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H.P. 1170

House of Representatives, December 22, 2017

An Act To Facilitate Wireless Broadband Deployment in Maine and Modify the Process for Issuing Utility Facility Location Permits

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 19, 2017. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WADSWORTH of Hiram.
Cosponsored by Senator WOODSOME of York and
Representatives: COREY of Windham, HANLEY of Pittston, HARRINGTON of Sanford,
KINNEY of Limington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA §4362** is enacted to read:

3 **§4362. Small cell facilities**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Historic district" means a group of buildings, properties or sites that are either
7 listed in the National Register of Historic Places or formally determined eligible for
8 listing by the Keeper of the National Register in accordance with 47 Code of Federal
9 Regulations, Part 1, Appendix C, Section VI(D)(1)(a)(i) to (v) (2017).

10 B. "Small cell facility" has the same meaning as in Title 35-A, section 2502,
11 subsection 7.

12 C. "Technically feasible" means, with regard to a small cell facility, that, by virtue of
13 engineering or spectrum usage, the proposed design or concealment measures can be
14 implemented without reducing the functionality of the small cell facility.

15 D. "Wireless provider" has the same meaning as in Title 35-A, section 2502,
16 subsection 9.

17 **2. Permitted use.** Except as specifically provided in this section, a municipality
18 may not enact or enforce a land use ordinance that prohibits or restricts the siting of a
19 small cell facility and a municipality may not require review or approval of such siting
20 under any land use ordinance. Nothing in this section is intended to limit the ability of a
21 municipality to regulate the location of a small cell facility as permitted under Title 35-A,
22 chapter 25.

23 **3. Historic district.** Notwithstanding subsection 2, a municipality may require
24 reasonable, technically feasible, nondiscriminatory and technologically neutral design or
25 concealment measures governing the siting of a small cell facility in a historic district.
26 Any such design or concealment measures may not have the effect of prohibiting any
27 wireless provider's technology, nor may any such measures be considered a part of the
28 small cell facility for purposes of calculating size under Title 35-A, section 2502,
29 subsection 7. Nothing in this subsection permits a municipality to adopt any standards or
30 requirements with regard to equipment of a small cell facility that is excluded from
31 evaluation for effects on historic properties under 47 Code of Federal Regulations,
32 Section 1.1307(a)(4) (2017).

33 **Sec. 2. 35-A MRSA §2502, sub-§§1-A to 1-D** are enacted to read:

34 **1-A. Applicable codes.** "Applicable codes" means any building code, as defined in
35 Title 10, section 9721, including the Maine Uniform Building and Energy Code, and any
36 fire, electrical, plumbing or mechanical codes of general applicability that have been
37 adopted by ordinance, regulation or rule.

1 **1-B. Authority.** "Authority" means the State or any agency, county, municipality or
2 district or any subdivision or instrumentality of the State or any agency, county,
3 municipality or district, excluding any public utility owned or operated by an authority.

4 **1-C. Authority pole.** "Authority pole" means a pole owned, managed or operated
5 by or on behalf of an authority.

6 **1-D. Collocate.** "Collocate" means to install, mount, maintain, modify, operate or
7 replace a wireless facility on or adjacent to a pole or wireless support structure.
8 "Collocate" does not include the installation of new poles or wireless support structures.

9 **Sec. 3. 35-A MRSA §2502, sub-§3, ¶B**, as enacted by PL 1987, c. 141, Pt. A,
10 §6, is amended to read:

11 B. If on or over the surface of the public way, poles, guys, hydrants, cables, wires
12 and any plant or equipment, including small cell facilities, located on or over the
13 surface of the public way.

14 **Sec. 4. 35-A MRSA §2502, sub-§§5 to 11** are enacted to read:

15 **5. Make-ready work.** "Make-ready work" means work necessary to enable an
16 authority pole to support a small cell facility.

17 **6. Pole.** "Pole" means a pole or similar structure that is or may be used in whole or
18 in part for communications, electric transmission or distribution, lighting, traffic control,
19 signage or a similar function, including a pole installed solely for the collocation of small
20 cell facilities. "Pole" includes an authority pole but does not include wireless support
21 structures.

