

ASSEMBLY, No. 1116

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Provides for uniform regulation of small wireless facility deployment in this State.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/10/2020)

1 AN ACT concerning deployment of small wireless facilities and
2 supplementing Title 40 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. The deployment of small wireless facilities and other next-
9 generation wireless and broadband network facilities is a matter of
10 federal and statewide concern and interest;

11 b. Wireless and broadband products and services are a
12 significant and continually growing part of the State's economy and
13 encouraging the development of strong and robust wireless and
14 broadband communications networks throughout the State is
15 integral to the State's economic competitiveness;

16 c. Rapid deployment of small wireless facilities will serve
17 important Statewide goals, such as: meeting the growing consumer
18 demand for wireless data; increasing competitive options for
19 communications services available to the State's residents;
20 promoting the ability of the State's residents to communicate with
21 their neighbors and with their State and local governments; and
22 promoting public safety;

23 d. Small wireless facilities, including facilities commonly
24 referred to as small cells and distributed antenna systems, are
25 deployed most effectively in right-of-way;

26 e. To meet the key objectives of federal law and P.L. , c.
27 (C.) (pending before the Legislature as this bill), wireless
28 providers need to have access to the right-of-way and the ability to
29 attach to infrastructure in the right-of-way to densify wireless
30 networks and to provide next-generation wireless services;

31 f. Rates and fees for the permitting and deployment of small
32 wireless facilities in right-of-way and on authority infrastructure,
33 including utility poles, throughout the State, consistent with federal
34 law, is reasonable and will encourage the development of robust
35 next-generation wireless and broadband networks for the benefit of
36 residents throughout the State; and

37 g. The procedures, rates, and fees established in P.L. , c.
38 (C.) (pending before the Legislature as this bill) should be
39 consistent with federal law and are fair, reasonable, and further the
40 State's interest in facilitating and supporting a robust, reliable, and
41 technologically-advanced wireless and broadband network and
42 reflect a balancing of the interests of the wireless providers
43 deploying new small wireless facilities and the interests of
44 authorities in recovering the cost of managing access to the right-of-
45 way.

46

47 2. As used in P.L. , c. (C.) (pending before the
48 Legislature as this bill):

1 "Antenna" means an apparatus designed for the purpose of
2 emitting radio frequency, to be operated or operating from a fixed
3 location pursuant to Federal Communications Commission
4 authorization, for the provision of personal wireless service and any
5 commingled information services. "Antenna" shall not include an
6 unintentional radiator, mobile station, or device authorized pursuant
7 to 47 C.F.R. Part 15.

8 "Antenna equipment" means equipment, switches, wiring,
9 cabling, power sources, shelters, or cabinets associated with an
10 antenna, located at the same fixed location as the antenna, and,
11 when collocated on a structure, is mounted or installed at the same
12 time as the antenna.

13 "Antenna facility" means an antenna and associated antenna
14 equipment.

15 "Applicable codes" means uniform building, fire, electrical,
16 plumbing, or mechanical codes adopted by the Commissioner of the
17 Department of Community Affairs pursuant to P.L.1975, c.217
18 (C.52:27D-119 et seq.) and are consistent with P.L. , c.
19 (C.) (pending before the Legislature as this bill).

20 "Applicant" means any person who submits an application and is
21 a wireless provider.

22 "Application" means a request submitted by an applicant to an
23 authority for a permit to: collocate a small wireless facility; install,
24 modify, or replace a pole on which a small wireless facility will be
25 collocated, mounted, or installed; mount or install a small wireless
26 facility on a new or replacement pole; or install associated antenna
27 equipment adjacent to a structure on which a small wireless facility
28 is or will be collocated, mounted, or installed.

29 "Authority" means a unit of local government, and any board,
30 commission, committee, authority, agency, office, officer, or
31 employee thereof, which has jurisdiction and control over the use of
32 a public right-of-way for the placement of a wireless facility within
33 the public right-of-way or has zoning or land use control for the
34 placement of a wireless facility not within a public right-of-way.
35 "Authority" shall not mean a State court having jurisdiction over an
36 authority.

37 "Authority pole" means a pole or utility pole owned or operated
38 by an authority in a public right-of-way.

39 "Collocate" or "collocation" means: mounting or installing an
40 antenna facility on a pre-existing structure; or modifying a structure
41 for the purpose of mounting or installing an antenna facility on that
42 structure.

43 "Communications facility" means the equipment and network
44 components that provide communications services, including wires,
45 cables, and associated facilities used by: a cable operator, as
46 defined in 47 U.S.C. s.522; a telecommunications carrier, as defined
47 in 47 U.S.C. s.153; a provider of an information service, as defined

A1116 MURPHY, GREENWALD

1 in 47 U.S.C. s.153; or a wireless service provider, as defined
2 pursuant to this section.

3 "Communications service" means: cable service, as defined
4 pursuant to 47 U.S.C. s.522, as amended; information service, as
5 defined pursuant to 47 U.S.C. s.153, as amended;
6 telecommunications service, as defined in 47 U.S.C. s.153, as
7 amended; mobile service, as defined pursuant to 47 U.S.C. s.153, as
8 amended; or wireless service other than mobile service.

9 "Communications service provider" means: a cable operator, as
10 defined pursuant to 47 U.S.C. s.522, as amended; a provider of
11 information service, as defined pursuant to 24 of 47 U.S.C. s.153,
12 as amended; a telecommunications carrier, as defined pursuant to 47
13 U.S.C. s.153, as amended; or a wireless service provider as defined
14 pursuant to this section.

