

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 474 (Delegates Krimm and Mautz)
 Economic Matters

Joint Use of Utility and Telecommunications Infrastructure

This bill authorizes the Public Service Commission (PSC) to open a proceeding to determine whether to require joint use of poles, conduits, ducts, or rights-of-way (“telecommunications infrastructure”) and prescribe reasonable compensation and reasonable terms and conditions for their joint use, subject to specified conditions.

Fiscal Summary

State Effect: Special fund expenditures increase by \$309,100 in FY 2020, escalating to \$392,300 by FY 2024. Special fund revenues increase correspondingly from assessments imposed on public service companies.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	\$309,100	\$356,500	\$367,800	\$379,800	\$392,300
SF Expenditure	\$309,100	\$356,500	\$367,800	\$379,800	\$392,300
Net Effect	\$0	\$0	\$0	\$0	\$0

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

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Minimal. Most joint use entities under the bill are likely not small businesses.

Analysis

Bill Summary: “Joint use entity” means an electric company, a gas company, a telephone company, a water company, a dark fiber provider, a cable television system, an unlit fiber provider, a telecommunications service provider, or an information service provider, as

defined. PSC jurisdiction is extended to apply to joint use entities that are not already under PSC's existing jurisdiction for the limited purposes under the bill.

Hearing and Joint Use

On a complaint by a joint use entity, or on motion by the commission, PSC may open a proceeding to (1) determine whether to require joint use of telecommunications infrastructure and (2) prescribe reasonable compensation and reasonable terms and conditions for joint use.

After a hearing, PSC may order a joint use entity to allow joint use of telecommunications infrastructure, and prescribe reasonable compensation and reasonable terms and conditions for joint use, if PSC finds that:

- the interest of the public, including the interests of the customers of the affected joint use entities, requires a joint use entity to provide nondiscriminatory access to any telecommunications infrastructure owned or controlled by another joint use entity;
- joint use will not result in irreparable injury to the owner or other users of the telecommunications infrastructure or any substantial detriment to service;
- the joint use entities failed to agree to the use or compensation for the use of the telecommunications infrastructure; and
- the joint use entity seeking access to the poles, conduits, ducts, or rights-of-way has the technical and financial capabilities to fulfill the obligations the entity would assume relating to joint use.

PSC must adopt regulations governing the resolution of pole attachment disputes and the rates, terms, and conditions of joint use. The regulations must:

- promote competition and ensure safe, nondiscriminatory access on just and reasonable terms;
- include a process to ensure that a new joint use entity that seeks access to poles, conduits, ducts, or rights-of-way has the technical and financial capabilities to fulfill the obligations the entity would assume relating to joint use; and
- in establishing rates, consider various formulas, including a specified formula adopted by the Federal Communications Commission (FCC).

Current Law/Background: The market for utility pole attachments in Maryland is not regulated at the State level. In instances where states have not exercised their right to regulate pole attachments, FCC has the authority to regulate and adopt procedures to resolve complaints concerning the rates, terms, and conditions for pole attachments. As part of its oversight, FCC sets appropriate pole attachment rates and promulgates rules governing the timeline for work completion throughout the pole attachment process.

Many of the rules and regulations currently in place for pole attachments stem from the Pole Attachment Act of 1978, which implemented Section 224 of the 1934 Communications Act, and directed FCC to create just and reasonable rates, terms, and conditions for the pole attachments of cable television providers. The Pole Attachment Act also authorized states to preempt federal pole attachment regulations by promulgating pole attachment regulations at the state level; 19 states subsequently did so.

Chapter 431 of 2015 required PSC to convene a workgroup to study attachments to utility poles in the State, including whether the regulation of pole attachment agreements at the State level is in the public interest, and to submit a report of its findings to the General Assembly by December 31, 2015. The [report](#) found in part that FCC regulates the market for pole attachments efficiently, and pole attachment regulation at the State level was not in the public interest. PSC took no further action.

State Fiscal Effect: Special fund expenditures for PSC increase by \$309,130 in fiscal 2020, which accounts for the bill's October 1, 2019, effective date. This estimate reflects the cost of hiring two technical staff, one staff attorney, and one public utility law judge to hear and adjudicate joint use complaints. It includes salaries, fringe benefits, one-time start-up costs, travel costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$253,301
Other Operating Expenses	<u>55,829</u>
Total FY 2020 PSC Expenditures	\$309,130

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Counties; Office of People's Counsel;
Public Service Commission; Department of Legislative Services

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mm/lgc

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