



# OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 478 of the 132nd G.A.

**Status:** As Reported by Senate Public Utilities

**Sponsor:** Reps. Smith, and LaTourette

**Local Impact Statement Procedure Required:** No

**Subject:** Revise regulations for wireless service and the placement of small cell wireless facilities in the public way

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### State & Local Fiscal Highlights

- The bill revises regulations for wireless service and the placement of small cell wireless facilities in the public way without incurring any fiscal effect on state agencies or any significant net fiscal effect on political subdivisions.

### Detailed Fiscal Analysis

H.B. 478 modifies the law regarding wireless service and the placement of small cell wireless facilities in the public way. Previous legislation regarding this policy area was enacted by S.B. 331 of the 131st General Assembly, and it became effective on March 21, 2017.<sup>1</sup>

### Background

In general, wireless network infrastructure originated as large antennas bolted to the tops of tall towers. This "macrocell" technology has since been complemented with less obtrusive technology – distributed antenna system (DAS) networks.<sup>2</sup> DAS networks and other small cell systems use components that are a fraction of the size of macrocell deployments, and they can be installed on utility poles, buildings, and other existing structures.<sup>3</sup>

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<sup>1</sup> Approximately 50 municipalities challenged the S.B. 331 provisions by filing a civil action against the state of Ohio in the Franklin County Court of Common Pleas, case number 17CV002672. The cities contend that S.B. 331 impairs their "ability to manage, administer, and control the public way."

<sup>2</sup> DAS networks represent another wireless alternative to macrocells, but differ from small cells in that, whereas each small-cell deployment includes its own transceiver equipment that generally serves one wireless carrier/operator, a DAS network involves the use of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area and in "neutral-host" deployments, can serve multiple wireless carriers/operators.

<sup>3</sup> Federal Communications Commission, FCC 14-153, October 17, 2014.

The Federal Communications Commission (FCC) adopted a Report and Order (the "Order") on October 17, 2014 that eliminated "review procedures that are not necessary for small-size facilities collocated on existing structures . . . in a manner that preserves local zoning requirements and rules requiring camouflage or concealment measures. In particular, the rules [the FCC adopted] allow local jurisdictions to retain their ability to protect aesthetic and safety interests. Accordingly, [FCC] actions are intended to encourage deployments on existing towers and structures – rather than entirely new towers – in recognition that collocations almost always result in less impact or no impact at all."<sup>4</sup>

The FCC regards its 2014 Order as one that "accounts for [technological] change by crafting a more efficient process for small deployments and other installations that do not trigger concerns about environmental protection or historic preservation. The Order also implements federal statutory directives that are intended to make State and local review more efficient for wireless deployments and modifications. At the same time, the Order preserves [the FCC's] commitment to safeguard the essential roles that State, local, and Tribal governments play in this process. For instance, the Order preserves local governments' authority to adopt and apply the zoning, safety, and concealment requirements that are appropriate for their communities."<sup>5</sup>

### **Fiscal effect**

H.B. 478 makes a number of changes to current law, including for example definitional changes, which have no fiscal effect. References to "micro wireless facility operator" in current law are generally replaced with the newly defined, "operator" of a "small cell facility," and the term "micro wireless facility" is revised as well. None of the changes appear to have a fiscal effect on the Public Utilities Commission. The changes affect primarily municipalities.

Generally, the bill expands a municipal corporation's authority with respect to the placement of any small cell facility or wireless support structure in a public way. The bill requires the small cell facility operator to indemnify the municipal corporation from claims arising from the operation of the small cell facility. H.B. 478 also permits municipalities to request an operator to "relocate or adjust its facilities within the public way at no cost to the municipal corporation" in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public.

S.B. 331 authorized municipalities to charge a one-time application fee for siting, replacing, or modifying a micro wireless facility in a public way equal to the lesser of \$250 or the amount it charges for a building permit; no provision was made for increasing the amount over time. H.B. 478 re-establishes the one-time application fee at

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<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

\$250 for siting a small cell facility, and authorizes municipalities to increase the fee by 10% every five years, rounded to the nearest \$5. During each five-year period, the adjustment may be applied incrementally or as a single adjustment. Similarly, H.B. 478 modifies the existing authorization for municipalities to impose an annual pole attachment charge equal to the lesser of \$200 per small cell facility collocated on a wireless support structure in the public way or the municipality's costs associated with the use of the structure. Under the bill, this pole attachment charge is limited to \$200 per small cell facility, with an allowance to increase the charge by 10% every five years, rounded to the nearest \$5. During each five-year period, the adjustment may be applied incrementally or as a single adjustment.<sup>6</sup> Except for the work permit (in existing law, largely unaffected by H.B. 478), the previously described surety guaranty, and the two above-mentioned fees, the bill explicitly prohibits a municipality from charging an operator "any other charge or fee for a small cell facility or associated wireless support structure."<sup>7</sup>

The bill explicitly addresses cable or video service providers by stating they should "not be required to obtain permits from a municipal corporation or to pay fees, with the exception of work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities pursuant to an existing franchise or video service authorization under Chapter 1332. of the Revised Code."

The prohibition against other charges and fees for small cell facility operators may have the effect of reducing revenue to some municipalities, while the allowance for increases over time in the fee amounts has the effect of increasing such revenue. The net effect of these provisions likely varies from one municipality to another. But LSC staff think the allowance for increases over time will have the predominant effect over time in most, if not all, cases.

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<sup>6</sup> R.C. 4939.0316 and 4939.0322.

<sup>7</sup> R.C. 4939.0322.