

Rhode Island House Bill 5224 - Signed by Governor as of 9/27/17

1 When does the statute take effect?

- “By statute (Section 43-3-25 as amended) every statute which does not expressly prescribe the time it shall go into operation shall take effect on the first day of July of the calendar year of its enactment into law by the General Assembly” (State of Rhode Island General Assembly website).

2 Is there a grandfather provision for rates on existing leased municipal facilities?

- Yes, there is a grandfather provision. (Page 3, Lines 26-32) “(e) All agreements between authorities and wireless service providers that are in effect on the effective date of this chapter and that relate to the collocation of small wireless facilities in the public right-of-way or on authority poles or structures shall remain in effect, subject to any termination provisions in such agreements. Notwithstanding the foregoing, at the election of a wireless service provider, the rates, fees, terms and conditions established pursuant to this chapter shall apply to small wireless facilities that are the subject of an application submitted after the effective date of this chapter.”

3 What structures are included in the statute?

- (Page 2, Line 5-6) “‘Authority pole’ means a pole owned or controlled by an authority and includes metal, composite, concrete, or wood poles as well as decorative poles.”
- (Page 2, Lines 7-8) “‘Authority structure’ means a building, water tower or other structure owned or controlled by an authority, but not an authority pole.”
- (Page 2, Lines 17-19) “‘Pole’ means a utility pole, light pole, light standard or similar structure that is used in whole or in part for telephone service, wireless service, cable television service, information service, electric service, lighting, traffic control, signage or similar function.”

4 Does the statute apply definitions for telecommunications facility, small cell, micro transmitter or similar? If so, what are the definitions?

- (Page 2, Lines 7-8) “‘Authority structure’ means a building, water tower or other structure owned or controlled by an authority, but not an authority pole.”
- (Page 2, Lines 20-28) “‘Small wireless facility’ means a wireless facility with an antenna of no more than six (6) cubic feet in volume and associated equipment with a cumulative volume no larger than twenty-eight (28) cubic feet. The following types of associated equipment may be located outside the primary enclosure and are not included in the calculation of equipment volume: electric meter, concealment, telecommunications

demarcation box, ground-based enclosures, backup power system, grounding equipment, power transfer switch, cut-off switch, and cable and conduit runs for the connection of power and other services. Equipment that is concealed from public view within or behind an existing structure or concealment is not included in the volume calculations.”

- (Page 2, Lines 29-34; Page 3, Lines 1-6) “Wireless facilities’ means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to:
 - (i) Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and
 - (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term ‘wireless facilities’ includes small wireless facilities but does not include the structure or improvements on, under or within which the equipment is collocated; wireline backhaul facilities; coaxial or fiber-optic cable that is between wireless support structures or poles; or coaxial or fiber optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.”

5 Are there maximum rates for providing access to municipally owned structures (lease or license rates)?

- (Page 3, Lines 19-20) “(b) Except as provided in this chapter, an authority shall not prohibit, regulate or charge for the collocation of small wireless facilities.”
- (Page 6, Lines 11-16) “Aside from the application processing fee allowed under §39-32-3, an authority shall not charge on an annual recurring basis more for such a collocation than one hundred and fifty dollars (\$150.00) or the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications attachments under 47 U.S.C. §224(e). Such fee limitation shall not apply to authority structures.”
- (Page 6, Lines 17-25) “(b) An authority shall authorize the collocation of small wireless facilities on authority poles not located within the public rights-of-way and on authority structures to the same extent the authority permits access to such poles and structures for other commercial projects or uses, and may authorize such collocation if the authority has not previously permitted such access. Such collocation shall be subject to reasonable and nondiscriminatory rates, terms and

conditions as provided by ordinance or in one or more agreements between the wireless provider and the authority. An authority may not charge on an annual recurring basis more for such a collocation than the amount charged for similar commercial projects or uses to occupy or use the same amount of space on similarly situated property.”

- (Page 6, Lines 27-28) “(a) An authority may not prohibit, regulate or charge for the collocation of small wireless facilities on poles or structures other than authority poles and authority structures.”

6 Is a transfer of municipal assets to another ownership entity prohibited?

- The new law does not address this issue.

7 Is there a restriction on exclusive management or subleasing of municipal assets?

- The new law does not directly address this issue, but it does state: (Page 4, Lines 17-21) “The fee shall be no greater than the reasonable, direct and actual costs incurred by the authority to process the application, excluding any fees for review of an application charged by third parties on a contingency basis or a result-based arrangement, and further excluding any costs already recovered by existing fees, rates or taxes paid by a wireless provider.”

