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Maryland General Assembly  
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FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1188  
Finance

(Senator Middleton)

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Wireless Facilities - Permitting and Siting

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This bill establishes procedures and guidelines that must be followed by local governments and specified wireless providers regarding the permitting and siting of specified wireless facilities.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** Potential significant impact on local government revenues and expenditures depending on the number of small wireless facilities permit applications. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** The bill specifies various authorizations, prohibitions, and requirements for local governments and wireless providers pertaining to:

- the deployment of small wireless facilities and associated poles in a right-of-way;
- the collocation of small wireless facilities and the installation, modification, and replacement of poles in a right-of-way and the collocation of small wireless facilities outside a right-of-way on property not zoned exclusively for single-family residential use;

- work conducted outside a right-of-way in an area that is zoned exclusively for single-family residential use for (1) the collocation of wireless facilities; (2) the installation, modification, or replacement of wireless support structures or poles; and (3) substantial modifications;
- the collocation of wireless facilities on local government poles and local government wireless support structures that are located on property owned by the local government and outside a right-of-way; and
- activities of a wireless provider in a right-of-way.

#### *Deployment of Small Wireless Facilities and Associated Poles in a Right-of-way*

Local governments are prohibited from entering into an exclusive agreement with any person for the use of a right-of-way for the (1) collocation of small wireless facilities or (2) the installation, operation, marketing, modification, maintenance, or replacement of poles associated with a small wireless facility. Wireless providers may install or collocate small wireless facilities and install, operate, modify, maintain, and replace poles along, across, on, and under a right-of-way in a manner that does not obstruct or hinder the (1) usual travel or public safety on the right-of-way or (2) legal use of the right-of-way by others.

Local governments may (1) impose rules related to the design, concealment, repair, and replacement of poles; (2) prohibit the installation of a structure in a right-of-way in an area solely dedicated for underground cable and utility facilities in specified circumstances; and (3) impose some limitations on installation in specified rights-of-way. The bill specifies height limitations for poles and small wireless facilities unless otherwise authorized by a local government in accordance with local zoning laws. Local governments must be neutral and nondiscriminatory in the exercise of their administration and regulation of the uses and users of rights-of-way in their jurisdictions.

#### *Collocation of Small Wireless Facilities and Poles in a Right-of-way*

Local governments may not prohibit, regulate, or impose a rate or fee for the collocation of small wireless facilities. Collocation of small wireless facilities is not subject to local zoning review and approval if the facilities are collocated (1) in a right-of-way or (2) outside a right-of-way on property not zoned exclusively for single-family residential use. If not solely applied to wireless providers, local governments may require a permit to collocate a small wireless facility or install a new, modified, or replacement pole associated with the small wireless facility. This does not apply to the routine maintenance, replacement of small wireless facilities with similar or not larger than the existing small wireless facilities, or collocation of micro wireless facilities that are strung on cables between existing poles in compliance with the National Electrical Safety Code. The bill

specifies conditions and procedures under which local governments can require, review, approve, and deny permits for collocation of small wireless facilities.

*Work Outside of a Right-of-way in an Area Not Zoned Exclusively for Single-family Residential Use*

Local governments are authorized to require a permit for the collocation of wireless facilities; the installation, modification, or replacement of wireless support structures or poles; and substantial modifications conducted outside a right-of-way in an area zoned exclusively for single-family residential use. Collocation or replacement of wireless facilities, wireless support structures, or poles that does not constitute a substantial modification is a permitted use as of right and is not subject to zoning review or approval. This bill specifies the conditions and procedures under which local governments can require, review, approve, and deny specified permits.

*Collocation of Wireless Facilities on Local Government Poles or Support Structures*

Local governments are authorized to impose a reasonable and nondiscriminatory rate, fee, or term of use of local government poles and local government wireless support structures located on property owned by the local government and outside a right-of-way which takes into account (1) alternative financing or service remuneration; (2) the characteristics of the proposed equipment or installation; (3) structural limitations of the equipment or the pole or wireless support structure; and (4) other commercial or unique features or components of the equipment used. Local governments may not enter into an exclusive agreement with a wireless provider concerning local government poles that exceed 50 feet in height or local government wireless support structures unless the agreement requires the wireless provider to (1) provide service using a shared network of wireless facilities that the wireless provider makes available for access by other wireless providers or (2) allow other wireless providers to collocate small wireless facilities.

