an ROW in the authority's geographic jurisdiction on which the wireless provider colocated a small cell wireless facility that exceeded the following:

- $20 annually, unless the following applied.
- $125 annually, if the utility pole or wireless support structure were erected by or on behalf of the wireless provider on or after the effective date of the proposed Act, unless the replacement of the utility pole was not designed to support small cell wireless facilities.

Every five years after the Act took effect, the maximum rates then authorized would be increased by 10% and rounded to the nearest dollar.

If, on the date the Act took effect, an authority had a rate or fee in an ordinance or in an agreement with a wireless provider for the use of an ROW to colocate a small cell wireless facility or to construct, install, mount, maintain, modify, operate, or replace a utility pole, and the rate or fee did not comply with the limitations listed above, the authority would have to revise the rate or fee within 90 days after the Act took effect. Both of the following also would apply:

- For installations of utility poles designed to support small cell wireless facilities or collocations of small cell wireless facilities installed and operational in an ROW before the date the Act took effect, the fees, rates, and terms of an agreement or ordinance for use of the ROW would remain in effect subject to the termination provisions contained in the agreement or ordinance.
- For installations of utility poles designed to support small cell wireless facilities or collocations of small cell wireless facilities installed and operational in an ROW after the date the Act took effect, the fees, rates, and terms of an agreement or ordinance for use of the ROW would have to comply with the rates proposed above.

A wireless provider could, as a permitted use not subject to zoning review or approval, except that an application for a permitted use would still be subject to approval by the authority, colocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under an ROW. Such structures and facilities would have to be constructed and maintained so as not to obstruct the legal use of the authority's ROW or uses of the ROW by other utilities and communications service providers. Both of the following provisions would apply:

- A utility pole in the ROW installed or modified on or after the date the proposed Act took effect could not exceed 40 feet above ground level, unless the authority agreed to a taller height.
- A small cell wireless facility in the ROW installed or modified after the date the Act took effect could not extend more than five feet above a utility pole or wireless support structure on which the facility was colocated.

Subject to these, the provisions for reviewing a permit, and applicable zoning regulations, a wireless provider could colocate a small cell wireless facility or install, construct, maintain, modify, operate, or replace a utility pole that exceeded the specified height limits, or a wireless support structure, in, along, across, upon, and under the ROW.

A wireless provider would have to comply with reasonable and nondiscriminatory requirements otherwise provided that prohibited communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities if *all* of the following applied:

- The authority had required all cable and utility 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 underground by a date that was at least 90 days before the submission of an application.
- The authority did not prohibit the replacement of authority poles by a wireless provider in the designated area.

- The authority allowed wireless providers to apply for a waiver of the undergrounding requirements for the placement of a new utility pole to support small cell wireless facilities, and the waiver applications were addressed in a nondiscriminatory manner.

Subject to permitting provisions, and except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4), an authority could adopt written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district, downtown district, or residential zoning district. Any such requirement could not have the effect of prohibiting any wireless provider's technology. Any such design or concealment measures would not be considered a part of the small cell wireless facility for purposes of the size restrictions in the definition of small cell wireless facility.

An authority's administration and regulation of wireless providers' activities in the ROW would have to be reasonable, nondiscriminatory, and competitively neutral and would have to comply with applicable law.

An authority could require a wireless provider to repair all damage to an ROW directly caused by the activities of the provider while occupying, constructing, installing, mounting, maintaining, modifying, operating, or replacing small cell wireless facilities, utility poles, or wireless support structures in the ROW and to return it to its functional equivalence before the damage. If the provider failed to make the repairs required by the authority within 60 days after written notice, the authority could make the repairs and charge the wireless provider the reasonable, documented cost of repairs.

Permitting Provisions

The following provisions would apply to activities of a wireless provider within a public ROW.

Except as otherwise provided, an authority could require a permit to colocate a small cell wireless facility or install, modify, or replace a utility pole on which a small cell wireless facility would be colocated if the permit were of general applicability. The processing of an application for such a permit would be subject to all of the following provisions.

