

# HOUSE BILL NO. 6294

June 30, 2022, Introduced by Rep. Yaroeh and referred to the Committee on Communications and Technology.

A bill to amend 2018 PA 365, entitled  
"Small wireless communications facilities deployment act,"  
by amending sections 15, 17, and 31 (MCL 460.1315, 460.1317, and  
460.1331).

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

3           (2) Except as otherwise provided in subsection ~~(5)~~, **(22)**, an  
4 authority may require a permit to colocate a small cell wireless

1 facility or install, modify, or replace a utility pole on which a  
 2 small cell wireless facility will be colocated if the permit is of  
 3 general applicability. The processing of an application for ~~such a~~  
 4 ~~the~~ permit is subject to ~~all of the following:~~ **subsections (3) to**  
 5 **(18) .**

6 **(3)** ~~(a)~~ The authority shall not directly or indirectly require  
 7 an applicant to perform services unrelated to the collocation for  
 8 which a permit is sought, ~~such as~~ **including** reserving fiber,  
 9 conduit, or pole space for the authority or making other in-kind  
 10 contributions to the authority.

11 **(4)** ~~(b)~~ An authority may require an applicant to provide  
 12 ~~information~~ **any of the following information or documentation:**

13 **(a)** **Information** and documentation to enable the authority to  
 14 make a decision with regard to the criteria in ~~subdivision (i)~~. ~~An~~  
 15 ~~authority may also require a~~ **subsection (12) .**

16 **(b)** **A** certificate of compliance with FCC rules related to  
 17 radio frequency emissions from a small cell wireless facility.

18 **(c)** **An attestation that the small cell wireless facility will**  
 19 **be operational for use by a wireless services provider not later**  
 20 **than 1 year after the permit issuance date, unless the authority**  
 21 **and the applicant agree to extend this period or delay is caused by**  
 22 **lack of commercial power or communications transport facilities to**  
 23 **the site.**

24 **(5)** If the application is related to installing a new utility  
 25 pole on which a small cell wireless facility will be colocated, the  
 26 authority shall require the applicant to prove that the collocation  
 27 is impossible without the installation of the new utility pole.

28 **(6)** ~~(e)~~ If the proposed activity will occur within a shared  
 29 ROW or an ROW that overlaps another ROW, a wireless provider shall

1 provide, to each affected authority to which an application for the  
 2 activity is not submitted, notification of the wireless provider's  
 3 intent to locate a small cell wireless facility within the ROW. ~~An~~  
 4 **In addition to any document or information described in subsections**  
 5 **(4) and (5), an** authority may require **an applicant to provide** proof  
 6 of other necessary permits, permit applications, or easements to  
 7 ensure all necessary permissions for the proposed activity are  
 8 obtained.

9 **(7)** ~~(d)~~ Within 25 days after receiving an application, an  
 10 authority shall notify the applicant in writing whether the  
 11 application is complete. If the application is incomplete, the  
 12 notice ~~shall~~**must** clearly and specifically delineate all missing  
 13 documents or information. The notice tolls the running of the time  
 14 for approving or denying an application under ~~subdivision~~  
 15 ~~(h)~~**subsection (10)**.

16 **(8)** ~~(e)~~ The running of ~~the~~ time period tolled under  
 17 ~~subdivision (d)~~**subsection (7)** resumes when the applicant makes a  
 18 supplemental submission in response to the authority's notice of  
 19 incompleteness. If a supplemental submission is inadequate, the  
 20 authority shall notify the applicant in writing not later than 10  
 21 days after receiving the supplemental submission that the  
 22 supplemental submission did not provide the information identified  
 23 in the original notice delineating missing documents or  
 24 information. The time period may be tolled in the case of ~~a~~ **a** second  
 25 or **any** subsequent ~~notices~~**notice** under the procedures identified in  
 26 ~~subdivision (d)~~**subsection (7)**. ~~A second~~ or **any** subsequent  
 27 ~~notices~~**notice** of incompleteness may not specify missing documents  
 28 or information that ~~was~~**were** not delineated in the original notice  
 29 of incompleteness.

~~(f) The authority may 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.~~

(9) ~~(g) The~~ **An** application ~~shall~~ **must** be processed on a nondiscriminatory basis.

