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

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

1. The Legislature finds and declares that:
   a. The deployment of small wireless facilities and other next-generation wireless and broadband network facilities is a matter of federal and statewide concern and interest;
   b. Wireless and broadband products and services are a significant and continually growing part of the State’s economy and encouraging the development of strong and robust wireless and broadband communications networks throughout the State is integral to the State’s economic competitiveness;
   c. Rapid deployment of small wireless facilities will serve important Statewide goals, such as: meeting the growing consumer demand for wireless data; increasing competitive options for communications services available to the State’s residents; promoting the ability of the State’s residents to communicate with their neighbors and with their State and local governments; and promoting public safety;
   d. Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in right-of-way;
   e. To meet the key objectives of federal law and P.L. , c. (pending before the Legislature as this bill), wireless providers need to have access to the right-of-way and the ability to attach to infrastructure in the right-of-way to densify wireless networks and to provide next-generation wireless services;
   f. Rates and fees for the permitting and deployment of small wireless facilities in right-of-way and on authority infrastructure, including utility poles, throughout the State, consistent with federal law, is reasonable and will encourage the development of robust next-generation wireless and broadband networks for the benefit of residents throughout the State; and
   g. The procedures, rates, and fees established in P.L. , c. (pending before the Legislature as this bill) should be consistent with federal law and are fair, reasonable, and further the State’s interest in facilitating and supporting a robust, reliable, and technologically-advanced wireless and broadband network and reflect a balancing of the interests of the wireless providers deploying new small wireless facilities and the interests of authorities in recovering the cost of managing access to the right-of-way.

2. As used in P.L. , c. (pending before the Legislature as this bill):
"Antenna" means an apparatus designed for the purpose of emitting radio frequency, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. “Antenna” shall not include an unintentional radiator, mobile station, or device authorized pursuant to 47 C.F.R. Part 15.

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

“Antenna facility” means an antenna and associated antenna equipment.

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

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

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

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

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

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

“Communications facility” means the equipment and network components that provide communications services, including wires, cables, and associated facilities used by: a cable operator, as defined in 47 U.S.C. s.522; a telecommunications carrier, as defined in 47 U.S.C. s.153; a provider of an information service, as defined
in 47 U.S.C. s.153; or a wireless service provider, as defined pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

"Micro wireless facility" means an antenna facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, no longer than 11 inches.
"Permit" means authorization, written or otherwise, required by an authority to perform an action or initiate, continue, or complete a project for the deployment of antenna facilities at a specified location in a right-of-way.

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

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

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

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

"Rate" means a recurring charge.

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

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

"Structure" means a pole, tower, base station, as defined pursuant 47 C.F.R. §1.6100, or other building, whether or not it has an existing antenna facility, which is used or is to be used for the provision of personal wireless service.
“Technically feasible” means that, by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a reduction in the functionality of the small wireless facility.

“Tower” shall have the same meaning as defined pursuant to 47 C.F.R. 1.6100.

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

"Wireless provider” means a wireless infrastructure provider or a wireless service provider.

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

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

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

3. a. An authority may not enter into an exclusive arrangement with any person or entity for the use of the right-of-way for:
   (1) collocation of a small wireless facility;
   (2) the mounting or installation of a small wireless facility on new or replacement poles;
   (3) the installation of associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
   (4) the installation, operation, marketing, modification, maintenance, or replacement of associated poles.

b. Subject to the provisions of this section, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, and without the need for municipal consent, pursuant to R.S.48:3-19, to:
   (1) collocate small wireless facilities;
   (2) mount or install small wireless facilities on new or replacement poles;
   (3) install associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
   (4) install, modify, or replace its own poles, or, with the permission of the owner, a third party’s poles, associated with a
small wireless facility, along, across, upon, and under the right-of-
way.

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

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

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

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

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

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

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

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

b. Aesthetic requirements applicable to deployment of small
wireless facilities on decorative poles and in historic districts shall,
in addition to the requirements of subsection a. of this section, comply with the following:

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

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

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

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

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

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

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

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

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

7. The authority may require a wireless provider to repair all damage to a right-of-way caused by the activities of the wireless provider and to return the right-of-way to its functional equivalence before the damage, pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may
make those repairs and charge the applicable party the reasonable, documented cost of the repairs.