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

An authority could require an applicant to provide information and documentation to enable the authority to make a decision with regard to the criteria for denying a completed application. An authority also could require a certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.

If the proposed activity will occur within a shared ROW or a ROW that overlaps another ROW, a wireless provider would have to provide, to each affected authority to which an application for the activity is not submitted, notification of the wireless provider's intent to locate a small cell wireless facility within the ROW. An authority could require proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity are obtained.

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

The authority would approve or deny the application and notify the applicant in writing within certain conditional time periods specified in the bill, or the completed application could be considered approved.

An authority could deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements only if the proposed activity would do any of the following:

- Materially interfere with any of the following:
  - The safe operation of traffic control.
  - Sight lines or clear zones for transportation or pedestrians.
  - Compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
  - Maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.
- With respect to drainage infrastructure under the jurisdiction of an authority, either of the following:
  - Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
  - Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code, and access to the drainage infrastructure.
- Fail to comply with the following:
  - Reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.
  - Applicable codes.
  - Reasonable and nondiscriminatory requirements otherwise provided that prohibited communications service providers from installing structures on or above ground in the ROW in an area designated solely for underground or buried cable and utility facilities, as well as written, objective requirements for reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district, downtown district, or residential zoning district, as described above.
  - Reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and nondiscriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the authority.

If the completed application is denied, the notice described above would have to explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the authority

and resubmit the application within 30 days after the denial without paying an additional application fee. The authority would approve or deny the revised application within 30 days. The authority also would limit its review of the revised application to the deficiencies cited in the denial.

An applicant could file a consolidated application and receive a single permit for the collocation of up to 20 small cell wireless facilities within the jurisdiction of a single authority or, in the case of the state transportation department, a single designated control section as identified on the department's website. The small cell wireless facilities within a consolidated application would have to consist of substantially similar equipment and be placed on similar types of utility poles or wireless support structures. An authority could approve a permit for one or more small cell wireless facilities included in a consolidated application and deny a permit for the remaining small cell facilities. An authority could not deny a permit for a small cell wireless facility included in a consolidated application on the basis that a permit is being denied for one or more other small cell facilities included in that application.

Within one year after a permit is granted, a wireless provider would have to complete collocation of a small cell wireless facility that is to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by the lack of commercial power or communications facilities at the site. If the wireless provider fails to complete the collocation within the applicable time, the permit would be void. But, the wireless provider could reapply for a permit. A permittee also could voluntarily request that a permit be terminated.

Approval of an application would authorize the wireless provider to do both of the following:

- Undertake the installation or collocation.
- Subject to relocation requirements that apply to similarly situated users of the ROW and the applicant's right to terminate at any time, maintain the small cell wireless facilities and any associated utility poles or wireless support structures covered by the permit for as long as the site is in use and in compliance with the initial permit under this act.

An authority could not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be colocated.

Permit fee

An application fee for a permit to colocate a small cell wireless facility, or to install, modify, or replace a utility pole on which such a facility would be collocated, could not exceed the lesser of the following:

- $200 for each small cell wireless facility alone.
- $300 for each small cell wireless facility and a new utility pole to which it would be attached.

Every five years after the bill would take effect, the maximum fees then authorized would be increased by 10% and rounded to the nearest dollar.

Permitting authority
An authority could revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole failed to meet the requirements listed above as reasons for which an authority could deny a completed application.

The following activities would be exempt from zoning review, and an authority could not require a permit or any other approval or require fees or rates:

- The replacement of a small cell wireless facility with a small cell wireless facility that was not larger or heavier, in compliance with applicable codes.
- Routine maintenance of a small cell wireless facility, utility pole, or wireless support structure.
- The installation, placement, maintenance, operation, or replacement of ***micro wireless facilities*** that were suspended on cables strung between utility poles or wireless support structures in compliance with applicable codes.

