

[First Reprint]

ASSEMBLY, No. 1116

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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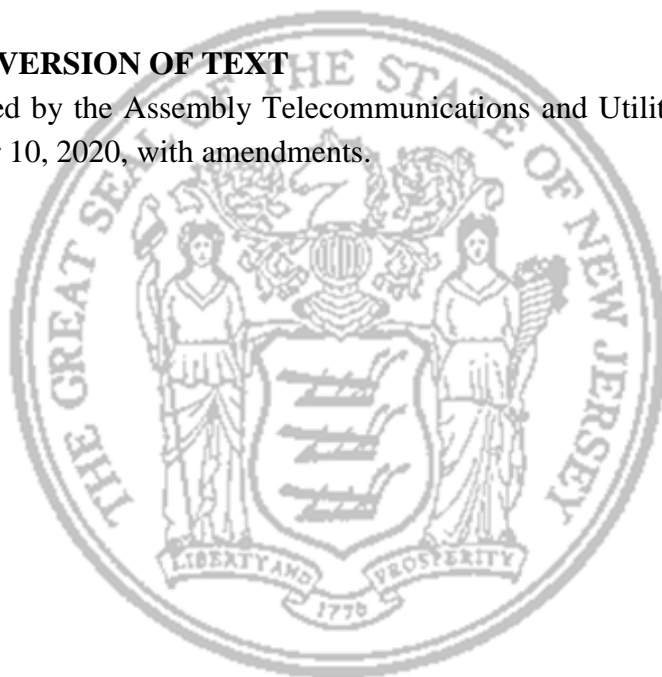
Assemblymen Zwicker, Calabrese and Karabinchak

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Telecommunications and Utilities Committee on December 10, 2020, with amendments.



(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 ¹most
25 cost-effective for a wireless service provider when¹ deployed
26 ¹most effectively¹ in ¹right-of-way rights-of-way¹;

27 e. To meet the key objectives of federal law and P.L. ,
28 c. (C.) (pending before the Legislature as this bill), wireless
29 providers ¹need to have¹ must be granted¹ access to ¹the right-of-
30 way¹ rights-of-way¹ and ¹have¹ the ability to attach to
31 infrastructure in ¹the right-of-way¹ rights-of-way¹ to densify
32 wireless networks and to provide next-generation wireless services;

33 f. Rates and fees for the permitting and deployment of small
34 wireless facilities in ¹right-of-way¹ rights-of-way¹ and on
35 authority infrastructure, including utility poles, throughout the
36 State, consistent with federal law, is reasonable and will encourage
37 the development of robust next-generation wireless and broadband
38 networks for the benefit of residents throughout the State;

39 ¹g. Authorities actively manage rights-of-way, acting as trustees
40 of this limited public asset, to protect residents' safety, preserve the
41 character of communities, and maintain availability for current and
42 future uses;¹ and

43 ¹g. h.¹ The procedures, rates, and fees established in P.L. ,
44 c. (C.) (pending before the Legislature as this bill) should be

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATU committee amendments adopted December 10, 2020.

1 consistent with federal law and are fair, reasonable, and further the
2 State's interest in facilitating and supporting a robust, reliable, and
3 technologically-advanced wireless and broadband network and
4 reflect a balancing of the interests of the wireless providers
5 deploying new small wireless facilities and the interests of
6 authorities in ¹managing and¹ recovering the cost of managing
7 ¹~~access to the right-of-way~~ the rights-of-way¹.

8
9 2. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

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

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

23 "Antenna facility" means an antenna and associated antenna
24 equipment.

25 "Applicable codes" means uniform building, fire, electrical,
26 plumbing, or mechanical codes adopted by the Commissioner of the
27 Department of Community Affairs pursuant to P.L.1975, c.217
28 (C.52:27D-119 et seq.) ¹, or authority amendments to those codes
29 that are of general application¹ and are consistent with P.L. ,
30 c. (C.) (pending before the Legislature as this bill).

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

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

40 "Authority" means ¹**[a]** the State and any¹ unit of local
41 government, and any board, commission, committee, authority,
42 agency, office, officer, or employee thereof, which has jurisdiction
43 and control over the use of a ¹**[public]**¹ right-of-way for the
44 placement of a wireless facility within the ¹**[public]**¹ right-of-way
45 or has zoning or land use control for the placement of a wireless
46 facility not within a ¹**[public]**¹ right-of-way. "Authority" shall not
47 mean a State court having jurisdiction over an authority.