*Make-ready Work on Local Government Poles in a Right-of-way*

“Make-ready work” means any rearrangement of existing pole attachments or pole replacements that must be completed before a person collocates new wireless facilities on a pole in order to ensure the proper spacing of equipment and compliance with applicable safety and electrical codes.

Local governments must authorize the collocation of small wireless facilities on local government poles for a wireless provider in a right-of-way. A person that owns, manages, or controls local government poles in a right-of-way may not enter into an exclusive agreement with any person for the right to attach equipment to local government poles. Local governments may apply a rate to collocate wireless facilities on local government

poles that is nondiscriminatory regardless of the services provided. A fee for make-ready work may not (1) include costs related to preexisting or prior damage or noncompliance; (2) exceed actual costs or the amount charged to any other cable, information services, or telecommunications provider for similar work; or (3) include any consultant fees or expenses. All rates, fees, and terms and conditions for make-ready work on a local government pole must be nondiscriminatory, competitively neutral, and commercially reasonable. The local government must provide a good-faith estimate for any make-ready work, including pole replacement, if necessary, within 60 days of receiving a complete application for a permit, as specified. Within 60 days after the applicant receives the estimate, the local government must complete all necessary make-ready work, including replacement of a local government pole if the local government demonstrates that the collocation will render the pole structurally unsound.

#### *Prohibition of Fees, Rates, or Other Compensation*

Local governments are prohibited from requiring a wireless provider to pay any rate, fee, or other compensation to the local government or any other person for (1) the right to use or occupy a right-of-way; (2) the collocation of small wireless facilities on poles in a right-of-way; or (3) the installation, maintenance, modification, operation, or replacement of poles in a right-of-way. Local governments may charge a fee for a permit if the fee is the same as that required for similar types of commercial development or construction in the local government's jurisdiction and the costs to be recovered by the application fee are not also recovered by existing fees, rates, licenses, or taxes paid by the applicant. The fee may not include travel expenses incurred by a third party in its review of the application or direct payment or reimbursement of third-party rates or fees charged on a contingency basis or a result-based arrangement.

The bill establishes limits on permit fees that may be imposed in some circumstances, as specified.

A rate for the occupancy of a right-of-way cannot exceed \$20 per year for each small wireless facility. The rate for the collocation of a small wireless facility attached to a local government pole must be \$20 per year for each small wireless facility connected to a local government pole.

#### *Court Jurisdiction and Local Government Indemnity*

The bill specifies that the District Court has jurisdiction to oversee any disputes arising from the provisions of the bill.

The bill prohibits local governments from requiring wireless providers to indemnify and hold harmless the local government and its officers and employees against any loss,

damage, or liability, except when a court of competent jurisdiction has found that the loss, damage, or liability was directly caused by the negligence of the wireless provider when installing, repairing, or maintaining small wireless facilities and associated poles. Local governments may require wireless providers to carry insurance if they impose similar requirements on other users of a right-of-way and the requirements are reasonable and nondiscriminatory.

Local governments may enact laws to carry out the requirements of the bill. If a local government does not enact a local law, a wireless provider may install and operate small wireless facilities in accordance with the provisions of the bill. To the extent that the provisions of the bill conflict with a local law, the provisions of this bill prevail over the local law.

### *Definitions*

A “wireless facility” is defined as equipment at a fixed location that enables wireless communications between user equipment and a communications network. A wireless facility does not include the structure or improvements on, under, or within which the equipment is located or coaxial or fiber-optic cable in specified locations.

A “small wireless facility” is defined as a wireless facility of a size that accommodates any antenna within an enclosure of not more than 6 cubic feet in volume and all other wireless equipment associated with the facility cumulatively not more than 28 cubic feet in volume. A small wireless facility does not include any associated ancillary equipment such as electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, or vertical cable runs for power connections or other services.

“Collocate” means to install, mount, maintain, modify, operate, or replace a wireless facility on or adjacent to a wireless support structure or pole.

A “wireless support structure” is defined as a structure that is designed to support or be capable of supporting wireless facilities but does not include a pole or a structure designed solely for the collocation of small wireless facilities.

### **Current Law:**

#### *Local Government Franchises*

Unless otherwise defined by local law, “cable television system” means a nonbroadcast facility that consists of a set of transmission paths and associated signal generation, reception, and central equipment, under common ownership and control, that distributes or

is designed to distribute to subscribers the signals of one or more television broadcast stations.

