A bill to amend 2018 PA 365, entitled "Small wireless communications facilities deployment act," by amending sections 15, 17, and 31 (MCL 460.1315, 460.1317, and 460.1331).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 15. (1) This section applies to activities of a wireless provider within the public right-of-way.

(2) Except as otherwise provided in subsection (2), an authority may require a permit to colocate a small cell wireless
facility or install, modify, or replace a utility pole on which a small cell wireless facility will be collocated if the permit is of general applicability. The processing of an application for such a permit is subject to all of the following subsections (3) to (18).

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

(4) (b) An authority may require an applicant to provide any of the following information or documentation:

(a) Information and documentation to enable the authority to make a decision with regard to the criteria in subdivision (i). An authority may also require a subsection (12).

(b) A certificate of compliance with FCC rules related to radio frequency emissions from a small cell wireless facility.

(c) An attestation that the small cell wireless facility will be operational for use by a wireless services provider not later than 1 year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site.

(5) If the application is related to installing a new utility pole on which a small cell wireless facility will be collocated, the authority shall require the applicant to prove that the collocation is impossible without the installation of the new utility pole.

(6) (c) If the proposed activity will occur within a shared ROW or an ROW that overlaps another ROW, a wireless provider shall
provide, to each affected authority to which an application for the
activity is not submitted, notification of the wireless provider's
intent to locate a small cell wireless facility within the ROW. An
In addition to any document or information described in subsections
(4) and (5), an authority may require an applicant to provide proof
of other necessary permits, permit applications, or easements to
ensure all necessary permissions for the proposed activity are
obtained.

(7) (d) Within 25 days after receiving an application, an
authority shall notify the applicant in writing whether the
application is complete. If the application is incomplete, the
notice shall must clearly and specifically delineate all missing
documents or information. The notice tolls the running of the time
for approving or denying an application under subdivision
(h). subsection (10).

(8) (e) The running of the time period tolled under
subdivision (d) subsection (7) resumes when the applicant makes a
supplemental submission in response to the authority's notice of
incompleteness. If a supplemental submission is inadequate, the
authority shall notify the applicant in writing not later than 10
days after receiving the supplemental submission that the
supplemental submission did not provide the information identified
in the original notice delineating missing documents or
information. The time period may be tolled in the case of a second
or any subsequent notices notice under the procedures identified in
subdivision (d). Second subsection (7). A second or any subsequent
notices notice of incompleteness may not specify missing documents
or information that was were not delineated in the original notice
of incompleteness.
(f) The authority may require an applicant to include an attestation that the small cell wireless facilities will be operational for use by a wireless services provider within 1 year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or communications transport facilities to the site.

(9) An application shall be processed on a nondiscriminatory basis.

(10) The authority shall approve or deny the application and notify the applicant in writing within the following period of time after the application is received:

(a) (i) For an application for the collocation of small cell wireless facilities on a utility pole, 60 days, subject to the following adjustments:

   (i) (A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

   (ii) (B) Add 15 days if, before the otherwise applicable 60-day or 75-day time period under this subparagraph subdivision elapses, the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.

(b) (ii) For an application for a new or replacement utility pole that meets the height requirements of section 13(5)(a) and associated small cell facility, 90 days, subject to the following adjustments:

   (i) (A) Add 15 days if an application from another wireless provider was received within 1 week of the application in question.

   (ii) (B) Add 15 days if, before the otherwise applicable 90-day or 105-day time period under this subparagraph subdivision elapses,
the authority notifies the applicant in writing that an extension is needed and the reasons for the extension.

(11) If the authority fails to comply with this subdivision, subsection (10), the completed application is considered to be approved subject to the condition that the applicant provide the authority not less than 7 days' advance written notice that the applicant will be proceeding with the work pursuant to the automatic approval under this subsection.

(12) (i) An authority may deny a completed application for a proposed collocation of a small cell wireless facility or installation, modification, or replacement of a utility pole that meets the height requirements in section 13(5)(a) only if the proposed activity would do any of the following:

(a) (i) Materially interfere with the safe operation of traffic control equipment.

(b) (ii) Materially interfere with sight lines or clear zones for transportation or pedestrians.