1 "Authority pole" means a pole or utility pole owned or operated
2 by an authority in a ¹["public"]¹ right-of-way.

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

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

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

20 "Communications service provider" means: a cable operator, as
21 defined pursuant to 47 U.S.C. s.522, as amended; a provider of
22 information service, as defined pursuant to ¹["24 of"]¹ 47 U.S.C.
23 s.153, as amended; a telecommunications carrier, as defined
24 pursuant to 47 U.S.C. s.153, as amended; or a wireless service
25 provider as defined pursuant to this section.

26 "Decorative pole" means an authority pole ¹, or a pole that is
27 subsidized by an authority.¹ that is specially designed and placed
28 for aesthetic purposes ¹["and on which no appurtenances or
29 attachments, other than a small wireless facility, lighting, specially
30 designed informational or directional signage, or temporary holiday
31 or special event attachments, have been placed or are permitted to
32 be placed according to non-discriminatory authority rules or
33 codes"]¹.

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

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

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

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

44 a. listed on the National Register of Historic Places or formally
45 determined eligible for listing by the keeper of the National
46 Register of Historic Places, the individual who has been delegated
47 the authority by the federal agency to list properties and determine

1 their eligibility for the National Register of Historic Places,
2 pursuant to 47 C.F.R. Part 1, Appendix C; or

3 b. **1[Listed] listed¹** on the New Jersey Register of Historic
4 Places **1or identified in an authority’s master plan adopted pursuant**
5 **to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et**
6 **seq.)¹.**

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

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

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

16 "Permit" means **1an¹** authorization **1[, written or otherwise,]¹**
17 required by an authority to perform an action or initiate, continue,
18 or complete a project for the deployment of antenna facilities at a
19 specified location in a right-of-way.

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

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

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

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

38 "Rate" means a recurring charge.

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

43 "Small wireless facility" means a facility that meets each of the
44 following conditions: the facility is mounted on a structure 50 feet
45 or less in height, including the antenna or is mounted on a structure
46 no more than 10 percent taller than other adjacent structures or does
47 not extend existing structures on which they are located to a height
48 of more than 50 feet or by more than 10 percent, whichever is

1 greater; each antenna associated with the deployment, excluding
2 associated antenna equipment, is no more than three cubic feet in
3 volume; all other wireless equipment associated with the structure,
4 including wireless equipment associated with the antenna and any
5 pre-existing associated ¹antenna¹ equipment on the structure, is no
6 more than 28 cubic feet in volume; the facility does not require
7 antenna structure registration under 47 C.F.R. Part 17; the facility is
8 not located on tribal lands, as defined pursuant to 36 C.F.R.
9 s.800.16; and the facility does not result in human exposure to radio
10 frequency in excess of the applicable safety standards specified
11 pursuant ¹to¹ 47 C.F.R. s.1.1307.

12 “Structure” means a pole, tower, base station, as defined
13 pursuant ¹to¹ 47 C.F.R. s.1.6100, or other building, whether or not
14 it has an existing antenna facility, which is used or is to be used for
15 the provision of personal wireless service.

16 “Technically feasible” means that, by virtue of engineering or
17 spectrum usage, the proposed placement for a small wireless
18 facility, or its design, concealment measures, or site location can be
19 implemented without a ¹material¹ reduction in the functionality of
20 the small wireless facility.

21 “Tower” shall have the same meaning as defined pursuant to 47
22 C.F.R. ¹s.¹1.6100.

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

27 “Wireless provider” means a wireless infrastructure provider or a
28 wireless service provider.

29 “Wireless service” means any services provided to the general
30 public and made available on a non-discriminatory basis using
31 licensed or unlicensed spectrum, whether at a fixed location or
32 mobile, provided using ¹**【wireless facilities】** an antenna facility¹.

33 “Wireless service provider” means a person who provides
34 wireless services.