> ***Micro wireless facility*** would mean a small cell wireless facility that is not more than 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.

An authority that received an application to place a new utility pole could propose an alternative location within an ROW or on property or structures owned or controlled by an authority within 75 feet of the proposed location to either place the new utility pole or colocate on an existing structure. The applicant would have to use the alternative location if, as determined by the applicant, it had the right to do so on reasonable terms and conditions and the alternative location did not impose unreasonable technical limits or significant additional costs.

Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider would have to notify an authority in writing. The notice would have to specify when and how the wireless provider intended to remove the small cell wireless facility, utility pole, or wireless support structure. The authority could impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to return the property to its preinstallation condition. If the wireless provider did not complete the removal within 45 days after the discontinuance of use, the authority could complete the removal and assess the costs of removal against the wireless provider. A permit for a small cell wireless facility would expire upon removal of the facility.

An authority would not be prohibited from requiring a permit for work that would reasonably affect traffic patterns or obstruct vehicular or pedestrian traffic in an ROW.

Zoning Approval and Review
The provisions discussed below would apply to zoning reviews for the following activities that would be subject to zoning review and approval, that would not be a permitted use, and that took place within or outside a public ROW:

- The modification of existing or installation of new small cell wireless facilities.
- The modification of existing or installation of new wireless support structures used for such facilities.

The bill delineates procedures and time frames for processing an application for a zoning approval.

An authority's review of an application for a zoning approval would be subject to all of the following:

- An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures or technology to be used would be presumed to be reasonable. This presumption would not apply with respect to the height of wireless facilities or wireless support structures. An authority could consider the height of such structures in its zoning review, but could not discriminate between the applicant and other communications service providers.
- An authority could not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:
  - The need for a wireless support structure or small cell wireless facilities.
  - The applicant's service, customer demand for the service, or the quality of service.
- Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, would have to be reasonable.
- Any spacing, setback, or fall zone requirement would have to be substantially similar to such a requirement imposed on other types of commercial structures of a similar height.

An application fee for a zoning approval could not exceed the following:

- $1,000 for a new wireless support structure or a modification of an existing wireless support structure.
- $500 for a new small cell wireless facility or modification of an existing small cell wireless facility.

Within one year after a zoning approval was granted, a wireless provider would have to commence construction of the approved structure or facilities that were to be operational for use by a provider, unless the authority and the applicant agreed to extend the period or the delay was caused by a lack of commercial power or communications facilities at the site. If the provider failed to commence construction within the time period required, the zoning approval would be void, and the provider could reapply for a zoning approval. However, the provider could voluntarily request that the zoning approval be terminated.

An authority could not institute a moratorium on either of the following:

- Filing, receiving, or processing applications for zoning approval.
- Issuing approvals for installations that were not a permitted use.

An authority could revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated wireless support structure failed to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

Collocation Rates and Fees

An authority could not enter into an exclusive arrangement with any person for the right to attach to authority poles. A person who purchased, controlled, or otherwise acquired an authority pole would be subject to the requirements described below.

The rate for the collocation of small cell wireless facilities on authority poles would have to be nondiscriminatory regardless of the services provided by the collocating person. The rate could not exceed $30 per year per authority pole. Every five years after the date the proposed Act took effect, the maximum rate then authorized would be increased by 10% and rounded to the nearest dollar. This rate for the collocation of small cell wireless facilities on authority poles would be in addition to the rate charged for the use of a ROW.

If, on the date the Act took effect, an authority had a rate, fee, or other term in an ordinance or in an agreement with a wireless provider that did not comply with these provisions, the authority would have to revise the rate, fee, or term, within 90 days after that date. Both of the following would apply:

- An ordinance or agreement between an authority and a wireless provider that was in effect on the date the Act took effect and that related to the collocation on authority poles of small cell wireless facilities installed and operational before that date would remain in effect as it related to those collocations, subject to termination provisions in the ordinance or agreement.
- The rates, fees, and terms established in the Act would apply to the collocation on authority poles of small cell wireless facilities that were installed and operational after the rates, fees, and terms took effect.