22 **7. Small cell facility.** "Small cell facility" means a wireless facility:

23 A. Each antenna of which could fit within an enclosure of no more than 6 cubic feet;
24 and

25 B. Of which all associated wireless equipment other than antennas has a cumulative
26 volume of no more than 28 cubic feet.

27 The following types of associated ancillary equipment are not included in the calculation
28 of equipment volume: electric meters, concealment elements, telecommunications
29 demarcation boxes, grounding equipment, power transfer switches, cut-off switches and
30 vertical cable runs for the connection of power and other services.

31 **8. Wireless facility.** "Wireless facility" means equipment at a fixed location that
32 enables wireless communications between user equipment and a communications
33 network, including: equipment associated with wireless communications and radio
34 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies
35 and comparable equipment, regardless of technological configuration. "Wireless facility"
36 includes a small cell facility. "Wireless facility" does not include: the structure or
37 improvements on, under, within or adjacent to which the equipment is collocated; or
38 coaxial or fiber-optic cable that is between wireless support structures or poles or that is
39 otherwise not immediately adjacent to or directly associated with a particular antenna.

1 **9. Wireless provider.** "Wireless provider" means a person who provides wireless
2 services as well as any person who builds or installs wireless communication
3 transmission equipment, wireless facilities or wireless support structures.

4 **10. Wireless services.** "Wireless services" means any services using licensed or
5 unlicensed spectrum, whether at a fixed location or mobile, provided to the public using
6 wireless facilities.

7 **11. Wireless support structure.** "Wireless support structure" means a new or
8 existing freestanding structure, such as a monopole, guyed tower, self-supporting tower
9 or billboard, that is designed to support or is capable of supporting wireless facilities.
10 "Wireless support structure" does not include a pole.

11 **Sec. 5. 35-A MRSA §2503, sub-§1,** as amended by PL 2015, c. 216, §1, is
12 further amended to read:

13 **1. Application.** The application must be in writing and describe the facilities, the
14 requested location, evidence of notice provided to owners of facilities in the applicable
15 public way, the minimum depth if an underground facility, the minimum height of any
16 attached wires or cables, if aboveground facilities, all in the manner and form that the
17 licensing authority requires. A single application may include multiple facilities of the
18 same type at different locations, as long as the information required by this subsection is
19 clearly noted on the application for each location.

20 **Sec. 6. 35-A MRSA §2503, sub-§5-A** is enacted to read:

21 **5-A. Duration of permit.** A permit issued under this section is of unlimited
22 duration except that a permit expires if substantial construction of the proposed facility is
23 not commenced within 12 months of the permit date or if construction work is suspended
24 for more than 6 months unless the delay is caused by a lack of commercial power or
25 communications facilities at the site of the proposed facility.

26 **Sec. 7. 35-A MRSA §2503, sub-§13, ¶A-1** is enacted to read:

27 A-1. Within 30 days of receipt of notice under paragraph A, the applicant may seek
28 reconsideration of a denial, including by curing any deficiencies identified by the
29 licensing authority. A request for reconsideration is deemed approved, and a location
30 permit issued, if the licensing authority does not grant or deny the request within 30
31 days of its filing. The filing of a request for reconsideration stays any time periods
32 for appeal otherwise set forth in paragraphs B and C, and the time period for appeal
33 under these paragraphs commences upon receipt of a written notice of a decision
34 related to the request for reconsideration.

35 **Sec. 8. 35-A MRSA §2503, sub-§22** is enacted to read:

36 **22. Small cell facilities.** The following provisions govern small cell facilities.

37 A. Subsections 3, 4 and 5 do not apply to applications to collocate small cell
38 facilities in the public way.

1 B. In reviewing an application and issuing a permit under this section for a small cell
2 facility, the licensing authority shall process the application and issue the permit for
3 the facility in substantially the same manner as for other facilities and on a
4 competitively neutral and nondiscriminatory basis except as set forth in this
5 subsection, including with respect to the assessment of permit fees, if any. A
6 licensing authority may not institute, either expressly or de facto, a moratorium on
7 processing applications or issuing permits for small cell facilities. A licensing
8 authority may not, as a condition of issuing a permit under this section for a small cell
9 facility, require an applicant to provide or perform services unrelated to the permit or
10 require that a small cell facility be located on a specific pole or other facility. If a
11 licensing authority adopts a permit by rule process, the process must include a permit
12 by rule process for small cell facilities.