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

39

40 3. a. An authority may not enter into an exclusive
41 arrangement with any person or entity for the use of the right-of-
42 way for:

43 (1) ¹the¹ collocation of a small wireless facility;

44 (2) the mounting or installation of a small wireless facility on
45 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 b. Subject to the provisions of this section, a wireless provider
7 shall have the right, as a permitted use not subject to zoning review
8 or approval, and without the need for ¹**["municipal"] authority¹**
9 consent, ¹**["pursuant to R.S.48:3-19,"]¹** to:
10 (1) collocate small wireless facilities;
11 (2) mount or install small wireless facilities on new or
12 replacement poles;
13 (3) install associated antenna equipment adjacent to a structure
14 on which a small wireless facility is or will be collocated, mounted,
15 or installed; or
16 (4) install, modify, or replace its own poles, or, with the
17 permission of the owner, a third party's poles, associated with a
18 small wireless facility, along, across, upon, and under the right-of-
19 way.
20 Small wireless facilities, antenna equipment, and poles
21 collocated or installed pursuant to this section shall be installed and
22 maintained as not to obstruct or hinder the usual travel or public
23 safety in a right-of-way or obstruct the legal use of a right-of-way
24 by a public utility.
25
26 4. a. A new, replaced, or modified pole installed in a right-of-
27 way after the effective date of P.L. , c. (C.) (pending
28 before the Legislature as this bill) for the purpose of collocating,
29 mounting, or installing a small wireless facility shall not exceed 50
30 feet in height above ground level or ¹**["ten"] 10¹** percent taller than
31 the tallest existing pole in place as of the effective date of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) in the
33 same right-of-way within 500 feet of the new, replaced, or modified
34 pole, whichever is greater.
35 b. A new small wireless facility installed in a right-of-way after
36 the effective date of P.L. , c. (C.) (pending before the
37 Legislature as this bill) may not extend more than 10 percent above
38 the existing structure on which they are located or 50 feet above
39 ground level, whichever is greater.
40 c. A wireless provider shall have the right to collocate, mount,
41 or install a small wireless facility and install, maintain, modify, and
42 replace a pole that exceeds the height limits pursuant to subsections
43 a. and b. of this section along, across, upon, and under the right-of-
44 way, subject to section 3 of P.L. , c. (C.) (pending before
45 the Legislature as this bill) and applicable zoning regulations.
46 ¹d. A wireless provider shall not apply to install a new pole
47 unless it has determined after diligent investigation that it cannot

1 meet its service objectives by collocating on an existing pole or
2 other structure on which:

3 (1) the wireless provider has the right to collocate subject to
4 reasonable terms and conditions, including the right to pole mount
5 antenna equipment; and

6 (2) that collocation would not impose technical limitations or
7 significant additional costs. The wireless provider shall certify that
8 it has made such a determination in good faith, based on the
9 assessment of a licensed engineer, and shall provide a written
10 summary of the basis for that determination.

11 e. For applications for new poles in the right-of-way in areas
12 zoned for residential use, the authority may propose an alternate
13 location in the right-of-way within 100 feet of the location set forth
14 in the application, and the wireless provider shall use the authority's
15 proposed alternate location unless the location imposes technical
16 limits or significant additional costs. The wireless provider shall
17 certify that it has made the determination in good faith, based on the
18 assessment of a licensed engineer, and it shall provide a written
19 summary of the basis for that determination.¹

20

21 5. a. An authority may adopt aesthetics requirements
22 governing the deployment of small wireless facilities and associated
23 antenna equipment and poles in a right-of-way, ¹which may include
24 pre-approved designs for new poles in specified areas,¹ subject to
25 the following:

26 (1) the aesthetic requirements shall be reasonable, in that they
27 are technically feasible and reasonably directed at avoiding or
28 remedying unsightly or out-of-character deployments, are no more
29 burdensome than those applied to ¹["other types of"] functionally
30 equivalent¹ infrastructure deployments, and are ¹["objective and"]¹
31 published in advance;

32 (2) any design or concealment measures are not considered a
33 part of the small wireless facility for purposes of the size
34 parameters in the definition of small wireless facility; ¹and¹

35 (3) an authority may deny an application for not complying with
36 an aesthetic requirement only if the authority finds that the denial
37 does not prohibit or have the effect of prohibiting the provision of
38 wireless service ¹[";"]¹

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

43 (1) a wireless provider shall be permitted to collocate small
44 wireless facilities on, ¹or¹ modify ¹[";"]¹ or replace ¹[";"]¹ decorative
45 poles when necessary to deploy a small wireless facility ¹[" An"]¹
46 provided that an¹ authority may require the collocation or
47 decorative pole replacement to reasonably conform to the design

1 aesthetics of the original decorative pole or poles ¹], provided the
2 aesthetic requirements are technically feasible¹].

