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BILL ANALYSIS

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Senate Bill 637 (Substitute S-1)
Senate Bill 894 (as introduced 3-7-18)
Sponsor: Senator Joe Hune (S.B. 637)
Senator Mike Nofs (S.B. 894)
Committee: Energy and Technology

Date Completed: 3-8-18

CONTENT

Senate Bill 637 (S-1) would enact the "Small Wireless Communications Facilities Deployment Act" to do the following:

- **Prohibit an authority (the State or a local unit) from prohibiting, regulating, or charging for the collocation of small cell wireless facilities, except as provided in the Act.**
- **Prohibit an authority from entering into an exclusive agreement for use of a right-of-way (ROW) for work on utility poles or the collocation of small cell wireless facilities.**
- **Prohibit an authority from charging a wireless provider a rate or fee for the use of an ROW, except as provided in the Act.**
- **Permit a wireless provider to colocate small wireless facilities and work on utility poles in, along, across, upon, and under an ROW, subject to certain height limitations.**
- **Permit an authority to adopt requirements for design or concealment measures in a historic district, downtown district, or residential district, subject to evaluation on the effects on historic properties.**
- **Allow an authority to require a wireless provider to repair any damage to an ROW directly caused by the provider's activities while working on small cell wireless facilities or utility poles in the ROW.**
- **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.**
- **Require an application and an application fee for a permit to meet certain conditions.**
- **Require a provider to complete collocation within one year after a permit was granted, subject to exceptions.**
- **Specify requirements an application for a zoning approval would have to meet.**
- **Require an authority to approve or deny an application and notify the applicant within 90 days if the application were for a modification of a wireless support structure or the installation of a new small cell wireless facility, or within 150 days if the application were for a new wireless support structure.**
- **Prohibit an authority from denying an application without a reasonable basis for the denial, require a denial to be supported by substantial evidence, and prohibit a denial from discriminating with respect to the placement of facilities of other wireless providers.**

-- Require a wireless provider to commence construction of an approved structure or facility within one year after a permit was granted, and pursue construction to completion.
-- Prohibit an authority from entering into an exclusive arrangement with any person for the right to attach to authority poles.
-- Establish requirements that a rate or fee to colocate a small cell wireless facility on an authority pole would have to meet.
-- Prohibit a wireless provider from colocating small cell wireless facilities on authority poles that were part of an electric distribution or transmission system within a communication worker safety zone of the pole or the electric supply zone of the pole.
-- Prohibit the governing body of a municipally owned electric utility from entering into an exclusive agreement with any person for the right to attach to nonauthority poles.
-- Require the governing body of a municipally owned electric utility to adopt a process for wireless providers' requests to colocate small cell wireless facilities, and establish requirements that a rate or fee to process such requests would have to meet.
-- Require a wireless provider that had to relocate small cell facilities colocated on a nonauthority pole to comply with terms and standards adopted by the governing board of a municipally owned electric utility.
-- Permit the governing body of a municipally owned electric utility to require a wireless provider to defend, indemnify, or hold harmless an authority, the governing body, and its employees and officers against any claims resulting from working on wireless facilities, wireless support structures, or utility poles.
-- Provide that the circuit court would have jurisdiction to determine all disputes arising under the Act.
-- Permit an authority, as a condition for obtaining a permit, to adopt bonding requirements for small cell wireless facilities if certain requirements were met.

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

Each bill would take effect 90 days after it was enacted. Senate Bill 894 is tie-barred to Senate Bill 637.

<u>Senate Bill 637 (S-1)</u> is described in more detail below.

<u>Definitions</u>

"Authority", unless the context implied otherwise, would mean 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 any of the following:

-- A municipally owned electric utility.
-- An investor-owned utility whose rates are regulated by the Michigan Public Service Commission (MPSC).
-- A State court having jurisdiction over an authority.

"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.

(The following types of associated ancillary equipment would not be included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.)

"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 mean work necessary to enable an authority pole or utility pole to support collocation, which could include authority pole or utility pole modification or replacement, modification of lines, or installation of guys and anchors.)

"Public right-of-way" or "ROW" would mean the area on, below, or above a public roadway, highway, street, alley, bridge, sidewalk, or utility easement, dedicated for compatible uses. The term would not include any of the following:

-- A private right-of-way.
-- A limited access highway.
-- Land owned or controlled by a railroad as defined in the Railroad Code.
-- Railroad infrastructure.

