

SENATE, No. 2324

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JANUARY 25, 2024

Sponsored by:
Senator JAMES BEACH
District 6 (Burlington and Camden)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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 most
25 cost-effective for a wireless service provider when deployed in
26 rights-of-way;

27 e. To meet the key objectives of federal law and
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 wireless providers must be granted access to rights-of-way and have
30 the ability to attach to infrastructure in rights-of-way on a
31 competitively neutral basis to densify wireless networks and to
32 provide next-generation wireless services;

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

39 g. Authorities actively manage rights-of-way, acting as trustees
40 of this limited public asset, to protect residents' safety, preserve the
41 character of communities, and maintain availability for current and
42 future uses; and

43 h. The procedures, rates, and fees established in
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 should be consistent with federal law and are fair, reasonable, and
46 further the State's interest in facilitating and supporting a robust,
47 reliable, and technologically-advanced wireless and broadband
48 network and reflect a balancing of the interests of the wireless

1 providers deploying new small wireless facilities and the interests
2 of authorities in managing and recovering the cost of managing the
3 rights-of-way.

4

5 2. As used in P.L. , c. (C.) (pending before the
6 Legislature as this bill):

7 "Antenna" means an apparatus designed for the purpose of
8 emitting radio frequency, to be operated or operating from a fixed
9 location pursuant to Federal Communications Commission
10 authorization, for the provision of personal wireless service and any
11 commingled information services.

12 "Antenna equipment" means equipment, switches, wiring,
13 cabling, power sources, shelters, or cabinets associated with an
14 antenna, located at the same fixed location as the antenna, and,
15 when collocated on a structure, is mounted or installed at the same
16 time as the antenna.

17 "Antenna facility" means an antenna and associated antenna
18 equipment. "Antenna facility" includes small wireless facilities.
19 "Antenna facility" shall not include:

20 a. the structure or improvements on, under, or within which the
21 equipment is located;

22 b. wireline backhaul facilities; or

23 c. coaxial or fiber optic cables that are not immediately adjacent to
24 or directly associated with a particular antenna.

25 "Applicable codes" means uniform building, fire, electrical,
26 plumbing, or mechanical codes adopted by the Commissioner of the
27 Department of Community Affairs pursuant to P.L.1975, c.217
28 (C.52:27D-119 et seq.), or authority amendments to those codes that
29 are of general application and are consistent with
30 P.L. , c. (C.) (pending before the Legislature as this bill).

31 "Applicant" means any person who submits an application and is
32 a wireless provider.

33 "Application" means a request submitted by an applicant to an
34 authority for a permit to: collocate a small wireless facility; install,
35 modify, or replace a pole on which a small wireless facility will be
36 collocated, mounted, or installed; mount or install a small wireless
37 facility on a new or replacement pole; or install associated antenna
38 equipment adjacent to a structure on which a small wireless facility
39 is or will be collocated, mounted, or installed.

40 "Authority" means the State and any unit of local government,
41 and any board, commission, committee, authority, agency, office,
42 officer, or employee thereof, which has jurisdiction and control
43 over the use of a right-of-way for the placement of a wireless
44 facility within the right-of-way or has zoning or land use control for
45 the placement of a wireless facility not within a right-of-way.
46 "Authority" shall not mean a State court having jurisdiction over an
47 authority.

1 "Authority pole" means a pole or utility pole owned or operated
2 by an authority in a right-of-way.

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

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

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

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

26 "Decorative pole" means an authority pole, or a pole that is
27 subsidized by an authority, that is specially designed and placed for
28 aesthetic purposes.

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

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

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

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

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

45 b. listed on the New Jersey Register of Historic Places or
46 identified in an authority's master plan adopted pursuant to the
47 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

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

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

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

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

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

17 "Personal wireless service" means "commercial mobile service,"
18 "unlicensed wireless services," and "common carrier wireless
19 exchange access services," as those terms are defined pursuant to 47
20 U.S.C. s.332, "commercial mobile data service," as defined
21 pursuant to 47 U.S.C. s.1401, and information service provided
22 through wireless fidelity or similar technologies utilizing unlicensed
23 spectrum.

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

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

34 "Rate" means a recurring charge.

