

Legislative Analysis



LAND USE: COLLOCATION OF WIRELESS COMMUNICATIONS EQUIPMENT

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Senate Bill 1064 as passed by the Senate
Sponsor: Sen. Mike Kowall
House Committee: Energy and Technology
Senate Committee: Economic Development

First Analysis (5-1-12)

BRIEF SUMMARY: The bill would provide that wireless communications equipment would be a permitted use of property and would not be subject to special land use approval or any other approval by local governments, if certain requirements were met.

FISCAL IMPACT: Senate Bill 1064 would have an indeterminate overall fiscal impact on local governments. Local governments would realize certain administrative cost increases under the provisions of the bill, which would include a review of the application and accompanying materials to ensure that it is administratively complete and a final determination on the special land use application. To offset the cost increases, the bill authorizes the local unit to collect a fee not to exceed the actual, reasonable costs of reviewing and processing the application or \$1,000, whichever is less. The net impact to any local unit would depend on whether they are able to fully recoup the costs associated with the review and processing of the application.

THE APPARENT PROBLEM:

As the number of people using cell phones increase, either in conjunction with a landline or as the sole phone, demand for better service and higher speeds are placed on wireless companies to update transmission equipment. Sometimes, updating wireless communications facilities to improve service does not require building a new tower or monopole, but can be done by installing newer equipment on already constructed facilities - a process known as "collocation."

Apparently, local zoning laws regarding collocation of wireless communications equipment differ from locale to locale, with differences in fees, application processes, and length of time to process and approve an application. Some may require a special use permit, which can entail a much longer process. Any delay in getting local approval in turn delays a wireless company's ability to provide better service to their customers.

With so many relying on wireless services today, the ability to deliver quality access to mobile communications services is important to any community in order to attract and retain residents and businesses. It has been suggested that the law be amended to streamline the permitting process when a minor infrastructure change is proposed on existing communications facilities.

THE CONTENT OF THE BILL:

The Michigan Zoning Enabling Act authorizes local units of government to enact zoning ordinances that regulate land development and establish districts in which land and structures may be used for particular purposes. The legislative body of a local unit also may provide for special land uses in a zoning district, subject to approval by a local body or official as provided in the zoning ordinance.

Senate Bill 1064 would add a new section to the Michigan Zoning Enabling Act (MCL 125.3514) to specify that wireless communications equipment is a permitted use of property and therefore not subject to special land use approval, or any other approval under the act, if all of the following requirements are met:

- The equipment would be collocated on an existing wireless communications support structure or in an existing equipment compound.
- The existing structure or compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or local official.
- The proposed collocation would not do any of the following:
 - Increase the overall height of the support structure by more than 20 feet or 10 percent of its original height, whichever is greater.
 - Increase the width of the support structure by more than the minimum necessary to permit collocation.
 - Increase the area of the existing equipment compound to greater than 2,500 square feet.
- The proposed collocation complies with the terms and conditions of any previous final approval of the support structure or compound by the appropriate zoning body or local official.

In addition, the bill would do the following:

- Provide that equipment that meets the first two conditions above but not the last two would be a permitted use of property if it received a special land use approval.
- Require an application for special land use approval to include a site plan (plus a map of the property and existing and proposed buildings) and any additional relevant information specifically required by a zoning ordinance provision described in Sections 502(1) or 504 of the act.
- Require the zoning body or local official to determine whether an application is administratively complete within 14 business days after receiving the application. If no determination is made within the time period, the application will be considered as being complete. The 14-day period will be tolled if the applicant is notified (in writing or electronically) that the application is not administratively complete as well as the information necessary to make it complete, and also if the applicant is notified that the required fee has not been paid and the amount due.

- Establish an application fee not to exceed the local unit of government's actual, reasonable costs to review and process the application, or \$1,000, whichever is less.
- Require the zoning body or local official to approve or deny the application within 60 days of determining the application to be administratively complete. Failure to timely approve or deny an application will result in the application being considered approved.
- Provide that special land use approval of wireless communications equipment could be made expressly conditional only on the equipment's meeting the requirements of federal and state laws and other local ordinances before the equipment begins operation.
- Allow a 90-day application approval process if a local unit of government requires special land use approval for equipment that does not meet the requirements for a wireless communications support structure or that is not collocated on an existing wireless communications support structure or in an existing equipment compound.
- Allow a local unit of government to authorize wireless communications equipment as a permitted use of property not subject to special land use approval.
- Define "collocate," "equipment compound," "wireless communications equipment," and "wireless communications support structure."

HOUSE COMMITTEE ACTION:

The House Committee on Energy and Technology did not make changes to the bill.

ARGUMENTS:

For:

With one in five phone customers switching from landlines to cell phone service only, mobile phone use is on the rise. And, as smart phone technology increases, customers want to upgrade to devices with faster speeds and want greater service coverage. This means that mobile Internet providers must periodically update or add equipment to handle the increased demands.

Senate Bill 1064 would address this problem by speeding up the process to obtain permits for the collocation of wireless communications equipment on already existing towers or monopoles, or in already existing equipment compounds. If certain criteria were met, collocating such equipment would no longer be subject to local special land use permits - which can be a lengthier process. Enactment of the bill would cut out unnecessary red tape, thereby streamlining the permitting process around the state and encouraging communications companies to provide timely upgrades and expansion of their services. The impact to communities would be minimal as the bill would encourage collocation - where appropriate - rather than construction of new communications towers. The result is a more efficient system that will support the needs of businesses and residents alike.

Response:

The bill in its current form would charge an application fee of up to \$1,000. This is considerably higher than the \$250 cap contained in the original bill. If the point is to encourage these mobile Internet providers to expand coverage around the state and provide greater access to high speed service, why make the fee so high?

Rebuttal:

There were some concerns by local officials that the \$250 cap may not cover the actual cost to process an application. Even though a new tower is not being built, equipment cannot be added to existing structures willy-nilly. There are state and federal regulations that must be complied with, as well as other local ordinances. In addition, the existing tower or monopole must have the structural integrity necessary to safely support the equipment to be added. Therefore, a review by the city planner, as well as inspection of the site to be altered, must be carried out to ensure all safety and legal requirements are met. Besides, even with the increase in the fee, which was agreed upon by industry members, the companies affected still stand to save money by decreasing the time needed to approve permits for collocations, having statewide uniformity in the permitting process, and having a cap on the permit fee.

POSITIONS:

The Lansing Regional Chamber submitted written testimony in support of the bill. (4-24-12)

The Detroit Regional Chamber submitted written testimony in support of the bill. (4-30-12)

The Michigan Chamber of Commerce indicated support for the bill. (5-1-12)

Spirit/Nextel indicated support for the bill. (5-1-12)

The Michigan Wireless Association indicated support for the bill. (5-1-12)

T-Mobile indicated support for the bill. (5-1-12)

Verizon indicated support for the bill. (5-1-12)

AT&T indicated support for the bill. (5-1-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.