Within 90 days after receiving the first request to colocate a small cell wireless facility on an authority pole, the authority would have to make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell wireless facilities on the authority poles. The rates, fees, and terms would have to comply with all of the following:

- The rates, fees, and terms would have to be nondiscriminatory, competitively neutral, and commercially reasonable, as well as comply with the act.
- The authority would have to provide a good-faith estimate for any make-ready work within 60 days after receiving a complete application, and any make-ready work would have to be completed within 60 days of the applicant's written acceptance of the good-faith estimate.
- The person owning or controlling the authority pole could not require more make-ready work than required to comply with law or industry standards.
- Fees for make-ready work could not do any of the following:
  - Include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant.
  - Include any unreasonable consultant fees or expenses.
  - Exceed actual costs imposed on a nondiscriminatory basis.

These provisions would not require an authority to install or maintain any specific authority pole or to continue to install or maintain authority poles in any location if the authority made a nondiscriminatory decision to eliminate aboveground poles of a particular type generally, such as electric utility poles, in a designated area of its geographic jurisdiction. For authority poles with colocated small cell wireless facilities in place when an authority made a decision to eliminate aboveground poles of a particular type, the authority would have to do one of the following:

- Continue to maintain the authority pole.
- Install and maintain a reasonable alternative pole or wireless support structure for the collocation of the small cell wireless facility.

- Offer to sell the pole to the wireless provider at a reasonable cost.
- Allow the wireless provider to install its own utility pole so it could maintain service from that location.
- Proceed as provided by an agreement between the authority and the wireless provider.

Municipally Owned Electric Utility

The governing body of a municipally owned electric utility could not enter into an exclusive agreement with any person for the right to attach to nonauthority poles, and would have to allow the collocation of small cell wireless facilities on nonauthority poles on a nondiscriminatory basis.

The collocation of small cell wireless facilities on nonauthority poles by a wireless provider would have to comply with the applicable, nondiscriminatory safety and reliability standards adopted by the governing body of a municipally owned electric utility and with the Natural Electric Safety Code published by the Institute of Electrical and Electronics Engineers. The governing body could require a wireless provider to execute an agreement if such an agreement were required of all other nonauthority pole attachments.

The governing body of a municipally owned electric utility would have to adopt a nondiscriminatory and competitively neutral process for requests by wireless providers to colocate small cell wireless facilities on nonauthority poles. If such a process had not been adopted within 90 days after the date the proposed Act took effect, the application process for a permit within a public ROW would apply to such requests. The governing body of a municipally owned electric utility could not impose a moratorium on the processing of nonauthority pole collocation requests, or require a wireless provider to perform any service not directly related to the collocation. The governing body could charge a maximum fee of $100 per nonauthority pole for processing the request. The governing body also could charge an additional fee of up to $100 per nonauthority pole for processing the request, if a modification or maintenance of the collocation required an engineering analysis. Every five years after the date the Act took effect, the maximum fees then authorized would be increased by 10% and rounded to the nearest dollar.

The rate for a wireless provider to colocate on a nonauthority pole in an ROW could not exceed $50 annually per nonauthority pole. Every five years after the date the proposed Act took effect, the maximum rate then authorized would be increased by 10% and rounded to the nearest dollar.

A wireless provider would have to comply with the process for make-ready work that the governing body of a municipally owned electric utility had adopted for other parties under the same or similar circumstances that attached facilities to nonauthority poles. If such a process had not been adopted, the wireless provider and the governing body would have to comply with the process for make-ready work under 47 USC 224 and implementing orders and regulations. (That section of the U.S. Code pertains to attachments by a cable television system or telecommunications service provider to a pole, duct, conduit, or right-of-way owned or controlled by a utility.) A good-faith estimate established by the governing body for any make-ready work for nonauthority poles would have to include pole replacement, if necessary. All make-ready costs would have to be based on actual costs, with detailed documentation provided.

