SENATE, No. 1487

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED FEBRUARY 10, 2022

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)
Senator FRED H. MADDEN, JR.
District 4 (Camden and Gloucester)

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

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning deployment of small wireless facilities and
supplementing Title 40 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares that:
   a. The deployment of small wireless facilities and other next-
geneneration wireless and broadband network facilities is a matter of
federal and statewide concern and interest;
   b. Wireless and broadband products and services are a
significant and continually growing part of the State’s economy and
encouraging the development of strong and robust wireless and
broadband communications networks throughout the State is
integral to the State’s economic competitiveness;
   c. Rapid deployment of small wireless facilities will serve
important Statewide goals, such as: meeting the growing consumer
demand for wireless data; increasing competitive options for
communications services available to the State’s residents;
   d. Small wireless facilities, including facilities commonly
referred to as small cells and distributed antenna systems, are most
cost-effective for a wireless service provider when deployed in
rights-of-way;
   e. To meet the key objectives of federal law and
P.L. , c. (C. ) (pending before the Legislature as this bill),
   wireless providers must be granted access to rights-of-way and have
the ability to attach to infrastructure in rights-of-way on a
competitively neutral basis to densify wireless networks and to
provide next-generation wireless services;
   f. Rates and fees for the permitting and deployment of small
wireless facilities in rights-of-way and on authority infrastructure,
including utility poles, throughout the State, consistent with federal
law, is reasonable and will encourage the development of robust
next-generation wireless and broadband networks for the benefit of
residents throughout the State;
   g. Authorities actively manage rights-of-way, acting as trustees
of this limited public asset, to protect residents’ safety, preserve the
character of communities, and maintain availability for current and
future uses; and
   h. The procedures, rates, and fees established in
P.L. , c. (C. ) (pending before the Legislature as this bill)
should be consistent with federal law and are fair, reasonable, and
further the State’s interest in facilitating and supporting a robust,
reliable, and technologically-advanced wireless and broadband
network and reflect a balancing of the interests of the wireless
providers deploying new small wireless facilities and the interests
of authorities in managing and recovering the cost of managing the
rights-of-way.

2. As used in P.L. , c. (C. ) (pending before the
Legislature as this bill):
"Antenna" means an apparatus designed for the purpose of
emitting radio frequency, to be operated or operating from a fixed
location pursuant to Federal Communications Commission
authorization, for the provision of personal wireless service and any
commingled information services.
"Antenna equipment" means equipment, switches, wiring,
cabling, power sources, shelters, or cabinets associated with an
antenna, located at the same fixed location as the antenna, and,
when collocated on a structure, is mounted or installed at the same
time as the antenna.
"Antenna facility" means an antenna and associated antenna
equipment. "Antenna facility” includes small wireless facilities.
"Antenna facility” shall not include:
a. the structure or improvements on, under, or within which the
equipment is located;
b. wireline backhaul facilities; or
c. coaxial or fiber optic cables that are not immediately adjacent to
or directly associated with a particular antenna.
"Applicable codes” means uniform building, fire, electrical,
plumbing, or mechanical codes adopted by the Commissioner of the
Department of Community Affairs pursuant to P.L.1975, c.217
(C.52:27D-119 et seq.), or authority amendments to those codes that
are of general application and are consistent with
P.L. , c. (C. ) (pending before the Legislature as this bill).
"Applicant” means any person who submits an application and is
a wireless provider.
"Application” means a request submitted by an applicant to an
authority for a permit to: collocate a small wireless facility; install,
modify, or replace a pole on which a small wireless facility will be
collocated, mounted, or installed; mount or install a small wireless
facility on a new or replacement pole; or install associated antenna
equipment adjacent to a structure on which a small wireless facility
is or will be collocated, mounted, or installed.
"Authority” means the State and any unit of local government,
and any board, commission, committee, authority, agency, office,
officer, or employee thereof, which has jurisdiction and control
over the use of a right-of-way for the placement of a wireless
facility within the right-of-way or has zoning or land use control for
the placement of a wireless facility not within a right-of-way.
"Authority” shall not mean a State court having jurisdiction over an
authority.
"Authority pole" means a pole or utility pole owned or operated by an authority in a right-of-way.

