October 19, 2017, Introduced by Senators HUNE and NOFS and referred to the Committee on Energy and Technology.

A bill to provide for the regulation by state or local authorities of the activities of wireless infrastructure providers and wireless services providers and of wireless facilities, wireless support structures, and utility poles; to regulate rates and fees concerning wireless facilities, wireless support structures, communication service provider pole attachments, and utility poles charged by state or local authorities and certain electric utilities; to provide for collocation of wireless facilities and of communications service provider pole attachments; to provide for use of rights-of-way; to regulate certain permitting processes and zoning reviews; to prohibit certain commercially discriminatory actions by state or local authorities and certain electric utilities; and to prohibit certain indemnification or insurance requirements.
THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. (1) This act shall be known and may be cited as the "small wireless communications facilities deployment act".

(2) The purpose of the act is to do all of the following:

(a) Increase investment in wireless networks that will benefit the citizens of this state by providing better access to emergency services, advanced technology, and information.

(b) Increase investment in wireless networks that will enhance the competitiveness of this state in the global economy.

(c) Encourage the deployment of advanced wireless services by streamlining the process for the permitting, construction, modification, maintenance, and operation of wireless facilities in the public rights-of-way.

(d) Allow wireless services providers and wireless infrastructure providers access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to enhance their networks and provide next generation services.

(e) Ensure the reasonable and fair control and management of public rights-of-way by governmental units within this state.

(f) Address the timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities as matters of statewide concern and interest.

(g) Provide for the management of public rights-of-way in a manner that does all of the following:

(i) Supports new technology.

(ii) Avoids interference with right-of-way use by existing public utilities and cable communications providers.
(iii) Ensures a level playing field for competitive communications service providers.

Sec. 3. As used in this act:

(a) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(b) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization and adopted under the Stille-Derossett-Hale single state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531, to address threats of destruction of property or injury to persons to the extent not inconsistent with this act.

(c) "Applicant" means a wireless provider that submits an application.

(d) "Application" means a request submitted to an authority for a permit to collocate small cell wireless facilities or to approve the installation or modification of a utility pole or wireless support structure.

(e) "Authority", unless the context implies otherwise, means each state, county, township, city, village, district, or subdivision thereof authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application. Authority does not include a state court having jurisdiction over an authority.

(f) "Authority pole" means either of the following that are owned or operated by an authority and located in the ROW:

(i) A utility pole, other than a utility pole for designated
services.

(ii) A pole or similar structure that supports only wireless facilities.

(g) "Collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Collocation" has a corresponding meaning.

(h) "Communications facility" means the set of equipment and network components, including wires, cables, antennas, and associated facilities, used by a communications service provider to provide communications service.

(i) "Communications service" means service provided over a communications facility, including cable service, as defined in 47 USC 522(6), information service, as defined in 47 USC 153(24), telecommunications service, as defined in 47 USC 153(53), or wireless service.

(j) "Communications service provider" means any entity that provides communications services.

(k) "FCC" means the Federal Communications Commission.

(l) "Fee" means a 1-time charge.

(m) "Law" means federal, state, or local law, including common law or a statute, rule, regulation, order, or ordinance.

(n) "Make-ready work" means work necessary to enable an authority pole or utility pole to support collocation, which may include authority pole or utility pole modification or replacement, modification of lines, or installation of guys and anchors.

(o) "Micro wireless facility" means a small cell wireless
facility that is not more than 24 inches in length, 15 inches in width, and 12 inches in height and that does not have an exterior antenna more than 11 inches in length.

(p) "Permit" means a written authorization required by an authority to perform an action or initiate, continue, or complete a project.

(q) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(r) "Rate" means a recurring charge.

(s) "Right-of-way" or "ROW" means the area on, below, or above a public roadway, highway, street, alley, easement, waterway, sidewalk, or similar property. Right-of-way does not include a federal interstate highway.

(t) "Small cell wireless facility" means a wireless facility that meets both of the following requirements:

(i) Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than 6 cubic feet.

(ii) All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of
power and other services.

(u) "Utility pole" means a pole or similar structure that is used in whole or in part for communications service, electric distribution, lighting, traffic control, signage, or a similar function.