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

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

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

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

(1) the collocation of a small wireless facility not subject to the provisions of P.L.2011, c.199 (C.40:55D-46.2);
(2) mounting or installation of a small wireless facility on a new, modified, or replacement pole; or
(3) the installation, modification, or replacement of an associated pole or antenna equipment as provided in section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

(1) small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval if they are located in the right-of-way in any zone;
(2) an authority may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority including, but not limited to, reserving fiber, conduit, or pole space for the authority;

(3) an applicant shall not be required to provide additional information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in paragraph (9) of this subsection;

(4) an authority may not require:
   (a) the collocation, mounting, or installation of a small wireless facility on any specific pole or category of poles or require multiple antenna facilities on a single pole;
   (b) the use of specific pole types or configurations when installing a new or replacement pole; or
   (c) the underground placement of a small wireless facility or antenna equipment that is or are designated in an application to be pole-mounted or ground-mounted;

(5) an authority may not limit the collocation of a small wireless facility or the mounting or installation of a small wireless facility on a new, modified, or replacement pole by minimum horizontal separation distance requirements from an existing small wireless facility or structure;

(6) the authority may require an applicant to include an attestation that the small wireless facility will be operational for use by a wireless service provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or a delay is caused by lack of commercial power, communications transport facilities to the site, or any other factors outside of the applicant’s control;

(7) within ten days of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority shall specifically identify the missing information in writing. The processing deadline provided in paragraph (8) of this subsection shall restart on the date the applicant provides the missing information to complete the application;

(8) an authority shall process an application in a non-discriminatory manner and the application shall be deemed approved if the authority fails to approve or deny the application within:
   (a) 60 days of receipt of an application for a permit involving collocation of a small wireless facility using an existing structure; and
   (b) 90 days for an application for a permit involving deployment of a small wireless facility using a new or replacement pole.
The processing deadline may be tolled by agreement of the applicant and the authority; (9) an authority may deny the application for collocation, mounting, or installation of a small wireless facility on a new or replacement pole, or the installation or replacement of an associated pole or antenna equipment that meets the requirements in section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), if the authority finds that the proposed work: (a) materially interferes with the safe operation of traffic control equipment; (b) materially interferes with the safe operation of street signs or clear zones for transportation or pedestrians; (c) materially interferes with compliance with the federal "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), or similar federal or State standards regarding pedestrian access or movement; (d) fails to comply with reasonable and non-discriminatory horizontal spacing requirements of general application adopted by ordinance that concern the location of ground-mounted antenna equipment and new poles and which shall not prevent a wireless provider from serving any location; (e) designates the location of a new pole for the purpose of mounting or installing a small wireless facility within seven feet in any direction of an electrical conductor, unless the wireless provider obtains the written consent of the public utility that owns or manages the electrical conductor; (f) fails to comply with applicable codes; or (g) fails to comply with sections 4, 5, or 6 of P.L. , c. (C.) (pending before the Legislature as this bill); (10) the authority shall document the basis for an application denial, including the specific code, rule, or statutory provisions 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 30 days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within 30 days of resubmission and limit its review to the deficiencies cited in the denial; (11) an applicant seeking to collocate, mount, or install more than one small wireless facility within the jurisdiction of a single authority may file a consolidated application for small wireless facilities and associated poles and antenna equipment and receive a single permit for the collocation, mounting, or installation of multiple small wireless facilities and the placement of associated poles and antenna equipment; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities, poles, or antenna equipment in the same consolidated application. A
A consolidated application shall be collectively processed in accordance with the procedures in this section. A consolidated application that includes a new or replacement pole deployment shall be subject to a 90-day timeframe for approval;

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

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

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

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

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

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

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

c. An authority shall not require an application for:

(1) routine maintenance;

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

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

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

12. A person owning, managing, or controlling an authority pole in the right-of-way may not enter into an exclusive arrangement
with any person for the right to attach to the pole. A person who purchases or otherwise acquires an authority pole is subject to the requirements of P.L.  c. (C. ) (pending before the Legislature as this bill).