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

5

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

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

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

20 (3) ¹subject to the application process established pursuant to
21 section 11 of P.L. , c. (C.) (pending before the Legislature
22 as this bill),¹ a wireless provider may install a new pole in the
23 designated area that otherwise complies with P.L. , c. (C.)
24 (pending before the Legislature as this bill) when the wireless
25 provider is not able to provide wireless service by collocating on a
26 remaining structure.

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

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

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

36

37 7. ¹【The authority may require a】 A¹ wireless provider ¹【to】
38 shall¹ repair all damage to a right-of-way caused by the activities of
39 the wireless provider and ¹【to】¹ return the right-of-way to its
40 functional ¹and aesthetic¹ equivalence before the damage, pursuant
41 to the competitively neutral, reasonable requirements and
42 specifications of the authority. If the wireless provider fails to make
43 the repairs required by the authority within a reasonable time after
44 written notice, the authority may make those repairs and charge the
45 applicable party the reasonable, documented cost of the repairs.

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

7
8 9. A wireless provider is required to notify the authority at
9 least 30 days before the abandonment of a small wireless facility.
10 Following receipt of the notice, the authority shall direct the
11 wireless provider to remove all or any portion of the small wireless
12 facility and associated antenna equipment that the authority
13 determines would be in the best interest of ¹the public ¹["safety"]¹.
14 If the wireless provider fails to remove the abandoned small
15 wireless facility within 90 days after the notice, the authority may
16 undertake to remove the small wireless facility and recover the
17 actual and reasonable expenses of the removal from the wireless
18 provider, its successors, or assigns.

19
20 10. Except as provided in P.L. , c. (C.) (pending before
21 the Legislature as this bill), an authority may not prohibit, regulate,
22 or charge for the collocation, mounting, or installation of a small
23 wireless facility on a new, modified, or replacement pole, or the
24 installation, modification, or replacement of an associated pole or
25 antenna equipment that may be permitted in P.L. , c. (C.)
26 (pending before the Legislature as this bill).

27
28 11. a. An authority may require an applicant to obtain a permit
29 for:

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

32 (2) ¹the¹ mounting or installation of a small wireless facility on
33 a new, modified, or replacement pole; or

34 (3) the installation, modification, or replacement of ¹["an
35 associated"] ¹a¹ pole or antenna equipment as provided in section 3
36 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

46 (2) an authority may not directly or indirectly require an
47 applicant to perform services or provide goods unrelated to the
48 permit, such as in-kind contributions to the authority including, but

- 1 not limited to, reserving fiber, conduit, or pole space for the
2 authority;
- 3 (3) an applicant shall not be required to provide additional
4 information to obtain a permit than communications service
5 providers that are not wireless providers, provided that an applicant
6 may be required to include construction and engineering drawings
7 and information demonstrating compliance with the criteria in
8 paragraph (9) of this subsection;
- 9 (4) an authority may not require:
- 10 (a) the collocation, mounting, or installation of a small wireless
11 facility on any specific pole or category of poles or require multiple
12 antenna facilities on a single pole;
- 13 (b) the use of specific pole types or configurations when
14 installing a new or replacement pole; or
- 15 (c) the underground placement of a small wireless facility or
16 antenna equipment that is or are designated in an application to be
17 pole-mounted or ground-mounted ¹, provided that an authority may:
- 18 (i) require, pursuant to section 6 of P.L. , c. (C.) (pending
19 before the Legislature as this bill), that a wireless provider place
20 underground fiber that is part of a small wireless facility and not in
21 or on a pole; or
- 22 (ii) prohibit, pursuant to section 6 of P.L. , c. (C.)
23 (pending before the Legislature as this bill), ground-mounted
24 antenna equipment¹;
- 25 (5) ¹subject to the provisions of subparagraph (d) of paragraph
26 (9) of subsection b. of this section,¹ an authority may not limit the
27 collocation of a small wireless facility or the mounting or
28 installation of a small wireless facility on a new ¹**【, modified,】¹** or
29 replacement pole by minimum horizontal separation distance
30 requirements from an existing small wireless facility ¹**【or**
31 **structure】¹**;
- 32 (6) the authority may require an applicant to include an
33 attestation that the small wireless facility ¹**【will】 shall¹** be
34 operational for use by a wireless service provider within one year
35 after the permit issuance date, unless the authority and the applicant
36 agree to extend this period or a delay is caused by lack of
37 commercial power, communications ¹**【transport】¹** facilities to the
38 site, or any other factors outside of the applicant's control;
- 39 (7) within ¹**【ten】 10¹** days of receiving an application, an
40 authority shall determine and notify the applicant in writing
41 whether the application is complete. If an application is incomplete,
42 an authority shall specifically identify the missing information in
43 writing. The processing deadline provided in paragraph (8) of this
44 subsection shall restart on the date the applicant provides the
45 missing information to complete the application;
- 46 (8) an authority shall process an application in a non-
47 discriminatory manner and the application shall be deemed