(10) ~~(h) The~~ **An** authority shall approve or deny ~~the~~ **an** application and notify the applicant in writing within the following period of time after the application is received:

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

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

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

(b) ~~(ii)~~ For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) and associated small cell facility, 90 days, subject to the following adjustments:

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

(ii) ~~(B)~~ Add 15 days if, before the otherwise applicable 90-day or 105-day time period under this ~~subparagraph~~ **subdivision** elapses,

1 the authority notifies the applicant in writing that an extension  
2 is needed and the reasons for the extension.

3 (11) If the authority fails to comply with ~~this subdivision,~~  
4 **subsection (10)**, the completed application is considered to be  
5 approved subject to the condition that the applicant provide the  
6 authority not less than 7 days' advance written notice that the  
7 applicant will be proceeding with the work pursuant to ~~this the~~  
8 automatic approval **under this subsection**.

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

14 (a) ~~(i)~~ Materially interfere with the safe operation of traffic  
15 control equipment.

16 (b) ~~(ii)~~ Materially interfere with sight lines or clear zones  
17 for transportation or pedestrians.

18 (c) ~~(iii)~~ Materially interfere with compliance with the  
19 Americans with Disabilities Act of 1990, Public Law 101-336, or  
20 similar federal, state, or local standards regarding pedestrian  
21 access or movement.

22 (d) ~~(iv)~~ Materially interfere with maintenance or full  
23 unobstructed use of public utility infrastructure under the  
24 jurisdiction of an authority.

25 (e) ~~(v)~~ With respect to drainage infrastructure under the  
26 jurisdiction of an authority, either of the following:

27 (i) ~~(A)~~ Materially interfere with maintenance or full  
28 unobstructed use of the drainage infrastructure as it was  
29 originally designed.

1       (ii) ~~(B)~~—Not be located a reasonable distance from the drainage  
 2 infrastructure to ensure maintenance under the drain code of 1956,  
 3 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage  
 4 infrastructure.

5       (f) ~~(vi)~~—Fail to comply with reasonable, nondiscriminatory,  
 6 written spacing requirements of general applicability adopted by  
 7 ordinance or otherwise that apply to the location of ground-mounted  
 8 equipment and new utility poles and that do not prevent a wireless  
 9 provider from serving any location.

10       (g) ~~(vii)~~—Fail to comply with applicable codes.

11       (h) ~~(viii)~~—Fail to comply with section 13(7) or (8).

12       (i) ~~(ix)~~—Fail to meet reasonable, objective, written stealth or  
 13 concealment criteria for small cell wireless facilities applicable  
 14 in a historic district or other designated area, as specified in an  
 15 ordinance or otherwise and nondiscriminatorily applied to all other  
 16 occupants of the ROW, including electric utilities, incumbent or  
 17 competitive local exchange carriers, fiber providers, cable  
 18 television operators, and the authority.

19       (13) ~~(j)~~—If the completed application is denied, the notice  
 20 under ~~subdivision (h) shall~~ **subsection (10) must** explain the  
 21 reasons for the denial and, if applicable, cite the specific  
 22 provisions of applicable codes on which the denial is based. The  
 23 applicant may cure the deficiencies identified by the authority and  
 24 resubmit the application within 30 days after the denial without  
 25 paying an additional application fee. The authority shall approve  
 26 or deny the revised application within 30 days. The authority shall  
 27 limit its review of the revised application to the deficiencies  
 28 cited in the denial.

29       (14) ~~(k)~~—An applicant may at the applicant's discretion file a

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

16 (15) ~~(l)~~ Within 1 year after a permit is granted, a wireless  
 17 provider shall complete collocation of a small cell wireless  
 18 facility that is to be operational for use by a wireless services  
 19 provider, unless the authority and the applicant agree to extend  
 20 this period or the delay is caused by the lack of commercial power  
 21 or communications facilities at the site. If the wireless provider  
 22 fails to complete the collocation within the applicable time, the  
 23 permit is void, and the wireless provider may reapply for a permit.  
 24 A permittee may voluntarily request that a permit be terminated.

25 (16) ~~(m) Approval~~ **The approval** of an application authorizes  
 26 the wireless provider to do both of the following:

27 (a) ~~(i)~~ Undertake the installation or collocation.

28 (b) ~~(ii)~~ Subject to relocation requirements that apply to  
 29 similarly situated users of the ROW and the applicant's right to

1 terminate at any time, maintain the small cell wireless facilities  
 2 and any associated utility poles or wireless support structures  
 3 covered by the permit for so long as the site is in use and in  
 4 compliance with the initial permit under this act.