(v) "Utility pole for designated services" means a utility pole that is all of the following:

(i) Located in the ROW.

(ii) Owned or operated by an authority, a municipal electric utility, or a cooperative electric utility.

(iii) Designed to, or used in whole or in part to, carry cables or wires for telecommunications service, cable service, or electric service.

(w) "Wireless facility", subject to subdivision (x), means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility.

(x) Wireless facility does not include any of the following:

(i) The structure or improvements on, under, or within which the equipment is collocated.

(ii) A wireline backhaul facility.

(iii) Coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately
adjacent to or directly associated with a particular antenna.

(y) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in this state but not including a wireless service provider, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures.

(z) "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

(aa) "Wireless services" means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

(bb) "Wireless services provider" means a person that provides wireless services.

(cc) "Wireless support structure" means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting small cell wireless facilities. Wireless support structure does not include a utility pole.

(dd) "Wireline backhaul facility" means a facility used to transport services by wire from a wireless facility to a network.

Sec. 5. (1) This section applies only to activities of a wireless provider within the right-of-way for the deployment of small cell wireless facilities and associated new or modified utility poles.

(2) An authority shall not enter into an exclusive arrangement with any person for use of the ROW for the construction, operation,
marketing, or maintenance of utility poles or the collocation of small cell wireless facilities.

(3) An authority shall not charge a wireless provider a rate or fee for the use of the ROW with respect to the collocation of small cell wireless facilities or the construction, installation, mounting, maintenance, modification, operation, or replacement of utility poles in the ROW, unless the authority charges other communications service providers. If an authority is authorized by applicable law to charge a rate or fee to those persons, and does so, any such rate or fee charged to a wireless provider shall be competitively neutral with regard to other users of the ROW. The rate or fee shall not do any of the following:

(a) Result in a double recovery where existing rates, fees, or taxes already recover direct and actual costs of managing the rights of way.

(b) Be based on wireless provider revenue or customer counts.

(c) Be unreasonable or discriminatory.

(d) Violate any applicable law.

(e) Exceed an annual amount equal to $20.00 times the number of utility poles or wireless support structures in the authority's geographic jurisdiction on which the wireless provider has collocated a small cell wireless facility.

(f) Exceed the direct and actual cost of managing the ROW.

(4) If, on the effective date of this act, an authority has a rate or fee for the use of the ROW to construct, install, mount, maintain, modify, operate, or replace a small cell wireless facility or wireless support structure, and the rate or fee does
not comply with subsection (3), not later than 180 days after the effective date of this act, the authority shall revise the rate or fee to comply with subsection (3).

(5) Subject to this section and approval of an application, if required by law, a wireless provider may, as a permitted use not subject to zoning review or approval, collocate small cell wireless facilities and construct, maintain, modify, operate, or replace utility poles in, along, across, upon, and under the ROW. Such structures and facilities shall be constructed and maintained so as not to obstruct or hinder the usual travel or public safety on the ROW or obstruct the legal use of the ROW by other utilities and communications service providers. Both of the following apply:

(a) Each new or modified utility pole installed in the ROW shall not exceed the greater of the following:

(i) 10 feet in height above the tallest existing utility pole in place on the effective date of this act and located within 500 feet of the new or modified pole in the same ROW.

(ii) 50 feet above ground level.

(b) Small cell wireless facilities installed or modified in the ROW shall not extend as described in either of the following:

(i) More than 10 feet above an existing utility pole or wireless support structure, in place as of the effective date of this act, to which the new small cell wireless facilities are attached.

(ii) Above the height permitted under this subsection for the installation or modification of a utility pole.

(6) Subject to this section and section 7, a wireless provider
may construct, maintain, or modify a utility pole or small cell
wireless facility that exceeds the height limits under subsection
(5) along, across, upon, and under the ROW, subject to applicable
zoning regulations. An applicant proceeding under this subsection
shall comply with any nondiscriminatory requirements that
installation in the ROW be underground in areas zoned exclusively
for single family residential use unless prior zoning approval is
obtained. Such requirements shall not prohibit the replacement of
existing structures.

