

[Second Reprint]

SENATE, No. 2674

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 6, 2020

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

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District 7 (Burlington)

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2021.



(Sponsorship Updated As Of: 6/30/2021)

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 significant
12 and continually growing part of the State's economy and encouraging
13 the development of strong and robust wireless and broadband
14 communications networks throughout the State is integral to the
15 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; promoting
20 the ability of the State's residents to communicate with their neighbors
21 and with their State and local governments; and promoting public
22 safety;

23 d. Small wireless facilities, including facilities commonly referred
24 to as small cells and distributed antenna systems, are ¹most cost-
25 effective for a wireless service provider when¹ deployed ¹most
26 effectively¹ in ¹right-of-way rights-of-way¹;

27 e. To meet the key objectives of federal law and
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 wireless providers ¹need to have must be granted¹ access to ¹the
30 right-of-way rights-of-way¹ and ¹have¹ the ability to attach to
31 infrastructure in ¹the right-of-way rights-of-way on a competitively
32 neutral basis¹ to densify wireless networks and to provide next-
33 generation wireless services;

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

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

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:

¹Senate SEG committee amendments adopted June 15, 2021.

²Senate floor amendments adopted June 21, 2021.

1 ¹**[g.] h.**¹ The procedures, rates, and fees established in P.L. , c.
 2 (C.) (pending before the Legislature as this bill) should be
 3 consistent with federal law and are fair, reasonable, and further the
 4 State's interest in facilitating and supporting a robust, reliable, and
 5 technologically-advanced wireless and broadband network and reflect
 6 a balancing of the interests of the wireless providers deploying new
 7 small wireless facilities and the interests of authorities in ¹managing
 8 and¹ recovering the cost of managing ¹**[access to the right-of-way]**
 9 the rights-of-way¹.

10

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

13 "Antenna" means an apparatus designed for the purpose of
 14 emitting radio frequency, to be operated or operating from a fixed
 15 location pursuant to Federal Communications Commission
 16 authorization, for the provision of personal wireless service and any
 17 commingled information services. ¹**[“Antenna” shall not include an**
 18 **unintentional radiator, mobile station, or device authorized pursuant**
 19 **to 47 C.F.R. Part 15.]**¹

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

25 “Antenna facility” means an antenna and associated antenna
 26 equipment. ²**[¹Antenna facility]** “Antenna facility”² includes small
 27 wireless facilities. ²[An antenna facility] “Antenna facility”² shall
 28 not include:

29 a. the structure or improvements on, under, or within which the
 30 equipment is located;

31 b. wireline backhaul facilities; or

32 c. coaxial or fiber optic cables that are not immediately adjacent
 33 to or directly associated with a particular antenna.¹

34 “Applicable codes” means uniform building, fire, electrical,
 35 plumbing, or mechanical codes adopted by the Commissioner of the
 36 Department of Community Affairs pursuant to P.L.1975, c.217
 37 (C.52:27D-119 et seq.) ¹, or authority amendments to those codes
 38 that are of general application¹ and are consistent with P.L. , c.
 39 (C.) (pending before the Legislature as this bill).

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

42 "Application" means a request submitted by an applicant to an
 43 authority for a permit to: collocate a small wireless facility; install,
 44 modify, or replace a pole on which a small wireless facility will be
 45 collocated, mounted, or installed; mount or install a small wireless
 46 facility on a new or replacement pole; or install associated antenna

1 equipment adjacent to a structure on which a small wireless facility
2 is or will be collocated, mounted, or installed.

3 "Authority" means ¹**[a]** the State and any¹ unit of local
4 government, and any board, commission, committee, authority,
5 agency, office, officer, or employee thereof, which has jurisdiction
6 and control over the use of a ¹**[public]**¹ right-of-way for the
7 placement of a wireless facility within the ¹**[public]**¹ right-of-way
8 or has zoning or land use control for the placement of a wireless
9 facility not within a ¹**[public]**¹ right-of-way. "Authority" shall not
10 mean a State court having jurisdiction over an authority.

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

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

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

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

30 "Communications service provider" means: a cable operator, as
31 defined pursuant to 47 U.S.C. s.522, as amended; a provider of
32 information service, as defined pursuant to ¹**[24 of]**¹ 47 U.S.C.
33 s.153, as amended; a telecommunications carrier, as defined
34 pursuant to 47 U.S.C. s.153, as amended; or a wireless service
35 provider as defined pursuant to this section.