1 approved if the authority fails to approve or deny the application
2 within:

3 (a) 60 days of receipt of an application for a permit involving
4 collocation of a small wireless facility using an existing structure;
5 and

6 (b) 90 days for an application for a permit involving deployment
7 of a small wireless facility using a new or replacement pole.

8 ¹If an authority provides written notification to the applicant
9 within 10 days of receiving an application certifying that it is
10 experiencing an unusually high overall level of permitting activity,
11 which prevents the authority from reviewing and processing the
12 application by the deadline, the processing deadline may be
13 extended automatically for up to 30 days.¹

14 The processing deadline may be tolled by agreement of the
15 applicant and the authority;

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

22 (a) ¹**【materially】**¹ interferes with the safe operation of traffic
23 control equipment;

24 (b) ¹**【materially】**¹ interferes with sight lines or clear zones for
25 transportation or pedestrians;

26 (c) ¹**【materially】**¹ interferes with compliance with the federal
27 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et
28 seq.), or similar federal or State standards regarding pedestrian
29 access or movement;

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

35 (e) ¹**【designates the location of a new pole for the purpose of**
36 **mounting or installing a small wireless facility within seven feet in**
37 **any direction of an electrical conductor, unless the wireless provider**
38 **obtains the written consent of the public utility that owns or**
39 **manages the electrical conductor;**

40 (f) ¹**【】**¹ fails to comply with applicable codes; or

41 ¹**【(g)】** (f)¹ fails to comply with sections 4, 5, or 6 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill);

43 (10) the authority shall document the basis for an application
44 denial, including the specific code, rule, or statutory provisions on
45 which the denial was based, and send the documentation to the
46 applicant on or before the day the authority denies an application.
47 The applicant may cure the deficiencies identified by the authority

1 and resubmit the application within 30 days of the denial without
2 paying an additional application fee. The authority shall approve or
3 deny the revised application within 30 days of resubmission and
4 limit its review to the deficiencies cited in the denial;

5 (11) an applicant seeking to collocate, mount, or install more
6 than one small wireless facility within the jurisdiction of a single
7 authority may file a consolidated application for small wireless
8 facilities and associated poles and antenna equipment and receive a
9 single permit for the collocation, mounting, or installation of
10 ¹**multiple** up to 25¹ small wireless facilities and the placement of
11 associated poles and antenna equipment ¹**;**¹ provided ¹**;**
12 however, **]** that all small wireless facilities within the consolidated
13 application are substantially the same type and proposed for
14 collocation on substantially the same types of structures;

15 (12) an applicant may not file within a 60-day period, three
16 consolidated applications; or multiple applications that collectively
17 seek permits for a combined total of more than 75 small wireless
18 facilities and associated poles and antenna equipment;

19 (13)¹ the denial of one or more small wireless facilities in a
20 consolidated application shall not delay processing of any other
21 small wireless facilities, poles, or antenna equipment in the same
22 consolidated application. A consolidated application shall be
23 collectively processed in accordance with the procedures in this
24 section. A consolidated application that includes a new or
25 replacement pole deployment shall be subject to a 90-day timeframe
26 for approval;

27 ¹**[(12)]** (14)¹ installations, mountings, modifications,
28 replacements, and collocations for which a permit is granted
29 pursuant to this section shall be completed by the applicant within
30 one year after the permit issuance date unless the authority and the
31 applicant agree to extend this period, or a delay is caused by the
32 lack of commercial power or communications facilities at the site
33 ¹**;**¹

34 ¹**[(13)]** (15)¹ approval of an application authorizes the applicant
35 to:

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

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

46 ¹**[(13)]** (16)¹ an authority may not institute, either expressly or
47 de facto, a moratorium on:

- 1 (a) filing, receiving, or processing applications; or
2 (b) issuing permits or other required approvals, if any, for the
3 collocation, mounting, or installing of a small wireless facility or
4 the installation, modification, or replacement of associated antenna
5 equipment or poles.