15 "Decorative pole" means an authority pole that is specially
16 designed and placed for aesthetic purposes and on which no
17 appurtenances or attachments, other than a small wireless facility,
18 lighting, specially designed informational or directional signage, or
19 temporary holiday or special event attachments, have been placed or
20 are permitted to be placed according to non-discriminatory
21 authority rules or codes.

22 "Facility" means an antenna facility or a structure that is used for
23 the provision of personal wireless service, whether the personal
24 wireless service is provided on a stand-alone basis or comingled
25 with other wireless communications services.

26 "FCC" means the Federal Communications Commission of the
27 United States.

28 "Fee" means a one-time, nonrecurring charge.

29 "Historic district" or "historic landmark" means a building,
30 property, or site, or group of buildings, properties, or sites that are
31 either:

32 a. listed on the National Register of Historic Places or formally
33 determined eligible for listing by the keeper of the National
34 Register of Historic Places, the individual who has been delegated
35 the authority by the federal agency to list properties and determine
36 their eligibility for the National Register of Historic Places,
37 pursuant to 47 C.F.R. Part 1, Appendix C; or

38 b. Listed on the New Jersey Register of Historic Places.

39 "Law" means a federal or State statute, common law, code, rule,
40 regulation, order, or local ordinance, or resolution.

41 "Make-ready work" means the process of ensuring that an
42 authority pole is in suitable condition to receive a small wireless
43 facility and associated antenna equipment.

44 "Micro wireless facility" means an antenna facility that is not
45 larger in dimension than 24 inches in length, 15 inches in width,
46 and 12 inches in height, and that has an exterior antenna, if any, no
47 longer than 11 inches.

1 "Permit" means authorization, written or otherwise, required by
2 an authority to perform an action or initiate, continue, or complete a
3 project for the deployment of antenna facilities at a specified
4 location in a right-of-way.

5 "Person" means an individual, corporation, limited liability
6 company, partnership, association, trust, or other entity or
7 organization, including an authority.

8 "Personal wireless service" means "commercial mobile service,"
9 "unlicensed wireless services," and "common carrier wireless
10 exchange access services," as those terms are defined pursuant to 47
11 U.S.C. s.332, and "commercial mobile data service," as defined
12 pursuant to 47 U.S.C. s.1401.

13 "Pole" means a pole in the right-of-way that is or may be used in
14 whole or in part by or for wireline communications, electric
15 distribution, lighting, traffic control, signage, or a similar function,
16 or for the collocation of small wireless facilities. "Pole" shall not
17 mean a: tower, either guyed or self-supporting, built for the sole or
18 primary purpose of supporting wireless equipment other than a
19 small wireless facility; building; billboard; or electric transmission
20 structure.

21 "Public utility" shall have the same meaning as provided in
22 R.S.48:2-13.

23 "Rate" means a recurring charge.

24 "Right-of-way" means the area on, below, or above a public
25 roadway, highway, street, public sidewalk, alley, or utility easement
26 dedicated for compatible use, but shall not include a federal
27 interstate highway.

28 "Small wireless facility" means a facility that meets each of the
29 following conditions: the facility is mounted on a structure 50 feet
30 or less in height, including the antenna or is mounted on a structure
31 no more than 10 percent taller than other adjacent structures or does
32 not extend existing structures on which they are located to a height
33 of more than 50 feet or by more than 10 percent, whichever is
34 greater; each antenna associated with the deployment, excluding
35 associated antenna equipment, is no more than three cubic feet in
36 volume; all other wireless equipment associated with the structure,
37 including wireless equipment associated with the antenna and any
38 pre-existing associated equipment on the structure, is no more than
39 28 cubic feet in volume; the facility does not require antenna
40 structure registration under 47 C.F.R. Part 17; the facility is not
41 located on tribal lands, as defined pursuant to 36 C.F.R. s.800.16;
42 and the facility does not result in human exposure to radio
43 frequency in excess of the applicable safety standards specified
44 pursuant 47 C.F.R. s.1.1307.

45 "Structure" means a pole, tower, base station, as defined
46 pursuant 47 C.F.R. s.1.6100, or other building, whether or not it has
47 an existing antenna facility, which is used or is to be used for the
48 provision of personal wireless service.

1 "Technically feasible" means that, by virtue of engineering or
2 spectrum usage, the proposed placement for a small wireless
3 facility, or its design, concealment measures, or site location can be
4 implemented without a reduction in the functionality of the small
5 wireless facility.

6 "Tower" shall have the same meaning as defined pursuant to 47
7 C.F.R. 1.6100.

8 "Wireless infrastructure provider" means any person, including a
9 person authorized to provide telecommunications service in the
10 State, that builds or installs facilities for the provision of wireless
11 service, but that is not a wireless service provider.

12 "Wireless provider" means a wireless infrastructure provider or a
13 wireless service provider.

14 "Wireless service" means any services provided to the general
15 public and made available on a non-discriminatory basis using
16 licensed or unlicensed spectrum, whether at a fixed location or
17 mobile, provided using wireless facilities.

18 "Wireless service provider" means a person who provides
19 wireless services.

20 "Wireline backhaul facility" means an above-ground or
21 underground wireline facility used to transport communications
22 data or other electric communications from an antenna facility to a
23 communications network.