5 (17) ~~(n)~~ An authority shall not institute a moratorium on  
 6 filing, receiving, or processing applications or issuing permits  
 7 for the collocation of small cell wireless facilities or the  
 8 installation, modification, or replacement of utility poles on  
 9 which small cell wireless facilities will be colocated.

10 (18) ~~(e)~~ The ~~An~~ authority and an applicant may extend a time  
 11 period under ~~this subsection~~ **subsections (3) to (17)** by mutual  
 12 agreement.

13 (19) ~~(3)~~ ~~An~~ **Subject to subsection (20), an** application fee for  
 14 a permit under subsection (2) ~~shall~~ **must** not exceed the lesser of  
 15 the following:

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

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

19 (20) ~~Every~~ **Beginning March 12, 2019 and every** 5 years after  
 20 ~~the effective date of this act, thereafter,~~ the maximum fees ~~then~~  
 21 authorized under ~~this subsection~~ **(19)** are increased by 10% and  
 22 rounded to the nearest dollar.

23 (21) ~~(4)~~ An authority may revoke a permit, upon 30 days'  
 24 notice and an opportunity to cure, if the permitted small cell  
 25 wireless facilities and any associated utility pole fail to meet  
 26 the requirements of subsection ~~(2)(i)~~ **(12)**.

27 (22) ~~(5)~~ An authority shall not require a permit or any other  
 28 approval or require fees or rates for any of the following:

29 (a) The replacement of a small cell wireless facility with a



1 small cell wireless facility that is not larger or heavier, in  
2 compliance with applicable codes.

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

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

9 (23) ~~(6)~~—An authority that receives an application to place a  
10 new utility pole may propose an alternate location within the ROW  
11 or on property or structures owned or controlled by an authority  
12 within 75 feet of the proposed location to either place the new  
13 utility pole or colocate on an existing structure. The applicant  
14 shall use the alternate location if, as determined by the  
15 applicant, the applicant has the right to do so on reasonable terms  
16 and conditions and the alternate location does not impose  
17 unreasonable technical limits or significant additional costs.

18 (24) ~~(7)~~—Before discontinuing its use of a small cell wireless  
19 facility, utility pole, or wireless support structure, a wireless  
20 provider shall notify an authority in writing. The notice ~~shall~~  
21 **must** specify when and how the wireless provider intends to remove  
22 the small cell wireless facility, utility pole, or wireless support  
23 structure. The authority may impose reasonable and  
24 nondiscriminatory requirements and specifications for the wireless  
25 provider to return the property to its preinstallation condition.  
26 If the wireless provider does not complete the removal within 45  
27 days after the discontinuance of use, the authority may complete  
28 the removal and assess the costs of removal against the wireless  
29 provider. A permit under this section for a small cell wireless

1 facility expires upon removal of the small cell wireless facility.

2 **(25)** ~~(8)~~ This section does not prohibit an authority from  
3 requiring a permit for work that will unreasonably affect traffic  
4 patterns or obstruct vehicular or pedestrian traffic in the ROW.

5 Sec. 17. (1) The activities set forth in section ~~15(5)~~ **15(22)**  
6 are exempt from zoning review. Subsections (2) to ~~(4)~~ **(10)** apply to  
7 zoning reviews for the following activities that are subject to  
8 zoning review and approval, that are not a permitted use under  
9 section 13(5), and that take place within or outside the public  
10 right-of-way:

11 (a) The modification of existing or installation of new small  
12 cell wireless facilities.

13 (b) The modification of existing or installation of new  
14 wireless support structures used for ~~such~~ **the** small cell wireless  
15 facilities **described in subdivision (a)**.

16 (2) The processing of an application for a zoning approval is  
17 subject to ~~all of the following requirements~~ **subsections (3) to**  
18 **(8)**.

19 **(3) If the application for zoning approval is related to**  
20 **installing a new wireless support structure on which a small cell**  
21 **wireless facility will be colocated, the authority shall require**  
22 **the applicant to prove that the collocation is impossible without**  
23 **the installation of the new wireless support structure.**

24 **(4)** ~~(a)~~ Within 30 days after receiving an application under  
25 this section, an authority shall notify the applicant in writing  
26 whether the application is complete. If the application is  
27 incomplete, the notice ~~shall~~ **must** clearly and specifically  
28 delineate all missing documents or information. The notice tolls  
29 the running of the 30-day period.

