



COMPARISON CHART OF PRIOR v. FINAL PA WIRELESS REGULATION BILLS
June 28, 2021

The following comparison chart details the key differences between recent past iterations of the state “small cell” bill (PA House Bill 1400 and PA House Bill 2564) and PA [House Bill 1621](#) (H.B. 1621), known as the “An Act Providing for Small Wireless Facilities Deployment.” H.B. 1621 is the result of considerable negotiations between the Pennsylvania Municipal League and representatives from AT&T. These discussions were aimed at preserving municipal rights and ensuring that H.B. 1621 does not place restrictions on municipalities beyond the requirements of currently applicable federal law, as in the original draft. H.B. 1621 was approved by the PA House and Senate the week in late June 2021 and is expected to be signed by the Governor soon.

| | ORIGINAL SMALL CELL BILL | H.B. 1621 |
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| Local Zoning Authority | <ul style="list-style-type: none"> • Effectively eliminated local zoning authority • Did not permit municipalities to deny a wireless facility application for noncompliance with local zoning code • Required local approval of all small wireless facilities if they complied with Act | <ul style="list-style-type: none"> • Preserves local zoning authority via revised definition of “applicable codes:” <ul style="list-style-type: none"> ○ Includes “local zoning, land use, streets and sidewalks, rights-of-way, and permitting ordinances” that comply with Act (Section 2) • Small wireless facilities are a permitted use in all areas except underground districts and shall be reviewed by municipal staff in accordance with applicable codes, as defined. (Section 4(b)) |
| Dimensions of “Small Wireless Facilities” | <ul style="list-style-type: none"> • Antenna: <ul style="list-style-type: none"> ○ 6 cubic feet in volume • Accessory equipment: <ul style="list-style-type: none"> ○ 28 cubic feet in volume | <ul style="list-style-type: none"> • Mirrors FCC’s 2018 Small Cell Order (Section 2): • Antenna: <ul style="list-style-type: none"> ○ 3 cubic feet in volume • Accessory equipment: |

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| | <ul style="list-style-type: none"> ○ Excludes majority of accessory equipment from calculation ● Maximum pole height: <ul style="list-style-type: none"> ○ Indefinite due to “height waiver” | <ul style="list-style-type: none"> ○ 28 cubic feet in volume ○ Excludes only equipment used solely for concealment from calculation ● Maximum height of small wireless facility is 50 feet (Section 3(e)) ● Height waivers are subject to applicable codes, which includes local zoning (Section 3(e)) |
| <p>Permissible Fees</p> | <ul style="list-style-type: none"> ● Applications: <ul style="list-style-type: none"> ○ \$500 (up to five sites); \$100 per additional site thereafter ○ One fee for both collocated small wireless facilities and new poles ● ROW use: <ul style="list-style-type: none"> ○ \$100 per site per year ● Attachment to municipal facilities: <ul style="list-style-type: none"> ○ \$170 per site per year ● Bill does not permit municipalities to charge fees that exceed “presumptive” fees, even if the fees mandated are below the municipalities’ actual costs. | <ul style="list-style-type: none"> ● Applications (Section 4(n)): <ul style="list-style-type: none"> ○ \$500 for an application seeking approval of up to 5 collocated small wireless facilities; \$100 per additional collocated small wireless facility thereafter ○ \$1,000 for an application for a small wireless facility that requires the installation of a new or replacement pole ● ROW use (Section 3(c)): <ul style="list-style-type: none"> ○ \$270 per site per year ○ May charge ROW use fee that exceeds \$270 if based on “reasonable approximation” of municipality’s costs and are not discriminatory ● No fee for attachment to municipal facilities. (Section 5(d)) \$270 per site ROW use fee allows for recovery of maximum fee permitted by FCC. |
| <p>Fee Flexibility</p> | <ul style="list-style-type: none"> ● If the fees established by the FCC’s 2018 Small Cell Order are reversed or repealed by the U.S. Supreme Court, the application and ROW use fees may increase 1.5% annually beginning January 1, 2021. | <ul style="list-style-type: none"> ● If the FCC adjusts fee levels for small wireless facilities, a municipality may adjust any impacted fee on a pro rata basis consistent with the FCC’s adjustment (Section 7(c)(1)). ● If the fees in the FCC’s 2018 Small Cell Order are reversed by |

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| | | <p>the U.S. Supreme Court, the application and ROW use fees may increase by 3% annually (Section 7(c)(2)). On June 28, 2021, the Supreme Court declined to accept the appeal of the Small Cell Order. As such, this provision is not applicable.</p> |
| <p>Design Guidelines</p> | <ul style="list-style-type: none"> • No right for municipalities to impose design guidelines | <ul style="list-style-type: none"> • Municipalities are permitted to “develop objective guidelines for small wireless facilities relating to the minimization of aesthetic impact.” (Section 3(h)) • Guidelines may not have effect of prohibiting the provider’s technology or unreasonably discriminating among providers of functionally equivalent services (both required by federal law). (Section 3(h)) |
| <p>Repair and Restoration of Public Rights-of-Way</p> | <ul style="list-style-type: none"> • Requires that wireless providers “return the right-of-way to its functional equivalence as it existed prior to any work being done in the right-of-way by the wireless provider.” | <ul style="list-style-type: none"> • Requires both providers and contracts to “return the right-of-way to as good of condition as it existed prior to any work being done.” (Section 3(i)) |
| <p>Indemnification</p> | <ul style="list-style-type: none"> • Municipality may be indemnified only if the harm is “caused solely by the negligent act, error or omission of the wireless provider.” • Wireless provider can escape liability if another party is even 1% liable for the harm. | <ul style="list-style-type: none"> • Providers must fully indemnify municipalities for any harm “caused by the act, error, or omission of the wireless provider or its officers, agents, employees, directors, contractors or subcontractors while installing, repairing, or maintaining small wireless facilities or utility poles within the right-of-way.” (Section 8) |