(c) (iii) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.

(d) (iv) Materially interfere with maintenance or full unobstructed use of public utility infrastructure under the jurisdiction of an authority.

(e) (v) With respect to drainage infrastructure under the jurisdiction of an authority, either of the following:

(i) (a) Materially interfere with maintenance or full unobstructed use of the drainage infrastructure as it was originally designed.
(ii) (B) Not be located a reasonable distance from the drainage infrastructure to ensure maintenance under the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, and access to the drainage infrastructure.

(f) (vi) Fail to comply with reasonable, nondiscriminatory, written spacing requirements of general applicability adopted by ordinance or otherwise that apply to the location of ground-mounted equipment and new utility poles and that do not prevent a wireless provider from serving any location.

(g) (vii) Fail to comply with applicable codes.

(h) (viii) Fail to comply with section 13(7) or (8).

(i) (ix) Fail to meet reasonable, objective, written stealth or concealment criteria for small cell wireless facilities applicable in a historic district or other designated area, as specified in an ordinance or otherwise and nondiscriminatorily applied to all other occupants of the ROW, including electric utilities, incumbent or competitive local exchange carriers, fiber providers, cable television operators, and the authority.

(13) (k) If the completed application is denied, the notice under subdivision (h) shall explain the reasons for the denial and, if applicable, 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.

(14) (k) An applicant may at the applicant's discretion file a
consolidated application and receive a single permit for the collocation of up to 20 small cell wireless facilities within the jurisdiction of a single authority or, in the case of the state transportation department, a single designated control section as identified on the department's website. The small cell wireless facilities within a consolidated application must consist of substantially similar equipment and be placed on similar types of utility poles or wireless support structures. An authority may approve a permit for 1 or more small cell wireless facilities included in a consolidated application and deny a permit for the remaining small cell facilities. An authority shall not deny a permit for a small cell wireless facility included in a consolidated application on the basis that a permit is being denied for 1 or more other small cell facilities included in that application.

(15) Within 1 year after a permit is granted, a wireless provider shall complete collocation of a small cell wireless facility that is to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by the lack of commercial power or communications facilities at the site. If the wireless provider fails to complete the collocation within the applicable time, the permit is void, and the wireless provider may reapply for a permit. A permittee may voluntarily request that a permit be terminated.

(16) Approval The approval of an application authorizes the wireless provider to do both of the following:

(a) Undertake the installation or collocation.
(b) Subject to relocation requirements that apply to similarly situated users of the ROW and the applicant's right to
terminate at any time, maintain the small cell wireless facilities and any associated utility poles or wireless support structures covered by the permit for so long as the site is in use and in compliance with the initial permit under this act.

(17) (n) An authority shall not institute a moratorium on filing, receiving, or processing applications or issuing permits for the collocation of small cell wireless facilities or the installation, modification, or replacement of utility poles on which small cell wireless facilities will be colocated.

(18) (o) The an authority and an applicant may extend a time period under this subsection subsections (3) to (17) by mutual agreement.

(19) (3) Subject to subsection (20), an application fee for a permit under subsection (2) shall must not exceed the lesser of the following:

(a) $200.00 for each small cell wireless facility alone.

(b) $300.00 for each small cell wireless facility and a new utility pole to which it will be attached.

(20) Beginning March 12, 2019 and every 5 years after the effective date of this act, thereafter, the maximum fees then authorized under this subsection (19) are increased by 10% and rounded to the nearest dollar.

(21) (4) An authority may revoke a permit, upon 30 days' notice and an opportunity to cure, if the permitted small cell wireless facilities and any associated utility pole fail to meet the requirements of subsection (2)(i)-(12).

(22) (5) An authority shall not require a permit or any other approval 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 not larger or heavier, in compliance with applicable codes.

(b) Routine maintenance of a small cell wireless facility, utility pole, or wireless support structure.

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

(23) An authority that receives an application to place a new utility pole may propose an alternate location within the ROW or on property or structures owned or controlled by an authority within 75 feet of the proposed location to either place the new utility pole or colocate on an existing structure. The applicant shall use the alternate location if, as determined by the applicant, the applicant has the right to do so on reasonable terms and conditions and the alternate location does not impose unreasonable technical limits or significant additional costs.