If a wireless provider were required to relocate small cell facilities colocated on a nonauthority pole, it would have to do so in accordance with the nondiscriminatory terms adopted by the governing body of a municipally owned electric utility.

An attaching entity, and all contractors or parties under its control, would have to comply with reliability, safety, and engineering standards adopted by the governing body of a municipally owned electric utility, including the following:

- Applicable engineering and safety standards governing installation, maintenance, and operation of facilities and the performance of work in or around the municipally owned electric utility nonauthority poles and facilities.
- The National Electric Safety Code, published by the Institute of Electrical and Electronics Engineers.
- Regulations of the U.S. Occupational Safety and Health Administration.
- Other reasonable safety and engineering requirements to which municipally owned electric facilities were subject by law.

The governing body of a municipally owned electric utility could require an attaching entity to execute an agreement for wire or cable attachments to nonauthority poles or related infrastructure. However, it could not charge an attaching entity a rate for wire or cable pole attachments within the communication space on a nonauthority pole greater than the maximum allowable rate pursuant to 47 USC 224(d) and (e) as established in FCC Order on Reconsideration 15-151.

Subject to proposed provisions pertaining to court action (described below), an attaching entity could commence a civil action for injunctive relief for a violation these provisions. The attaching entity could not file an action unless it had first given the municipally owned electric utility a written notice of the intent to sue. Within 30 days after the utility received the notice of intent to sue, the utility and the attaching entity would have to meet and make a good-faith attempt to determine if there was a credible basis for the action. If the parties agreed that there was a credible basis for the action, the governing body of the utility would have to take all reasonable and prudent steps necessary to comply with the applicable requirements within 90 days after the meeting.

Authority Limitations

An authority would not have jurisdiction or authority over the design, engineering, construction, installation, or operation of a small cell wireless facility located in an interior structure or upon a campus of an institution of higher education, including any stadiums or athletic facilities associated with the institution, a professional stadium, or a professional athletic facility, other than to enforce applicable codes. The proposed Act would not authorize the State or any other authority to require wireless facility deployment or to regulate wireless services.

Dispute Resolution

The circuit court would have jurisdiction to determine all disputes arising under the proposed Act. Venue would lie in the judicial circuit where an authority or municipally owned electric utility was located. In addition to its right to appeal to the circuit court, an applicant could elect, at its sole discretion, to appeal a determination under the Act to an authority, if the authority had an appeal process to render a decision expeditiously.

Requirement to Indemnify, Defend, or Insure

With respect to a small cell wireless facility, a wireless support structure, or a utility pole, as part of the permit process for activities of a wireless provider within the public ROW, a zoning approval process for the modification or installation of new small cell wireless facilities or wireless support structures, or a request process for wireless providers to colocate small cell wireless facilities on nonauthority poles, an authority or the governing body of a municipally owned electric utility could require a wireless provider to do the following:

- Defend, indemnify, and hold harmless the authority or the governing body, and its officers, agents, and employees, against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees resulting from the installation, construction, repair, replacement, operation, or maintenance of any wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant, its contractors, its subcontractors, and the officers, employees, or agents of any of those. A wireless provider would have no obligation to defend, indemnify, or hold harmless an authority or governing body, or its officers, agents, or employees, against any liabilities or losses due to or caused by the sole negligence of the authority or the governing body, or its officers, employees, or agents.
- Obtain insurance naming the authority or the governing body, and its officers, agents, and employees, as additional insureds against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney fees. A wireless provider could meet all or a portion of the authority's insurance coverage and limit requirements by self-insurance. To the extent a wireless provider self-insured, it would have to provide to the authority evidence demonstrating, to the authority's satisfaction, the provider's financial ability to meet the authority's insurance coverage and limit requirements.

