

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint] **ASSEMBLY, No. 1116**

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 16, 2021

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1116 (2R), with committee amendments.

As amended and reported, this bill provides for the uniform regulation of small wireless facility deployment in the State by the State government and local government units (authorities). The bill prohibits an authority from regulating small wireless facilities in a manner inconsistent with the bill, including entering into an exclusive arrangement with any person or entity for the use of the right-of-way for:

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

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

- 1) collocate small wireless facilities;
- 2) mount or install small wireless facilities on new or replacement poles;
- 3) install associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted, or installed; or
- 4) install, modify, or replace its own poles, or, with the permission of the owner, a third party's poles, associated with a small wireless facility, along, across, upon, and under the right-of-way.

The bill provides that each new, replaced, or modified pole installed in the right-of-way for the purpose of collocating, mounting, or installing a small wireless facility is to follow certain height restrictions pursuant to the bill. A wireless provider is not to install a new pole unless the wireless provider has determined it cannot meet its

service objectives by collocating on existing poles or structures. An authority may adopt aesthetics requirements governing the deployment of small wireless facilities and associated antenna equipment and poles in the right-of-way, subject to certain requirements pursuant to the bill. A wireless provider is to comply with undergrounding requirements that are consistent with the bill.

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

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

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

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

Each permit issued pursuant to the bill is to be of general applicability and is not to apply exclusively to a small wireless facility and an authority is to receive and process applications following certain requirements pursuant to the bill. Application fees for any permit issued pursuant to the bill 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 an authority pole and to install associated antenna

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

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

The bill allows an authority 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. An authority 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 an authority may adopt reasonable indemnification, insurance, and bonding requirements related to a small wireless facility and associated pole permits and antenna equipment. The bill requires a wireless provider that owns or operates a small wireless facility or utility pole in the right-of-way to indemnify, protect, defend, and hold the authority and its elected officials, officers, and employees, agents, and volunteers harmless against all claims, lawsuits, judgements, costs, liens, losses, expenses and fees.

The bill further provides that an authority may require a wireless provider to have in effect certain insurance coverage as provided in the bill. The bill also allows an authority 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 authority property caused by the wireless provider or its agent.

The bill provides that nothing in the bill is to be construed to authorize certain actions, including authorizing a person to collocate a small wireless facility on property owned by a public utility without consent of the public utility, to impact, modify or supersede any construction standard or other obligation applicable to certain entities that are not wireless providers, or to apply to a public utility's use of its own poles, facilities, or both for communications associated with its public utility operations.

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

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) include the provision of wireless fidelity information service utilizing unlicensed spectrum under the definition of "personal wireless service;"
- 2) clarify the definition of "wireline backhaul facility;"
- 3) require construction and maintenance of equipment within the right-of-way by wireless providers to comply National Electrical Safety Code and all applicable laws and regulations for the protection of underground and overhead public utility facilities;
- 4) remove the exception concerning a wireless provider's application for access to a right-of-way and the permitting for the collection, mounting, or installation of a small wireless facility on public utility poles pursuant to a pole attachment agreement between the wireless provider and the public utility; and
- 5) clarify that nothing in the bill is to be construed to apply to a public utility's use of its own poles, facilities, or both for communications associated with its public utility operations.

FISCAL IMPACT:

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 rights-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 public 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.