24
25 3. a. An authority may not enter into an exclusive
26 arrangement with any person or entity for the use of the right-of-
27 way for:

28 (1) collocation of a small wireless facility;

29 (2) the mounting or installation of a small wireless facility on
30 new or replacement poles;

31 (3) the installation of associated antenna equipment adjacent to
32 a structure on which a small wireless facility is or will be
33 collocated, mounted, or installed; or

34 (4) the installation, operation, marketing, modification,
35 maintenance, or replacement of associated poles.

36 b. Subject to the provisions of this section, a wireless provider
37 shall have the right, as a permitted use not subject to zoning review
38 or approval, and without the need for municipal consent, pursuant
39 to R.S.48:3-19, to:

40 (1) collocate small wireless facilities;

41 (2) mount or install small wireless facilities on new or
42 replacement poles;

43 (3) install associated antenna equipment adjacent to a structure
44 on which a small wireless facility is or will be collocated, mounted,
45 or installed; or

46 (4) install, modify, or replace its own poles, or, with the
47 permission of the owner, a third party's poles, associated with a

1 small wireless facility, along, across, upon, and under the right-of-
2 way.

3 Small wireless facilities, antenna equipment, and poles
4 collocated or installed pursuant to this section shall be installed and
5 maintained as not to obstruct or hinder the usual travel or public
6 safety in a right-of-way or obstruct the legal use of a right-of-way
7 by a public utility.

8
9 4. a. A new, replaced, or modified pole installed in a right-
10 of-way after the effective date of P.L. , c. (C.) (pending
11 before the Legislature as this bill) for the purpose of collocating,
12 mounting, or installing a small wireless facility shall not exceed 50
13 feet in height above ground level or ten percent taller than the
14 tallest existing pole in place as of the effective date of P.L. , c.
15 (C.) (pending before the Legislature as this bill) in the same
16 right-of-way within 500 feet of the new, replaced, or modified pole,
17 whichever is greater.

18 b. A new small wireless facility installed in a right-of-way after
19 the effective date of P.L. , c. (C.) (pending before the
20 Legislature as this bill) may not extend more than 10 percent above
21 the existing structure on which they are located or 50 feet above
22 ground level, whichever is greater.

23 c. A wireless provider shall have the right to collocate, mount,
24 or install a small wireless facility and install, maintain, modify, and
25 replace a pole that exceeds the height limits pursuant to subsections
26 a. and b. of this section along, across, upon, and under the right-of-
27 way, subject to section 3 of P.L. , c. (C.) (pending before
28 the Legislature as this bill) and applicable zoning regulations.

29
30 5. a. An authority may adopt aesthetics requirements
31 governing the deployment of small wireless facilities and associated
32 antenna equipment and poles in a right-of-way, subject to the
33 following:

34 (1) the aesthetic requirements shall be reasonable, in that they
35 are technically feasible and reasonably directed at avoiding or
36 remedying unsightly or out-of-character deployments, are no more
37 burdensome than those applied to other types of infrastructure
38 deployments, and are objective and published in advance;

39 (2) any design or concealment measures are not considered a
40 part of the small wireless facility for purposes of the size
41 parameters in the definition of small wireless facility;

42 (3) an authority may deny an application for not complying with
43 an aesthetic requirement only if the authority finds that the denial
44 does not prohibit or have the effect of prohibiting the provision of
45 wireless service;

46 b. Aesthetic requirements applicable to deployment of small
47 wireless facilities on decorative poles and in historic districts shall,

1 in addition to the requirements of subsection a. of this section,
2 comply with the following:

3 (1) a wireless provider shall be permitted to collocate small
4 wireless facilities on, modify, or replace decorative poles when
5 necessary to deploy a small wireless facility. An authority may
6 require the collocation or decorative pole replacement to reasonably
7 conform to the design aesthetics of the original decorative pole or
8 poles, provided the aesthetic requirements are technically feasible.

9 (2) an authority may adopt aesthetic requirements applicable in
10 historic districts that comply with this section.

11

12 6. a. A wireless provider shall comply with undergrounding
13 requirements that are consistent with subsection a. of section 5 of
14 P.L. , c. (C.) (pending before the Legislature as this bill)
15 when:

16 (1) the authority has required all electric and
17 telecommunications lines to be placed underground by a date
18 certain that is three months prior to the submission of the
19 application;

20 (2) a pole the authority allows to remain shall be made available
21 to wireless providers for the collocation of small wireless facilities,
22 and a pole may be modified or replaced by a wireless provider to
23 accommodate the collocation, mounting, or installation of small
24 wireless facilities, in compliance with P.L. , c. (C.)
25 (pending before the Legislature as this bill); and

26 (3) a wireless provider may install a new pole in the designated
27 area that otherwise complies with P.L. , c. (C.) (pending
28 before the Legislature as this bill) when the wireless provider is not
29 able to provide wireless service by collocating on a remaining
30 structure.

31 b. For small wireless facilities installed before an authority
32 adopts requirements that electric and telecommunications lines be
33 placed underground, an authority adopting these requirements shall
34 permit:

35 (1) a wireless provider to maintain the small wireless facilities
36 in place on any pole not required to be removed, subject to any
37 applicable pole attachment agreement with the pole owner; or

38 (2) a wireless provider to replace an existing pole within 50 feet
39 of the prior location.

40

41 7. The authority may require a wireless provider to repair all
42 damage to a right-of-way caused by the activities of the wireless
43 provider and to return the right-of-way to its functional equivalence
44 before the damage, pursuant to the competitively neutral,
45 reasonable requirements and specifications of the authority. If the
46 wireless provider fails to make the repairs required by the authority
47 within a reasonable time after written notice, the authority may

1 make those repairs and charge the applicable party the reasonable,
2 documented cost of the repairs.

