

Pennsylvania House Bill 2564 – Referred to Consumer Affairs as of 7/13/18

1 When does the statute take effect?

- This act will go into effect 60 days after passage.

2 Is there a grandfather provision for rates on existing leased municipal facilities?

- (Page 19, Lines 15-23) “Section 7. Implementation. All agreements between municipalities and wireless service providers that are in effect on the effective date of this act shall remain in effect, subject to any termination provisions in the agreements. When an application is submitted after the effective date of this act, a wireless provider may elect to have the rates, fees, terms and conditions established under this act apply to the small wireless facility or utility pole installed after the effective date of this act.”

3 What structures are included in the statute?

- (Page 1, Lines 11-12) “‘Accessory equipment.’ Equipment serving or being used in conjunction with a small wireless facility.”
- (Page 1, Lines 13-15) “‘Antenna.’ Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.”
- (Page 3, Lines 1-2) “‘Decorative pole.’ A municipal pole that is specially designed and placed for aesthetic purposes.”
- (Page 4, Lines 24-25) “‘Municipal pole.’ A utility pole owned, managed or operated by or on behalf of a municipality.”
- (Page 5, Lines 26-30, Page 6, Lines 1-3) “‘Utility pole.’ A pole or similar structure that is or may be used, in whole or in part, by or for telecommunications, electric distribution, lighting, traffic control, signage or a similar function or for collocation. The term includes the vertical support structure for traffic lights but does not include wireless support structures or horizontal structures to which signal lights or other traffic control devices are attached.
- (Page 6, Lines 15-17) “‘Wireless support structure.’ The term shall have the same meaning given to it in the act of October 24, 2012 (P.L.1501, No.191), known as the Wireless Broadband Collocation Act.”

4 Does the statute apply definitions for telecommunications facility, small cell, micro transmitter or similar? If so, what are the definitions?

- (Page 2, Lines 14-19) “‘Cable facility.’ Buildings, other structures and equipment used by the owner or operator of a cable television system to provide service. As used in this definition, the term ‘cable television system’ shall have the meaning given to it in section 501-B (1) of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951.”
- (Page 4, Lines 6-9) “‘Micro wireless facility.’ A small wireless facility that:
 - (1) is not larger in dimension than 24 inches in length, inches in width and 12 inches in height; and
 - (2) has an exterior antenna no longer than 11 inches.”
- (Page 4, Line 30, Page 5, Lines 1-18) “‘Small wireless facility.’ The equipment and network components, including antennas, transmitters and receivers, used by a wireless provider that meet the following qualifications:
 - (1) Has an antenna that could fit within an enclosure of no more than six cubic feet in volume.
 - (2) The volume of all other equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet. As used in this paragraph, the following associated ancillary equipment are not included in the calculation of equipment volume:
 - (i) Electric meter.
 - (ii) Concealment elements.
 - (iii) Telecommunications demarcation box.
 - (iv) Grounding equipment.
 - (v) Power transfer switch.
 - (vi) Cut-off switch.
 - (vii) Vertical cable runs for the connection of power and other services.
- (Page 5, Lines 23-25) “‘Utility facility.’ Buildings, other structures and equipment owned or operated by a public utility, as defined in 66 Pa.C.S. § 102 (relating to definitions), to provide service.”

5 Are there maximum rates for providing access to municipally owned structures (lease or license rates)?

- (Page 6, Line 30, Page 7, Lines 1-3) “(c) Right-of-way rates and fees. -- A municipality shall have the right to charge an annual fee for the use of the right-of-way not to exceed \$25 per small wireless facility or \$25 per new utility pole with a small wireless facility.”

- (Page 17, Lines 28-30, Page 18, Lines 1-4) “(d) Rates. -- (1) The rates to collocate on municipal poles shall be nondiscriminatory regardless of the services provided by the collocating applicant.
 - (2) The annual rate for collocation to a municipal pole shall not exceed \$50 per attachment to a municipal pole per year.”

6 Is a transfer of municipal assets to another ownership entity prohibited?

- This new bill does not specifically address this issue.

7 Is there a restriction on exclusive management or subleasing of municipal assets?

- (Page 6, Lines 24-29) “(b) Exclusive use prohibited. --A municipality shall not enter into an exclusive arrangement with any person for use of the right-of-way for:
 - (1) collocation; or
 - (2) the installation, operation, modification or replacement of utility poles.”
- (Page 17, Lines 15-17) “(b) Exclusive use prohibited. --A municipality may not enter into an exclusive arrangement with any person for the right to collocate on municipality-owned utility poles.”

