
Technology & Economic Development Committee

HB 1921

Brief Description: Concerning telecommunications services.

Sponsors: Representatives Morris, Smith and Vick.

Brief Summary of Bill

- Establishes access, installation, permitting, use, and rates provisions for small cell facilities on city, town, or PUD facilities, and for the use of city or town rights-of-ways.
- Exempts small cell facilities from land use review.
- Removes the expiration date for the universal communications services program and associated provisions.

Hearing Date: 2/8/17

Staff: Lily Smith (786-7175).

Background:

Pole Attachments.

Telecommunications service providers use poles, conduits, or rights-of-way owned by other providers or government entities to attach service equipment.

The authority of cities and towns to require personal wireless services providers to pay franchise fees or other fees or charges for the use of the right-of-way is limited. Municipalities may generally impose a site-specific charge, pursuant to an agreement with a personal wireless services provider, for the following: (1) placement of new structures in the right-of-way; (2) placement of personal wireless facilities on structures owned by the municipality; and (3) placement of replacement structures when the replacement is necessary for attachment or

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installation of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than 60 feet. A personal wireless services company may seek binding arbitration if a municipality and the company cannot agree on site-specific charges.

In 2014 legislation was passed allowing a provider of a small cell network to file a consolidated application and receive a single permit for the interrelated facilities that comprise the network within a jurisdiction, instead of filing separate applications for each individual small cell facility. An additional limitation was placed on the authority of cities and towns in applying site-specific charges for replacement structures in the right-of-way. The authority was limited to instances where a replacement structure with an overall height greater than 60 feet is also higher than the structure being replaced.

City and public utility district (PUD) pole owners must apply rates, terms, and conditions for pole attachments that are just, reasonable, nondiscriminatory, and sufficient. For PUD owners, determining a just and reasonable rate must follow a calculation tied to the additional costs of procuring and maintaining pole attachments. A city owner must levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

A "small cell facility" is a personal wireless services facility where both:

- each antenna and any exposed elements would fit within no more than three cubic feet; and
- primary equipment enclosures are no larger than 17 cubic feet in volume.

Universal Communications Services Fund.

Legislation was passed in 2013 creating a universal communications service fund, with the purpose of supporting the continued provision of basic telecommunications services during the period when incumbent communications providers would be adapting to changes in federal funding.

Summary of Bill:

Specific Provisions for Cities and Towns.

Installation fees within a right-of-way.

The amount a city or town may charge a personal wireless services provider for installing a new small cell facility in a right-of-way is capped at the lesser of: (1) the projected cost to the city; or (2) \$500 annually.

The site-specific charge for placement of a small cell facility on existing structures in a right-of-way is subject to the general provisions for access, make-ready work, and modifications.

Installation fees outside a right-of-way.

A city or town must authorize the installation of small cell facilities or networks on city- or town-owned structures outside the right-of-way to the same extent as access is permitted for other

commercial projects or uses. Rates and terms must be reasonable, and the charge may not exceed the lesser of:

- the amount charged for similar commercial projects;
- the projected cost to the city or town; or
- \$500 annually.

Use of rights of ways.

A city or town may permit use of the right-of-way for installing, maintaining, repairing, or removing telecommunications services, provided that it allows for placement of small cell facilities and small cell networks, subject only to the following conditions.

Small cell facilities must be given nondiscriminatory access for attachments to or in any right-of-way the city or town owns or controls. Access may be denied on a nondiscriminatory basis where there is insufficient capacity for reasons of safety, reliability, and generally applicable engineering principles. Access may not be denied based on insufficient capacity if the service provider is willing to pay for replacement costs and make-ready work. The height of a new or replacement pole may be limited so as not to exceed 130 percent of the average nearby pole height.

Master permits for small cell facilities must comply with the general provisions for access, make-ready work, and modifications, and must be approved within 90 days of submission. A master permit must provide for the issuance of future use permits, and once approved, a city or town must issue a use permit for each small cell facility or network as specified under the section regarding land use reviews and authorizations. No permit is required for Wi-Fi antennas suspended on messenger cables between existing poles.

