



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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<b>Bill Number:</b>	H. 4262	Amended by Senate Judiciary Subcommittee on March 5, 2020
<b>Author:</b>	Simrill	
<b>Subject:</b>	Small Wireless Facilities Deployment Act	
<b>Requestor:</b>	Senate Judiciary	
<b>RFA Analyst(s):</b>	Gallagher and Gardner	
<b>Impact Date:</b>	March 18, 2020	

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### **Fiscal Impact Summary**

This bill establishes the South Carolina Small Wireless Facilities Deployment Act (Act). This bill permits a county, municipality, or consolidated government (authority) to enter into agreements at specified maximum fees with wireless providers for wireless services. The Revenue and Fiscal Affairs Office (RFA) contacted all forty-six counties and the Municipal Association of South Carolina (MASC) regarding the impact of this bill. No counties responded to the request. MASC indicates that currently several municipalities charge their own rates to wireless providers for the approval to install and operate wireless facilities and poles. In certain cases, these fees are higher than the maximum fees allowed in this bill. Therefore, the implementation of this bill may result in a revenue loss for these municipalities. Further, this bill permits an authority to fine providers in specific instances, which may result in a revenue increase for these entities.

Municipalities are permitted to charge a fee to providers for necessary consultation services when reviewing permits within the first four years of this bill's effective date. MASC indicates that municipalities receiving a large number of permit requests may experience an increase in expenditures if consultation fees are higher than those fees allowed in the bill. However, due to limited data to estimate the impact of these changes, the expenditure and revenue impact on counties and municipalities resulting from this bill is undetermined.

The Administrative Law Court (ALC) will determine any dispute between an authority and an applicant seeking to collocate small wireless facilities (facilities) or for approval to install, modify, or replace a pole. This bill will have an undetermined impact on ALC. This legislation gives ALC new contested case jurisdiction, and there is no historical data to estimate the complexity of cases filed and the amount of hearings that may be generated.

### **Explanation of Fiscal Impact**

#### **Amended by Senate Judiciary Subcommittee on March 5, 2020**

#### **State Expenditure**

This bill establishes the South Carolina Small Wireless Facilities Deployment Act (Act) and defines terms relating to small wireless and broadband products. This bill establishes procedures for an authority to enter into agreements with wireless providers for wireless services.

ALC will determine any dispute between an authority and an applicant seeking to collocate small wireless facilities or for approval to install, modify, or replace a pole. This legislation may create

more contested cases for ALC. The expenditure impact of this bill is undetermined because there is no historical data to estimate the complexity of cases filed and the amount of hearings that may be generated. Any request filed with ALC pursuant to this Act must be filed in accordance with its Rules of Procedure. The actual rate will be settled following the final resolution of the dispute.

### **State Revenue**

N/A

### **Local Expenditure and Local Revenue**

This bill permits an authority to adopt an agreement with a wireless provider (provider) that:

- is compliant with the provisions of this Act;
- authorizes wireless providers to install and operate small wireless facilities and associated poles and support structures in compliance with this Act; and
- if the authority is a municipality, allows providers to install and operate facilities and associated poles and support structures in compliance with the aforementioned conditions.

If an authority and provider entered into a written agreement prior to the effective date of this Act, they are not bound by this Act with regard to poles, support structures, replacement poles, or facilities installation until the agreement expires or is terminated. However, all other provisions in the pre-existing agreement are invalid and subject to the provisions of this Act.

If an agreement is not entered into by an authority and a provider, a provider is permitted to install and operate facilities and associated poles and support structures under the requirements of this Act on or after its effective date. An authority and provider are permitted to enter into voluntary agreements regarding franchising, rates, fees, and other terms that differ from those in this article provided that the authority makes these agreements available for public inspection and available for adoption by any requesting wireless provider.

An authority is permitted to charge providers a nondiscriminatory rate or fee for the use of the rights of way (ROW) with respect to the collocation of facilities or the installation, maintenance, modification, operation, or replacement of a pole in the ROW. An authority is not permitted to prohibit, regulate, or charge for the collocation of facilities and associated poles in any way other than as listed in this Act.