8 Are municipally owned public utilities exempt?

- How the bill is currently written states that public utilities are included under the definition of “utility facility”. However, the term “utility facility” is not used any in the bill besides the definitions section.

9 Does the state have a home rule provision?

- Yes, Laws of Pennsylvania Act No. 62 of 1972 “Section 101. This act shall be known and may be cited as the “Home Rule Charter and Optional Plans Law.” All counties and municipalities in Pennsylvania have the right to create and adopt a home rule charter. There are currently 78 home rule municipalities in the state.

10 Can there be application fees? If so, what amount?

- (Page 16, Line 30, Page 17, Lines 1-10) “(n) Application fees. -- Application fees shall be subject to the following requirements:
 - (1) A municipality shall have the right to charge an application fee for the review of a permit application and plans submitted for the work to be done within the right-of-way. The application fee shall be similar to application fees charged to other applicants for the right to access the right-of-way but shall not exceed \$100.

- (2) An application fee shall not include third-party rates or fees charged on a contingency basis or a result-based arrangement.”

11 Can there be inspection fees? If so, what amount?

- This new bill does not specifically address inspection fees, but it does state applications are not required for routine maintenance. Refer to Page 16, Lines 15-17, “(m) When applications not required. -- (1) A municipality shall not require an application for:
 - (i) Routine maintenance.”

12 Can local zoning or building codes apply restrictions? If so, what are the allowable restrictions?

- (Page 2, Lines 1-5) “‘Applicable codes.’ Uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.”
- (Page 7, Lines 4-19) “(d) Right of access. --
 - (1) Under the provisions of this act, including those governing municipal approvals, and with the permission of the owner of the structure, a wireless provider shall have the right to perform the following within the right-of-way:
 - (i) Collocate, maintain and modify small wireless facilities on existing utility poles.
 - (ii) Install new utility poles with attached small wireless facilities.
 - (iii) Replace existing utility poles.
 - (iv) Collocate on other structures within the right-of-way.
 - (2) All structures and facilities shall be installed and maintained so as not to obstruct nor hinder travel or public safety within the right-of-way or obstruct the legal use of the right-of-way by the municipality and utilities.”
- (Page 8, Lines 17-30, Page 9, Lines 1-5) “(f) Underground district. – A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit communications service providers from placing or installing structures in the right-of-way in an area designated solely for underground or buried cable facilities and utility facilities if the municipality:
 - (1) Requires all cable facilities and utility facilities, other than municipal poles and attachments, to be placed underground by a date certain that is three months prior to the submission of the application.
 - (2) Does not prohibit the replacement of municipal poles in the designated area.

- (3) Permits wireless providers to seek a waiver of the underground requirements for the installation of a new utility pole to support small wireless facilities. Upon the submission of a request for a waiver by a wireless provider, the municipality may require a public hearing and, with the approval of the property owner, permit a waiver request. Waivers shall be addressed in a nondiscriminatory manner.”
- (Page 9, Lines 6-16) “(g) Historic district. --Except for facilities excluded from evaluation for effects on historic properties under 47 CFR 1.1307(a)(4) (relating to actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared), a municipality may require reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures in a historic district. Any design or concealment measures may not have the effect of prohibiting any provider's technology or be considered a part of the small wireless facility for purposes of the size restrictions of small wireless facilities.”
- (Page 3, Lines 9-30, Page 4, Lines 1-5) “‘Historic district.’ A group of buildings, properties or sites that are:
 - (1) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register.
 - (2) Determined to be eligible for listing by the keeper of the National Register of Historic Places who has been delegated the authority by a Federal agency to list properties and determine their eligibility for the National Register in accordance with section VI.D.1.a.i-v of the Nationwide Programmatic Agreement for Review Regarding the Section 106 National Historic Preservation Act Review Process (47 CFR Pt. 1, App. C).
 - (3) Marked as a historical site by the Pennsylvania Historical and Museum Commission pursuant to 37 Pa.C.S. (relating to historical and museums).
 - (4) Within a historic district created pursuant to the act of June 13, 1961 (P.L.282, No.167), entitled "An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering governing bodies of political subdivisions to protect the distinctive historical character of these districts and to regulate the erection, reconstruction, alteration, restoration, demolition or razing of buildings within the historic districts."
- (Page 9, Lines 23-27) “(i) Damage and repair. -- A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the

wireless provider and return the right-of-way to its functional equivalence as it existed prior to any work being done in the right-of-way by the wireless provider.”