3

4 8. A wireless provider shall not be required to replace or
5 upgrade an existing pole except for reasons of structural necessity
6 or compliance with applicable codes. A wireless provider may, with
7 the permission of the pole owner, replace or modify the existing
8 pole, but any replacement or modification shall be consistent with
9 the design aesthetics of the pole being modified or replaced.

10

11 9. A wireless provider is required to notify the authority at
12 least 30 days before the abandonment of a small wireless facility.
13 Following receipt of the notice, the authority shall direct the
14 wireless provider to remove all or any portion of the small wireless
15 facility and associated antenna equipment that the authority
16 determines would be in the best interest of public safety. If the
17 wireless provider fails to remove the abandoned small wireless
18 facility within 90 days after the notice, the authority may undertake
19 to remove the small wireless facility and recover the actual and
20 reasonable expenses of the removal from the wireless provider, its
21 successors, or assigns.

22

23 10. Except as provided in P.L. , c. (C.) (pending before
24 the Legislature as this bill), an authority may not prohibit, regulate,
25 or charge for the collocation, mounting, or installation of a small
26 wireless facility on a new, modified, or replacement pole, or the
27 installation, modification, or replacement of an associated pole or
28 antenna equipment that may be permitted in P.L. , c. (C.)
29 (pending before the Legislature as this bill).

30

31 11. a. An authority may require an applicant to obtain a permit
32 for:

33 (1) the collocation of a small wireless facility not subject to the
34 provisions of P.L.2011, c.199 (C.40:55D-46.2);

35 (2) mounting or installation of a small wireless facility on a
36 new, modified, or replacement pole; or

37 (3) the installation, modification, or replacement of an
38 associated pole or antenna equipment as provided in section 3 of
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 Each permit issued pursuant to this section shall be of general
41 applicability and shall not apply exclusively to a small wireless
42 facility. Only one application shall be required for all activities
43 associated with a permit issued pursuant to this section.

44 b. An authority shall receive and process applications subject
45 to the following requirements:

46 (1) small wireless facilities shall be classified as permitted uses
47 and not subject to zoning review or approval if they are located in
48 the right-of-way in any zone;

- 1 (2) an authority may not directly or indirectly require an
2 applicant to perform services or provide goods unrelated to the
3 permit, such as in-kind contributions to the authority including, but
4 not limited to, reserving fiber, conduit, or pole space for the
5 authority;
- 6 (3) an applicant shall not be required to provide additional
7 information to obtain a permit than communications service
8 providers that are not wireless providers, provided that an applicant
9 may be required to include construction and engineering drawings
10 and information demonstrating compliance with the criteria in
11 paragraph (9) of this subsection;
- 12 (4) an authority may not require:
- 13 (a) the collocation, mounting, or installation of a small wireless
14 facility on any specific pole or category of poles or require multiple
15 antenna facilities on a single pole;
- 16 (b) the use of specific pole types or configurations when
17 installing a new or replacement pole; or
- 18 (c) the underground placement of a small wireless facility or
19 antenna equipment that is or are designated in an application to be
20 pole-mounted or ground-mounted;
- 21 (5) an authority may not limit the collocation of a small wireless
22 facility or the mounting or installation of a small wireless facility on
23 a new, modified, or replacement pole by minimum horizontal
24 separation distance requirements from an existing small wireless
25 facility or structure;
- 26 (6) the authority may require an applicant to include an
27 attestation that the small wireless facility will be operational for use
28 by a wireless service provider within one year after the permit
29 issuance date, unless the authority and the applicant agree to extend
30 this period or a delay is caused by lack of commercial power,
31 communications transport facilities to the site, or any other factors
32 outside of the applicant's control;
- 33 (7) within ten days of receiving an application, an authority
34 shall determine and notify the applicant in writing whether the
35 application is complete. If an application is incomplete, an authority
36 shall specifically identify the missing information in writing. The
37 processing deadline provided in paragraph (8) of this subsection
38 shall restart on the date the applicant provides the missing
39 information to complete the application;
- 40 (8) an authority shall process an application in a non-
41 discriminatory manner and the application shall be deemed
42 approved if the authority fails to approve or deny the application
43 within:
- 44 (a) 60 days of receipt of an application for a permit involving
45 collocation of a small wireless facility using an existing structure;
46 and
- 47 (b) 90 days for an application for a permit involving deployment
48 of a small wireless facility using a new or replacement pole.

1 The processing deadline may be tolled by agreement of the
2 applicant and the authority;

3 (9) an authority may deny the application for collocation,
4 mounting, or installation of a small wireless facility on a new or
5 replacement pole, or the installation or replacement of an associated
6 pole or antenna equipment that meets the requirements in section 4
7 of P.L. , c. (C.) (pending before the Legislature as this
8 bill), if the authority finds that the proposed work:

9 (a) materially interferes with the safe operation of traffic control
10 equipment;

11 (b) materially interferes with sight lines or clear zones for
12 transportation or pedestrians;

13 (c) materially interferes with compliance with the federal
14 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et
15 seq.), or similar federal or State standards regarding pedestrian
16 access or movement;

17 (d) fails to comply with reasonable and non-discriminatory
18 horizontal spacing requirements of general application adopted by
19 ordinance that concern the location of ground-mounted antenna
20 equipment and new poles and which shall not prevent a wireless
21 provider from serving any location;

22 (e) designates the location of a new pole for the purpose of
23 mounting or installing a small wireless facility within seven feet in
24 any direction of an electrical conductor, unless the wireless provider
25 obtains the written consent of the public utility that owns or
26 manages the electrical conductor;