An authority is permitted to require applicants to obtain permits to collocate facilities, to install a new, modified, or replacement pole associated with a facility, or for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW. However, these permits must be generalized and not exclusively applicable to wireless facilities. The application process and issuance of these permits must follow the guidelines enumerated in this bill. Upon receipt of a permit, installation or collocation must be completed within a year of issuance, and the provider must operate and maintain the facilities and any associated pole for at least ten years.

Municipalities are further permitted to charge a fee to providers for necessary consultation services when reviewing permits within the first four years of this bill’s effective date. The permit and consultation fee structures are detailed in Figure 1 and Figure 2, respectively:

**Figure 1**

<b>Permit Fee Structure</b>		
Authority	Maximum Fee Amount	Fee Description
All Authorities	\$100 each for the first five facilities in the same application and \$50 for each additional facility in the same application	For applications to collocate small wireless facilities on existing poles or structures
All Authorities	\$1,000 for each pole	For applications to collocate small wireless facilities on new poles or structures
All Authorities	\$250 for each pole	For applications to collocate small wireless facilities on modified poles or replacement poles
All Authorities	\$100/year for each small wireless facility collocated on any existing or replacement pole; \$200/year for each facility collocated on a new pole	For the occupancy and use of the ROW, regardless of whether the provider is subject to a franchise fee
Municipalities	Tier 1: Population: 1-1,000: \$100/year Tier 2: Population: 1,001-3,000: \$200/year Tier 3: Population: 3,001-5,000: \$300/year Tier 4: Population: 5,001-10,000: \$500/year Tier 5: Population: 10,001-25,000: \$750/year Tier 6: Population: Over 25,000: \$1,000/year	A franchise, consent, or administrative fee, pursuant to Section 58-9-2230
All Authorities	Reasonable, nondiscriminatory, and recover no more than the authority’s direct costs	For collocation of a facility on an authority pole

**Figure 2**

<b>Maximum Fees Municipalities Can Charge Providers for Necessary Consultation</b>				
Fee Description	Maximum Fee Amount			
	Year 1	Year 2	Year 3	Year 4
For applications to collocate small wireless facilities on existing poles	\$70 each for the first five facilities in the same application and \$35 for each additional facility	\$60 each for the first five facilities in the same application and \$30 for each additional facility	\$50 each for the first five facilities in the same application and \$25 for each additional facility	\$40 each for the first five facilities in the same application and \$20 for each additional facility in the fourth year
For applications to collocate small wireless facilities on new poles	\$650	\$520	\$450	\$390
For applications to collocate small wireless facilities on modified poles or replacement poles	\$200	\$185	\$150	\$125

Note: Municipalities may charge a provider fees for necessary consultation during the review of permit applications in years 1-4 after enactment of the bill.

An authority is permitted to fine a provider in the event:

- that damage is caused to the right of way by a provider as a direct result of their actions, and they fail to restore the right of way to its previous condition within 30 days. The authority is permitted to restore the right of way, charge the applicable party, and fine them up to \$500.
- a wireless provider abandons or removes a small wireless facility and fails to remove the facility within ninety days after notice is given to the authority. The authority may recover expenses associated with removing the abandoned facility and fine them up to \$500.
- a provider undertakes unpermitted collocation or installation in the ROW. The authority may restore the ROW to its previous condition, charge the provider, and fine them up to \$1,000.

RFA contacted forty-six county governments and MASC regarding the impact of this bill. Because no responses were received from the counties surveyed, our office is not able to determine the expenditure or revenue impact of this bill on county governments. MASC indicates that several municipalities charge their own rates to wireless providers for the approval to install and operate wireless facilities and poles. In certain cases, these fees are currently higher than the maximum fees allowed in this bill. Therefore, the implementation of this bill may result in a revenue loss for these municipalities. Additionally, this bill permits an authority to fine providers in specific instances, which may result in a revenue increase for these entities.

MASC further indicates that municipalities receiving a large number of permit requests may experience an increase in expenditures if consultation fees are higher than those fees allowed in the bill. However, due to limited data to estimate the impact of these changes, the expenditure and revenue impact on counties and municipalities resulting from this bill is undetermined.

### **Amended by House Labor, Commerce, and Industry on April 3, 2019**

#### **State Expenditure**

This bill establishes the South Carolina Small Wireless Facilities Deployment Act (Act) and defines terms relating to small wireless and broadband products.