(7) The authority's administration and regulation of the ROW
shall be reasonable, nondiscriminatory, and competitively neutral
and shall comply with applicable law.

(8) The authority may require a wireless provider to repair
all damage to the ROW directly caused by the activities of the
wireless provider while occupying, constructing, installing,
mounting, maintaining, modifying, operating, or replacing its small
cell wireless facilities or utility poles in the ROW and to return
the ROW to its functional equivalence before the damage. If the
wireless provider fails to make the repairs required by the
authority within a reasonable time after written notice, the
authority may make those repairs and charge the applicable party
the reasonable, documented cost of the repairs.

(9) The approval of a small cell wireless facility under this
act authorizes only the collocation of a small cell wireless
facility and does not authorize any of the following:

(a) The provision of any particular services.
(b) The installation, placement, modification, maintenance, or
Sec. 7. (1) This section applies to activities of a wireless provider within or outside of the right-of-way.

(2) Except as provided in sections 5, 9, and 11 and this section, an authority shall not prohibit, regulate, or charge for the collocation of small cell wireless facilities.

(3) Small cell wireless facilities are permitted uses and not subject to zoning review or approval if they are collocated within the ROW in any zone or outside the ROW in property not zoned exclusively for single-family residential use.

(4) Except as otherwise provided in subsection (6), an authority may require an application for a permit to collocate a small cell wireless facility if the permit is of general applicability and does not apply exclusively to wireless facilities. The processing of an application for such a permit is subject to all of the following requirements:

(a) The authority shall not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as reserving fiber, conduit, or pole space for the authority or making other in-kind contributions to the authority.

(b) The authority shall only require an applicant to provide information that is required from other communications service provider applicants that are not wireless providers.

(c) Within 10 days after receiving an application, an authority shall notify the applicant whether the application is complete. If the application is incomplete, the authority shall
specifically identify the missing information.

(d) The application shall be processed on a nondiscriminatory basis.

(e) The authority shall approve or deny the application and notify the applicant in writing within 60 days after the application is received. If the authority fails to comply with this subdivision, the application is considered to be approved.

(f) The authority shall approve the application unless it does not comply with applicable codes. If the application is denied, the notice under subdivision (e) shall explain the reasons for the denial and cite the specific provisions of applicable codes on which the denial is based. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days after the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days. The authority shall limit its review of the revised application to the deficiencies cited in the denial.

(g) An applicant seeking to collocate small cell wireless facilities within the jurisdiction of a single authority may at the applicant's discretion file a consolidated application and receive a single permit for the collocation of multiple small cell wireless facilities.

(h) A wireless provider shall commence collocation of a small cell wireless facility within 1 year after a permit is granted and shall pursue collocation to completion. Any time limitation placed on a permit is void. However, the permittee may voluntarily request that the permit be terminated.
(i) An authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small cell wireless facilities.

(5) An application fee for a permit under subsection (4) is subject to all of the following requirements:

(a) An authority may charge an application fee only if the fee is also charged to other communications service providers within the authority's jurisdiction.

(b) An authority shall not charge an application fee for costs that are already recovered by existing fees, rates, or taxes paid by a wireless provider.

(c) Total application fees shall not exceed the least of the following:

(i) The amount charged by the authority for a building permit for any similar commercial construction, activity, or land use development.

(ii) The actual, direct, and reasonable costs incurred by the authority relating to the granting or processing of an application. In any controversy concerning the appropriateness of an application fee, the authority has the burden of proving that the fee is reasonably related to the actual, direct, and reasonable costs incurred by the authority.

(iii) $100.00 each for up to 5 small cell wireless facilities addressed in an application and $50.00 for each additional small cell wireless facility addressed in the application.

(6) An authority shall not require an application approval or
permit or require fees or rates for any of the following:

(a) The replacement of a small cell wireless facility with a small cell wireless facility that is substantially similar or the same size or smaller.

(b) Routine maintenance of small cell wireless facilities or wireless support structures.

(c) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between utility poles or wireless support structures in compliance with applicable codes.

(7) This section does not prohibit an authority from requiring a permit for work that will unreasonably affect traffic patterns or obstruct vehicular traffic in the ROW.

