

[Third Reprint]

ASSEMBLY, No. 1116

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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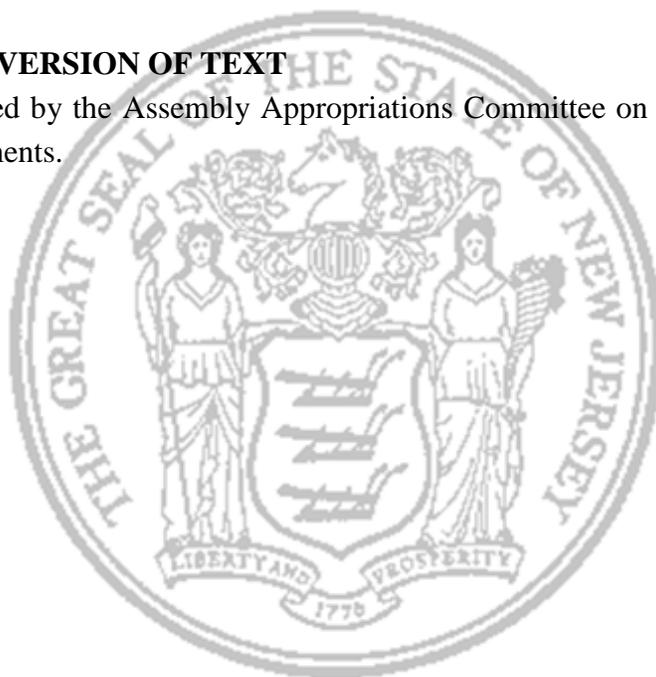
Assemblymen Zwicker, Calabrese and Karabinchak

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 16, 2021, 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 ³on a
32 competitively neutral basis³ to densify wireless networks and to
33 provide next-generation wireless services;

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

40 ¹g. Authorities actively manage rights-of-way, acting as trustees
41 of 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:

¹Assembly ATU committee amendments adopted December 10, 2020.

²Assembly AAP committee amendments adopted March 17, 2021.

³Assembly AAP committee amendments adopted June 16, 2021.

1 ¹**[g.] h.**¹ The procedures, rates, and fees established in P.L. ,
 2 c. (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
 6 reflect a balancing of the interests of the wireless providers
 7 deploying new small wireless facilities and the interests of
 8 authorities in ¹managing and¹ recovering the cost of managing
 9 ¹**[access to the right-of-way] the rights-of-way**¹.

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. ³**[“Antenna” shall not include an
 18 unintentional radiator, mobile station, or device authorized pursuant
 19 to 47 C.F.R. Part 15.]**³

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. ³“Antenna facility” includes small wireless facilities.
 27 “Antenna facility” shall not include:

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

30 b. wireline backhaul facilities; or

31 c. coaxial or fiber optic cables that are not immediately adjacent to
 32 or directly associated with a particular antenna.³

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

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

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

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

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

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

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

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

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

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

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

46 "FCC" means the Federal Communications Commission of the
47 United States.

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

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

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

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

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

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

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

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

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

31 "Personal wireless service" means "commercial mobile service,"
32 "unlicensed wireless services," and "common carrier wireless
33 exchange access services," as those terms are defined pursuant to 47
34 U.S.C. s.332, **3** **["and"]**³ "commercial mobile data service," as defined
35 pursuant to 47 U.S.C. s.1401 **3**, and information service provided
36 through wireless fidelity or similar technologies utilizing unlicensed
37 spectrum³.

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

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

48 "Rate" means a recurring charge.

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

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

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

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

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

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

37 "Wireless provider" means a wireless infrastructure provider or a
38 wireless service provider.

39 "Wireless service" means any services provided to the general
40 public and made available on a non-discriminatory basis using
41 licensed or unlicensed spectrum, whether at a fixed location or
42 mobile, provided using ¹**[wireless facilities]** an antenna facility¹.

43 "Wireless service provider" means a person who provides
44 wireless services.

45 "Wireline backhaul facility" means ³**[an above-ground or**
46 **underground wireline facility used to transport communications data or**
47 **other electric communications from an antenna facility to a**

1 communications network] a physical transmission path, all or part of
2 which is within the right-of-way, used for the transport of
3 communications services or other electronic communications by wire
4 from an antenna facility to a communications network³.