36 "Decorative pole" means an authority pole ¹, or a pole that is
37 subsidized by an authority,¹ that is specially designed and placed
38 for aesthetic purposes ¹**[and on which no appurtenances or**
39 **attachments, other than a small wireless facility, lighting, specially**
40 **designed informational or directional signage, or temporary holiday**
41 **or special event attachments, have been placed or are permitted to**
42 **be placed according to non-discriminatory authority rules or**
43 **codes]**¹.

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

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

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

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

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

13 b. **1**[Listed] listed¹ on the New Jersey Register of Historic
14 Places 1or identified in an authority's master plan adopted pursuant
15 to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-
16 1 et seq.)¹.

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

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

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

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

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

33 "Personal wireless service" means "commercial mobile service,"
34 "unlicensed wireless services," and "common carrier wireless
35 exchange access services," as those terms are defined pursuant to 47
36 U.S.C. s.332, **1**[and]¹ "commercial mobile data service," as defined
37 pursuant to 47 U.S.C. s.1401 ¹, and information service provided
38 through wireless fidelity or similar technologies utilizing unlicensed
39 spectrum¹.

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

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

3 "Rate" means a recurring charge.

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

8 "Small wireless facility" means a facility that meets each of the
9 following conditions: the facility is mounted on a structure 50 feet
10 or less in height, including the antenna or is mounted on a structure
11 no more than 10 percent taller than other adjacent structures or does
12 not extend existing structures on which they are located to a height
13 of more than 50 feet or by more than 10 percent, whichever is
14 greater; each antenna associated with the deployment, excluding
15 associated antenna equipment, is no more than three cubic feet in
16 volume; all other wireless equipment associated with the structure,
17 including wireless equipment associated with the antenna and any
18 pre-existing associated ¹antenna¹ equipment on the structure, is no
19 more than 28 cubic feet in volume; the facility does not require
20 antenna structure registration under 47 C.F.R. Part 17; the facility is
21 not located on tribal lands, as defined pursuant to 36 C.F.R.
22 s.800.16; and the facility does not result in human exposure to radio
23 frequency in excess of the applicable safety standards specified
24 pursuant ¹to¹ 47 C.F.R. s.1.1307.

25 "Structure" means a pole, tower, base station, as defined
26 pursuant ¹to¹ 47 C.F.R. s.1.6100, or other building, whether or not
27 it has an existing antenna facility, which is used or is to be used for
28 the provision of personal wireless service.

29 "Technically feasible" means that, by virtue of engineering or
30 spectrum usage, the proposed placement for a small wireless
31 facility, or its design, concealment measures, or site location can be
32 implemented without a ¹material¹ reduction in the functionality of
33 the small wireless facility.

34 "Tower" shall have the same meaning as defined pursuant to 47
35 C.F.R. ¹s.¹1.6100.

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

40 "Wireless provider" means a wireless infrastructure provider or a
41 wireless service provider.

42 "Wireless service" means any services provided to the general
43 public and made available on a non-discriminatory basis using
44 licensed or unlicensed spectrum, whether at a fixed location or
45 mobile, provided using ¹an antenna facility¹.

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

1 "Wireline backhaul facility" means ¹["an above-ground or
2 underground wireline facility used to transport communications
3 data or other electric communications from an antenna facility to a
4 communications network] a physical transmission path, all or part
5 of which is within the right-of-way, used for the transport of
6 communications services or other electronic communications by
7 wire from an antenna facility to a communications network¹.

8
9 3. a. An authority may not enter into an exclusive arrangement
10 with any person or entity for the use of the right-of-way for:

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

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

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

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

19 b. Subject to the provisions of this section, a wireless provider
20 shall have the right, as a permitted use not subject to zoning review or
21 approval, and without the need for ¹["municipal] authority¹ consent,
22 ¹["pursuant to R.S.48:3-19,]"¹ to:

23 (1) collocate small wireless facilities;

24 (2) mount or install small wireless facilities on new or replacement
25 poles;