13 C. Notwithstanding any provision of law to the contrary in chapter 23 or this chapter,
14 a licensing authority may deny a permit under this section for a small cell facility
15 only if the proposed facility:

- 16 (1) Fails to comply with applicable codes;
- 17 (2) Obstructs use of the right-of-way for public travel;
- 18 (3) Materially interferes with the safe operation of traffic control equipment; or
- 19 (4) Materially interferes with compliance with the federal Americans with
20 Disabilities Act of 1990 or similar federal or state standards regarding pedestrian
21 access or movement.

22 D. A permit is not required under this section for:

- 23 (1) Routine maintenance of small cell facilities; or
- 24 (2) The installation, placement, maintenance, operation or replacement of micro
25 wireless facilities on cables between existing poles or wireless support structures
26 in compliance with applicable codes.

27 As used in this paragraph, "micro wireless facilities" means any wireless facility that
28 is no larger than 24 inches in length, 15 inches in width and 12 inches in height and
29 that has an exterior antenna, if any, no longer than 11 inches.

30 E. A licensing authority that charges fees for an application under this section may
31 charge a nonrecurring application fee for a small cell facility, as long as the fee does
32 not exceed the least of:

- 33 (1) The actual, direct and reasonable costs to process and review the application,
34 to the extent the costs are not already recovered by existing fees, rates or taxes,
35 and excluding travel expenses incurred by a 3rd party in its review of an
36 application and 3rd-party rates or fees charged on a contingency basis or a result-
37 based arrangement;
- 38 (2) The application fee, if any, the licensing authority charges for a location
39 permit for placing other facilities in the public way; and

1 (3) One hundred dollars each for the first 5 small cell facilities requested in an
2 application and \$50 for each additional small cell facility requested in the same
3 application.

4 **Sec. 9. 35-A MRSA §2518, sub-§4**, as enacted by PL 1987, c. 141, Pt. A, §6, is
5 amended to read:

6 **4. Exceptions: Long distance lines and small cell facilities.** This section does not
7 apply to small cell facilities, long distance telephone wires or lines of poles used to
8 support them. For the purpose of this section a long distance telephone wire is a
9 telephone wire that extends at least 20 miles in a direct line from a central office.

10 **Sec. 10. 35-A MRSA §2524** is enacted to read:

11 **§2524. Collocation of small cell facilities**

12 **1. Limitation.** Except as expressly provided in this chapter, an authority may not
13 prohibit, regulate or charge for the collocation of small cell facilities.

14 **2. Exclusive arrangements prohibited.** An authority may not enter into an
15 exclusive arrangement with any person for:

16 A. Use of the public way for the construction, operation, marketing or maintenance
17 of small cell facilities; or

18 B. The right to collocate small cell facilities on authority poles.

19 **3. Rate.** An authority may charge an annual recurring rate of up to \$20 per pole for
20 the collocation of small cell facilities on authority poles in the public way.

21 **4. Description of necessary work.** Within 60 days after receipt of either an
22 application under section 2503 to collocate small cell facilities on an authority pole or, if
23 the licensing authority does not own or control the authority pole, a notice of such an
24 application, the authority shall provide the applicant with a description of any make-ready
25 work necessary to enable the authority pole to support the requested small cell facilities,
26 including pole replacement if necessary. If the authority intends to perform any such
27 make-ready work, either itself or through an agent, it shall include with the description a
28 good faith estimate of the cost of such work, and it shall complete such work within 60
29 days of written acceptance of the estimate by the applicant.