"Wireless facility" would mean equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including radio transceivers, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. It also would include a small cell wireless facility. The term would not include any of the following:

-- The structure or improvements on, under, or within which the equipment is colocated.
-- A wireline backhaul facility (a facility used to transport services by wire or fiber-optic cable from a wireless facility to a network).
-- Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

"Wireless services" would mean any services, provided using licensed or unlicensed spectrum, including the use of wi-fi, whether at a fixed location or mobile.

"Wireless provider" would mean a wireless infrastructure provider or a wireless services provider. It would not include an investor-owned utility whose rates are regulated by the MPSC.

"Wireless infrastructure provider" would mean any person, including a person authorized to provide telecommunications service in the State, but not including a wireless service provider, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures and that, when filing an application with an authority under the proposed Act, provides written authorization to perform the work on behalf of a wireless service provider.

"Wireless support structure" would mean a freestanding structure designed to support or capable of supporting small cell wireless facilities. It would not include a utility pole.

Purpose of the Act

The stated purpose of the proposed Act would be to do all of the following:

- "Increase investment in wireless networks that will benefit the citizens of the state by providing better access to emergency services, advanced technology, and information."
- "Increase investment in wireless networks that will enhance the competitiveness of the state in the global economy."
- "Encourage the deployment of advanced wireless services by streamlining the process for the permitting, construction, modification, maintenance, and operation of wireless facilities in the public rights-of-way."
- "Allow wireless services providers and wireless infrastructure providers access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to enhance their networks and provide next generation services."
- "Ensure the reasonable and fair control and management of public rights-of-way by governmental authorities within the state."
- "Address the timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities as matters of statewide concern and interest."
- "Provide for the management of public rights-of-way in a safe and reliable manner that does all of the following:" supports new technology; avoids interference with right-of-way use by existing public utilities and cable communications providers; and allows for a level playing field for competitive communications service providers.
- "Increase the connectivity for autonomous and connected vehicles through the deployment of small cell wireless facilities with full access and compatibility for connected and autonomous vehicles as determined and approved by the state transportation department, county road commissions, and authorities."

"Communications service provider" would mean any entity that provides communications service. "Communications service" would mean service provided over a communications facility, including cable service, as defined in 47 U.S.C. 522(6) (the one-way transmission to subscribers of video programming and other programming service, and subscriber interaction, if any, that is required for the selection or use of such programming or programming service), information service, as defined in 47 U.S.C. 153(24) (the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via telecommunications, including electronic publishing, but not including any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service), telecommunications service, as defined in 47 U.S.C. 153(53) (the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used), or wireless service.

"Communications facility" would mean the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.

Prohibited Regulation; Collection Approval

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.

<u>Right-of-Way Use</u>

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

("Utility pole" would mean a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that does not exceed 40 feet above ground level, unless a taller height is agreed to by an authority, and is designed to support small cell wireless facilities. The term would not include a sign pole less than 15 feet in height above ground.)

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.

For installations of utility poles designed to support small cell wireless facilities and 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 and 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.

Subject to these and other provisions, 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 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 and other provisions, 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, subject to applicable zoning regulations.

An authority could impose reasonable and nondiscriminatory requirements that prohibited communications service providers from installing structures in an 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 and attachments 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 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 permit provisions (described below), and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. 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 wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(Under 47 C.F.R. 1.1307(a)(4), applicants must prepare environment assessments if the Federal Communications Commission (FCC) takes any action with respect to facilities that may affect districts, sites, buildings, structures, or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing in the National Register of Historic Places, and that are subject to review by the FCC and have been determined through that review process to have adverse effects on identified historic properties.

"Historic district" would mean a historic district established under the Local Historic Districts Act, or a group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the Federal agency to list properties and determine their eligibility for the National Register, in accordance with the Nationwide Programmatic Agreement.)

An authority's administration and regulation of an 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 its small cell wireless facilities or utility poles 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.

Permit

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:

- The authority could not directly or indirectly require an applicant to perform services unrelated to the collocation for which a permit was sought, such as reserving fiber, conduit, or pole space for the authority or making other in-kind contributions to the authority.
- The authority could require proof of other necessary permits, permit applications, or easements to ensure all necessary permissions for the proposed activity were obtained, if the proposed activity would occur within an ROW of another authority or on private land.
- The authority could require an applicant to include an attestation that the small cell wireless facilities would be operational for use by a wireless services provider within one year after the permit was issued, unless the authority and the applicant agreed to extend the period or delay was caused by lack of commercial power or communications transport facilities to the site.
- The application would have to be processed on a nondiscriminatory basis.
- Approval of an application would authorize the wireless provider to undertake an installation or collocation and 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 was in use and in compliance with the initial permit, subject to relocation requirements that would apply to similarly situated users of an ROW and the applicant's right to terminate at any time.
- 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 the facilities could be colocated.
- An authority and an applicant could extend a time period by mutual agreement.