Bonding Requirements

As a condition of a permit described in the proposed Act, an authority could adopt bonding requirements for small cell wireless facilities if both of the following requirements are met:

- The authority imposed similar requirements in connection with permits issued for similarly situated users of an ROW.
- The purpose of the bonds would have to be one or more of the following:
    - To provide for the removal of abandoned or improperly maintained small cell wireless facilities, including those that an authority determined should be removed to protect public health, safety, or welfare.
    - To repair the ROW as provided by the Act.
    - To recoup rates or fees that a wireless provider had not paid in more than 12 months, if the provider had received 60-day advance notice from the authority of noncompliance.

An authority could not require a cash bond unless the wireless provider had failed to obtain or maintain a bond required under these provisions, or the surety had defaulted or failed to perform on a bond given to the authority on behalf of the wireless provider. Also, an authority could not require a bond in an amount exceeding $1,000 per small cell wireless facility.

Fees Less than Maximum

Subject to other requirements of the proposed Act, an authority could establish a fee or rate less than the maximum specified for utility poles or wireless support structures in an ROW in the authority's geographic jurisdiction on which a wireless provider had colocated a small cell

wireless facility, a permit application, zoning approval application, or the collocation of small cell facilities on authority poles.

Scope of Act; MPSC Jurisdiction

The proposed Act would not impose or otherwise affect any rights, controls, or contractual obligations of an investor-owned utility whose rates are regulated by the MPSC, an ***affiliated transmission company***, an independent transmission company, or a cooperative electric utility (unless it acquired all or substantially all of the assets of a municipal electric utility after the Act's effective date) with respect to its poles or conduits, similar structures, or equipment of any type.

> ***Affiliated transmission company*** would refer to a person, partnership, corporation, association, or other legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by the federal energy regulatory commission, is engaged in this state in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state. This definition is found in the Electric Transmission Line Certification Act (MCL 460.562).

The Act also would not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by any of those entities.

Except for the purposes of a wireless provider obtaining a permit to occupy an ROW, the Act would not affect an investor-owned utility whose rates are regulated by the MPSC. Notwithstanding any other provision of the Act, the MPSC would have sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the MPSC.

Other Provisions

A small cell wireless facility for which a permit was issued would have to be labeled with the name of the wireless provider, emergency contact telephone number, and information that identified the facility and its location.

A wireless provider would be responsible for arranging and paying for the electricity used to operate a small cell wireless facility.

Senate Bill 894

Senate Bill 894 would amend the Michigan Zoning Enabling Act to provide that a zoning ordinance under that Act would be subject to the proposed Small Wireless Communications Facilities Deployment Act.

The bill is tie-barred to SB 637, which means that SB 894 cannot take effect unless SB 637 is enacted.

MCL 125.3205 (SB 894)

HOUSE COMMITTEE ACTION:

The House Committee on Energy Policy reported the Senate-passed versions of the bills without amendment.

ARGUMENTS:

For:

Supporters of the bills argue that small cell technology would drive Michigan's broadband expansion and 5G development, which would help the state become a global competitor in technological advancement. For instance, the Detroit area is known across the world as an automobile developer, but it could be an autonomous vehicle developer with the deployment of small cell networks. Additionally, current regulatory frameworks to access public rights-of-way are different across Michigan's 83 counties, leaving developers and carriers with the task of navigating each framework and finding out how to cross county lines. Further, each county has different fee structures for permits, whether for developing new infrastructure in a right-of-way or utilizing existing infrastructure. Supporters of the bills argue that some of the fees are exorbitant and stifle development. The bills would create fair and uniform fee structures to make development feasible.

Against:

Opponents of the bills argue that the bills interfere with a variety of local governmental rights, most notably a county's ability to recover costs from the development and use of their rights-of-way. The fee structures proposed in the bills do not allow some counties in Michigan to properly recover the costs of the development and oversight. If the fees don't cover the cost of required inspections, then taxpayers are left footing the bill for private entities that should, and can afford to, at least cover those costs. Moreover, those additional costs could saddle those counties with debt, which would not help Michigan's economy. Additionally, critics argue that local governments would not be able to address aesthetic concerns, such as in historical areas, nor would they have any leverage to negotiate, e.g., free WiFi services in public areas, to address competitive and equity issues.