- (Page 10, Lines 2-11) “(j) Permitted use. -- Subject to the provisions of this act or a municipal ordinance consistent with this act, a wireless provider shall have the right as a permitted use subject to a permitted use process and not subject to zoning review or approval to
 - (1) Collocate and modify or replace existing utility poles associated with a small wireless facility if the utility poles are installed in the right-of-way.
 - (2) Install a new utility pole within the right-of-way that includes small wireless facilities.”

- (Page 13, Lines 1-20) “(f) Denial. -- (1) A municipality may only deny an application under this section that does not meet the requirements of this act or a municipal ordinance consistent with this act if the granting of a permit:
 - (i) Would materially interfere with the safe operation of traffic control equipment, sight lines or clear zones for transportation or pedestrians or compliance with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327) or similar Federal or State standards regarding pedestrian access or movement.
 - (ii) Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of ground-mounted equipment and new utility poles. The spacing requirements shall not prevent or have the effect of preventing a wireless provider from serving any location.
 - (iii) Fails to comply with applicable codes.

- (Page 14, Line 30, Page 15, Lines 1-17) “(i) Utility poles. --When applying to install a new utility pole under this act, the municipality may require the wireless provider to demonstrate that it cannot meet the service reliability and functional objectives of the application by collocating on an existing utility pole or municipal pole instead of installing a new utility pole. The municipality may require the wireless provider to self-certify that the wireless provider has made this determination in good faith and to provide a documented summary of the basis for the determination. The wireless provider's determination shall be based on whether the wireless provider can meet the service objectives of the application by collocating on an existing utility pole or municipal pole on which:
 - (1) The wireless provider has the right to collocation.

- (2) The collocation would not impose technical limitations or additional costs.
 - (3) The collocation would not obstruct or hinder travel or public safety.”
- (Page 16, Lines 15-29) “(m) When applications not required. -- (1) A municipality shall not require an application for:
 - (i) Routine maintenance.
 - (ii) The replacement of small wireless facilities with small wireless facilities that are similar or the same size or smaller.
 - (iii) The installation, placement, maintenance, operation or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code.
 - (2) A municipality may require a permit to perform work within the right-of-way for the activities under paragraph (1), if applicable. Permits shall be subject to the requirements provided in this act or a municipal ordinance consistent with this act.”
- (Page 18, Line 30, Page 19, Lines 1-14) “Section 6. Local authority. Subject to the provisions of this act and applicable Federal and State law, nothing in this act shall be construed to:
 - (1) Limit or preempt the scope of a municipality's review of zoning, land use, planning and permitting authority as it relates to small wireless facilities.
 - (2) Grant the authority to a municipality to exercise jurisdiction over the design, engineering, construction, installation or operation of a small wireless facility located in an interior structure or on the site of a campus, stadium or athletic facility not owned or controlled by the municipality, other than to comply with applicable codes. Nothing in this act authorizes the Commonwealth or any municipality to require small wireless facility deployment or to regulate wireless services.

13 Are strand mounted devices or facilities exempt?

- Yes, strand mounted devices or facilities are exempt from applications. (Page 16, Lines 15-16, 21-24) “(m) When applications not required. -- (1) A municipality shall not require an application for: ...
 - (iii) The installation, placement, maintenance, operation or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code.”

14 Are privately owned structures in ROW exempt?

- This new bill does not make mention of privately owned structures.

15 Are there design restrictions? If so what are they?

- (Page 7, Lines 20-30, Page 8, Lines 1-16) “(e) Size limits. -- (1) Each new or modified small wireless facility installed in the right-of-way shall be installed on an existing utility pole or a new utility pole subject to the following:
 - (i) The installation of a small wireless facility on an existing utility pole shall not extend more than five feet above the existing utility pole in the same municipality that is in place as of the effective date of this act.
 - (ii) If collocation cannot be achieved under section 4(i), a small wireless facility may be installed on a new utility pole. The maximum permitted height of the facility, which shall include the utility pole and small wireless facility, shall not be taller than:
 - (A) the greater of five feet in height above the tallest existing utility pole that is within 500 feet of the new pole in the same right-of-way and in the same municipality; or
 - (B) fifty feet above ground level.
 - (2) Subject to the provisions of this act, a wireless provider shall have the right to collocate and install, modify or replace a utility pole that exceeds these height limits along, across and under the right-of-way by including a height limit waiver request in the application. Height limit waivers shall be processed under section 4 and on nondiscriminatory basis.”
- (Page 11, Line 30, Page 12, Lines 1-13) “(iii) A municipality may not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.
 - (iv) A municipality may not limit the placement of small wireless facilities by minimum separation distances.
 - (v) A municipality shall have the authority to prohibit collocation on a decorative pole. The municipality and wireless provider shall work cooperatively to determine whether the collocation can occur if the wireless provider replaces the decorative pole in a manner that shall conform to the design aesthetics of the decorative pole being replaced.”