1           (5) ~~(b)~~ The running of the time period tolled under  
2 ~~subdivision (a)~~ **subsection (4)** resumes when the applicant makes a  
3 supplemental submission in response to the authority's notice of  
4 incompleteness. If a supplemental submission is inadequate, the  
5 authority shall notify the applicant not later than 10 days after  
6 receiving the supplemental submission that the supplemental  
7 submission did not provide the information identified in the  
8 original notice delineating missing documents or information. The  
9 time period may be tolled in the case of **a** second or **any** subsequent  
10 ~~notices~~ **notice** under the procedures identified in ~~subdivision (a)~~.  
11 ~~Second~~ **subsection (4)**. **A second** or **any** subsequent ~~notices~~ **notice** of  
12 incompleteness may not specify missing documents or information  
13 that was not delineated in the original notice of incompleteness.

14           (6) ~~(c)~~ ~~The~~ **An** application ~~shall~~ **must** be processed on a  
15 nondiscriminatory basis.

16           (7) ~~(d)~~ ~~The~~ **An** authority shall approve or deny the application  
17 and notify the applicant in writing within 90 days after an  
18 application for a modification of a wireless support structure or  
19 installation of a small cell wireless facility is received or 150  
20 days after an application for a new wireless support structure is  
21 received. The time period for approval may be extended by mutual  
22 agreement between the applicant and authority. If the authority  
23 fails to comply with this ~~subdivision~~, **subsection**, the application  
24 is considered to be approved subject to the condition that the  
25 applicant provide the authority not less than 15 days' advance  
26 written notice that the applicant will be proceeding with the work  
27 pursuant to this automatic approval.

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

1           (a) ~~(i)~~—The denial is supported by substantial evidence  
2 contained in a written record that is publicly released  
3 contemporaneously.

4           (b) ~~(ii)~~—There is a reasonable basis for the denial.

5           (c) ~~(iii)~~—The denial would not discriminate against the  
6 applicant with respect to the placement of the facilities of other  
7 wireless providers.

8           (9) ~~(3)~~—An authority's review of an application for a zoning  
9 approval is subject to all of the following requirements:

10           (a) An applicant's business decision on the type and location  
11 of small cell wireless facilities, wireless support structures, or  
12 technology to be used is presumed to be reasonable. This  
13 presumption does not apply with respect to the height of wireless  
14 facilities or wireless support structures. An authority may  
15 consider the height of ~~such~~ **the** structures in its zoning review,  
16 but shall not discriminate between the applicant and other  
17 communications service providers.

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

21           (i) ~~The~~ **Except as otherwise provided in subsection (3), the**  
22 need for a wireless support structure or small cell wireless  
23 facilities.

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

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

29           (d) Any spacing, setback, or fall zone requirement shall be

1 substantially similar to a spacing, setback, or fall zone  
 2 requirement imposed on other types of commercial structures of a  
 3 similar height.

4 **(10)** ~~(4)~~—An application fee for a zoning approval ~~shall~~**must**  
 5 not exceed the following:

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

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

10 **(11)** ~~(5)~~—Within 1 year after a zoning approval is granted, a  
 11 wireless provider shall commence construction of the approved  
 12 structure or facilities that are to be operational for use by a  
 13 wireless services provider, unless the authority and the applicant  
 14 agree to extend this period or the delay is caused by a lack of  
 15 commercial power or communications facilities at the site. If the  
 16 wireless provider fails to commence the construction of the  
 17 approved structure or facilities within the time required ~~pursuant~~  
 18 ~~to~~**under** section ~~15(2)(1)~~, **15(15)**, the zoning approval is void, and  
 19 the wireless provider may reapply for a zoning approval. However,  
 20 the wireless provider may voluntarily request that the zoning  
 21 approval be terminated.

22 **(12)** ~~(6)~~—An authority shall not institute a moratorium on  
 23 either of the following:

24 (a) Filing, receiving, or processing applications for zoning  
 25 approval.

26 (b) Issuing approvals for installations that are not a  
 27 permitted use.

28 **(13)** ~~(7)~~—An authority may revoke a zoning approval, upon 30  
 29 days' notice and an opportunity to cure, if the permitted small

1 cell wireless facilities and any associated wireless support  
2 structure fail to meet the requirements of the approval, applicable  
3 codes, or applicable zoning requirements.

4       Sec. 31. An authority may establish a fee or rate less than  
5 the maximum specified in section 13(3), ~~15(3), 17(4), 15(19)~~,  
6 **17(10)**, or 19(2), subject to other requirements of this act.