An authority could require an applicant to provide only information that was required from other communications service provider applicants that were not wireless providers. However, an authority could require an applicant to provide a certification of compliance with the criteria for drawings drawn to scale and with FCC rules related to radio frequency emissions from radio transmitters. An authority also could require an applicant to provide construction and engineering drawings that met all of the following requirements:

- Were drawn at a measurable scale.
- Showed the elevation, depth, adjoining property lines, setback lines, easements, power lines, and associated ancillary equipment for the proposed activity, if applicable.
- Depicted all utilities and infrastructure located within the ROW in the immediate vicinity of the utility pole and the distances from those utilities and infrastructure to the proposed activity, and all other overlapping or shared ROWs or property rights in the immediate vicinity of the utility pole held by other authorities or private landowners, for a new or replacement utility pole or the installation of ground-mounted equipment.

-- Included a description and rendering of the proposed small cell wireless facility and associated work.
-- Depicted construction methods to be used and the expected level of impact on the area surrounding the proposed activity.

Within 25 days after receiving an application, an authority would have to notify the applicant in writing whether the application was complete. If the application were incomplete, the notice would have to clearly and specifically delineate missing documents or information. The notice would toll the running of the time for approving or denying an application as described below.

The running of time period tolled would resume when an applicant made a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission were inadequate, the authority would have to notify the applicant in writing within 10 days after receiving the supplemental submission that it did not provide the information identified in the original notice delineating missing documents or information. The time period could be tolled in the case of second or subsequent notices under the procedures identified above. Second or subsequent notices of incompleteness could not specify missing documents or information that was not delineated in the original notice.

An authority would have to approve or deny an application and notify the applicant in writing within the following period of time after the application was received:

-- 60 days, for an application for the collocation of small cell wireless facilities on a utility pole, subject to the following adjustments: an additional 15 days if an application from another wireless provider were received within one week of the application in question, and an additional 15 days if, before the otherwise applicable 60-day or 75-day time period elapsed, the authority notified the applicant in writing that an extension was needed and the reasons for the extension.
-- 90 days, for an application for a new or replacement utility pole that would not exceed 40 feet above ground level, unless a taller height was agreed to by the authority, and associated small cell facility, subject to the following adjustments: an additional 15 days if an application from another wireless company were received within one week of the application in question; and an additional 15 days if, before the otherwise applicable 90-day or 105-day time period elapsed, the authority notified the application in writing that an extension was needed and the reasons for the extension.

If an authority failed to comply with these provisions, the application would be considered approved subject to the condition that the applicant provide the authority at least 7 days' advance written notice that the applicant would be proceeding with the work pursuant to this automatic approval.

An authority could deny an application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that would not exceed 40 feet above ground level, unless a taller height was agreed to by the authority, only if the proposed activity would do any of the following:

-- Materially interfere with the safe operation of traffic control equipment.
-- Materially interfere with sight lines or clear zones for transportation or pedestrians.
-- Materially interfere with compliance with the Americans with Disabilities Act, or similar Federal or State standards regarding pedestrian access or movement.
-- Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.
-- Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally intended, or not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the Drain Code, and access to

drainage infrastructure, with respect to drainage infrastructure under the jurisdiction of an authority.

- -- Fail to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that applied to the location of ground-mounted equipment and new utility poles that did not prevent a wireless provider from serving any location.
- -- Fail to comply with applicable codes.
- -- Fail to comply with provisions pertaining to underground or buried cables, or historic districts.
- -- Fail to meet reasonable stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance and nondiscriminatorily applied to all other occupants of an ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the authority.

If the application were denied, the written notice would have to explain the reasons for the denial and, if applicable, cite the specific provisions of applicable codes on which the denial was based. The applicant could 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 have to limit its review of the revised application to the deficiencies cited in the denial.

An applicant could at its discretion 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 Michigan Department of Transportation (MDOT), a single designated control section as identified on MDOT's website. The small cell 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.

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

An authority could not require a permit or any other approval or require fees or rates for any of the following:

- -- 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 small cell wireless facilities or wireless support structures.
- -- 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.

These activities would be exempt from zoning review.

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, the applicant had the right to do so on reasonable terms and conditions and the alternative location did not impose significant technical limits or significant additional costs.

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.

"Micro wireless facility" would mean a small cell wireless facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

"Applicable codes" would mean uniform building, fire, electrical, plumbing, or mechanical codes adopted under the Single State Construction Code Act, or adopted by the United States Occupational Safety and Health Administration or by a state or national code organization, including the National Electrical Safety Code published by the Institute of Electrical and Electronic Engineers.