Against:

Some opponents of the bills argue that broadband and cellular development is needed in unserved areas, which currently have no broadband (and sometimes even no cellular services) available to residents. However, small cell technology would not help bring internet or cell coverage to these areas. It would not expand services, but rather enhance existing services. Critics argue that the bill will encourage developers and providers to focus on areas already receiving service, instead of developing services in areas that need them, to the detriment of Michigan's economic growth and opportunities.

Against:

Other opponents of the bills argue that a variety of health issues, such as cancer and depression, develop from devices that emit man-made radiation. The small cell technology that would be used under the bills would emit even more radiation than current technologies, they argued, as the small cells would have to be placed in closer proximity to each other and would emit stronger signals. Numerous studies were cited during committee testimony that linked serious health issues to wireless technology. Some bill opponents argue that fiber optic cables, buried under the ground and connected to physical locations, are the safest for internet connectivity.

POSITIONS:

Representatives of the following organizations testified in support of the bills:

- T-Mobile (5-29-18)
- Verizon (10-4-18)
- AT&T (10-4-18)
- Sprint (5-29-18)
- Michigan Chamber of Commerce (5-29-18)
- Extenet Systems, Inc. (5-29-18)
- Free State Foundation (5-29-18)
- Cellular Telecommunications Industry Association (5-29-18)
- Michigan Energy Innovation Business Council (5-29-18)
- St. Clair County Commission (10-4-18)

The following organizations indicated support for the bills:

- Michigan Department of Transportation (10-4-18)
- Grand Rapids Chamber of Commerce (10-4-18)
- Detroit Regional Chamber of Commerce (10-4-18)
- Traverse City Area Chamber of Commerce (10-4-18)
- Northern Michigan Chamber Alliance (5-29-18)
- Police Officers Association of Michigan (10-4-18)
- Southern Wayne County Regional Chamber of Commerce (10-4-18)
- Macomb County Chamber of Commerce (10-4-18)
- Blue Water Area Chamber (10-4-18)
- Saginaw County Chamber of Commerce (10-4-18)
- Saginaw Future Inc. (10-4-18)
- Michigan Electric Cooperative Association (10-4-18)
- Clean Fuels, Michigan (10-4-18)
- Bay Area Chamber of Commerce (10-4-18)
- Hope Network (10-4-18)
- NAACP, Greater Grand Rapids Branch
- American Arab Chamber of Commerce (10-4-18)
- Ford Motor Company (10-4-18)
- Lansing Regional Chamber (10-4-18)
- Deputy Sheriff's Association of Michigan (10-4-18)
- Wayne County Sheriff's Association (10-4-18)
- Agricultural Leaders of Michigan (10-4-18)
- Michigan Municipal Electric Association (10-4-18)

Representatives of the following organizations testified in opposition to the bills:

- We Are The Evidence (10-4-18)
- Michigan Safe Technology (5-29-18)
- City of Auburn (5-29-18)
- PROTEC (10-4-18)
- Oakland County (10-4-18)
- County Road Association of Michigan (10-4-18)

- Oakland County Road Commission (10-4-18)
- Wayne County (10-4-18)
- Neo Networks (10-4-18)
- Americans for Responsible Technology (10-4-18)

The following organizations indicated opposition to the bills:

- Holistic Therapy Practice (5-29-18)
- Salem Township (10-4-18)
- Northfield Township (10-4-18)
- Mullett Township (10-4-18)
- Utility Meter Choice 4 Michigan (10-4-18)
- City of Rochester Hills (10-4-18)
- Lapeer County Road Commission (10-4-18)
- Huron County Road Commission (10-4-18)
- Meridian Township (10-4-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.