6 ¹If the State or another authority has declared an emergency and
7 the State or another authority institutes a temporary moratorium that
8 is generally applicable and competitively neutral, is necessary to
9 address the emergency, disaster, or related public safety needs
10 within the authority's jurisdiction, is targeted to those geographic
11 areas that are affected by the disaster or emergency, and applies
12 only for the duration of declaration of emergency, then the
13 provisions of subparagraphs (a) and (b) of this paragraph shall not
14 apply.¹

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

- 16 (1) routine maintenance;
17 (2) the replacement of a small wireless facility or antenna
18 equipment ¹with a , provided the replacement¹ small wireless
19 facility or antenna equipment ¹that¹ is substantially similar ¹to¹
20 or the same size ¹as¹ or smaller ¹as the replacement¹ than the
21 original small wireless facility or antenna equipment and continues
22 to meet all other requirements of the original permit¹; or
23 (3) the installation, placement, maintenance, operation, or
24 replacement of a micro wireless facility that is suspended on cables
25 that are strung between existing poles, in compliance with the
26 applicable codes.

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

34
35 12. A person owning, managing, or controlling an authority pole
36 in the right-of-way may not enter into an exclusive arrangement
37 with any person for the right to attach to the pole. A person who
38 purchases or otherwise acquires an authority pole is subject to the
39 requirements of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41
42 13. An authority shall allow the collocation of a small wireless
43 facility and the installation of associated antenna equipment on an
44 existing authority pole, ¹and¹ the mounting or installation of a small
45 wireless facility and the installation of associated antenna
46 equipment on a replacement authority ¹poles¹ pole,¹ on non-
47 discriminatory terms and conditions using the standards in section 5

1 of P.L. , c. (C.) (pending before the Legislature as this bill)
2 and the application requirements in section 11 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill).
4

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

11 b. The authority shall provide a good faith estimate for any
12 make-ready work necessary to enable the authority pole to support
13 the requested collocation, mounting, or installation by a wireless
14 provider, including authority pole replacement if necessary, within
15 60 days after receipt of a complete application. Make-ready work
16 including any authority pole replacement shall be completed within
17 60 days of written acceptance of the good faith estimate by the
18 applicant. An authority may require replacement of the authority
19 pole only if it demonstrates that the collocation would make the
20 authority pole structurally unsound.

21 c. The person owning, managing, or controlling the authority
22 pole shall not require more make-ready work than required to meet
23 applicable codes or industry standards. Fees for make-ready work
24 shall not include costs related to pre-existing or prior damage or
25 noncompliance. Fees for make-ready work, including any pole
26 replacement, shall not exceed either actual costs or the amount
27 charged to other communications service providers for similar work
28 and shall not include any revenue or contingency-based consultant's
29 fees or expenses.
30

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

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

46 (1) \$500 for a single up-front application for collocation of a
47 small wireless facility that includes up to five small wireless

1 facilities, with an additional \$100 for each small wireless facility
2 included in the same application thereafter;

3 (2) \$250 for the modification or replacement of an existing pole,
4 together with the mounting or installation of an associated small
5 wireless facility in the right-of-way; ¹and¹

6 (3) \$1,000 for the installation of a new pole, together with the
7 mounting or installation of an associated small wireless facility in
8 the right of way ¹]; and

9 (4) subject to subsection a. of this section, if¹].