<u>Permit Fee</u>

An application fee for a permit to colocate a small cell wireless facility 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 proposed Act took effect, the maximum rates then authorized would be increased by 10% and rounded to the nearest dollar.

<u>Zoning Approval; Review</u>

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.

Within 30 days after receiving an application for a zoning approval, an authority would have to notify the applicant in writing whether the application was complete. If the application were incomplete, the notice would have to clearly and specifically delineate all missing documents or information. The notice would toll the running of the 30-day period.

The running of the time period tolled would resume when the applicant made a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission were inadequate, the authority would have to notify the applicant within 10 days after receiving the submission that it did not provide the information identified in the original notice delineating missing documents or information. The time period could be tolled in the case of second or subsequent notices under the procedures identified above. Second or subsequent notices of incompleteness could not specify missing documents or information that was not delineated in the original notice of incompleteness.

The application for a zoning approval would have to be processed on a nondiscriminatory basis.

An authority would have to approve or deny an application and notify the applicant in writing within 90 days after an application for a modification of a wireless support structure or installation of a small cell wireless facility was received or 150 days after an application for a new wireless support structure was received. The time period for approval could be extended

by mutual agreement between the applicant and authority. If the authority failed to comply with these provisions, the application would be considered approved subject to the condition that the applicant provide the authority at least 15 days' advance written notice that the applicant would be proceeding with the work pursuant to this automatic approval.

An authority could not deny an application unless all of the following applied:

-- The denial was supported by substantial evidence contained in a written record that was publicly released contemporaneously.
-- There was a reasonable basis for the denial.
-- The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

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

-- 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; or 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 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 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 application fee for a zoning approval could not exceed $1,000 for a new wireless support structure or a modification of a wireless support structure.

A wireless provider would have to commence construction of an approved structure or facilities within one year after a permit was granted and would have to pursue construction to completion. Any time limitation placed on the permit would be void. However, the permittee could voluntarily request that the permit be terminated.

An authority could not institute a moratorium on either of the following: filing, receiving, or processing applications for zoning approval; or issuing approvals for installations that were not a permitted use.

Collocation Rates & 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.

("Authority pole" would mean a utility pole owned or operated by an authority and located in the ROW.)

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 utility pole and would be in addition to the rate charged

for a utility pole or wireless support structure in an ROW. 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.

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.
-- For authority poles that did not support aerial cables used for video, communications, or electric service, 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.

For authority poles that supported aerial cables used for video, communications, or electric service, the authority and the wireless provider would have to comply with the process for make-ready work that the authority had adopted for other parties that attached facilities to the authority's poles. If the authority had not adopted such a process, the person owning or controlling the pole and the person requesting collocation would have to comply with the process for make-ready work under 47 U.S.C. 224 and implementing orders and regulations. (Under that section, whenever the owner of a pole intends to modify or alter it, the owner must provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that the entity may have a reasonable opportunity to add to or modify its existing attachment.) The good-faith estimate of the person owning or controlling the pole for any make-ready work would have to include pole replacement if necessary.

Fees for make-ready work could not: include costs related to preexisting or prior damage or noncompliance unless the damage or noncompliance was caused by the applicant; include any consultant fees or expenses; or exceed actual costs or the amount charged to other communications service providers for similar work.

A wireless provider could not colocate small cell wireless facilities on authority poles that were part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole. However, the antenna and support equipment of the small cell wireless facility could be located in the communication space on

the authority pole and on the top of the pole, if available and if the wireless provider complied with applicable codes for work involving the top of the pole.

("Communication space" would mean that term as defined in the National Electric Safety Code published by the Institute of Electrical and Electronics Engineers.)

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 all or a significant portion 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

"Municipally owned electric utility" would mean a system owned by a municipality or combination of municipalities to furnish power or light and would include a cooperative electric utility that, on or after the date the proposed Act took effect, acquired all or substantially all of the assets of a municipal electric utility, when applying the Act to the former territory of the municipal 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 process for requests by wireless providers to colocate small cell wireless facilities on nonauthority poles that was nondiscriminatory and competitively neutral. 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 proposed 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 fees 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 U.S.C. 224 and implementing orders and regulations. 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.
-- Regulations of the U.S. Occupational Safety and Health Administration.
-- Other reasonable safety and engineering requirements to which municipally owned electric facilities were be 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.

