



Pennsylvania Municipal
League



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TO: Honorable Members of the House Consumer Affairs Committee

FROM: Pennsylvania Municipal League
Pennsylvania State Association of Boroughs
Pennsylvania State Association of Township Commissioners

RE: *Opposition to H.B. 1400: Small Wireless Facilities Deployment Bill*

DATE: June 13, 2019

Allow us to begin by reiterating our strong support for the deployment of wireless broadband throughout the Commonwealth. High-speed internet service is essential for economic growth, educational advancement, and the delivery of emergency services and quality healthcare. However, since the introduction of House Bill 1400 two days ago, the PA Municipal League, the PA State Association of Boroughs, and the PA State Association of Township Commissioners have reviewed the bill and have **serious concerns** regarding its provisions.

Pennsylvania municipalities have approved small wireless facilities in the public rights-of-way since 2012. Hundreds of small cell facility applications have been approved in the last eight years. Indeed, federal law prevents municipalities from prohibiting these facilities. Still, the Commonwealth has charged municipalities with managing their streets and roads, primarily to protect public safety. Rights-of-way are narrow ribbons of real estate in which numerous companies wish to install their facilities. No other level of government is closer or better equipped to juggle the competing interests vying for space in that property.

On September 27, 2018, the Federal Communications Commission (“FCC”) issued its Third Report and Order, which sets forth specific rules for local governments in regulating small wireless facilities in the rights-of-way. While it places strong restrictions on municipalities, it preserves local zoning authority over these facilities. H.B. 1400 would significantly undercut this zoning authority, expand the size and height of antennas and poles that are effectively exempt from zoning, and drastically reduce the fees permitted by the FCC Order. In addition, H.B. 1400 fails to address the critical issue of expanding service to rural areas.

The Bill Effectively Eliminates Local Zoning Authority

Section 6(1) of the bill states that nothing in the bill “shall be construed to limit or preempt the scope of a municipality’s review of zoning, land use, planning, and permitting authority as it relates to wireless facilities.” While this statement implies that the bill preserves local zoning authority, other provisions of the bill prove that the opposite is true. Section 4(b) of the bill does not permit wireless facility applications to be reviewed for compliance with a municipality’s zoning code.¹ Similarly, Section 4(f) of the proposed bill enumerates four permissible reasons for denial of a small wireless facility application², none of which include non-compliance with a municipality’s zoning code or right-of-way ordinance.

When considered in concert, these provisions of the bill render local zoning control useless, as municipalities are not permitted to review applications for compliance with zoning regulations or deny proposed facilities for not meeting zoning requirements. Moreover, municipalities could not impose aesthetic design guidelines for wireless facilities, a right expressly allowed in the FCC Order. Federal law preserves local zoning authority over wireless facilities. A close reading of H.B. 1400 reveals that it is impossible for a municipality to comply with the requirements of the bill while regulating wireless facilities through local zoning.

The Bill Increases the Permitted Size of Small Wireless Facilities

H.B. 1400 drastically increases the dimensions of small wireless facilities that are exempt from zoning requirements. First, the FCC Order requires that an antenna of a small wireless facility “is no more than three cubic feet in volume.” H.B. 1400 doubles this size to six cubic feet. Second, while H.B. 1400 tracks the FCC Order in allowing for 28 cubic feet of accessory equipment for a small wireless facility, unlike the Order it exempts the majority of that equipment from the volume calculation (Section 2).

Third and perhaps most important concerns the height of poles that support small wireless facilities. Like the FCC Order, H.B. 1400 states that poles may not be taller than 50 feet; however, unlike the Order, the bill allows poles that exceed these height limits simply by “including a height limit waiver request in the application.” By permitting such waivers, H.B. 1400 effectively permits wireless providers to install poles *of any height* in the public rights-of-way. This is an extreme departure from the scope of the Order.

¹ Section 4 (b) requires that “an application [for a small wireless facility] shall be reviewed for conformance with the municipality’s “applicable codes”; however, Section 1 defines “applicable codes,” as “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.” A municipality’s zoning code is not included in “applicable codes.”

² The four possible reasons for denial are: (1) the small wireless facility fails to meet the requirements of the act; (2) it would interfere with “the operation of traffic control equipment, sight lines or clear zones of transportation or pedestrians in compliance with the Americans with Disabilities Act or similar Federal or State standards regarding pedestrian access or movement; (3) it 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,” and (4) it “fails to comply with applicable codes.”

The Bill Drastically Reduces Permissible Fees

The proposed bill significantly reduces the fees that local governments may assess. The FCC Order allows the following “presumptively reasonable” fees:

- \$270 per wireless facility per year for a right-of-way fee;
- \$1,000 for a one-time application fee for each new pole and \$500 for an application fee for up to five new antennas added to an existing pole (\$100 for each additional antenna);

H.B. 1400 reduces these maximum permissible fees to the following:

- \$100 per wireless facility per year for a right-of-way fee (Section 3(c)). This is a **63% reduction** from the fees allowed by the FCC Order³;
- \$500 for a one-time application fee for up to five new poles or antennas (\$100 for each additional pole or antenna). **For new poles, this is a 90% reduction** from the fees allowed by the FCC Order;

Finally, the FCC Order “recognizes local variances in costs” by permitting municipalities to charge fees in excess of these fees by demonstrating that their actual costs are higher than these fee ceilings.⁴ HB 1400, however, eliminates this right of individual municipalities to charge higher fees by showing that their costs are higher. The bill imposes a “one size fits all” fee for all 2,500+ Pennsylvania municipalities that does not reflect the fact that costs for some municipalities are different from those of others. The right-of-way costs for large cities, for example, will most likely be higher than the costs for smaller townships and boroughs.

The Bill Does Not Address Unserved Rural Areas

Many Pennsylvanians lack access to high-speed broadband service, especially in rural areas. Approximately 10% of all Americans do not have the benefit of the minimum internet speeds prescribed by the FCC, but this is true of 39% of rural Americans. In Pennsylvania, according to the Governor’s Office, over 800,000 residents lack high speed internet service. Regrettably, there is nothing in H.B. 1400 that requires wireless companies to address this critical issue and expand their networks into unserved rural areas. The passage of H.B. 1400 without addressing this issue would further entrench the 5G digital divide in Pennsylvania.

For the reasons discussed above, we respectfully ask that H.B. 1400 not be brought up for a vote at the Consumer Affairs Committee meeting on June 17 and that genuine discussions occur among all stakeholders before such a vote takes place. Thank you for your consideration.

³ The maximum fee for collocation on municipally-owned poles is \$270 per site per year (Section 5(d)).

⁴ 33 F.C.C. Rec. 9088, 9130 (2018)