27 (f) fails to comply with applicable codes; or

28 (g) fails to comply with sections 4, 5, or 6 of P.L. , c.
29 (C.) (pending before the Legislature as this bill);

30 (10) the authority shall document the basis for an application
31 denial, including the specific code, rule, or statutory provisions on
32 which the denial was based, and send the documentation to the
33 applicant on or before the day the authority denies an application.
34 The applicant may cure the deficiencies identified by the authority
35 and resubmit the application within 30 days of the denial without
36 paying an additional application fee. The authority shall approve or
37 deny the revised application within 30 days of resubmission and
38 limit its review to the deficiencies cited in the denial;

39 (11) an applicant seeking to collocate, mount, or install more
40 than one small wireless facility within the jurisdiction of a single
41 authority may file a consolidated application for small wireless
42 facilities and associated poles and antenna equipment and receive a
43 single permit for the collocation, mounting, or installation of
44 multiple small wireless facilities and the placement of associated
45 poles and antenna equipment; provided, however, the denial of one
46 or more small wireless facilities in a consolidated application shall
47 not delay processing of any other small wireless facilities, poles, or
48 antenna equipment in the same consolidated application. A

1 consolidated application shall be collectively processed in
2 accordance with the procedures in this section. A consolidated
3 application that includes a new or replacement pole deployment
4 shall be subject to a 90-day timeframe for approval;

5 (12) installations, mountings, modifications, replacements, and
6 collocations for which a permit is granted pursuant to this section
7 shall be completed by the applicant within one year after the permit
8 issuance date unless the authority and the applicant agree to extend
9 this period, or a delay is caused by the lack of commercial power or
10 communications facilities at the site.

11 (13) approval of an application authorizes the applicant to:

12 (a) undertake the installation, modification, replacement or
13 collocation of the approved small wireless facility and any
14 associated pole and antenna equipment; and

15 (b) subject to applicable relocation requirements and the
16 applicant's right to terminate at any time, operate and maintain the
17 small wireless facility and any associated pole and antenna
18 equipment covered by the permit for a period of not less than 10
19 years, which must be renewed for equivalent durations so long as
20 the facilities comply with the criteria set forth in paragraph (9) of
21 this subsection;

22 (13) an authority may not institute, either expressly or de facto,
23 a moratorium on:

24 (a) filing, receiving, or processing applications; or

25 (b) issuing permits or other required approvals, if any, for the
26 collocation, mounting, or installing of a small wireless facility or
27 the installation, modification, or replacement of associated antenna
28 equipment or poles.

29 c. An authority shall not require an application for:

30 (1) routine maintenance;

31 (2) the replacement of a small wireless facility or antenna
32 equipment with a small wireless facility or antenna equipment that
33 is substantially similar or the same size or smaller as the
34 replacement; or

35 (3) the installation, placement, maintenance, operation, or
36 replacement of a micro wireless facility that is suspended on cables
37 that are strung between existing poles, in compliance with the
38 applicable codes.

39 An authority may require a permit for work pursuant to
40 subsection a. of this section that requires excavation or closure of
41 sidewalks or vehicular lanes within the right-of-way and the permit
42 shall be issued to the applicant on a non-discriminatory basis upon
43 terms and conditions applied to any other person's activities in the
44 right-of-way that require excavation, closing of sidewalks, or
45 vehicular lanes.

46

47 12. A person owning, managing, or controlling an authority pole
48 in the right-of-way may not enter into an exclusive arrangement

1 with any person for the right to attach to the pole. A person who
2 purchases or otherwise acquires an authority pole is subject to the
3 requirements of P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5
6 13. An authority shall allow the collocation of a small wireless
7 facility and the installation of associated antenna equipment on an
8 existing authority pole, the mounting or installation of a small
9 wireless facility and the installation of associated antenna
10 equipment on a replacement authority poles on non-discriminatory
11 terms and conditions using the standards in section 5 of P.L. , c.
12 (C.) (pending before the Legislature as this bill) and the
13 application requirements in section 11 of P.L. , c. (C.)
14 (pending before the Legislature as this bill).

15
16 14. a. The rates, fees, and terms and conditions for any make-
17 ready work to collocate, mount, or install a small wireless facility
18 on an authority pole and to install associated antenna equipment
19 shall be non-discriminatory, competitively neutral, commercially
20 reasonable, and shall comply with P.L. , c. (C.) (pending
21 before the Legislature as this bill).

22 b. The authority shall provide a good faith estimate for any
23 make-ready work necessary to enable the authority pole to support
24 the requested collocation, mounting, or installation by a wireless
25 provider, including authority pole replacement if necessary, within
26 60 days after receipt of a complete application. Make-ready work
27 including any authority pole replacement shall be completed within
28 60 days of written acceptance of the good faith estimate by the
29 applicant. An authority may require replacement of the authority
30 pole only if it demonstrates that the collocation would make the
31 authority pole structurally unsound.

32 c. The person owning, managing, or controlling the authority
33 pole shall not require more make-ready work than required to meet
34 applicable codes or industry standards. Fees for make-ready work
35 shall not include costs related to pre-existing or prior damage or
36 noncompliance. Fees for make-ready work, including any pole
37 replacement, shall not exceed either actual costs or the amount
38 charged to other communications service providers for similar work
39 and shall not include any revenue or contingency-based consultant's
40 fees or expenses.

