

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
 First Reader

Senate Bill 713 (Senator Beidle, *et al.*)
 Finance

Wireless Facilities - Permitting and Siting

This bill establishes procedures and requirements for the permitting, installation, and regulation of wireless facilities. The bill also establishes a wireless facilities surcharge, administered by the Comptroller, and directs the surcharge revenue to the Digital Inclusion Fund established in the Department of Housing and Community Development (DHCD). Except as otherwise provided by law, the provisions of the bill are not subject to the jurisdiction of the Public Service Commission. **The bill takes effect January 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by \$0.5 million in FY 2020 and by about \$0.5 million to \$0.7 million annually thereafter. Special fund revenues and expenditures increase significantly beginning in FY 2020. General fund revenues increase from interest earned on the new fund. The effect on State finances and operations due specifically to the bill’s permitting/installation provisions cannot be reliably estimated at this time (and are not shown) but are likely significant, as discussed below.

(\$ in millions)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
GF Expenditure	\$0.5	\$0.7	\$0.5	\$0.6	\$0.6
SF Expenditure	-	-	-	-	-
Net Effect	(\$0.5)	(\$0.7)	(\$0.5)	(\$0.6)	(\$0.6)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

The bill establishes comprehensive and interwoven definitions related to wireless facilities. “Authority” means a county, a municipality, the State, or an instrumentality of the State that may approve the installation of wireless facilities on poles of public rights-of-way.

“Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network. It includes equipment associated with wireless communications and any radio transceiver, antenna, coaxial or fiber-optic cable, regular or backup power supply, and comparable equipment, regardless of technological configuration. It does not include (1) the structure or improvements on, under, or within which the equipment is located; (2) a pole; or (3) coaxial or fiber-optic cable that is located between wireless structures or poles or not otherwise immediately adjacent to or directly associated with a particular antenna.

Grandfathering of Existing Local Laws

If there is an inconsistency between the bill and the provisions of any local law or agreement of an authority in effect before January 1, 2020, and as the local law or agreement may be amended from time to time, the provisions of the local law or agreement must prevail over the bill to the extent of the inconsistency.

Installation of Wireless Facilities – Generally

A wireless provider may install and maintain wireless facilities and poles in a public right-of-way in accordance with any applicable local law or regulations, franchises, permits, licenses, agreements, or other approvals required by an authority. The applicable local law and regulation may not (1) generally prohibit the installation of all wireless facilities or poles in the public right-of-way or on private property and (2) discriminate among wireless providers of functionally equivalent wireless services.

The use of a public right-of-way or the attachment of wireless facilities to public assets by a wireless provider may not obstruct or hinder (1) the travel or public safety on the public right-of-way or (2) the legal use of the public right-of-way or public assets by others.

Local Standards and Requirements

An authority may adopt design and aesthetic requirements or standards that govern the installation of wireless facilities and poles, including their appearance, location, and height, provided that the requirements or standards do not prohibit any wireless provider's wireless service. A wireless provider must obtain any approvals, including franchises, permits, licenses, leases, and agreements, which may be required by an authority before:

- the collocation of a wireless facility;
- the attachment of a wireless facility to a pole owned by an authority;
- the installation of a pole; or
- the modification of a wireless facility or a pole.

Subject to a specified application process and requirements, the applications and documents that an authority may require may include:

- detailed plans describing the collocation, modification, or attachment, including any certifications that may be required;
- a preconstruction survey;
- a description of any necessary make-ready work;
- a proposed schedule for completion, certified by a licensed professional engineer; and
- any other information required by an authority that will allow the authority to properly evaluate specified aspects of the proposed facility.

Fees

An authority may charge a wireless provider:

- for the costs of processing applications and permits;
- for the attachment or use of a pole owned by the authority;
- for the privilege of using a public right-of-way (franchise); and
- for the cost of relocating wireless facilities or poles when relocation is required by the alteration of a public right-of-way or its appurtenance.

The attachment or use charge may be up to the greater of \$2,500 or 2% of the gross revenue realized by a wireless provider from the use of the pole.

Liability and Insurance

A wireless provider must indemnify and hold harmless the authority and its officers and employees against any loss, damage, or liability resulting from the wireless facility or pole. During the period in which the facilities of a wireless provider are located on or attached to the authority's assets or rights-of-way, the authority may require a wireless provider to carry specified insurances, subject to certain requirements. An authority may also adopt surety bonding requirements for wireless providers, which may include provisions to terminate the right to occupy a public right-of-way for failure to meet the surety bonding requirements.

Circuit Court Jurisdiction over Disputes

The circuit court for the county in which the authority is located has jurisdiction over any dispute arising under the bill. The court must adjudicate a case arising from a dispute within 180 days after the complaint or petition is filed. A party to the judicial review may appeal the court's final judgment in accordance with the Maryland Rules.