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

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

32 Small wireless facilities, antenna equipment, and poles collocated
33 or installed pursuant to this section shall be installed and maintained as
34 not to obstruct or hinder the usual travel or public safety in a right-of-
35 way or obstruct the legal use of a right-of-way by a public utility.
36 Construction and maintenance by wireless providers shall comply
37 with the National Electrical Safety Code, published by the Institute of
38 Electrical and Electronics Engineers, and all applicable laws and
39 regulations for the protection of underground and overhead public
40 utility facilities.¹

41
42 4. a. A new, replaced, or modified pole installed in a right-of-
43 way after the effective date of P.L. , c. (C.) (pending
44 before the Legislature as this bill) for the purpose of collocating,
45 mounting, or installing a small wireless facility shall not exceed 50
46 feet in height above ground level or ¹["ten] 10¹ percent taller than
47 the tallest existing pole in place as of the effective date of P.L. , c.

1 (C.) (pending before the Legislature as this bill) in the same
2 right-of-way within 500 feet of the new, replaced, or modified pole,
3 whichever is greater.

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

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

15 ¹d. A wireless provider shall not apply to install a new pole
16 unless it has determined after diligent investigation that it cannot
17 meet its ²[wireless]² service objectives by collocating on ²[a pre-
18 existing]² an existing² pole or other structure on which:

19 (1) the wireless provider has the right to collocate subject to
20 reasonable terms and conditions, including the right to ²pole² mount
21 antenna equipment ²[on a pre-existing pole]²; and

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

27 e. For applications for new poles in the right-of-way in areas
28 zoned for residential use, the authority may propose an alternate
29 location in the right-of-way within 100 feet of the location set forth
30 in the application, and the wireless provider shall use the authority's
31 proposed alternate location unless the location imposes technical
32 limits or significant additional costs. The wireless provider shall
33 certify that it has made the determination in good faith, based on the
34 assessment of a licensed engineer, and it shall provide a written
35 summary of the basis for that determination.¹

36

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

42 (1) the aesthetic requirements shall be reasonable, in that they are
43 technically feasible and reasonably directed at avoiding or remedying
44 unsightly or out-of-character deployments, are no more burdensome
45 than those applied to ¹[other types of] functionally equivalent¹
46 infrastructure deployments, and are ¹[objective and]¹ published in
47 advance;

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

4 (3) an authority may deny an application for not complying with
5 an aesthetic requirement only if the authority finds that the denial does
6 not prohibit or have the effect of prohibiting the provision of wireless
7 service ¹[;]¹

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

12 (1) a wireless provider shall be permitted to collocate small
13 wireless facilities on, ¹or¹ modify ¹[.]¹ or replace ¹,¹ decorative poles
14 when necessary to deploy a small wireless facility ¹[. An]¹, provided
15 that an¹ authority may require the collocation or decorative pole
16 replacement to reasonably conform to the design aesthetics of the
17 original decorative pole or poles ¹[, provided the aesthetic
18 requirements are technically feasible]¹.

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

21
22 6. a. A wireless provider shall comply with undergrounding
23 requirements that are consistent with subsection a. of section 5
24 of P.L. , c. (C.) (pending before the Legislature as this bill)
25 when:

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

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

35 (3) ¹subject to the application process established pursuant to
36 section 11 of P.L. , c. (C.) (pending before the Legislature as
37 this bill),¹ a wireless provider may install a new pole in the designated
38 area that otherwise complies with P.L. , c. (C.) (pending
39 before the Legislature as this bill) when the wireless provider is not
40 able to provide wireless service by collocating on a remaining
41 structure.

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

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

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

3
4 7. ~~1~~ **1** ~~【The authority may require a】~~ A¹ wireless provider ~~1~~ **1** ~~【to】~~
5 shall¹ repair all damage to a right-of-way caused by the activities of
6 the wireless provider and ~~1~~ **1** ~~【to】~~ return the right-of-way to its
7 functional ~~1~~ **1** ~~and aesthetic~~¹ equivalence before the damage, pursuant to
8 the competitively neutral, reasonable requirements and specifications
9 of the authority. If the wireless provider fails to make the repairs
10 required by the authority within a reasonable time after written notice,
11 the authority may make those repairs and charge the applicable party
12 the reasonable, documented cost of the repairs.

13
14 8. A wireless provider shall not be required to replace or
15 upgrade an existing pole except for reasons of structural necessity
16 or compliance with applicable codes. A wireless provider may, with
17 the permission of the pole owner, replace or modify the existing
18 pole, but any replacement or modification shall be consistent with
19 the design aesthetics of the pole being modified or replaced.