5
6 3. a. An authority may not enter into an exclusive
7 arrangement with any person or entity for the use of the right-of-
8 way for:

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

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

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

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

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

21 (1) collocate small wireless facilities;

22 (2) mount or install small wireless facilities on new or
23 replacement poles;

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

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

31 Small wireless facilities, antenna equipment, and poles
32 collocated or installed pursuant to this section shall be installed and
33 maintained as not to obstruct or hinder the usual travel or public
34 safety in a right-of-way or obstruct the legal use of a right-of-way
35 by a public utility. ³Construction and maintenance by wireless
36 providers shall comply with the National Electrical Safety Code,
37 published by the Institute of Electrical and Electronics Engineers, and
38 all applicable laws and regulations for the protection of underground
39 and overhead public utility facilities.³

40
41 4. a. A new, replaced, or modified pole installed in a right-of-
42 way after the effective date of P.L. , c. (C.) (pending
43 before the Legislature as this bill) for the purpose of collocating,
44 mounting, or installing a small wireless facility shall not exceed 50
45 feet in height above ground level or ¹[ten] 10¹ percent taller than
46 the tallest existing pole in place as of the effective date of P.L. ,
47 c. (C.) (pending before the Legislature as this bill) in the

1 same right-of-way within 500 feet of the new, replaced, or modified
2 pole, whichever is greater.

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

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

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

18 (1) the wireless provider has the right to collocate subject to
19 reasonable terms and conditions, including the right to pole mount
20 antenna equipment; and

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

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

35
36 5. a. An authority may adopt aesthetics requirements
37 governing the deployment of small wireless facilities and associated
38 antenna equipment and poles in a right-of-way, ¹which may include
39 pre-approved designs for new poles in specified areas,¹ subject to
40 the following:

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

1 (2) any design or concealment measures are not considered a
2 part of the small wireless facility for purposes of the size
3 parameters in the 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
6 does not prohibit or have the effect of prohibiting the provision of
7 wireless service ¹];¹

8 b. Aesthetic requirements applicable to deployment of small
9 wireless facilities on decorative poles and in historic districts shall,
10 in addition to the requirements of subsection a. of this section,
11 comply 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
14 poles when necessary to deploy a small wireless facility ¹]. An],
15 provided that an¹ authority may require the collocation or
16 decorative pole replacement to reasonably conform to the design
17 aesthetics of the original decorative pole or poles ¹], provided the
18 aesthetic requirements are technically feasible¹.

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 of
24 P.L. , c. (C.) (pending before the Legislature as this bill)
25 when:

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

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

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

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

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

4 (2) a wireless provider to replace an existing pole within 50 feet
5 of the prior location.
6

7 7. ¹【The authority may require a】 A¹ wireless provider ¹【to】
8 shall¹ repair all damage to a right-of-way caused by the activities of
9 the wireless provider and ¹【to】¹ return the right-of-way to its
10 functional ¹and aesthetic¹ equivalence before the damage, pursuant
11 to the competitively neutral, reasonable requirements and
12 specifications of the authority. If the wireless provider fails to make
13 the repairs required by the authority within a reasonable time after
14 written notice, the authority may make those repairs and charge the
15 applicable party the reasonable, documented cost of the repairs.
16

17 8. A wireless provider shall not be required to replace or
18 upgrade an existing pole except for reasons of structural necessity
19 or compliance with applicable codes. A wireless provider may, with
20 the permission of the pole owner, replace or modify the existing
21 pole, but any replacement or modification shall be consistent with
22 the design aesthetics of the pole being modified or replaced.
23

24 9. A wireless provider ³【is required to】 shall³ notify the
25 authority at least 30 days before the abandonment of a small
26 wireless facility. Following receipt of the notice, the authority shall
27 direct the wireless provider to remove all or any portion of the small
28 wireless facility and associated antenna equipment that the authority
29 determines would be in the best interest of ¹the¹ public ¹【safety】¹.
30 If the wireless provider fails to remove the abandoned small
31 wireless facility within 90 days after the notice, the authority may
32 undertake to remove the small wireless facility and recover the
33 actual and reasonable expenses of the removal from the wireless
34 provider, its successors, or assigns.
35

36 10. Except as provided in P.L. , c. (C.) (pending before
37 the Legislature as this bill), an authority may not prohibit, regulate,
38 or charge for the collocation, mounting, or installation of a small
39 wireless facility on a new, modified, or replacement pole, or the
40 installation, modification, or replacement of an associated pole or
41 antenna equipment that may be permitted in P.L. , c. (C.)
42 (pending before the Legislature as this bill).
43

44 11. a. An authority may require an applicant to obtain a permit for:
45 (1) the collocation of a small wireless facility not subject to the
46 provisions of P.L.2011, c.199 (C.40:55D-46.2);

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

1 (3) the installation, modification, or replacement of ¹an
2 associated] ^a 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) subject 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 ¹or structure]¹;

45 (6) the authority may require an applicant to include an attestation
46 that the small wireless facility ¹will] 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 ³may shall³ not file within a 60-day period,
 29 three consolidated applications; or multiple applications that
 30 collectively seek permits for a combined total of more than 75 small
 31 wireless 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]~~ is substantially similar ¹~~to~~¹ or
30 the same size ¹~~as~~¹ or smaller ¹~~[as the replacement]~~ 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
8 equipment on a replacement authority ¹[poles] pole,¹ on non-
9 discriminatory terms and conditions using the standards in section 5
10 of P.L. , c. (C.) (pending before the Legislature as this bill)
11 and the application requirements in section 11 of P.L. ,
12 c. (C.) (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 P.L. ,
46 c. (C.) (pending before the Legislature as this bill) for the
47 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-
 3 of-way.