30 **5. Limitations on work and fees for work.** An authority may not require more
31 make-ready work on an authority pole than required to meet applicable codes or industry
32 standards. An authority may not require replacement of an authority pole unless the
33 authority demonstrates that replacement is required to meet the codes or standards. Fees
34 for make-ready work may not exceed actual costs and must be nondiscriminatory,
35 competitively neutral and commercially reasonable. Such fees may not include any
36 consultants' fees or expenses or costs related to preexisting or prior damage or
37 noncompliance.

38 **6. Decorative poles.** An authority shall permit a wireless provider to replace
39 decorative poles when necessary to collocate a small cell facility, but any replacement

1 pole must reasonably conform to the design aesthetics of the decorative pole being
2 replaced. As used in this subsection, "decorative pole" means an authority pole that is
3 specially designed and placed for aesthetic purposes and on which no appurtenances or
4 attachments, other than a small cell facility, specially designed informational or
5 directional signage or temporary holiday or special event attachments, have been placed
6 or are permitted to be placed according to nondiscriminatory municipal ordinances, rules
7 or codes.

8 **7. Other locations.** An authority shall allow wireless providers to collocate small
9 cell facilities on authority poles that are not located within the public way and on wireless
10 support structures or buildings owned or controlled by the authority to the same extent the
11 authority permits access to such poles, structures or buildings for other commercial
12 projects or uses. Such collocations are subject to reasonable and nondiscriminatory rates,
13 fees, terms and conditions as provided by ordinance or an agreement between the
14 authority and the wireless provider.

15 **8. Jurisdiction.** Notwithstanding any other law to the contrary, an authority does
16 not have jurisdiction or authority over the design, engineering, construction, installation
17 or operation of any small cell facilities located inside a building or other structure or upon
18 the site of any campus, stadium or athletic facility not otherwise owned or controlled by
19 the authority, other than to enforce applicable codes.

20 **9. Power of authority or municipality.** Nothing in this chapter authorizes an
21 authority to require deployment of wireless facilities or to regulate wireless services. A
22 municipality may not require the relocation of small cell facilities under section 2312.

23 **10. Ordinances.** An authority may adopt an ordinance, rule or code that establishes
24 rates, fees and other terms and conditions for wireless providers that are
25 nondiscriminatory and competitively neutral and that comply with this chapter. The
26 absence of such an ordinance, rule or code may not prevent or delay a wireless provider
27 from collocating small cell facilities pursuant to this chapter. An ordinance, rule or code
28 enacted prior to the effective date of this section that does not comply with this section
29 and section 2503 is invalid and unenforceable beginning on the 181st day after the
30 effective date of this section; small cell facilities collocated pursuant to such an
31 ordinance, rule or code may remain installed and operated pursuant to the provisions of
32 this section.

33 **11. Agreements.** Any agreement between an authority and a wireless provider that
34 addresses the collocation of small cell facilities, that is in effect on the effective date of
35 this section and that does not comply with this section and section 2503 remains in effect,
36 subject to any termination provisions in the agreement. Notwithstanding this subsection,
37 at the election of the wireless provider, the agreement applies only to small cell facilities
38 that became operational before the effective date of this section.

39 **12. Construction.** Nothing in this section or section 2503 may be construed to
40 authorize a person, without the consent of the property owner, to collocate a small cell
41 facility on a pole other than an authority pole, on a wireless support structure not owned
42 or controlled by an authority or on other private property.

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13. Indemnification; insurance. An authority may not require a wireless provider to indemnify the authority and its officers and employees, or hold them harmless, against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees arising from the collocation of small cell facilities, except when a court of competent jurisdiction has found that the negligence of the wireless provider while collocating small cell facilities caused the harm that created the claims, lawsuits, judgments, costs, liens, losses, expenses or fees. An authority may not require a wireless provider to obtain insurance naming the authority or its officers and employees an additional insured against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees arising from the collocation of small cell facilities.

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SUMMARY

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This bill changes the process for siting small cell facilities in order to facilitate wireless broadband deployment, including:

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- 1. Through modifications to the process for issuing utility facility location permits, including small cell facility location permits;
- 2. Through the establishment of standards governing local land use ordinances applicable to the siting of small cell facilities; and
- 3. Through the establishment of standards governing the collocation of small cell facilities on poles owned by the State, an agency, a county, a municipality or a district.