8 Are municipally owned public utilities exempt?

- The new law does not exempt municipally owned public utilities.

9 Does the state have a home rule provision?

- Yes, Rhode Island has a home rule provision. (Rhode Island Constitution, Article XIII, Home Rule for Cities and Towns - “Section 1. Intent of article. -- It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters. Section 2. Local legislative powers. -- Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.”

10 Can there be application fees? If so, what amount?

- (Page 3, Lines 26-32) “(e) All agreements between authorities and wireless service providers that are in effect on the effective date of this chapter and that relate to the collocation of small wireless facilities in the public right-of-way or on authority poles or structures shall remain in effect, subject to any termination provisions in such agreements. Notwithstanding the foregoing, at the election of a wireless service

provider, the rates, fees, terms and conditions established pursuant to this chapter shall apply to small wireless facilities that are the subject of an application submitted after the effective date of this chapter.”

- (Page 4, Lines 17-26) “(2) An authority may charge a fee to process an application to collocate a small wireless facility. The fee shall be no greater than the reasonable, direct and actual costs incurred by the authority to process the application, excluding any fees for review of an application charged by third parties on a contingency basis or a result-based arrangement, and further excluding any costs already recovered by existing fees, rates or taxes paid by a wireless provider. The application processing fee shall be no greater than the application processing fee, if any, charged by the authority to persons seeking to place a pole in the public way. Except as provided in §39-32-5, an applicant shall not be required to pay any additional fees or charges, or perform or provide any services not directly related to the collocation, in order to collocate small wireless facilities.”
- (Page 6, Lines 11-16) “Aside from the application processing fee allowed under §39-32-3, an authority shall not charge on an annual recurring basis more for such a collocation than one hundred and fifty dollars (\$150.00) or the rate produced by applying the formula adopted by the Federal Communications Commission for telecommunications attachments under 47 U.S.C. §224(e). Such fee limitation shall not apply to authority structures.”

11 Can there be inspection fees? If so, what amount?

- This new law does not directly address inspection fees, but it does state: (Page 4, Lines 23-26) “Except as provided in §39-32-5, an applicant shall not be required to pay any additional fees or charges, or perform or provide any services not directly related to the collocation, in order to collocate small wireless facilities.”

12 Can local zoning or building codes apply restrictions? If so, what are the allowable restrictions?

- (Page 3, Lines 21-22) “(c) Small wireless facilities shall be classified as permitted uses in all zoning districts and shall not be subject to zoning review or approval.”
- (Page 4, Lines 1-6) “An authority may require a person to obtain a building, electrical or a public right-of-way use or work permit to collocate small wireless facilities on authority poles or authority structures, provided such permits are of general applicability and do not apply exclusively to wireless facilities. An authority may not require a permit, other than a public right-of-way work permit, for routine maintenance on a previously-

approved small wireless facility or to replace a small wireless facility with a facility of substantially similar or smaller size and weight.”

- (Page 4, Lines 10-16) “An applicant for a collocation permit shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers. If consistent with the preceding sentence, an authority may require an application to include information sufficient to determine whether the collocation meets applicable building or electrical codes or, if applicable, standards for construction in the right-of-way, provided such codes and standards are of general applicability.”
- (Page 4, Lines 33-34; Page 5, Line 1) “...but initial construction shall be completed within one hundred eighty (180) days after the permit issuance date, unless the authority and wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.”
- (Page 5, Lines 2-9) “(6) Notwithstanding the provisions of §39-32-2(c), a permit for a collocation within an historic district as defined in §45-24.1-1.1 shall be subject to historic district commission review and approval, in accordance with standards to be adopted by regulation or rule. Such standards may include that a collocation meet reasonable design, context, color and stealth and concealment requirements and make reasonable accommodation for location within the district. The historic district commission may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense.”
- (Page 5, Lines 11-14) “A permit may require a collocation on an authority pole that is a decorative pole to meet objective design standards, including that a collocation meet reasonable location, context, color and stealth and concealment requirements. Such standards shall be adopted by ordinance, regulation or rule.”
- (Page 5, Lines 19-24) “An authority shall approve an application for a permit under this chapter unless the collocation does not meet applicable building or electrical codes or, if applicable, standards for construction in the right-of-way, provided such codes and standards are of general applicability. The authority must document the basis for any denial, including the specific code provisions or standards on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application.”

13 Are strand mounted devices or facilities exempt?

- This new law does not exempt strand mounted devices or facilities.