Wireless Facility Surcharge and Digital Inclusion Fund

A surcharge must be levied and collected from wireless providers that install wireless facilities and poles under the bill. The amount of the surcharge is 1% of the gross revenue realized by a wireless provider from the sale of wireless services in the State. The Comptroller must administer the surcharge, generally under the same requirements for the administration of the sales and use tax, and may adopt regulations appropriate for collection, administration, and enforcement.

All surcharge revenues must be deposited into the Digital Inclusion Fund established as a special, nonlapsing fund in DHCD. The purpose of the fund is to provide funding to authorities to expand the deployment of wireless facilities and poles in geographical areas of the State that are underserved by wireless providers. The Secretary of Housing and Community Development must administer the fund, which consists of:

- revenues from the surcharge established under the bill;
- money appropriated in the State budget to the fund; and
- any other money from any other source accepted for the benefit of the fund.

The fund may be used only for providing financial assistance in the form of grants and loans to authorities to fund the installation of wireless facilities and poles in underserved areas of the State. Expenditures from the fund may be made only in accordance with the State budget. Any interest earnings of the fund must be credited to the general fund.

The Secretary of Housing and Community Development must adopt regulations to implement the fund, which must include:

- procedures for authorities to apply for financial assistance from the fund; and
- priorities for allocating, selecting, and distributing financial assistance from the fund to authorities in areas of the State underserved by wireless facilities and wireless services.

Current Law/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 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.

The 2019 [report](#) by the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service discusses many of these and other related issues.

State Fiscal Effect: The bill's permitting/installation requirements affect State finances in several ways. The direction and magnitude of the effect depends on a variety of factors, including the number of wireless providers that choose to install wireless facilities on State rights-of-way and the associated State costs paid and revenues received as a result of the installations. The net effect cannot be reliably estimated but is likely significant, particularly due to the fee limitations, permit approval times, and the general prioritization

of wireless facility installations. For example, the Maryland Department of Transportation, which is responsible for a significant amount of State rights-of-way, advises that the bill creates conflicts with its existing resource sharing agreements and related uses of its rights-of-way, including permitting timelines and associated fees.

Digital Inclusion Fund and Associated Surcharge

The Comptroller must administer the surcharge established under the bill. General fund expenditures for the Comptroller increase by \$61,877 in fiscal 2020, which accounts for the bill’s January 1, 2020 effective date. This estimate reflects the cost of hiring two revenue examiners to administer the surcharge. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$51,472
Operating Expenses	<u>10,405</u>
Total FY 2020 Comptroller Expenditures	\$61,877

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Special fund revenues and expenditures for the Digital Inclusion Fund increase significantly beginning in fiscal 2020. The amount cannot be reliably estimated at this time, but, based on information provided by the Comptroller and DHCD, is potentially tens of millions of dollars annually. To administer a fund of this size, DHCD requires several dedicated staff and some initial consultant services. As administrative expenses are not an explicitly authorized use of the Digital Inclusion Fund, this analysis assumes general funds are used.

Therefore, general fund expenditures for DHCD increase by \$411,439 in fiscal 2020, which accounts for the bill’s January 1, 2020 effective date. This estimate reflects the cost of hiring one director, one technical staff, and one administrative staff to begin administration of the fund. It includes salaries, fringe benefits, one-time start-up costs, consultant costs, and ongoing operating expenses.

Positions	3
Salaries and Fringe Benefits	\$141,269
Consultant Services	250,000
Other Operating Expenses	<u>20,170</u>
Total FY 2020 DHCD Expenditures	\$411,439

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, as well as an additional \$250,000 in consultant costs in fiscal 2021 and two additional staff, effective January 1, 2021.

General fund revenues increase, likely minimally, from interest earnings of the new fund.

Local Fiscal Effect: The bill may have an effect on local revenues and expenditures in several ways. The actual effect varies by local jurisdiction and depends 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 effect is mitigated to some extent by the bill's grandfathering provisions.

The effect on the circuit courts is likewise unknown; however, barring a significant number of cases, the overall effect is likely absorbable within existing budgeted resources.

Additional Comments: The Comptroller advises that the likely outcome of the surcharge as currently established by the bill is that wireless providers will not install any equipment unless they are planning to install a large amount. The marginal tax cost of installing the first piece of equipment is 1% of a company's gross revenues from wireless service. The marginal tax cost on each successive piece is \$0.

Additional Information

Prior Introductions: None.

Cross File: HB 1020 (Delegate Lisanti, *et al.*) - Economic Matters.

Information Source(s): Comptroller's Office; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Baltimore City; Montgomery and Prince George's counties; City of Takoma Park; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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