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

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

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

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

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

18 c. Notwithstanding the provisions of any law, rule, regulation,
 19 or order to the contrary,¹ an authority ¹[elects] may elect¹ to charge
 20 for use of the right-of-way or the collocation of a small wireless
 21 facility on an authority pole in the right-of-way, ¹provided,
 22 however, that¹ the rate ¹for that use¹ shall not exceed ¹[\$20]
 23 ²[\$50¹] ²\$200² per small wireless facility per year for right-of-way
 24 access and ¹[\$100] ²[\$220¹] ²\$70² per authority pole per year for a
 25 small wireless facility collocated, mounted, or installed on an
 26 authority pole. The rates established pursuant to this paragraph,
 27 together with a one-time application fee, shall be the total
 28 compensation that the wireless provider is required to pay the
 29 authority for the deployment of each small wireless facility in the
 30 right-of-way and any associated antenna equipment or pole.

31

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

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

40 c. (C.) (pending before the Legislature as this bill) or
 41 otherwise specifically authorized by State or federal law, an
 42 authority shall not adopt or enforce any regulations or requirements
 43 on the placement or operation of communications facilities in the
 44 right-of-way by a communications service provider authorized by
 45 federal, State, or local law to operate in a right-of-way, regulate any
 46 communications services, or impose or collect any tax, fee, rate, or
 47 charge for the provision of additional communications service over

1 the communications service provider's communications facilities in
2 a right-of-way.

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

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

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

1 ordinance or agreement or¹ P.L. , c. (C.) (pending before
2 the Legislature as this bill) ¹, as applicable¹.

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

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

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

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

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

1 carry, at the wireless provider's own cost and expense, the
2 following insurance:

3 (a) property insurance for its property's replacement cost
4 against all risks;

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

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

16 A wireless provider may self-insure all or a portion of the
17 insurance coverage and limit requirements required by an authority.

18 A wireless provider that self-insures is not required, to the extent of
19 the self-insurance, to comply with the requirement for the naming
20 of additional insureds under this section. A wireless provider that
21 elects to self-insure shall provide to the authority evidence
22 sufficient to demonstrate its financial ability to self-insure the
23 insurance coverage and limits required by the authority¹.

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

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

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

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

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

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

1 facilities or damage to the right-of-way or authority property caused
 2 by the wireless provider or its agent¹.

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

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

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

23 d. Nothing in P.L. , c. (C.) (pending before the
 24 Legislature as this bill) shall ²apply to poles owned by an investor-
 25 owned public utility ²authorize a person to collocate a small
 26 wireless facility on property owned by a public utility without
 27 consent of the public utility nor be construed to impact, modify, or
 28 supersede any construction standard, engineering practice, tariff
 29 provision, collective bargaining agreement, contractual obligation
 30 or right, or federal or State law or regulation relating to facilities or
 31 equipment owned or controlled by a public utility or its affiliate, an
 32 electric cooperative, or an independent electric transmission
 33 company, that is not a wireless provider^{2 3} ², except as it concerns a
 34 wireless provider's ²application for² access to a right-of-way and
 35 permits for the collocation, mounting, or installation of a small
 36 wireless facility on ²[investor-owned]² public utility poles pursuant
 37 to a pole attachment agreement between the wireless provider and
 38 the ²[investor-owned]² public utility ², nor shall P.L. , c. (C.)
 39 (pending before the Legislature as this bill) be construed to apply to
 40 a public utility's use of its own poles, facilities, or both for
 41 communications associated with its public utility operations³.

42
 43 20. A court of competent jurisdiction shall have jurisdiction to
 44 determine disputes arising pursuant to P.L. , c. (C.)
 45 (pending before the Legislature as this bill). Pending resolution of a
 46 dispute concerning rates for collocation, mounting, and installation
 47 of small wireless facilities on authority poles in the right-of-way

1 and the installation of associated antenna equipment, the authority
2 owning or controlling the pole shall allow the collocating person or
3 entity to collocate at annual rates established pursuant to section 15
4 of P.L. , c. (C.) (pending before the Legislature as this
5 bill), with rates to be reconciled upon final resolution of the dispute.
6 A dispute shall be pursued in accordance with accelerated docket or
7 complaint procedures, where available.
8
9 21. This act shall take effect on the first day of the seventh
10 month next following enactment.