20
21 9. A wireless provider ~~1~~ **1** ~~【is required to】~~ shall¹ notify the authority
22 at least 30 days before the abandonment of a small wireless facility.
23 Following receipt of the notice, the authority shall direct the wireless
24 provider to remove all or any portion of the small wireless facility and
25 associated antenna equipment that the authority determines would be
26 in the best interest of ~~1~~ **1** ~~the~~¹ public ~~1~~ **1** ~~【safety】~~¹. If the wireless provider
27 fails to remove the abandoned small wireless facility within 90 days
28 after the notice, the authority may undertake to remove the small
29 wireless facility and recover the actual and reasonable expenses of the
30 removal from the wireless provider, its successors, or assigns.

31
32 10. Except as provided in P.L. , c. (C.) (pending before
33 the Legislature as this bill), an authority may not prohibit, regulate,
34 or charge for the collocation, mounting, or installation of a small
35 wireless facility on a new, modified, or replacement pole, or the
36 installation, modification, or replacement of an associated pole or
37 antenna equipment that may be permitted in P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39
40 11. a. An authority may require an applicant to obtain a permit
41 for:

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

44 (2) ~~1~~ **1** ~~the~~¹ mounting or installation of a small wireless facility on a
45 new, modified, or replacement pole; or

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

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

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

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

13 (2) an authority may not directly or indirectly require an applicant
14 to perform services or provide goods unrelated to the permit, such as
15 in-kind contributions to the authority including, but not limited to,
16 reserving fiber, conduit, or pole space for the authority;

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

23 (4) an authority may not require:

24 (a) the collocation, mounting, or installation of a small wireless
25 facility on any specific pole or category of poles or require multiple
26 antenna facilities on a single pole;

27 (b) the use of specific pole types or configurations when installing
28 a new or replacement pole; or

29 (c) the underground placement of a small wireless facility or
30 antenna equipment that is or are designated in an application to be
31 pole-mounted or ground-mounted ¹, provided that an authority may:

32 (i) require, pursuant to section 6 of P.L. , c. (C.) (pending
33 before the Legislature as this bill), that a wireless provider place
34 underground fiber that is part of a small wireless facility and not in or
35 on a pole; or

36 (ii) prohibit, pursuant to section 6 of P.L. , c. (C.) (pending
37 before the Legislature as this bill), ground-mounted antenna
38 equipment¹;

39 (5) ¹subject to the provisions of subparagraph (d) of paragraph (9)
40 of subsection b. of this section,¹ an authority may not limit the
41 collocation of a small wireless facility or the mounting or installation
42 of a small wireless facility on a new ¹[, modified,]¹ or replacement
43 pole by minimum horizontal separation distance requirements from an
44 existing small wireless facility ¹[or structure]¹;

45 (6) the authority may require an applicant to include an attestation
46 that the small wireless facility ¹[will] shall¹ be operational for use by
47 a wireless service provider within one year after the permit issuance

1 date, unless the authority and the applicant agree to extend this period
2 or a delay is caused by lack of commercial power, communications
3 **1[transport]1** facilities to the site, or any other factors outside of the
4 applicant's control;

5 (7) within **1[ten] 10**¹ days of receiving an application, an authority
6 shall determine and notify the applicant in writing whether the
7 application is complete. If an application is incomplete, an authority
8 shall specifically identify the missing information in writing. The
9 processing deadline provided in paragraph (8) of this subsection shall
10 restart on the date the applicant provides the missing information to
11 complete the application;

12 (8) an authority shall process an application in a non-
13 discriminatory manner and the application shall be deemed approved if
14 the authority fails to approve or deny the application within:

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

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

19 **1If an authority provides written notification to the applicant within**
20 **10 days of receiving an application certifying that it is experiencing an**
21 **unusually high overall level of permitting activity or other**
22 **circumstances beyond the authority's control that prevents the**
23 **authority from reviewing and processing the application by the**
24 **deadline, the processing deadline may be extended automatically for**
25 **up to 30 days.**¹

26 The processing deadline may be tolled by agreement of the
27 applicant and the authority;

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

34 (a) **1[materially]1** interferes with the safe operation of traffic
35 control equipment;

36 (b) **1[materially]1** interferes with sight lines or clear zones for
37 transportation or pedestrians;