10 c. Notwithstanding the provisions of any law, rule, regulation,
11 or order to the contrary,¹ an authority ¹elects¹ may elect¹ to charge
12 for use of the right-of-way or the collocation of a small wireless
13 facility on an authority pole in the right-of-way, ¹provided,
14 however, that¹ the rate ¹for that use¹ shall not exceed ¹[\$20] ¹\$50¹
15 per small wireless facility per year for right-of-way access and
16 ¹[\$100] ¹\$220¹ per authority pole per year for a small wireless
17 facility collocated, mounted, or installed on an authority pole. The
18 rates established pursuant to this paragraph, together with a one-
19 time application fee, shall be the total compensation that the
20 wireless provider is required to pay the authority for the deployment
21 of each small wireless facility in the right-of-way and any
22 associated antenna equipment or pole.

23
24 16. a. An authority shall not have or exercise any jurisdiction
25 or authority over the design, engineering, construction, installation,
26 or operation of a small wireless facility located in an interior
27 structure or upon the site of a campus, stadium, or athletic facility
28 not owned or controlled by the authority, other than to require
29 compliance with applicable codes.

30 b. Except as it relates to small wireless facilities subject to the
31 permit and fee requirements established pursuant to P.L. ,

32 c. (C.) (pending before the Legislature as this bill) or
33 otherwise specifically authorized by State or federal law, an
34 authority shall not adopt or enforce any regulations or requirements
35 on the placement or operation of communications facilities in the
36 right-of-way by a communications service provider authorized by
37 federal, State, or local law to operate in a right-of-way, regulate any
38 communications services, or impose or collect any tax, fee, rate, or
39 charge for the provision of additional communications service over
40 the communications service provider's communications facilities in
41 a right-of-way.

42
43 17. a. An authority may adopt an ordinance that makes
44 available to wireless providers rates, fees, and other terms and
45 conditions that comply with P.L. , c. (C.) (pending before
46 the Legislature as this bill). ¹[Pursuant to the provisions of this
47 section, in] ¹In¹ the absence of an ordinance ¹[that fully complies

1 with P.L. , c. (C.) (pending before the Legislature as this
 2 bill) and until a compliant ordinance is adopted¹, a wireless
 3 provider may install and operate a small wireless facility and any
 4 associated poles and antenna equipment under the requirements of
 5 P.L. , c. (C.) (pending before the Legislature as this bill).
 6 An authority may not require a wireless provider to enter into an
 7 agreement to implement P.L. , c. (C.) (pending before the
 8 Legislature as this bill), but agreements are permissible if voluntary
 9 and non-discriminatory.

10 b. An ordinance or agreement ¹or any provision thereof¹ that
 11 does not ¹**fully**¹ comply with P.L. , c. (C.) (pending
 12 before the Legislature as this bill) shall apply only to small wireless
 13 facilities and any associated poles and antenna equipment that were
 14 operational before the effective date of P.L. , c. (C.)
 15 (pending before the Legislature as this bill) and shall be deemed
 16 invalid and unenforceable beginning on the 181st day after the
 17 effective date of P.L. , c. (C.) (pending before the
 18 Legislature as this bill) unless amended to ¹**fully**¹ comply with
 19 P.L. , c. (C.) (pending before the Legislature as this bill). If
 20 an ordinance or agreement ¹or any provision thereof¹ is invalid
 21 pursuant to this subsection, small wireless facilities and associated
 22 poles and antenna equipment that became operational before the
 23 effective date of P.L. , c. (C.) (pending before the
 24 Legislature as this bill), pursuant to the ordinance or agreement,
 25 may remain installed and be operated under the requirements of ¹the
 26 remaining valid portions of the ordinance or agreement or¹ P.L. ,
 27 c. (C.) (pending before the Legislature as this bill) ¹, as
 28 applicable¹.

29 c. ¹**An** ¹Any provision of an¹ agreement or ordinance that
 30 applies to small wireless facilities and associated poles and antenna
 31 equipment that becomes operational on or after the effective date of
 32 P.L. , c. (C.) (pending before the Legislature as this bill) is
 33 invalid and unenforceable unless it ¹**fully**¹ complies with P.L. ,
 34 c. (C.) (pending before the Legislature as this bill). In the
 35 absence of an ordinance or agreement that ¹**fully**¹ complies with
 36 P.L. , c. (C.) (pending before the Legislature as this bill), a
 37 wireless provider may install and operate a small wireless facility
 38 and associated poles and antenna equipment in a right-of-way
 39 pursuant to the requirements of ¹the remaining valid portions of the
 40 ordinance or agreement or¹ P.L. , c. (C.) (pending before
 41 the Legislature as this bill) ¹, as applicable¹.