A city is required to provide notice of plans to open the right-of-way to current service providers or those that have filed notice of intent to place facilities.

Service providers must:

- obtain all required permits;
- comply with applicable rules and standards;
- work to ensure facilities do not impede public use or adversely affect public health, safety, or welfare;
- provide information to enable a city to provide notification of plans to open the right-of-way;
- obtain written approval from the structure owner prior to attaching;
- pay for construction, installation, operation, and maintenance of its facilities; and
- comply with applicable federal and state safety laws and standards.

A city operating under the Optional Municipal Code (a "code city") is subject to the new requirements in this act regarding facilities and right-of-ways, instead of those requirements found in the Optional Municipal Code.

General Provisions for Cities, Towns, and PUDs.

Access, make-ready work, and modifications.

Cities, towns, and PUDs must provide nondiscriminatory access for small cell facility attachments to or in any facility owned or controlled. Access may be denied on a nondiscriminatory basis where there is insufficient capacity for reasons of safety, reliability, and generally applicable engineering principles. Access may not be denied based on insufficient capacity if the service provider is willing to pay for replacement costs and make-ready work. The rates, terms, and conditions for an attachment must be fair and reasonable. An application process is provided, along with numerous requirements and criteria related to make-ready work and modifications. An application for access is not required when overlashing additional communications wires or cables into existing wires or cables, if certain criteria are met.

Any modification costs for additional capacity must be borne by the requester and all existing occupants and owners that directly benefit from the modification. Any modification costs to bring a facility into compliance with safety requirements must be borne by the owner or occupant that created the safety violation.

An owner must give occupants written notice prior to taking actions affecting the attachments. Provisions regarding the disclosure and use of contractors for make-ready work are provided. Owners or licensees may submit disputes to binding arbitrations under certain conditions. Process and parameters for the arbitration are included.

Formulas for reasonable rates.

A fair and reasonable rate for attachments must recover all additional owner costs of procuring and maintaining the attachments, but not more than the actual capital and operating expenses attributable to that portion of the facility used for the attachments.

The following formulas are applied to determine a fair, just, reasonable, and justifiable rate.

For attachments to poles:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

For attachments to ducts or conduits:

$$\begin{array}{l}
 \text{Maximum} \\
 \text{Rate per} \\
 \text{Linear} \\
 \text{ft./m.}
 \end{array}
 =
 \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}} \right]
 \times
 \left[\frac{\text{Number of Ducts}}{\text{System Duct Length (ft./m.)}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right]
 \times
 \text{Carrying Charge Rate}$$

(Percentage of Conduit Capacity) (Net Linear Cost of a Conduit)

Definitions.

An identical definitions section is added for both cities and towns and PUDs, and includes definitions for "attachments," "make-ready work," "overlashing," "pole," and "usable space."

Land Use Reviews and Authorizations.

Small cell facilities and networks are exempt from land use review, and installation may only be subject to the following, when applicable:

- a building permit;
- an encroachment permit; or
- a use agreement or permit.

Applicable permits and associated approvals must be issued within 90 days, and may only be denied if it does not meet applicable building or electrical codes or standards. Processing fees may not be higher than those for other telecommunications services providers, and the total fee for any individual permit or approval may not exceed \$500.

Applications, permits, or fees are not required for routine maintenance, similarly sized cell facility replacements, and installation of small cell facilities suspended on cables between existing utility poles.

City and town regulations may not violate the provisions of this section.

Universal Communications Services Program.

The purpose of the universal communications services program is broadened from supporting "basic telecommunications" to "communications" services, and the support is no longer tied to an adaptation period. The program's June 30, 2019, expiration date is removed.

The July 1, 2020, expiration date is removed for the following:

- the section establishing the universal communications services program;
- the requirement to adopt rules regarding the universal communications services program;
- the penalty provisions of the universal communications services program;
- the Utilities and Transportation Commission delegation authority for the universal communications services program; and
- the universal communications services account.

The definition of "communications provider" is broadened to include voice-over Internet service, and the definition of "communications services" is broadened to include broadband access services.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.