38 (c) **1[materially]1** interferes with compliance with the federal
39 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.),
40 or similar federal or State standards regarding pedestrian access or
41 movement;

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

1 (e) ¹designates the location of a new pole for the purpose of
2 mounting or installing a small wireless facility within seven feet in any
3 direction of an electrical conductor, unless the wireless provider
4 obtains the written consent of the public utility that owns or manages
5 the electrical conductor;

6 (f) ¹ fails to comply with applicable codes; or

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

9 (10) the authority shall document the basis for an application
10 denial, including the specific code, rule, or statutory provisions on
11 which the denial was based, and send the documentation to the
12 applicant on or before the day the authority denies an application. The
13 applicant may cure the deficiencies identified by the authority and
14 resubmit the application within 30 days of the denial without paying
15 an additional application fee. The authority shall approve or deny the
16 revised application within 30 days of resubmission and limit its review
17 to the deficiencies cited in the denial;

18 (11) an applicant seeking to collocate, mount, or install more than
19 one small wireless facility within the jurisdiction of a single authority
20 may file a consolidated application for small wireless facilities and
21 associated poles and antenna equipment and receive a single permit for
22 the collocation, mounting, or installation of ¹multiple up to 25¹
23 small wireless facilities and the placement of associated poles and
24 antenna equipment ¹;;¹ provided ¹[, however,] that all small
25 wireless facilities within the consolidated application are substantially
26 the same type and proposed for collocation on substantially the same
27 types of structures;

28 (12) an applicant shall not file within a 60-day period, three
29 consolidated applications; or multiple applications that collectively
30 seek permits for a combined total of more than 75 small wireless
31 facilities and associated poles and antenna equipment;

32 (13)¹ the denial of one or more small wireless facilities in a
33 consolidated application shall not delay processing of any other small
34 wireless facilities, poles, or antenna equipment in the same
35 consolidated application. A consolidated application shall be
36 collectively processed in accordance with the procedures in this
37 section. A consolidated application that includes a new or replacement
38 pole deployment shall be subject to a 90-day timeframe for approval;

39 ¹(12) (14)¹ installations, mountings, modifications,
40 replacements, and collocations for which a permit is granted pursuant
41 to this section shall be completed by the applicant within one year after
42 the permit issuance date unless the authority and the applicant agree to
43 extend this period, or a delay is caused by the lack of commercial
44 power or communications facilities at the site ¹.;¹

45 ¹(13) (15)¹ approval of an application authorizes the applicant
46 to:

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

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

10 ¹[(13)] (16)¹ an authority may not institute, either expressly or de
11 facto, a moratorium on:

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

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

17 ¹If the State or another authority has declared an emergency and
18 the State or another authority institutes a temporary moratorium that is
19 generally applicable and competitively neutral, is necessary to address
20 the emergency, disaster, or related public safety needs within the
21 authority's jurisdiction, is targeted to those geographic areas that are
22 affected by the disaster or emergency, and applies only for the duration
23 of declaration of emergency, then the provisions of subparagraphs (a)
24 and (b) of this paragraph shall not apply.¹

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

26 (1) routine maintenance;

27 (2) the replacement of a small wireless facility or antenna
28 equipment ¹[with a] . provided the replacement¹ small wireless
29 facility or antenna equipment ¹[that]¹ is substantially similar ¹to¹ or
30 the same size ¹as¹ or smaller ¹[as the replacement]¹ than the original
31 small wireless facility or antenna equipment and continues to meet all
32 other requirements of the original permit¹; or

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

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

43
44 12. A person owning, managing, or controlling an authority pole
45 in the right-of-way may not enter into an exclusive arrangement
46 with any person for the right to attach to the pole. A person who
47 purchases or otherwise acquires an authority pole is subject to the

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

3
4 13. An authority shall allow the collocation of a small wireless
5 facility and the installation of associated antenna equipment on an
6 existing authority pole, ¹and¹ the mounting or installation of a small
7 wireless facility and the installation of associated antenna equipment
8 on a replacement authority ¹[poles] pole,¹ on non-discriminatory
9 terms and conditions using the standards in section 5 of P.L. , c.
10 (C.) (pending before the Legislature as this bill) and the
11 application requirements in section 11 of P.L. , c. (C.)
12 (pending before the Legislature as this bill).

