

Wireless Update

HB 2564 Strips Municipalities of Their Zoning Rights over Wireless Facilities; Bill Sponsor Says He is Open to Amendments

A new wireless regulation bill was introduced on July 13, 2018 by Rep. Frank Farry, along with 34 cosponsors. It is House Bill 2564, entitled the “Small Wireless Facilities Deployment Bill.” Although it is structured differently from the previous House Bill 1620, the impact of HB 2564 on municipalities would be much the same. Specifically, HB 2564 would have the following effects:

1. It would strip municipalities of their zoning authority over all wireless facilities, including new poles and antennas, in the rights-of-way. (Section 3j). While prescribing a maximum permitted height of 50 feet for poles, it also gives wireless companies the “right” to exceed this height limit via a “height limit waiver request.” (Section 3e) Municipalities would be forced to approve any pole of any height at any location regardless of its appropriateness.

2. It would drastically cut fees that municipalities are permitted to assess for use of the rights-of-way. Specifically, the bill limits fees as follows: 1) application fee = \$100; 2) fee for new poles = \$25 per year; 3) fees for new antennas = \$25 per year; and 4) fee for new antennas on municipally-owned poles = \$50 per year. (Sections 3c, 4n, and 5d) These minimal fees would not allow municipalities to recover their costs of processing applications and managing wireless facilities, so local taxpayers would be forced to subsidize the wireless industry.

3. It would significantly shorten the FCC’s mandatory approval timeframes. For example, the FCC allows 30 days for initial review of an application for completeness. HB 2564 would cut this period to 15 days. The FCC also allows 150 days for action on a new pole, after which it would be deemed approved. HB 2564 would shorten this period to 60 days. (Sections 4d and 4e) The bill also allows wireless companies to submit up to 20 permit requests in a single application with no increase in the time for municipalities to review them. (Section 4g)

The House Consumer Affairs Committee held a hearing on the bill on August 9. The PA Municipal League (PML), PA State Assoc. of Township Commissioners (PSATC), and the PA State Assoc. of Boroughs (PSAB) spoke in strong opposition to the bill. I testified on behalf of PML and PSATC. During the hearing, Rep. Farry offered to work with the municipal associations to attempt to achieve a compromise bill. To that end, the municipal associations will be submitting proposed amendments this week.

Rep. Farry and Committee Chairman, Robert Godshall, have also said that they want to get the bill approved before this Legislative Session ends on November 13. As such, we expect the negotiations to move quickly. While we are open to a compromise bill that would

streamline the deployment of wireless broadband, it must also preserve the right of municipalities to manage their rights-of-way, recover their costs, and protect the character of their communities. We will keep you closely informed on all major developments regarding this process. In the meantime, please feel free to contact me if you have any questions or concerns.

Daniel S. Cohen
Cohen Law Group
413 S. Main Street
Pittsburgh, PA 15215
Phone: (412) 447-0130 x11
Fax: (412) 447-0129
Emails: dcohen@cohenlawgroup.org
Website: www.cohenlawgroup.org