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

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

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

"Communications service provider” means: a cable operator, as defined pursuant to 47 U.S.C. s.522, as amended; a provider of information service, as defined pursuant to 47 U.S.C. s.153, as amended; a telecommunications carrier, as defined pursuant to 47 U.S.C. s.153, as amended; or a wireless service provider as defined pursuant to this section.

“Decorative pole” means an authority pole, or a pole that is subsidized by an authority, that is specially designed and placed for aesthetic purposes.

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

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

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

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

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

b. listed on the New Jersey Register of Historic Places or identified in an authority’s master plan adopted pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).
"Law" means a federal or State statute, common law, code, rule, regulation, order, or local ordinance, or resolution.

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

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

"Permit" means an authorization required by an authority to perform an action or initiate, continue, or complete a project for the deployment of antenna facilities at a specified location in a right-of-way.

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

“Personal wireless service” means “commercial mobile service,” “unlicensed wireless services,” and “common carrier wireless exchange access services,” as those terms are defined pursuant to 47 U.S.C. s.332, “commercial mobile data service,” as defined pursuant to 47 U.S.C. s.1401, and information service provided through wireless fidelity or similar technologies utilizing unlicensed spectrum.

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

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

"Rate" means a recurring charge.

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

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

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

“Technically feasible” means that, by virtue of engineering or
spectrum usage, the proposed placement for a small wireless
facility, or its design, concealment measures, or site location can be
implemented without a material reduction in the functionality of the
small wireless facility.

“Tower” shall have the same meaning as defined pursuant to 47
C.F.R. s.1.6100.

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

"Wireless provider” means a wireless infrastructure provider or a
wireless service provider.

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

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

"Wireline backhaul facility” means a physical transmission path,
all or part of which is within the right-of-way, used for the transport of
communications services or other electronic communications by wire
from an antenna facility to a communications network.

3. a. An authority may not enter 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.
b. Subject to the provisions of this section, a wireless provider shall 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.

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

4. a. A new, replaced, or modified pole installed in a right-of-way after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) for the purpose of collocating, mounting, or installing a small wireless facility shall not exceed 50 feet in height above ground level or 10 percent taller than the tallest existing pole in place as of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) in the same right-of-way within 500 feet of the new, replaced, or modified pole, whichever is greater.

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

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

d. A wireless provider shall not apply to install a new pole unless it has determined after diligent investigation that it cannot meet its service objectives by collocating on an existing pole or other structure on which:
(1) the wireless provider has the right to collocate subject to reasonable terms and conditions, including the right to pole mount antenna equipment; and

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

e. 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 within 100 feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made the determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for that determination.

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

(1) the aesthetic requirements shall be reasonable, in that they are technically feasible and reasonably directed at avoiding or remedying unsightly or out-of-character deployments, are no more burdensome than those applied to functionally equivalent infrastructure deployments, and are published in advance;

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

(3) an authority may deny an application for not complying with an aesthetic requirement only if the authority finds that the denial does not prohibit or have the effect of prohibiting the provision of wireless service.

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

(1) a wireless provider shall be permitted to collocate small wireless facilities on, or modify or replace, decorative poles when necessary to deploy a small wireless facility, provided that an authority may require the collocation or decorative pole replacement to reasonably conform to the design aesthetics of the original decorative pole or poles; and

(2) an authority may adopt aesthetic requirements applicable in historic districts that comply with this section.
6. a. A wireless provider shall comply with undergrounding requirements that are consistent with subsection a. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) when:
   (1) the authority has required all electric and telecommunications lines to be placed underground by a date certain that is three months prior to the submission of the application;
   (2) a pole the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities, and a pole may be modified or replaced by a wireless provider to accommodate the collocation, mounting, or installation of small wireless facilities, in compliance with P.L. , c. (C. ) (pending before the Legislature as this bill); and
   (3) subject to the application process established pursuant to section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill), a wireless provider may install a new pole in the designated area that otherwise complies with P.L. , c. (C. ) (pending before the Legislature as this bill) when the wireless provider is not able to provide wireless service by collocating on a remaining structure.

b. For small wireless facilities installed before an authority adopts requirements that electric and telecommunications lines be placed underground, an authority adopting these requirements shall permit:
   (1) a wireless provider to maintain the small wireless facilities in place on any pole not required to be removed, subject to any applicable pole attachment agreement with the pole owner; or
   (2) a wireless provider to replace an existing pole within 50 feet of the prior location.