41
42 15. a. All rates and fees established pursuant to subsection b. of
43 this section shall be a reasonable approximation of the authority's
44 reasonable costs, and shall be applied by the authority in a non-
45 discriminatory manner. An authority may not require a wireless
46 provider to pay any rates, fees, or compensation to the authority or
47 other person other than what is expressly authorized by P.L. , c.
48 (C.) (pending before the Legislature as this bill) for the right to

1 use or occupy the right-of-way for the collocation, mounting, or
2 installation of a small wireless facility on a pole in the right-of-way,
3 or for the installation, maintenance, modification, or replacement of
4 associated antenna equipment or a pole in the right-of-way.

5 b. Application fees for any permit issued pursuant to P.L. , c.
6 (C.) (pending before the Legislature as this bill) shall not
7 exceed:

8 (1) \$500 for a single up-front application for collocation of a
9 small wireless facility that includes up to five small wireless
10 facilities, with an additional \$100 for each small wireless facility
11 included in the same application thereafter;

12 (2) \$250 for the modification or replacement of an existing pole,
13 together with the mounting or installation of an associated small
14 wireless facility in the right-of-way;

15 (3) \$1,000 for the installation of a new pole, together with the
16 mounting or installation of an associated small wireless facility in
17 the right of way; and

18 (4) subject to subsection a. of this section, if an authority elects
19 to charge for use of the right-of-way or the collocation of a small
20 wireless facility on an authority pole in the right-of-way, the rate
21 shall not exceed \$20 per small wireless facility per year for right-of-
22 way access and \$100 per authority pole per year for a small wireless
23 facility collocated, mounted, or installed on an authority pole. The
24 rates established pursuant to this paragraph, together with a one-
25 time application fee, shall be the total compensation that the
26 wireless provider is required to pay the authority for the deployment
27 of each small wireless facility in the right-of-way and any
28 associated antenna equipment or pole.

29

30 16. a. An authority shall not have or exercise any jurisdiction
31 or authority over the design, engineering, construction, installation,
32 or operation of a small wireless facility located in an interior
33 structure or upon the site of a campus, stadium, or athletic facility
34 not owned or controlled by the authority, other than to require
35 compliance with applicable codes.

36 b. Except as it relates to small wireless facilities subject to the
37 permit and fee requirements established pursuant to P.L. , c.
38 (C.) (pending before the Legislature as this bill) or otherwise
39 specifically authorized by State or federal law, an authority shall
40 not adopt or enforce any regulations or requirements on the
41 placement or operation of communications facilities in the right-of-
42 way by a communications service provider authorized by federal,
43 State, or local law to operate in a right-of-way, regulate any
44 communications services, or impose or collect any tax, fee, rate, or
45 charge for the provision of additional communications service over
46 the communications service provider's communications facilities in
47 a right-of-way.

1 17. a. An authority may adopt an ordinance that makes
2 available to wireless providers rates, fees, and other terms and
3 conditions that comply with P.L. , c. (C.) (pending before
4 the Legislature as this bill). Pursuant to the provisions of this
5 section, in the absence of an ordinance that fully complies with
6 P.L. , c. (C.) (pending before the Legislature as this bill)
7 and until a compliant ordinance is adopted, a wireless provider may
8 install and operate a small wireless facility and any associated poles
9 and antenna equipment under the requirements of P.L. , c.
10 (C.) (pending before the Legislature as this bill). An authority
11 may not require a wireless provider to enter into an agreement to
12 implement P.L. , c. (C.) (pending before the Legislature as
13 this bill), but agreements are permissible if voluntary and non-
14 discriminatory.

15 b. An ordinance or agreement that does not fully comply with
16 P.L. , c. (C.) (pending before the Legislature as this bill)
17 shall apply only to small wireless facilities and any associated poles
18 and antenna equipment that were operational before the effective
19 date of P.L. , c. (C.) (pending before the Legislature as this
20 bill) and shall be deemed invalid and unenforceable beginning on
21 the 181st day after the effective date of P.L. , c. (C.)
22 (pending before the Legislature as this bill) unless amended to fully
23 comply with P.L. , c. (C.) (pending before the Legislature
24 as this bill). If an ordinance or agreement is invalid pursuant to this
25 subsection, small wireless facilities and associated poles and
26 antenna equipment that became operational before the effective date
27 of P.L. , c. (C.) (pending before the Legislature as this
28 bill), pursuant to the ordinance or agreement, may remain installed
29 and be operated under the requirements of P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31 c. An agreement or ordinance that applies to small wireless
32 facilities and associated poles and antenna equipment that becomes
33 operational on or after the effective date of P.L. , c. (C.)
34 (pending before the Legislature as this bill) is invalid and
35 unenforceable unless it fully complies with P.L. , c. (C.)
36 (pending before the Legislature as this bill). In the absence of an
37 ordinance or agreement that fully complies with P.L. , c.
38 (C.) (pending before the Legislature as this bill), a wireless
39 provider may install and operate a small wireless facility and
40 associated poles and antenna equipment in a right-of-way pursuant
41 to the requirements of P.L. , c. (C.) (pending before the
42 Legislature as this bill).

43
44 18. a. An authority may adopt reasonable indemnification,
45 insurance, and bonding requirements related to a small wireless
46 facility and associated pole permits and antenna equipment pursuant
47 to the requirements of this section and section 6 of P.L. , c.
48 (C.) (pending before the Legislature as this bill).