The governing body of a municipally owned electric utility 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 U.S.C. 224(d) and (e) as established in FCC Order on Reconsideration 15-151 (which require fees to be just and reasonable, and require any increase in the rates for pole attachments from the adoption of regulations to be phased in equal annual increments over a period of five years).

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 municipally owned electric 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 with 30 days after the meeting.

Requirement to Indemnify, Defend, or Insure

With respect to a small cell wireless facility, a wireless support structure, or a utility pole, an authority or the governing body of a municipally owned electric utility could require a wireless provider to defend, indemnify, and hold harmless the authority or the governing body, and

its officers and employees, against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, resulting while installing, repairing, operating, or maintaining small cell wireless facilities, wireless support structures, or utility poles to the extent caused by the applicant. A wireless provider would have no obligation to indemnify or hold harmless against any liabilities and losses due to or caused by the sole negligence of the authority or the governing body, or its employees or agents. A wireless provider would not be required to provide any additional assurances to defend, indemnify, or hold harmless the authority or the governing body, and its officers and employees, if the wireless provider were already providing indemnification to the authority or the governing body pursuant to another agreement, such as a franchise attachment, a pole attachment agreement, or a permit under the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act.

Additionally, an authority or the governing body of a municipally owned electric utility could require a wireless provider to obtain insurance naming the authority or the governing body, and its officers and employees, as additional insureds against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, subject to both of the following:

-- A wireless provider would not be required to obtain the insurance if the wireless provider were already providing insurance to the authority pursuant to another agreement, such as a franchise agreement, pole attachment agreement, or a permit under the Metropolitan Extension Telecommunications Rights-Of-Way Oversight Act.
-- A wireless provider could meet all or a portion of the authority's insurance coverage and limit requirements by self-insurance.

To the extent that it self-insured, a wireless provider would not be required to name additional insureds. A wireless provider that elected to self-insure would have to provide to the authority evidence demonstrating, to the extent it elected to self-insure, its financial ability to meet the authority's insurance coverage and limit requirements.

Authority Limitations

An authority could continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles. However, 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.

Fees Less than Maximum

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, subject to the other requirements of the proposed Act.

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.

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 the authority imposed similar requirements in connection with permits issued for other users of an ROW, and the purpose of the bond were 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.

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 Michigan Public Service Commission, an affiliated transmission company, an independent transmission company, or, except as otherwise provided, a cooperative electric utility with respect to its poles or conduits, similar structures, or equipment of any type.

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 other provisions, 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

An applicant for the placement of a small cell wireless facility or an associated utility pole would have to comply with applicable FCC requirements and industry standards for identifying the owner's name and contact information.

A wireless provider could pay for electricity to operate a small wireless facility at a rate set by tariff or through agreement with the electric provider.

The proposed Act would not add to, replace, or supersede any law regarding poles or conduits, similar structures, or equipment of any type owned or controlled by an investor-owned utility whose rates are regulated by the MPSC, an affiliated transmission company, an independent transmission company, or, except as otherwise provided, a cooperative electric utility.

MCL 125.3205 (S.B. 894) Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 637 (S-1)

The bill would have an indeterminate fiscal impact on the State and a likely negative impact on local units of government.

The bill would set limits on permit application fees and annual rent fees that authorities could charge for the use or placement of utility poles within the right-of-way for small cell wireless providers. Authorities are defined in the bill to include the Department of Transportation, counties, townships, cities, and villages. The Department believes the fees identified in the

bill would be sufficient to cover the administrative costs associated with any work done on the portions of the ROW within its jurisdiction.

Local units of government do not currently have a standard rent or permitting fee structure for utility pole work done in the ROW. Fees most often vary based on actual costs, and may be larger or smaller than the limits identified in the bill due to several factors, including whether the ROW location is within an urban or rural setting, the available space within the ROW at that location, aesthetic considerations, potential damage to the ROW, and safety concerns. Some of these factors are addressed in the bill, as an authority could require a wireless provider to purchase insurance for work on the ROW and also could require a bond for any damage done to the ROW. The bill would prohibit an authority from charging a small cell wireless provider for any consultant fees associated with make-ready work, as defined in the bill. Many local units of government, particularly smaller counties, townships, and villages, do not have engineers or attorneys on staff who can review plans for work within the ROW. When those types of services would be required, the bill would prohibit those units of government from transferring those costs to the small cell wireless provider.

Senate Bill 894

The bill would subject existing zoning ordinances to the language of Senate Bill 637 (S-1). It would not have a direct impact on the State or local units of government beyond its reference to the language found in Senate Bill 637 (S-1), which would exempt the activities of wireless providers within the ROW from zoning review.

Fiscal Analyst: Michael Siracuse