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

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

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

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

15. a. All rates and fees established pursuant to subsection b. of this section shall be a reasonable approximation of the authority’s reasonable costs, and shall be applied by the authority in a non-discriminatory manner. An authority may not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by P.L.  c. (C. ) (pending before the Legislature as this bill) for the right to
use or occupy the right-of-way for the collocation, mounting, or installation of a small wireless facility on a pole in the right-of-way, or for the installation, maintenance, modification, or replacement of associated antenna equipment or a pole in the right-of-way.

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

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

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

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

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

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

b. Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant to P.L.   , c. (C.    ) (pending before the Legislature as this bill) or otherwise specifically authorized by State or federal law, an authority shall not adopt or enforce any regulations or requirements on the placement or operation of communications facilities in the right-of-way by a communications service provider authorized by federal, State, or local law to operate in a right-of-way, regulate any communications services, or impose or collect any tax, fee, rate, or charge for the provision of additional communications service over the communications service provider’s communications facilities in a right-of-way.
17. a. An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms and conditions that comply with P.L. , c. (C. ) (pending before the Legislature as this bill). Pursuant to the provisions of this section, in the absence of an ordinance that fully complies with P.L. , c. (C. ) (pending before the Legislature as this bill) and until a compliant ordinance is adopted, a wireless provider may install and operate a small wireless facility and any associated poles and antenna equipment under the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill). An authority may not require a wireless provider to enter into an agreement to implement P.L. , c. (C. ) (pending before the Legislature as this bill), but agreements are permissible if voluntary and non-discriminatory.

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

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

18. a. An authority may adopt reasonable indemnification, insurance, and bonding requirements related to a small wireless facility and associated pole permits and antenna equipment pursuant to the requirements of this section and section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).
b. An authority shall not require a wireless provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, except when a court of competent jurisdiction has found that the negligence of the wireless provider while installing, repairing, or maintaining a small wireless facility or associated poles and antenna equipment caused the harm that created the claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

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

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

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

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

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

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

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

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

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

19. a. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed to allow any person or entity to provide services regulated pursuant to 47 U.S.C. s.521 through 47 U.S.C s.573 without compliance with all laws applicable to those service providers, nor shall it be interpreted to impose any new requirements on cable providers for the provision of cable service in this State.
b. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed to allow any entity to provide communications services without compliance with all laws applicable to communications service providers, nor shall it be construed to authorize the collocation, installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, in the right-of-way, other than a small wireless facility.

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

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

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

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

STATEMENT

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

1) the collocation of a small wireless facility;

2) the mounting or installation of a small wireless facility on new or replacement poles;
3) the installation of associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
4) the installation, operation, marketing, modification, maintenance, or replacement of associated poles.

The bill provides that a wireless provider, as defined in the bill, is to have the right, as a permitted use not subject to zoning review or approval, and without the need for municipal consent to:
1) collocate small wireless facilities;
2) mount or install small wireless facilities on new or replacement poles;
3) install associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
4) install, modify, or replace its own poles, or, with the permission of the owner, a third party’s poles, associated with a small wireless facility, along, across, upon, and under the right-of-way.

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

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

Under the bill, a wireless provider shall not be required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable building codes. A wireless provider may, with the permission of the pole owner, replace or modify the existing pole, but any replacement or modification shall be consistent with the design aesthetics of the pole being modified or replaced. The bill requires wireless provider to notify an authority at least 30 days before the abandonment of a small wireless facility located within the authority’s jurisdiction. Following receipt of the notice, the authority is to direct the wireless provider to remove all or any portion of the small wireless facility and associated antenna equipment that the authority
determines would be in the best interest of public safety. If the wireless provider fails to remove the abandoned small wireless facility within 90 days after the notice, the authority may undertake to remove the small wireless facility and recover the actual and reasonable expenses of the removal from the wireless provider, its successors, or assigns.

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

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

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

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

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

The bill provides that an authority is not to have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable building codes. Further, except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant the bill or otherwise specifically authorized by State or federal law, an authority is not to adopt or enforce any regulations or requirements on the placement or operation of communications facilities in the right-of-way by a communications service provider authorized by federal, State, or local law to operate in the right-of-way, regulate any
communications services, or impose or collect any tax, fee, rate, or charge for the provision of additional communications service over the communications service provider’s communications facilities in the right-of-way.

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

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

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

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