Sec. 9. (1) The activities set forth in section 7(6) are exempt from zoning review. Subsections (2) to (4) apply to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under section 5(5) or 7(3), and that take place within or outside the ROW:

(a) The modification of existing or installation of new small cell wireless facilities.

(b) The modification of existing or installation of wireless support structures or utility poles used for such small cell wireless facilities.

(2) The processing of an application for a zoning approval is subject to all of the following requirements:

(a) Within 30 days after receiving an application under this section, an authority shall notify the applicant whether the
application is complete. If the application is incomplete, the
authority shall specifically identify the missing information.

(b) The application shall be processed on a nondiscriminatory
basis.

(c) The authority shall approve or deny the application and
notify the applicant in writing within 90 days after an application
for a modification of a wireless support structure or installation
of a small cell wireless facility is received or 150 days after an
application for a new wireless support structure is received. The
time period for approval may be tolled to accommodate timely
requests by the authority for information required to complete the
application. The time period for approval may be extended by mutual
agreement between the applicant and authority. If the authority
fails to comply with this subdivision, the application is
considered to be approved.

(d) A decision to deny an application under this section shall
be supported by substantial evidence contained in a written record
that is publicly released contemporaneously. An authority shall not
deny an application unless there is a reasonable basis for the
denial. An authority shall not deny an application if the denial
would discriminate against the applicant with respect to the
placement of the facilities of other wireless providers.

(3) An application fee for a zoning approval is subject to the
following requirements:

(a) An authority may charge an application fee only if the fee
is required for similar types of commercial development within the
authority's jurisdiction.
(b) An authority shall not charge an application fee for costs that are already recovered by existing fees, rates, or taxes paid by a wireless provider.

(c) Total application fees, if authorized, shall not exceed the least of the following:

(i) The amount charged by the authority for a building permit for any similar commercial construction, activity, or land use development.

(ii) The actual, direct, and reasonable costs incurred by the authority relating to the granting or processing of an application.

In any controversy concerning the appropriateness of an application fee, the authority has the burden of proving that the fee is reasonably related to the actual, direct, and reasonable costs incurred by the authority.

(iii) $1,000.00 for a new wireless support structure or a modification of a wireless support structure.

(4) An authority shall receive and process an application for a zoning approval subject to all of the following requirements:

(a) An applicant's business decision on the type and location of small cell wireless facilities, wireless support structures, utility poles, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities, wireless support structures, or utility poles. An authority may consider the height of such structures in its zoning review, but shall not unreasonably discriminate between the applicant and other communications service providers.
An authority shall not evaluate or require an applicant to submit information about an applicant's business decisions with respect to any of the following:

(i) The need for a wireless support structure, utility pole, or small cell wireless facilities.

(ii) The applicant's service, customer demand for the service, or the quality of service.

(c) Any requirements regarding the appearance of facilities, including those relating to materials used or arranging, screening, or landscaping, shall be reasonable.

(d) Any setback or fall zone requirement shall be substantially similar to a setback or fall zone requirement imposed on other types of commercial structures of a similar height.

(e) A wireless provider shall commence construction of the approved structure or facilities within 2 years after a permit is granted and shall pursue construction to completion. Any time limitation placed on a permit is void. However, the permittee may voluntarily request that the permit be terminated.

(f) An authority shall not institute a moratorium on either of the following:

(i) Filing, receiving, or processing applications.

(ii) Issuing approvals for installations that are not a permitted use.

Sec. 11. (1) A person owning or controlling authority poles or utility poles for designated services may not enter into an exclusive arrangement with any person for the right to attach to the poles.
(2) All of the following apply to collocation rates or fees, as indicated:

(a) The rates and fees for the collocation of small cell wireless facilities on authority poles or utility poles for designated services shall be nondiscriminatory regardless of the services provided by the collocating person.

(b) The rate to collocate small cell wireless facilities on utility poles for designated services shall not exceed the lesser of the following:

(i) The annual recurring rate that would be permitted under rules adopted by the FCC under 47 USC 224(e) if the rates were regulated by the FCC.

(ii) $20.00 per year per utility pole for designated services.