The federal Cable Act (47 U.S.C. § 541) prohibits a cable television system from providing cable service without a franchise. Under State law, the governing body of a county or municipality may (1) grant a franchise for a cable television system that uses a public right-of-way; (2) impose franchise fees; (3) establish rates applicable to a franchise; and (4) adopt rules and regulations for the operation of a franchise.

The Cable Act limits franchise fees to 5% of annual gross revenue received from the provision of cable service. Additional fees may be collected to support public, educational, and government channels or the use of such channels, as negotiated in the franchise agreement. County governments collected approximately \$82.8 million in local revenues from cable television franchise fees in fiscal 2017.

**Background:** As demand for high speed Internet access has increased, wireless providers are seeking new ways to meet this demand. One method used by wireless providers to increase network speed and density is through the deployment of small wireless facilities. Small wireless facilities include antennas and poles of various sizes and heights.

However, this desire to meet customer demands for faster, more accessible, and more reliable high speed internet service and the general lack of a regulatory framework at the state level, in many instances, has led to conflict between the wireless industry and local governments. One such conflict is over the use of public rights-of-way and publicly owned property and equipment. The wireless industry has argued that they should have access to local rights-of-way and locally owned equipment as the infrastructure is already in place for the siting of small wireless facilities. Local governments, on the other hand, have argued the need to have systems in place to allow for uniformity in siting, design, permitting, and maintenance of these wireless facilities. Local jurisdictions typically have this jurisdiction over other users of local rights-of-way, including telecommunications companies and cable television providers.

Several states including, Colorado, Delaware, Florida, Iowa, Indiana, Kansas, Ohio, Minnesota, North Carolina, Texas, Rhode Island, and Virginia, have enacted legislation limiting local control of the permitting and siting process for small wireless facilities. There are similar components shared in the legislation of these states including (1) expedited application processing; (2) limited or capped fees for applications and for the use of rights-of-way; (3) presumed application approvals and limitations on denying applications; and (4) limitations or prohibitions on zoning for new equipment, including poles.

In response to this type of legislation, at least some local jurisdictions have enacted local legislation establishing processes for the regulation of small wireless facilities. The City of Brunswick, Maryland passed an ordinance in February 2018 establishing guidelines and procedures for the deployment of small wireless facilities in the city. In general, the ordinance requires providers to apply for a special use permit to construct and use any wireless facilities in the city. The ordinance establishes design, size, and location guidelines for the construction and use of wireless facilities in the city. Wireless providers must also pay a \$5,000 deposit to reimburse the city's reasonable costs incurred during the application and permitting process. The ordinance prohibits the placement of antennas or poles on any buildings that are included in either the national or State register of historic places or other property deemed to be significant by the city. In addition, wireless providers are prohibited from constructing antennas or poles in the city unless they can prove the city's current infrastructure is insufficient to support the technology.

**Local Fiscal Effect:** The bill may have an effect on local revenues and expenditures in several ways. The actual effect will vary by local jurisdiction and will depend on a variety of factors including the number of wireless providers operating in a jurisdiction, the number of permits that may be applied for, and the number of small wireless facilities that may be located in a jurisdiction. The actual effect on local revenues and expenditures cannot be reliably estimated; however, in some jurisdictions, the effect may be significant.

The bill prohibits local governments from requiring a wireless provider to pay any rate, fee, or other compensation to the local government or any other person except as authorized for (1) the right to use or occupy a right-of-way; (2) the collocation of small wireless facilities on poles in a right-of-way; or (3) the installation, maintenance, modification, operation, or replacement of poles in a right-of-way.

However, a local government may only charge a fee for a permit if (1) the fee is the same as that required for similar types of commercial development or construction in the local government's jurisdiction and (2) the costs to be recovered by the application fee are not also recovered by existing fees, rates, licenses, or taxes paid by the applicant. A fee for a permit issued may not include travel expenses incurred by a third party in its review of the application or direct payment or reimbursement of third-party rates or fees charged on a contingency basis or a result-based arrangement. Montgomery County reports that this provision may limit the ability of local governments to use contractors to handle these types of reviews or assessments.