1 b. An authority shall not require a wireless provider to
2 indemnify and hold the authority and its officers and employees
3 harmless against any claims, lawsuits, judgments, costs, liens,
4 losses, expenses, or fees, except when a court of competent
5 jurisdiction has found that the negligence of the wireless provider
6 while installing, repairing, or maintaining a small wireless facility
7 or associated poles and antenna equipment caused the harm that
8 created the claims, lawsuits, judgments, costs, liens, losses,
9 expenses, or fees.

10 c. An authority may require a wireless provider to have in
11 effect insurance coverage consistent with this section, so long as the
12 authority imposes similar requirements on other right-of-way users
13 and the requirements are reasonable and non-discriminatory.

14 (1) An authority may not require a wireless provider to obtain
15 insurance naming the authority or its officers and employees an
16 additional insured.

17 (2) An authority may require a wireless provider to furnish
18 proof of insurance, if required, prior to the effective date of any
19 permit issued for a small wireless facility work.

20 d. An authority may adopt bonding requirements for small
21 wireless facilities if the authority imposes similar requirements in
22 connection with permits issued for other right-of-way users.

23 (1) The purpose of the bonds shall be to:

24 (a) provide for the removal of abandoned or improperly
25 maintained small wireless facilities, including those that an
26 authority determines need to be removed to protect public health,
27 safety, or welfare;

28 (b) restoration of the right-of-way in connection with removals
29 as provided for in P.L. , c. (C.) (pending before the
30 Legislature as this bill); or

31 (c) recoup rates or fees that have not been paid by a wireless
32 provider in over 12 months, so long as the wireless provider has
33 received reasonable notice from the authority of any non-
34 compliance pursuant to P.L. , c. (C.) (pending before the
35 Legislature as this bill) and given a reasonable opportunity to cure.

36 (2) Bonding requirements may not exceed \$200 per small
37 wireless facility. For wireless providers with multiple small
38 wireless facilities within the jurisdiction of a single authority, the
39 total bond amount across all facilities may not exceed \$10,000,
40 which may be combined into one bond instrument.

41

42 19. a. Nothing in P.L. , c. (C.) (pending before the
43 Legislature as this bill) shall be construed to allow any person or
44 entity to provide services regulated pursuant to 47 U.S.C. s.521
45 through 47 U.S.C s.573 without compliance with all laws applicable
46 to those service providers, nor shall it be interpreted to impose any
47 new requirements on cable providers for the provision of cable
48 service in this State.

1 b. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall be construed to allow any entity to
3 provide communications services without compliance with all laws
4 applicable to communications service providers, nor shall it be
5 construed to authorize the collocation, installation, placement,
6 maintenance, or operation of any communications facility,
7 including a wireline backhaul facility, in the right-of-way, other
8 than a small wireless facility.

9 c. Nothing in P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall authorize the State or any political
11 subdivision thereof, including an authority, to require small wireless
12 facility deployment or to regulate wireless service.

13 d. Nothing in P.L. , c. (C.) (pending before the
14 Legislature as this bill) shall apply to poles owned by an investor-
15 owned public utility, except as it concerns a wireless provider's
16 access to a right-of-way and permits for the collocation, mounting,
17 or installation of a small wireless facility on investor-owned public
18 utility poles pursuant to a pole attachment agreement between the
19 wireless provider and the investor-owned public utility.
20

21 20. A court of competent jurisdiction shall have jurisdiction to
22 determine disputes arising pursuant to P.L. , c. (C.)
23 (pending before the Legislature as this bill). Pending resolution of a
24 dispute concerning rates for collocation, mounting, and installation
25 of small wireless facilities on authority poles in the right-of-way
26 and the installation of associated antenna equipment, the authority
27 owning or controlling the pole shall allow the collocating person or
28 entity to collocate at annual rates established pursuant to section 15
29 of P.L. , c. (C.) (pending before the Legislature as this
30 bill), with rates to be reconciled upon final resolution of the dispute.
31 A dispute shall be pursued in accordance with accelerated docket or
32 complaint procedures, where available.
33

34 21. This act shall take effect on the first day of the seventh
35 month next following enactment.
36
37

38 STATEMENT
39

40 This bill provides for the uniform regulation of small wireless
41 facility deployment in this State by local government units
42 (authorities). The bill prohibits an authority from regulating small
43 wireless facilities in a manner that is inconsistent with the bill. An
44 authority may not enter into an exclusive arrangement with any
45 person or entity for the use of the right-of-way for:

- 46 1) the collocation of a small wireless facility;
- 47 2) the mounting or installation of a small wireless facility on
48 new or replacement poles;

1 3) the installation of associated antenna equipment adjacent to
2 a structure on which a small wireless facility is or will be
3 collocated, mounted, or installed; or

4 4) the installation, operation, marketing, modification,
5 maintenance, or replacement of associated poles.

6 The bill provides that a wireless provider, as defined in the bill,
7 is to have the right, as a permitted use not subject to zoning review
8 or approval, and without the need for municipal consent to:

9 1) collocate small wireless facilities;

10 2) mount or install small wireless facilities on new or
11 replacement poles;

12 3) install associated antenna equipment adjacent to a structure
13 on which a small wireless facility is or will be collocated, mounted,
14 or installed; or

15 4) install, modify, or replace its own poles, or, with the
16 permission of the owner, a third party's poles, associated with a
17 small wireless facility, along, across, upon, and under the right-of-
18 way.

19 The bill provides that each new, replaced, or modified pole
20 installed in the right-of-way for the purpose of collocating,
21 mounting, or installing a small wireless facility is to follow certain
22 height restrictions pursuant to the bill. An authority may adopt
23 aesthetics requirements governing the deployment of small wireless
24 facilities and associated antenna equipment and poles in the right-
25 of-way, subject to certain requirements pursuant to the bill. A
26 wireless provider is to comply with undergrounding requirements
27 that are consistent with the bill.