**Administrative Law Court.** ALC will determine any dispute between an applicant seeking to collocate small wireless facilities (facilities) or for approval to install, modify, or replace a pole and an authority. An authority consists of any county, municipality, consolidated government, agency, district, or subdivision. This legislation may create more contested cases for ALC. The expenditure impact of this bill is undetermined because there is no historical data to estimate the complexity of cases filed and the amount of hearings that may be generated. Any request filed with the Administrative Law Court pursuant to this Act must be filed in accordance with its Rules of Procedure. The actual rate will be settled following the final resolution of the dispute.

#### **State Revenue**

N/A

#### **Local Expenditure**

N/A

## **Local Revenue**

This bill permits an authority to adopt an agreement that:

- is compliant with the provisions of this Act;
- authorizes wireless providers to install and operate small wireless facilities and associated poles and support structures in compliance with this Act; and
- given the authority is a municipality, allows providers to install and operate facilities and associated poles and support structures in compliance with the aforementioned conditions.

If an authority and a wireless provider (provider) entered into a written agreement prior to December 31, 2019, they are not bound by this Act with regard to poles, support structures, replacement poles, and facilities' installation until the agreement expires or is terminated. However, all other provisions in the pre-existing agreement are invalid and subject to the provisions of this Act.

If an agreement is not entered into by an authority and provider, a provider is permitted to install and operate facilities and associated poles and support structures under the requirements of this Act on or after December 31, 2019. An authority and provider are permitted to enter into voluntary agreements regarding franchising, rates, fees, and other terms that differ from those in this article provided that the authority makes these agreements available for public inspection and available for adoption by any requesting wireless provider.

An authority is permitted to charge providers a nondiscriminatory rate or fee for the use of the rights of way (ROW), with respect to the collocation of facilities or the installation, maintenance, modification, operation, or replacement of a pole in the ROW. An authority is not permitted to prohibit, regulate, or charge for the collocation of facilities and associated poles in any way other than as listed in this Act.

An authority is permitted to require applicants to obtain permits to collocate facilities, to install a new, modified, or replacement pole associate with a facility, or for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW. However, these permits must be generalized and not exclusively applicable to wireless facilities. The application process and issuance of these permits must follow the guidelines enumerated in this bill. Upon receipt of a permit, installation or collocation must be completed within a year of issuance and the provider must operate and maintain the facilities and any associated pole for at least ten years.

The permitted fee structure is as follows:

<b>Fee Structure</b>		
Authority	Maximum Fee Amount	Fee Description
All Authorities	\$100 each for the first five facilities in the same application and \$50 for each additional facility in the same application	For applications to collocate small wireless facilities on existing poles or structures
All Authorities	\$1,000 for each pole	For applications to collocate small wireless facilities on new poles or structures
All Authorities	\$250 for each pole	For applications to collocate small wireless facilities on modified poles or replacement poles
All Authorities	\$100/year for each small wireless facility collocated on any existing or replacement pole; \$200/year for each facility collocated on a new pole	For the occupancy and use of the ROW, regardless of whether the provider is subject to a franchise fee
Municipalities	Tier 1: Population: 1-1,000: \$100/year Tier 2: Population: 1,001-3,000: \$200/year Tier 3: Population: 3,001-5,000: \$300/year Tier 4: Population: 5,001-10,000: \$500/year Tier 5: Population: 10,001-25,000: \$750/year Tier 6: Population: Over 25,000: \$1,000/year	A franchise, consent, or administrative fee, pursuant to Section 58-9-2230
All Authorities	Reasonable, nondiscriminatory, and recover no more than the authority's direct costs	For collocation of a facility on an authority pole

The Revenue and Fiscal Affairs Office (RFA) contacted forty-six county governments and the Municipal Association of South Carolina (MASC) regarding the revenue impact of this bill. Due to the limited number of responses from the counties surveyed, our office is not able to determine the revenue impact of this bill on county governments. MASC indicates that several municipalities charge their own rates to wireless providers for the approval to install and operate wireless facilities and poles. In certain cases, these fees are currently higher than the maximum fees allowed for in this bill. Therefore, the implementation of this bill may result in a revenue loss for these municipalities. However, due to limited data, the revenue impact on municipalities resulting from this bill is undetermined.

Frank A. Rainwater, Executive Director