The bill also sets fee limits for various permits that may be issued for small wireless facilities, which may have the effect of reducing or limiting a potential source of local revenues:

- a permit fee for a collocation of wireless facilities is limited to the cost of granting a building permit for similar types of commercial development or construction within the local government's jurisdiction;
- a permit fee for the collocation of small wireless facilities on an existing or replacement local government pole may not exceed \$100 each for the first five small wireless facilities on the same application and \$50 for each subsequent small wireless facility on the same application;
- a permit fee for the installation, modification, or replacement of a pole and the collocation of an associated small wireless facility that are permitted uses as of right may not exceed \$250 per pole for access to the right-of-way;
- a permit fee for the installation, modification, or replacement of a new wireless support structure, a substantial modification, or a new pole associated with a small wireless facility that is not a permitted use as of right may not exceed \$1,000;
- a permit fee for the occupancy of a right-of-way may not exceed \$20 per year for each small wireless facility; and
- a permit fee for a rate for the collocation of a small wireless facility attached to a local government pole must be set at \$20 per year for each small wireless facility connected to a local government pole.

The bill specifies that local governments do not have any authority over the design, engineering, construction, installation, or operation of a small wireless facility that is not located on property owned or controlled by the local government except to ensure compliance with applicable building, electrical, plumbing, or mechanical codes. The Maryland Association of Counties (MACo) advises that this will limit the ability of local governments to respond to constituent concerns regarding the placement of small wireless facilities, which may be placed in residential communities, on utility poles, or directly on private buildings. MACo also indicates that the bill does not allow a county to set a minimum distance or other restriction to limit the concentration of small wireless facilities in certain areas but does allow the facilities to be placed without following local zoning practices, which limits resident input that they might typically have in the zoning process.

The bill requires local governments to undertake make-ready work prior to providers installing small wireless facilities to existing poles and structures and prohibits the local government from including the cost of any consultant used in developing cost estimates to perform such work. The bill also prohibits including the cost to correct any pre-existing damage or noncompliance. This will likely be an additional cost incurred by local governments.

The bill prohibits local governments from requiring wireless providers to indemnify and hold harmless the local government and its officers and employees against any loss, damage, or liability, except when a court of competent jurisdiction has found that the loss,

damage, or liability was directly caused by the negligence of the wireless provider when installing, repairing, or maintaining small wireless facilities and associated poles. Montgomery County advises that, in the event of a lawsuit, this provision could result in a significant fiscal liability for local jurisdictions since the bill also prohibits the local jurisdictions from being named as an additional insured party.

Local governments may require wireless providers to carry insurance if they impose similar requirements on other users of a right-of-way and the requirements are reasonable and nondiscriminatory. Local governments are authorized to adopt surety bond requirements for providers collocating small wireless facilities under specified circumstances. The purpose of a surety bond is to (1) provide for the removal of abandoned or improperly maintained small wireless facilities, including those that the local government determines need to be removed to protect public health, safety, or welfare and restore the right-of-way or (2) recoup rates or fees that have not been paid by a wireless provider in more than 12 months, as long as the local government has given reasonable notice to the wireless provider and the opportunity to pay the rates or fees outstanding. The bill limits surety bonding requirements to \$200 for each small wireless facility, up to a maximum amount of \$10,000 for all small wireless facilities owned by a wireless provider in the jurisdiction. Montgomery County advises that these limits may be inadequate to cover costs depending on the number of small wireless facilities in a jurisdiction. To the extent local governments are not paid or need to remove certain facilities that may be abandoned or improperly maintained or those that are deemed a hazard to health or safety, any associated costs in excess of \$10,000 will be incurred by the local jurisdiction.

The bill requires local governments to act on permit applications within specified time periods, which may affect local permitting offices. A permit for the collocation of small wireless facilities and the installation, modification, and replacement of poles in a right-of-way must be verified for completeness by the local government within 10 days after receiving an application. If the application is not complete, the local government must notify the applicant in writing identifying the parts of the application that are incomplete. Local governments must approve or deny the permit within 60 days after receiving a complete application. However, if the local government fails to act on a complete permit application within 60 days after receipt of the complete application, the permit is deemed to be approved. Montgomery County advises that these provisions of the bill could significantly increase the workload of the county permitting department, which may result in the need for additional staff.

Montgomery County also notes that the bill may result in equity issues between cable television companies that are required to pay franchise fees for the use of local rights-of-way. The bill does not require wireless providers to pay franchise fees, nor are local governments authorized to impose franchise fees on wireless providers.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1767 (Delegate Davis) - Rules and Executive Nominations.

**Information Source(s):** Baltimore City; Harford and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Office of People's Counsel; Public Service Commission; Department of Legislative Services

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