14 Are privately owned structures in ROW exempt?

- Yes, privately owned structures are exempt. (Page 3, Lines 23-25) “(d) Nothing in this chapter shall be construed to authorize a person to collocate a small wireless facility on a privately owned pole, structure or other private property without the consent of the property owner.”
- (Page 6, Lines 25-32) “39-32-6. Collocation of small wireless facilities on private poles and structures.
 - (a) An authority may not prohibit, regulate or charge for the collocation of small wireless facilities on poles or structures other than authority poles and authority structures.
 - (b) A wireless service provider may install poles in the public rights-of-way in order to collocate small wireless facilities, subject to request and authority approval. An authority shall receive, process and approve such requests on a non-discriminatory basis and in substantially the same manner and on substantially the same terms and conditions as the authority applies to similar requests by other persons seeking to place poles in the public ways.”

15 Are there design restrictions? If so what are they?

- (Page 2, Lines 20-28) “‘Small wireless facility’ means a wireless facility with an antenna of no more than six (6) cubic feet in volume and associated equipment with a cumulative volume no larger than twenty-eight (28) cubic feet. The following types of associated equipment may be located outside the primary enclosure and are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, backup power system, grounding equipment, power transfer switch, cut-off switch, and cable and conduit runs for the connection of power and other services. Equipment that is concealed from public view within or behind an existing structure or concealment is not included in the volume calculations.”
- (Page 5, Lines 11-16) “(7) A permit may require a collocation on an authority pole that is a decorative pole to meet objective design standards, including that a collocation meet reasonable location, context, color and stealth and concealment requirements. Such standards shall be adopted by ordinance, regulation or rule. An authority may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense.”

- (Page 5, Lines 2-9) “(6) Notwithstanding the provisions of §39-32-2(c), a permit for a collocation within an historic district as defined in §45-24.1-1.1 shall be subject to historic district commission review and approval, in accordance with standards to be adopted by regulation or rule. Such standards may include that a collocation meet reasonable design, context, color and stealth and concealment requirements and make reasonable accommodation for location within the district. The historic district commission may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense.”

16 What are the shot clocks as defined by statute?

- (Page 4, Lines 32-24; Page 5, Line 1) “(5) All permits regarding the collocation of small wireless facilities shall be of unlimited duration but initial construction shall be completed within one hundred eighty (180) days after the permit issuance date, unless the authority and wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.”
- (Page 5, Lines 6-10) “The historic district commission may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request for waiver.”
- (Page 5, Lines 14-17) “An authority may waive one or more standards upon a showing that the standard(s) are not reasonably compatible with the particular location of a small wireless facility, or that the standard(s) impose an excessive expense. The waiver shall be granted or denied within forty-five (45) days after the date of the request.”
- (Page 5, Lines 22-27) “The authority must document the basis for any denial, including the specific code provisions or standards on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty (30) days of the denial without paying an additional processing fee. The authority shall approve or deny the revised application within thirty (30) days.”
- (Page 5, Lines 31-34; Page 6, Lines 1-2) “(b) An application shall be deemed approved if the authority fails to approve or deny the application within sixty (60) days of submission. If the authority notifies the applicant

within fourteen (14) days after the initial submission that the application is incomplete and reasonably identifies at that time the information that is lacking, the time period stated above shall be tolled during the time it takes the applicant to respond. No other request for additional information shall toll such time periods.”

- (Page 6, Lines 3-5) “(c) A person whose application or revised application is denied by an authority may appeal to the superior court within thirty (30) days of the denial. The superior court shall have jurisdiction to determine all disputes arising under this chapter.”
- (Page 6, Lines 7-11) “(a) Within six (6) months of receiving its first request to collocate small wireless facilities on authority poles located within the public rights-of-way, but in no event later than April 1, 2018, an authority shall establish by ordinance, regulation or rule nondiscriminatory, competitively neutral and commercially reasonable rates, terms and conditions for such collocation that are consistent with the provisions of this chapter.”

17 Does the statute require local acceptance of bulk applications?

- Yes. (Page 4, Lines 27-29) “(3) At its discretion, an applicant shall be allowed to file a consolidated application and receive a single permit to collocate small wireless facilities at multiple locations within the jurisdiction of the authority.”
- (Page 5, Lines 28-30) “Where one or more locations addressed in a consolidated application do not meet the criteria of this section, the authority shall allow the application as to all other locations.”

18 Is the city required to complete the make ready work? If so, is there a limit on what they can charge and any requirements they must meet?

- The new law does not address make ready work.