16 What are the shot clocks as defined by statute?

- (Page 9, Lines 27-30, Page 10, Line 1) “If the wireless provider fails to make the repairs required by the municipality within 30 days after written notice, the municipality may effect those repairs and charge the wireless provider the reasonable, documented cost of the repairs.”
- (Page 12, Lines 14-30) “(d) Completed application. --Within 15 business days of receiving an application, a municipality must determine and notify the applicant in writing whether the application is complete. If an application is incomplete, the notice must specifically identify the missing information. The municipality shall have the remaining time of the original 15 business days or five additional business days, whichever is greater, to determine whether the applicant has corrected the stated deficiencies. The processing deadline shall be tolled from the time the municipality sends the notice of incompleteness to the time the applicant provides the missing information. The processing deadline also may be tolled by agreement of the applicant and the municipality.
(e) Processing deadline. --An application shall be processed on a nondiscriminatory basis and deemed approved if the municipality fails to approve or deny the application within 60 days of receipt of a complete application.”
- (Page 13, Lines 21-30, Page 14, Lines 1-9) “(2) Within 60 days of receiving a complete application, the municipality shall document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant within five business days of the denial.
(3) The applicant may cure the deficiencies identified by the municipality and resubmit the application within 30 days of the denial. The applicant shall not be required to pay an additional application fee if the applicant's revised application addresses all deficiencies listed in the denial. The municipality shall approve or deny the revised application within 30 days of the application being resubmitted for review. Any subsequent review shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other sections of the application that were not previously denied, the municipality shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.”
- (Page 14, Lines 21-23) “(3) A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period in a municipality with a population of less than 50,000.”
- (Page 14, Lines 24-29) “(h) Time limit for work. --The proposed collocation, the

modification or replacement of a utility pole or the installation of a new utility pole for which a permit is granted under this section shall be completed within one year of the permit issuance date unless the municipality and the applicant agree to extend the period.”

- (Page 15, Lines 18-29) “(j) Approval. – Approval of an application authorizes the applicant to:
 - (1) Collocate on an existing utility pole, modify or replace a utility pole or install a new utility pole.
 - (2) Subject to the permit requirements and the applicant's right to terminate at any time, operate and maintain small wireless facilities and any associated equipment on a utility pole covered by the permit for a period of not less than five years, which shall be renewed for two additional five-year periods if the applicant is in compliance with the criteria set forth in this act or a municipal ordinance consistent with this act.”

- (Page 15, Line 30, Page 16, Lines 1-5) “(k) Removal of equipment. --Within 60 days of suspension or revocation of a permit due to noncompliance with this act or a municipal ordinance consistent with this act, the applicant shall remove the small wireless facility and any associated equipment after receiving adequate notice and an opportunity to cure any noncompliance.”

- (Page 16, Lines 6-14) “(l) Moratorium prohibited. --A municipality may not institute, either expressly or de facto, a moratorium on:
 - (1) filing, receiving or processing applications;
 - (2) issuing permits for:
 - (i) collocation;
 - (ii) modification or replacement of utility poles to support small wireless facilities; or
 - (iii) installation of new utility poles to support small wireless facilities.

17 Does the statute require local acceptance of bulk applications?

- (Page 14, Lines 10-23) “(g) Consolidated application. --An applicant seeking to collocate within the jurisdiction of a single municipality shall be allowed at the applicant's discretion to file a consolidated application for collocation of multiple small wireless facilities as follows:
 - (1) The consolidated application does not exceed 20 small wireless facilities.
 - (2) The denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same consolidated application.

- (3) A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period in a municipality with a population of less than 50,000.”

18 Is the city required to complete the make ready work? If so, is there a limit on what they can charge and any requirements they must meet?

- (Page 18, Lines 5-29) “(e) Implementation and make-ready work. -- (1) The rates, fees and terms and conditions for the make-ready work to collocate on a municipal pole must be nondiscriminatory, competitively neutral and commercially reasonable and must comply with this act.
 - (2) The municipality shall provide a good faith estimate for any make-ready work necessary to enable the municipal pole to support the requested collocation by a wireless provider, including utility pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including utility pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. A municipality may require replacement of the municipal pole only if the municipality demonstrates that the collocation would make the municipal pole structurally unsound.
 - (3) The municipality shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work on a nonreplacement utility pole shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses that are charged on a contingency basis.”