7. A wireless provider shall repair all damage to a right-of-way caused by the activities of the wireless provider and 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.

8. A wireless provider shall not be required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes. A wireless provider may, with the permission of the pole owner, replace or modify the existing pole, but any replacement or modification shall be consistent with the design aesthetics of the pole being modified or replaced.
9. A wireless provider shall notify the authority at least 30 days before the abandonment of a small wireless facility. Following receipt of the notice, the authority shall 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.

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

11. a. An authority may require an applicant to obtain a permit for:
   (1) the collocation of a small wireless facility not subject to the provisions of P.L.2011, c.199 (C.40:55D-46.2);
   (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 section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

   b. An authority shall receive and process applications subject to the following requirements:
      (1) small wireless facilities shall be classified as permitted uses and not subject to zoning review or approval if they are located in the right-of-way in any zone;
      (2) an authority may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority including, but not limited to, reserving fiber, conduit, or pole space for the authority;
      (3) an applicant shall not be required to provide additional information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in paragraph (9) of this subsection;
      (4) an authority may not require:
(a) the collocation, mounting, or installation of a small wireless facility on any specific pole or category of poles or require multiple antenna facilities on a single pole;

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

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

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

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

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

   (6) the authority may require an applicant to include an attestation that the small wireless facility shall be operational for use by a wireless service provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or a delay is caused by lack of commercial power, communications facilities to the site, or any other factors outside of the applicant’s control;

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

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

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

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

   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 or other circumstances beyond the authority’s control that prevents the authority from reviewing and processing the application by the
deadline, the processing deadline may be extended automatically for up to 30 days. The processing deadline may be tolled by agreement of the applicant and the authority;

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

(a) interferes with the safe operation of traffic control equipment;
(b) interferes with sight lines or clear zones for transportation or pedestrians;
(c) interferes with compliance with the federal "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), or similar federal or State standards regarding pedestrian access or movement;
(d) fails to comply with reasonable and non-discriminatory horizontal spacing requirements of general application adopted by ordinance that concern the location of ground-mounted antenna equipment and new poles and which shall not prevent a wireless provider from serving any location;
(e) fails to comply with applicable codes; or
(f) fails to comply with sections 4, 5, or 6 of P.L. , c. (C. ) (pending before the Legislature as this bill);

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

(11) an applicant seeking to collocate, mount, or install more than one small wireless facility within the jurisdiction of a single authority may file a consolidated application for small wireless facilities and associated poles and antenna equipment and receive a single permit for the collocation, mounting, or installation of up to 25 small wireless facilities and the placement of associated poles and antenna equipment, provided that all small wireless facilities within the consolidated application are substantially the same type and proposed for collocation on substantially the same types of structures;

(12) an applicant shall not file 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;

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

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

(15) approval of an application authorizes the applicant to:

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

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

(16) an authority may not institute, either expressly or de facto, a moratorium on:

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

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

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

c. An authority shall not require an application for:

(1) routine maintenance;

(2) the replacement of a small wireless facility or antenna equipment, provided the replacement small wireless facility or antenna equipment is substantially similar to or the same size as or smaller than the original small wireless facility or antenna equipment and continues to meet all other requirements of the original permit; or

(3) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing poles, in compliance with the applicable codes.
An authority may require a permit for work pursuant to subsection a. of this section that requires excavation or closure of sidewalks or vehicular lanes within the right-of-way and the permit shall be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person’s activities in the right-of-way that require excavation, closing of sidewalks, or vehicular lanes.

12. A person owning, managing, or controlling an authority pole in the right-of-way may not enter into an exclusive arrangement with any person for the right to attach to the pole. A person who purchases or otherwise acquires an authority pole is subject to the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill).

13. An authority shall allow the collocation of a small wireless facility and the installation of associated antenna equipment on an existing authority pole, and the mounting or installation of a small wireless facility and the installation of associated antenna equipment on a replacement authority pole, on non-discriminatory terms and conditions using the standards in section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) and the application requirements in section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill).

14. a. 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 shall be non-discriminatory, competitively neutral, commercially reasonable, and shall comply with P.L. , c. (C. ) (pending before the Legislature as this bill).

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

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

15. a. All rates and fees established pursuant to subsection b. of this section shall be a reasonable approximation of the authority’s reasonable costs, and shall 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 P.L. , c. (C. ) (pending before the Legislature as this 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.