(c) The total annual rate to collocate small cell wireless facilities on authority poles and any activities related to such collocations shall not exceed the lesser of the following:

(i) The actual, direct, and reasonable costs related to the collocation on the authority pole. In any controversy concerning the appropriateness of a rate for an authority pole, the authority has the burden of proving that the rate is reasonably related to the actual, direct, and reasonable costs incurred for use of space on the authority pole for the period.

(ii) $20.00 per year per utility pole.

(d) If an authority, a municipal electric utility, or a cooperative electric utility has an existing pole attachment rate, fee, or other term that does not comply with this section, the authority, municipal electric utility, or cooperative electric
utility shall, not later than 180 days after the effective date of
this act, revise the rate, fee, or term to comply with this
section.

(3) Within the later of 180 days after the effective date of
this act or 90 days after receiving a request to collocate its
first small cell wireless facility on an authority pole or a
utility pole for designated services owned or controlled by an
authority, a person owning or controlling authority poles or
utility poles for designated services shall make available, through
ordinance or otherwise, the rates, fees, and terms for the
collocation of small cell wireless facilities on the poles. The
rates, fees, and terms shall comply with all of the following:

(a) The rates, fees, and terms shall be nondiscriminatory,
competitively neutral, and commercially reasonable and shall comply
with this act.

(b) For authority poles that support aerial cables used for
video, communications, or electric service, and for utility poles
for designated services, the parties shall comply with the process
for make-ready work under 47 USC 224 and implementing orders and
regulations. The good-faith estimate of the person owning or
controlling the pole for any make-ready work shall include pole
replacement if necessary.

(c) For authority poles that do not support aerial cables used
for video, communications, or electric service, the authority shall
provide a good-faith estimate for any make-ready work within 60
days after receipt of a complete application. Make-ready work shall
be completed within 60 days of written acceptance of the good-faith
estimate by the applicant.

(d) The person owning or controlling the authority pole or utility pole for designated services shall not require more make-ready work than required to comply with law or industry standards.

(e) Fees for make-ready work shall not do any of the following:

(i) Include costs related to preexisting or prior damage or noncompliance.

(ii) Include any consultant fees or expenses.

(iii) Exceed actual costs or the amount charged to other communications service providers for similar work.

(4) The rates, fees, terms, and conditions for the collocation of small cell wireless facilities in subsections (2) and (3) shall apply to the pole attachments of communication service providers to utility poles for designated services.

Sec. 13. Subject to this act and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles. However, an authority does not have jurisdiction or authority over the design, engineering, construction, installation, or operation of a small cell wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not otherwise owned or controlled by the authority, other than to enforce applicable codes. This act does not authorize this state or any other authority to require wireless facility deployment or to regulate wireless services.
Sec. 15. The circuit court has jurisdiction to determine all disputes arising under this act. Unless agreed otherwise and pending resolution of a right-of-way access rate dispute, the authority controlling access to and use of the ROW shall allow the placement of a wireless facility or wireless support structure at a temporary rate of 1/2 of authority-proposed annual rates or $20.00, whichever is less. The rates shall be trued up upon final resolution of the dispute. Pending resolution of a dispute concerning rates for collocation of small cell wireless facilities on authority poles or utility poles for designated services, the person owning or controlling the poles shall allow the wireless provider to collocate small cell wireless facilities on its poles at annual rates of no more than $20.00 per year per utility pole. The rates shall be trued up upon final resolution of the dispute.

Sec. 17. An authority shall not require a wireless provider to do either of the following with respect to a small cell wireless facility, a wireless support structure, or a utility pole:

(a) Indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, unless a court of competent jurisdiction has found that the negligence of the wireless provider while installing, repairing, or maintaining small cell wireless facilities, wireless support structures, or utility poles caused the harm that gave rise to the claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

(b) Require a wireless provider to obtain insurance naming the authority or its officers or employees an additional insured.
against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

Sec. 19. An authority may establish a fee less than the maximum specified in section 5(3), 7(5), 9(3), or 11(2), subject to other requirements of this act.

Enacting section 1. This act takes effect 90 days after the date it is enacted into law.