

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 2674

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2021

The Senate Economic Growth Committee reports favorably and with committee amendments Senate Bill No. 2674.

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, or be construed to impact, modify or supersede any construction standard or other obligation applicable to certain entities that are not wireless providers.

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.

The committee amended the bill to:

- 1) include in the bill's provisions the application to the State as an entity by including the State in the definition of "authority";
- 2) prohibit a wireless provider from applying to install a new pole under certain circumstances as provided in the bill;
- 3) provide that, for applications for new poles in the right-of-way in areas zoned for residential use, the authority may propose an alternate location in the right of way as provided in the bill;
- 4) require a wireless provider to repair all damage to a right of way and return the right-of-way to is functional and aesthetic equivalence;
- 5) provide that an authority may require that a wireless provider place underground fiber that is part of a small wireless facility and not in or on a pole or prohibit ground-mounted antenna equipment;
- 6) provide that, if an authority provides written notification to the applicant within 10 days of receiving an application certifying that it is experiencing an unusually high overall level of permitting activity, which prevents the authority from reviewing and processing the application by the deadline, the processing deadline may be extended automatically for up to 30 days;
- 7) provide that an applicant may file a consolidated application for up to 25 small wireless facilities provided that the small wireless facilities are substantially the same type and proposed for collocation on substantially the same types of structures;
- 8) prohibit an applicant from filing within a 60-day period, three consolidated applications or multiple applications that collectively seek permits for a combined total of more than 75 small wireless facilities and associated poles and antenna equipment;
- 9) provide that, if the State or another authority has declared an emergency and institutes a temporary moratorium that is generally applicable and competitively neutral to address the emergency, provisions of the bill prohibiting an authority from instituting a moratorium no longer apply;

10) adjusts the amounts of certain rates that may be charged by an authority for the use of a right-of-way as provided in the bill;

11) as provided in the bill, make changes to the indemnification, insurance, and bonding requirements related to a small wireless facility and associated pole permits and antenna equipment, makes changes to a wireless provider's insurance coverage carriage requirements for those facilities, and makes changes to the authority's ability 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;

12) provide for circumstances beyond an authority's control in extending the application processing deadline;

13) remove the provision that nothing in the bill is to apply to poles owned by investor-owned public utilities;

14) provide that nothing in the bill is to authorize a person to collocate a small wireless facility on property owned by a public utility without consent of the public utility nor be construed to effect certain circumstances as provided in the amendments;

16) clarify the definition of "antenna" and "antenna facility;"

17) include the provision of wireless fidelity information service utilizing unlicensed spectrum under the definition of "personal wireless service;"

18) clarify the definition of "wireline backhaul facility;" and

19) 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.