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

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

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

(3) $1,000 for the installation of a new pole, together with the mounting or installation of an associated small wireless facility in the right of.

c. Notwithstanding the provisions of any law, rule, regulation, or order to the contrary, an authority may elect to charge for use of the right-of-way or the collocation of a small wireless facility on an authority pole in the right-of-way, provided, however, that the rate for that use shall not exceed $200 per small wireless facility per year for right-of-way access and $70 per authority pole per year for a small wireless facility collocated, mounted, or installed on an authority pole. The rates established pursuant to this paragraph, together with a one-time application fee, shall be the total compensation that the wireless provider is required to pay the authority for the deployment of each small wireless facility in the right-of-way and any associated antenna equipment or pole.

16. a. An authority shall not 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 codes.
b. Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) or otherwise specifically authorized by State or federal law, an authority shall not 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 a 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 a right-of-way.

17. a. An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms and conditions that comply with P.L. , c. (C. ) (pending before the Legislature as this 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 P.L. , c. (C. ) (pending before the Legislature as this bill). An authority may not require a wireless provider to enter into an agreement to implement P.L. , c. (C. ) (pending before the Legislature as this bill), but agreements are permissible if voluntary and non-discriminatory.

b. An ordinance or agreement or any provision thereof that does not comply with P.L. , c. (C. ) (pending before the Legislature as this bill) shall apply only to small wireless facilities and any associated poles and antenna equipment that were operational before the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall be deemed invalid and unenforceable beginning on the 181st day after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) unless amended to comply with P.L. , c. (C. ) (pending before the Legislature as this bill). If an ordinance or agreement or any provision thereof is invalid pursuant to this subsection, small wireless facilities and associated poles and antenna equipment that became operational on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), pursuant to the ordinance or agreement, may remain installed and be operated under the requirements of the remaining valid portions of the ordinance or agreement or P.L. , c. (C. ) (pending before the Legislature as this bill), as applicable.

c. Any provision of an agreement or ordinance that applies to small wireless facilities and associated poles and antenna equipment that becomes operational on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) is invalid and unenforceable unless it complies with P.L. , c. (C. ) (pending before the Legislature as this bill). In the absence of an
ordinance or agreement that complies with P.L. , c. (C. ) (pending before the Legislature as this bill), a wireless provider may install and operate a small wireless facility and associated poles and antenna equipment in a right-of-way pursuant to the requirements of the remaining valid portions of the ordinance or agreement or P.L. , c. (C. ) (pending before the Legislature as this bill), as applicable.

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

b. Any wireless provider that owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials, officers , employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees including reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including but not limited to personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the wireless provider, or their respective officers, agents, employees, directors, or representatives while installing, repairing, operating, or maintaining facilities in rights-of-way.

c. Except for a wireless provider with an existing agreement to occupy and operate in the rights-of-way, during the period in which the wireless provider’s facilities are located on the authority improvements or rights-of-way, the authority may require the wireless provider to carry, at the wireless provider’s own cost and expense, the following insurance:

(a) property insurance for its property’s replacement cost against all risks;
(b) workers’ compensation insurance, as required by law; or
(c) commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage. An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a commercial general liability policy as reasonably required by the authority.
A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

d. An authority may 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.

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

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

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

d. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) 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 impact, modify, or supersede any construction standard, engineering practice, tariff provision, collective bargaining agreement, contractual obligation or right, or federal or State law or regulation relating to facilities or equipment owned or controlled by a public utility or its affiliate, an electric cooperative, or an independent electric transmission company, that is not a wireless provider, nor shall P.L. , c. (C. ) (pending before the Legislature as this bill) 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.
20. A court of competent jurisdiction shall have jurisdiction to
determine disputes arising pursuant to P.L. , c. (C. )
(pending before the Legislature as this bill). Pending resolution of a
dispute concerning rates for collocation, mounting, and installation
of small wireless facilities on authority poles in the right-of-way
and the installation of associated antenna equipment, the authority
owning or controlling the pole shall allow the colocating person or
entity to collocate at annual rates established pursuant to section 15
of P.L. , c. (C. ) (pending before the Legislature as this
bill), with rates to be reconciled upon final resolution of the dispute.
A dispute shall be pursued in accordance with accelerated docket or
complaint procedures, where available.

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

STATEMENT

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.