

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1116
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: MARCH 17, 2021

SUMMARY

- Synopsis:** Provides for uniform regulation of small wireless facility deployment in this State.
- Type of Impact:** Annual State and local revenue and cost impacts.
- Agencies Affected:** Board of Public Utilities; Local Government Units

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Impact	Indeterminate
State Revenue Impact	Indeterminate
Local Cost Impact	Indeterminate
Local Revenue Impact	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will have an indeterminate impact on annual State and local costs and revenues. This bill primarily concerns the manner in which the State and local governments may regulate small wireless facilities within their right-of-way. The impact on any given government unit may be to increase or decrease costs and revenues based on how its regulations change under the bill compared to its current practices. To the extent that a government unit shifts infrastructure maintenance costs to utilities or is able to increase the cost of permits, fees, and other agreements, the government unit’s costs would be expected to decrease or its revenues increase. Conversely, if a government unit takes on additional infrastructure maintenance costs or reduces the cost of permit fees and other agreements, its costs would increase or its revenues would be reduced. The regulatory environment and fee structure for each government unit varies, so the impact could be in either direction.

- The regulatory certainty that comes from a uniform set of Statewide standards may reduce expenditures in general by reducing time and labor costs for the State and local government units to develop regulations independently. A uniform set of standards will also likely allow the resolution of disputes that emerge in one area to serve as precedent in other areas, so that over time there are fewer disputes over small wireless facility regulation issues.

BILL DESCRIPTION

This bill provides for the uniform regulation of small wireless facility deployment by the State and local governments. The bill prohibits a government unit from regulating small wireless facilities in a manner that is inconsistent with the bill and sets certain limits on the size of poles, antennae, and equipment; sets limits on fees and charges; prevents the State and local governments from making exclusive arrangements with wireless providers; and provides a means by which small wireless facilities can be required to maintain their infrastructure or be forced to pay government units for their costs in maintaining or removing infrastructure.

The bill requires a wireless provider to repair all damage to the right-of-way caused by its activities and to return the right-of-way to its functional and aesthetic equivalence before the damage. If the wireless provider fails to make the repairs required within a reasonable time after written notice, the government unit may make those repairs and charge the applicable party the reasonable, documented cost of the repairs.

The bill requires wireless providers to provide notice at least 30 days before the abandonment of a small wireless facility. Following receipt of the notice, the government unit is to direct the wireless provider to remove all or any portion of the small wireless facility and associated antenna equipment that is determined to be in the best interest of the public. If the wireless provider fails to remove the abandoned small wireless facility within 90 days after the notice, the government unit may undertake to remove the small wireless facility and recover the expenses of the removal from the wireless provider.

The bill allows a government unit to require an applicant to obtain a permit for certain activities related to wireless facilities, but each issued permit is to be of general applicability and is not to apply exclusively to a small wireless facility. A government unit is to receive and process applications following certain requirements pursuant to the bill. Application fees for any permit issued are not to exceed certain amounts pursuant to the bill.

Under the bill, the rates, fees, and terms and conditions for any make-ready work to collocate, mount, or install a small wireless facility on a government unit pole and to install associated antenna equipment are to be non-discriminatory, competitively neutral, commercially reasonable, and are to comply with the provisions of the bill. The bill further provides that all rates and fees are to be a reasonable approximation of the government unit's costs and are to be applied in a non-discriminatory manner. A government unit may not require a wireless provider to pay any rates, fees, or compensation to the government unit or other person other than what is expressly authorized by the bill.

Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant the bill or otherwise specifically authorized by State or federal law, a government unit is not to adopt or enforce any regulations or requirements on the placement or operation of communications facilities in their right-of-way by a communications service provider

authorized by federal, State, or local law to operate in the right-of-way, regulate any communications services, or impose or collect any tax, fee, rate, or charge for the provision of additional communications service over the communications service provider's communications facilities in the right-of-way.

The bill allows a government unit to adopt an ordinance that makes available to wireless providers rates, fees, and other terms and conditions that comply with the provisions of the bill. In the absence of an ordinance, a wireless provider may install and operate a small wireless facility and any associated poles and antenna equipment under the requirements of the bill. A government unit may not require a wireless provider to enter into an agreement to implement the provisions of the bill, but agreements are permissible if voluntary and non-discriminatory.

The bill provides that a government unit may adopt reasonable indemnification, insurance, and bonding requirements related to a small wireless facility and associated pole permits and antenna equipment.

The bill provides that a government unit may require a wireless provider to have in effect certain insurance coverage as provided in the bill. The bill also allows a government unit to impose reasonable and non-discriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or government unit property caused by the wireless provider or its agent.

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill will have an indeterminate annual impact on State and local costs and revenues. This bill primarily concerns the manner in which the State and local governments may regulate small wireless facilities within their right-of-way. The impact on any given government unit may be to increase or decrease costs and revenues based on how its regulations change under the bill compared to its current practices. To the extent that a government unit shifts infrastructure maintenance costs to utilities or is able to increase the cost of permits, fees, and other agreements, the government unit's costs would be expected to decrease or its revenues increase. Conversely, if a government unit takes on additional infrastructure maintenance costs or reduces the cost of permit fees and other agreements, its costs would increase or its revenues would be reduced. The regulatory environment and fee structure for each government unit varies, so the impact could be in either direction.

In general, this bill sets certain limits on the size of poles, antennae, and equipment; sets limits on fees and charges; prevents the State and local governments from making exclusive arrangements with wireless providers; and provides a means by which small wireless facilities can be required to maintain their infrastructure or be forced to pay government units for their costs in maintaining or removing infrastructure. It is likely that government units with more aggressive regulatory approaches will have their regulations scaled back, which could result in lower fee

revenue and higher costs as those government units must take on a greater maintenance burden; however; those government units also may realize greater utility development in their right-of-way, which would increase permit and fee revenue over time and have indirect benefits from a greater supply of wireless service providers in the area. Government units with passive regulatory approaches may realize greater revenue and reduced costs as they are given new tools to require utilities to more actively maintain the right-of-way and to recover certain maintenance costs they incur.

The regulatory certainty that comes from a uniform set of Statewide standards may reduce expenditures in general by reducing time and labor costs for the State and local government units to develop regulations independently. The statutory framework in the bill limits the scope of rulemaking in a government unit and also provides a common set of standards, so it is less likely for there to be confusion from one government unit to the next. Utilities will likely develop a uniform approach that is consistent with the Statewide standard, and this will likely result in a reduced regulatory burden for each government unit to review each wireless facility.

A uniform set of standards will also likely allow the resolution of disputes that emerge in one area to serve as precedent in other areas, so that over time there are fewer disputes over small wireless facility regulation issues. When disputes do arise, resolutions to similar issues in other areas will allow government units to avoid litigating those same disputes. This will also reduce direct regulatory costs for local government units.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Principal Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).