42
 43 18. a. An authority may adopt reasonable indemnification,
 44 insurance, and bonding requirements related to a small wireless
 45 facility and associated pole permits and antenna equipment pursuant

1 to the requirements of this section and section 6 of P.L. ,
2 c. (C.) (pending before the Legislature as this bill).

3 b. ¹【An authority shall not require a wireless provider to
4 indemnify and hold the authority and its officers and employees
5 harmless against any claims, lawsuits, judgments, costs, liens,
6 losses, expenses, or fees, except when a court of competent
7 jurisdiction has found that the negligence of the wireless provider
8 while installing, repairing, or maintaining a small wireless facility
9 or associated poles and antenna equipment caused the harm that
10 created the claims, lawsuits, judgments, costs, liens, losses,
11 expenses, or fees】 Any wireless provider that owns or operates
12 small wireless facilities or utility poles in the right-of-way shall
13 indemnify, protect, defend, and hold the authority and its elected
14 officials, officers and, employees, agents, and volunteers harmless
15 against any and all claims, lawsuits, judgments, costs, liens, losses,
16 expenses, fees including reasonable attorney fees and costs of
17 defense, proceedings, actions, demands, causes of action, liability,
18 and suits of any kind and nature, including but not limited to
19 personal or bodily injury or death, property damage or other harm
20 for which recovery of damages is sought, to the extent that it is
21 caused by the negligence of the wireless provider who owns or
22 operates small wireless facilities or utility poles in the right-of-way,
23 any agent, officer, director, representative, employee, affiliate, or
24 subcontractor of the wireless provider, or their respective officers,
25 agents, employees, directors, or representatives while installing,
26 repairing, operating, or maintaining facilities in rights-of-way¹.

27 c. ¹【An authority may require a wireless provider to have in
28 effect insurance coverage consistent with this section, so long as the
29 authority imposes similar requirements on other right-of-way users
30 and the requirements are reasonable and non-discriminatory.

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

34 (2) An authority may require a wireless provider to furnish
35 proof of insurance, if required, prior to the effective date of any
36 permit issued for a small wireless facility work】 Except for a
37 wireless provider with an existing agreement to occupy and operate
38 in the rights-of-way, during the period in which the wireless
39 provider's facilities are located on the authority improvements or
40 rights-of-way, the authority may require the wireless provider to
41 carry, at the wireless provider's own cost and expense, the
42 following insurance:

43 (a) property insurance for its property's replacement cost
44 against all risks;

45 (b) workers' compensation insurance, as required by law; or

46 (c) commercial general liability insurance with respect to its
47 activities on the authority improvements or rights-of-way to afford

1 minimum protection limits consistent with its requirements of other
2 users of authority improvements or rights-of-way, including
3 coverage for bodily injury and property damage. An authority may
4 require a wireless provider to include the authority as an additional
5 insured on the commercial general liability policy and provide
6 certification and documentation of inclusion of the authority in a
7 commercial general liability policy as reasonably required by the
8 authority.

9 A wireless provider may self-insure all or a portion of the
10 insurance coverage and limit requirements required by an authority.
11 A wireless provider that self-insures is not required, to the extent of
12 the self-insurance, to comply with the requirement for the naming
13 of additional insureds under this section. A wireless provider that
14 elects to self-insure shall provide to the authority evidence
15 sufficient to demonstrate its financial ability to self-insure the
16 insurance coverage and limits required by the authority¹.

17 d. ¹[An authority may adopt bonding requirements for small
18 wireless facilities if the authority imposes similar requirements in
19 connection with permits issued for other right-of-way users.

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

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

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

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

33 (2) Bonding requirements may not exceed \$200 per small
34 wireless facility. For wireless providers with multiple small
35 wireless facilities within the jurisdiction of a single authority, the
36 total bond amount across all facilities may not exceed \$10,000,
37 which may be combined into one bond instrument] An authority
38 may impose reasonable and non-discriminatory requirements for
39 bonds, escrow deposits, letters of credit, or any other type of
40 financial surety to ensure removal of abandoned or unused wireless
41 facilities or damage to the right-of-way or authority property caused
42 by the wireless provider or its agent¹.

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

1 impose any new requirements on cable operators for the provision
2 of cable service in this State.

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

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

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

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

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