13
14 14. a. The rates, fees, and terms and conditions for any make-
15 ready work to collocate, mount, or install a small wireless facility
16 on an authority pole and to install associated antenna equipment
17 shall be non-discriminatory, competitively neutral, commercially
18 reasonable, and shall comply with P.L. , c. (C.) (pending
19 before the Legislature as this bill).

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

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

39
40 15. a. All rates and fees established pursuant to subsection b. of
41 this section shall be a reasonable approximation of the authority's
42 reasonable costs, and shall be applied by the authority in a non-
43 discriminatory manner. An authority may not require a wireless
44 provider to pay any rates, fees, or compensation to the authority or
45 other person other than what is expressly authorized by
46 P.L. , c. (C.) (pending before the Legislature as this bill) for
47 the right to use or occupy the right-of-way for the collocation,
48 mounting, or installation of a small wireless facility on a pole in the

1 right-of-way, or for the installation, maintenance, modification, or
2 replacement of associated antenna equipment or a pole in the right-of-
3 way.

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

6 (1) \$500 for a single up-front application for collocation of a small
7 wireless facility that includes up to five small wireless facilities, with
8 an additional \$100 for each small wireless facility included in the same
9 application thereafter;

10 (2) \$250 for the modification or replacement of an existing pole,
11 together with the mounting or installation of an associated small
12 wireless facility in the right-of-way; ¹and¹

13 (3) \$1,000 for the installation of a new pole, together with the
14 mounting or installation of an associated small wireless facility in the
15 right of way ¹]; and

16 (4) subject to subsection a. of this section, if].

17 c. Notwithstanding the provisions of any law, rule, regulation, or
18 order to the contrary, ¹ an authority ¹ [elects] may elect ¹ to charge for
19 use of the right-of-way or the collocation of a small wireless facility on
20 an authority pole in the right-of-way, ¹provided, however, that¹ the
21 rate ¹for that use¹ shall not exceed ¹[\$20] \$200¹ per small wireless
22 facility per year for right-of-way access and ¹[\$100] \$70¹ per
23 authority pole per year for a small wireless facility collocated,
24 mounted, or installed on an authority pole. The rates established
25 pursuant to this paragraph, together with a one-time application fee,
26 shall be the total compensation that the wireless provider is required to
27 pay the authority for the deployment of each small wireless facility in
28 the right-of-way and any associated antenna equipment or pole.

29
30 16. a. An authority shall not have or exercise any jurisdiction
31 or authority over the design, engineering, construction, installation,
32 or operation of a small wireless facility located in an interior
33 structure or upon the site of a campus, stadium, or athletic facility
34 not owned or controlled by the authority, other than to require
35 compliance with applicable codes.

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

1 17. a. An authority may adopt an ordinance that makes available
2 to wireless providers rates, fees, and other terms and conditions that
3 comply with P.L. , c. (C.) (pending before the Legislature as
4 this bill). ¹**【Pursuant to the provisions of this section, in】** In¹ the
5 absence of an ordinance ¹**【that fully complies with**
6 P.L. , c. (C.) (pending before the Legislature as this bill) and
7 until a compliant ordinance is adopted¹, a wireless provider may
8 install and operate a small wireless facility and any associated poles
9 and antenna equipment under the requirements of P.L. , c.
10 (C.) (pending before the Legislature as this bill). An authority
11 may not require a wireless provider to enter into an agreement to
12 implement P.L. , c. (C.) (pending before the Legislature as
13 this bill), but agreements are permissible if voluntary and non-
14 discriminatory.

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

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

1 18. a. An authority may adopt reasonable indemnification,
2 insurance, and bonding requirements related to a small wireless
3 facility and associated pole permits and antenna equipment pursuant
4 to the requirements of this section and section 6 of P.L. , c.
5 (C.) (pending before the Legislature as this bill).