28 The bill provides that an authority may require a wireless
29 provider to repair all damage to the right-of-way caused by the
30 activities of the wireless provider and to return the right-of-way to
31 its functional equivalence before the damage, pursuant to the
32 competitively neutral, reasonable requirements and specifications of
33 the authority. If the wireless provider fails to make the repairs
34 required by the authority within a reasonable time after written
35 notice, the authority may make those repairs and charge the
36 applicable party the reasonable, documented cost of the repairs.

37 Under the bill, a wireless provider shall not be required to
38 replace or upgrade an existing pole except for reasons of structural
39 necessity or compliance with applicable building codes. A wireless
40 provider may, with the permission of the pole owner, replace or
41 modify the existing pole, but any replacement or modification shall
42 be consistent with the design aesthetics of the pole being modified
43 or replaced. The bill requires wireless provider to notify an
44 authority at least 30 days before the abandonment of a small
45 wireless facility located within the authority's jurisdiction.
46 Following receipt of the notice, the authority is to direct the
47 wireless provider to remove all or any portion of the small wireless
48 facility and associated antenna equipment that the authority

1 determines would be in the best interest of public safety. If the
2 wireless provider fails to remove the abandoned small wireless
3 facility within 90 days after the notice, the authority may undertake
4 to remove the small wireless facility and recover the actual and
5 reasonable expenses of the removal from the wireless provider, its
6 successors, or assigns.

7 The bill allows an authority to require an applicant to obtain a
8 permit for:

- 9 1) the collocation of a small wireless facility;
- 10 2) mounting or installation of a small wireless facility on a
11 new, modified, or replacement pole; or
- 12 3) the installation, modification, or replacement of associated
13 poles or antenna equipment as provided the bill.

14 Each permit issued pursuant to the bill is to be of general
15 applicability and is not to apply exclusively to a small wireless
16 facility. An authority is to receive and process applications
17 following certain requirements pursuant to the bill.

18 Under the bill, the rates, fees, and terms and conditions for any
19 make-ready work to collocate, mount, or install a small wireless
20 facility on an authority pole and to install associated antenna
21 equipment are to be non-discriminatory, competitively neutral,
22 commercially reasonable, and are to comply with the provisions of
23 the bill. The bill further provides that all rates and fees established
24 pursuant to the bill are to be a reasonable approximation of the
25 authority's reasonable costs, and are to be applied by the authority
26 in a non-discriminatory manner. An authority may not require a
27 wireless provider to pay any rates, fees, or compensation to the
28 authority or other person other than what is expressly authorized by
29 the bill for the right to use or occupy the right-of-way for the
30 collocation, mounting, or installation of a small wireless facility on
31 a pole in the right-of-way, or for the installation, maintenance,
32 modification, or replacement of associated antenna equipment or a
33 pole in the right-of-way.

34 Application fees for any permit issued pursuant to the bill are not
35 to exceed certain amounts pursuant to the bill.

36 The bill provides that an authority is not to have or exercise any
37 jurisdiction or authority over the design, engineering, construction,
38 installation, or operation of a small wireless facility located in an
39 interior structure or upon the site of a campus, stadium, or athletic
40 facility not owned or controlled by the authority, other than to
41 require compliance with applicable building codes. Further, except
42 as it relates to small wireless facilities subject to the permit and fee
43 requirements established pursuant the bill or otherwise specifically
44 authorized by State or federal law, an authority is not to adopt or
45 enforce any regulations or requirements on the placement or
46 operation of communications facilities in the right-of-way by a
47 communications service provider authorized by federal, State, or
48 local law to operate in the right-of-way, regulate any

1 communications services, or impose or collect any tax, fee, rate, or
2 charge for the provision of additional communications service over
3 the communications service provider's communications facilities in
4 the right-of-way.

5 The bill allows for an authority to adopt an ordinance that makes
6 available to wireless providers rates, fees, and other terms and
7 conditions that comply with the bill. An ordinance or agreement
8 that does not fully comply with the bill is to apply only to small
9 wireless facilities and any associated poles and antenna equipment
10 that were operational before the effective date the bill and are to be
11 deemed invalid and unenforceable beginning on the 181st day after
12 the effective date of the bill unless amended to fully comply the
13 bill.

14 The bill provides that an authority may adopt reasonable
15 indemnification, insurance, and bonding requirements related to a
16 small wireless facility and associated pole permits and antenna
17 equipment. An authority is not to require a wireless provider to
18 indemnify and hold the authority and its officers and employees
19 harmless against any claims, lawsuits, judgments, costs, liens,
20 losses, expenses, or fees, except when a court of competent
21 jurisdiction has found that the negligence of the wireless provider
22 while installing, repairing, or maintaining a small wireless facility
23 or associated poles and antenna equipment caused the harm that
24 created the claims, lawsuits, judgments, costs, liens, losses,
25 expenses, or fees.

26 The bill provides that an authority may require a wireless
27 provider to have in effect insurance coverage consistent with the
28 bill. The bill also allows an authority to adopt bonding requirements
29 for small wireless facilities if the authority imposes similar
30 requirements in connection with permits issued for other right-of-
31 way users.

32 The bill provides that a court of competent jurisdiction is to have
33 jurisdiction to determine disputes arising pursuant to the bill. A
34 dispute is to be pursued in accordance with accelerated docket or
35 complaint procedures, where available.