(24) Before discontinuing its use of a small cell wireless facility, utility pole, or wireless support structure, a wireless provider shall notify an authority in writing. The notice must specify when and how the wireless provider intends to remove the small cell wireless facility, utility pole, or wireless support structure. The authority may impose reasonable and nondiscriminatory requirements and specifications for the wireless provider to return the property to its preinstallation condition. If the wireless provider does not complete the removal within 45 days after the discontinuance of use, the authority may complete the removal and assess the costs of removal against the wireless provider. A permit under this section for a small cell wireless
facility expires upon removal of the small cell wireless facility.

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

Sec. 17. (1) The activities set forth in section 15(5)–15(22) are exempt from zoning review. Subsections (2) to (4)–(10) apply to zoning reviews for the following activities that are subject to zoning review and approval, that are not a permitted use under section 13(5), and that take place within or outside the public right-of-way:

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

(b) The modification of existing or installation of new wireless support structures used for such the small cell wireless facilities described in subdivision (a).

(2) The processing of an application for a zoning approval is subject to all of the following requirements: subsections (3) to (8).

(3) If the application for zoning approval is related to installing a new wireless support structure on which a small cell wireless facility will be colocated, the authority shall require the applicant to prove that the collocation is impossible without the installation of the new wireless support structure.

(4) (a) Within 30 days after receiving an application under this section, an authority shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall must clearly and specifically delineate all missing documents or information. The notice tolls the running of the 30-day period.
(5) (b) The running of the time period tolled under subdivision (a) subsection (4) resumes when the applicant makes a supplemental submission in response to the authority's notice of incompleteness. If a supplemental submission is inadequate, the authority shall notify the applicant not later than 10 days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of a second or any subsequent notices notice under the procedures identified in subdivision (a). Second subsection (4). A second or any subsequent notices notice of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(6) (c) The An application shall must be processed on a nondiscriminatory basis.

(7) (d) The An 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 extended by mutual agreement between the applicant and authority. If the authority fails to comply with this subdivision, subsection, the application is considered to be approved subject to the condition that the applicant provide the authority not less than 15 days' advance written notice that the applicant will be proceeding with the work pursuant to this automatic approval.

(8) (e) An authority shall not deny an application unless all of the following apply:
(a) (i) The denial is supported by substantial evidence contained in a written record that is publicly released contemporaneously.

(b) (ii) There is a reasonable basis for the denial.

(c) (iii) The denial would not discriminate against the applicant with respect to the placement of the facilities of other wireless providers.

(9) (a) An authority's review of an application for a zoning approval is 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, or technology to be used is presumed to be reasonable. This presumption does not apply with respect to the height of wireless facilities or wireless support structures. An authority may consider the height of such structures in its zoning review, but shall not discriminate between the applicant and other communications service providers.

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

(10) (4) An application fee for a zoning approval shall not exceed the following:

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

(b) $500.00 for a new small cell wireless facility or modification of an existing small cell wireless facility.

(11) (5) Within 1 year after a zoning approval is granted, a wireless provider shall commence construction of the approved structure or facilities that are to be operational for use by a wireless services provider, unless the authority and the applicant agree to extend this period or the delay is caused by a lack of commercial power or communications facilities at the site. If the wireless provider fails to commence the construction of the approved structure or facilities within the time required pursuant to section 15(2)(l), 15(15), the zoning approval is void, and the wireless provider may reapply for a zoning approval. However, the wireless provider may voluntarily request that the zoning approval be terminated.

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

(a) Filing, receiving, or processing applications for zoning approval.

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

(13) (7) An authority may revoke a zoning approval, upon 30 days' notice and an opportunity to cure, if the permitted small
cell wireless facilities and any associated wireless support structure fail to meet the requirements of the approval, applicable codes, or applicable zoning requirements.

Sec. 31. An authority may establish a fee or rate less than the maximum specified in section 13(3), 15(3), 17(4), 15(19), 17(10), or 19(2), subject to other requirements of this act.