6 b. ¹ [An authority shall not require a wireless provider to
7 indemnify and hold the authority and its officers and employees
8 harmless against any claims, lawsuits, judgments, costs, liens,
9 losses, expenses, or fees, except when a court of competent
10 jurisdiction has found that the negligence of the wireless provider
11 while installing, repairing, or maintaining a small wireless facility
12 or associated poles and antenna equipment caused the harm that
13 created the claims, lawsuits, judgments, costs, liens, losses,
14 expenses, or fees] ² [A] Any² wireless provider that owns or
15 operates small wireless facilities or ² [public]² utility poles in the
16 right-of-way shall indemnify, protect, defend, and hold the
17 authority and its elected officials, officers, employees, agents, and
18 volunteers harmless against any and all claims, lawsuits, judgments,
19 costs, liens, losses, expenses, fees including reasonable attorney
20 fees and costs of defense, proceedings, actions, demands, causes of
21 action, liability, and suits of any kind and nature, including, but not
22 limited to, personal or bodily injury or death, property damage or
23 other harm for which recovery of damages is sought, to the extent
24 that it is caused by the negligence of the wireless provider who
25 owns or operates small wireless facilities or ² [public]² utility poles
26 in the right-of-way, any agent, officer, director, representative,
27 employee, affiliate, or subcontractor of the wireless provider, or
28 their respective officers, agents, employees, directors, or
29 representatives while installing, repairing, operating, or maintaining
30 facilities in rights-of-way¹.

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

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

38 (2) An authority may require a wireless provider to furnish
39 proof of insurance, if required, prior to the effective date of any
40 permit issued for a small wireless facility work] Except for a
41 wireless provider with an existing agreement to occupy and operate
42 in the rights-of-way, during the period in which the wireless
43 provider's facilities are located on the ² [authority's] authority²
44 improvements or rights-of-way, the authority may require the
45 wireless provider to carry, at the wireless provider's own cost and
46 expense, the following insurance:

1 (a) property insurance for its property's replacement cost
2 against all risks;

3 (b) workers' compensation insurance, as required by law; or
4 (c) commercial general liability insurance with respect to its
5 activities on the authority improvements or rights-of-way to afford
6 minimum protection limits consistent with its requirements of other
7 users of authority improvements or rights-of-way, including
8 coverage for bodily injury and property damage. An authority may
9 require a wireless provider to include the authority as an additional
10 insured on the commercial general liability policy and provide
11 certification and documentation of inclusion of the authority in a
12 commercial general liability policy as reasonably required by the
13 authority.

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

22 d. ¹【An authority may adopt bonding requirements for small
23 wireless facilities if the authority imposes similar requirements in
24 connection with permits issued for other right-of-way users.

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

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

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

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

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

1 19. a. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall be construed to allow any person or
3 entity to provide cable services regulated pursuant to 47 U.S.C.
4 s.521 through 47 U.S.C. s.573 without compliance with all laws
5 applicable to those cable operators, nor shall it be interpreted to
6 impose any new requirements on cable operators for the provision
7 of cable service in this State.

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

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

20 d. Nothing in P.L. , c. (C.) (pending before the
21 Legislature as this bill) shall ¹【apply to poles owned by an investor-
22 owned public utility, except as it concerns a wireless provider's
23 access to a right-of-way and permits for the collocation, mounting,
24 or installation of a small wireless facility on investor-owned public
25 utility poles pursuant to a pole attachment agreement between the
26 wireless provider and the investor-owned public utility】 authorize a
27 person to collocate a small wireless facility on property owned by a
28 public utility without consent of the public utility nor be construed
29 to impact, modify, or supersede any construction standard,
30 engineering practice, tariff provision, collective bargaining
31 agreement, contractual obligation or right, or federal or State law or
32 regulation relating to facilities or equipment owned or controlled by
33 a public utility or its affiliate, an electric cooperative, or an
34 independent electric transmission company, that is not a wireless
35 provider^{1 2}, nor shall P.L. , c. (C.) (pending before the
36 Legislature as this bill) be construed to apply to a public utility's
37 use of its own poles, facilities, or both for communications
38 associated with its public utility operations².

39
40 20. A court of competent jurisdiction shall have jurisdiction to
41 determine disputes arising pursuant to P.L. , c. (C.)
42 (pending before the Legislature as this bill). Pending resolution of a
43 dispute concerning rates for collocation, mounting, and installation
44 of small wireless facilities on authority poles in the right-of-way
45 and the installation of associated antenna equipment, the authority
46 owning or controlling the pole shall allow the collocating person or
47 entity to collocate at annual rates established pursuant to section 15
48 of P.L. , c. (C.) (pending before the Legislature as this

1 bill), with rates to be reconciled upon final resolution of the dispute.
2 A dispute shall be pursued in accordance with accelerated docket or
3 complaint procedures, where available.

4

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