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

39 "Small wireless facility" means a facility that meets each of the
40 following conditions: the facility is mounted on a structure 50 feet
41 or less in height, including the antenna or is mounted on a structure
42 no more than 10 percent taller than other adjacent structures or does
43 not extend existing structures on which they are located to a height
44 of more than 50 feet or by more than 10 percent, whichever is
45 greater; each antenna associated with the deployment, excluding
46 associated antenna equipment, is no more than three cubic feet in
47 volume; all other wireless equipment associated with the structure,
48 including wireless equipment associated with the antenna and any

1 pre-existing associated antenna equipment on the structure, is no
2 more than 28 cubic feet in volume; the facility does not require
3 antenna structure registration under 47 C.F.R. Part 17; the facility is
4 not located on tribal lands, as defined pursuant to 36 C.F.R.
5 s.800.16; and the facility does not result in human exposure to radio
6 frequency in excess of the applicable safety standards specified
7 pursuant to 47 C.F.R. s.1.1307.

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

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

17 "Tower" shall have the same meaning as defined pursuant to 47
18 C.F.R. s.1.6100.

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

23 "Wireless provider" means a wireless infrastructure provider or a
24 wireless service provider.

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

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

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

35

36 3. a. An authority may not enter into an exclusive
37 arrangement with any person or entity for the use of the right-of-
38 way for:

39 (1) the collocation of a small wireless facility;

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

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

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

1 b. Subject to the provisions of this section, a wireless provider
2 shall have the right, as a permitted use not subject to zoning review
3 or approval, and without the need for authority consent, to:

4 (1) collocate small wireless facilities;

5 (2) mount or install small wireless facilities on new or
6 replacement poles;

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

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

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

23

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

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

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

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

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

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

9 e. For applications for new poles in the right-of-way in areas
10 zoned for residential use, the authority may propose an alternate
11 location in the right-of-way within 100 feet of the location set forth
12 in the application, and the wireless provider shall use the authority's
13 proposed alternate location unless the location imposes technical
14 limits or significant additional costs. The wireless provider shall
15 certify that it has made the determination in good faith, based on the
16 assessment of a licensed engineer, and it shall provide a written
17 summary of the basis for that determination.

18

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

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

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

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

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

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

46 (2) an authority may adopt aesthetic requirements applicable in
47 historic districts that comply with this section.

1 6. a. A wireless provider shall comply with undergrounding
2 requirements that are consistent with subsection a. of section 5 of
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 when:

5 (1) the authority has required all electric and
6 telecommunications lines to be placed underground by a date
7 certain that is three months prior to the submission of the
8 application;

9 (2) a pole the authority allows to remain shall be made available
10 to wireless providers for the collocation of small wireless facilities,
11 and a pole may be modified or replaced by a wireless provider to
12 accommodate the collocation, mounting, or installation of small
13 wireless facilities, in compliance with P.L. , c. (C.)
14 (pending before the Legislature as this bill); and

15 (3) subject to the application process established pursuant to
16 section 11 of P.L. , c. (C.) (pending before the Legislature
17 as this bill), a wireless provider may install a new pole in the
18 designated area that otherwise complies with P.L. , c. (C.)
19 (pending before the Legislature as this bill) when the wireless
20 provider is not able to provide wireless service by collocating on a
21 remaining structure.

22 b. For small wireless facilities installed before an authority
23 adopts requirements that electric and telecommunications lines be
24 placed underground, an authority adopting these requirements shall
25 permit:

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

29 (2) a wireless provider to replace an existing pole within 50 feet
30 of the prior location.

31

32 7. A wireless provider shall repair all damage to a right-of-way
33 caused by the activities of the wireless provider and return the right-
34 of-way to its functional and aesthetic equivalence before the
35 damage, pursuant to the competitively neutral, reasonable
36 requirements and specifications of the authority. If the wireless
37 provider fails to make the repairs required by the authority within a
38 reasonable time after written notice, the authority may make those
39 repairs and charge the applicable party the reasonable, documented
40 cost of the repairs.

41

42 8. A wireless provider shall not be required to replace or
43 upgrade an existing pole except for reasons of structural necessity
44 or compliance with applicable codes. A wireless provider may, with
45 the permission of the pole owner, replace or modify the existing
46 pole, but any replacement or modification shall be consistent with
47 the design aesthetics of the pole being modified or replaced.

1 9. A wireless provider shall notify the authority at least 30 days
2 before the abandonment of a small wireless facility. Following
3 receipt of the notice, the authority shall direct the wireless provider
4 to remove all or any portion of the small wireless facility and
5 associated antenna equipment that the authority determines would
6 be in the best interest of the public. If the wireless provider fails to
7 remove the abandoned small wireless facility within 90 days after
8 the notice, the authority may undertake to remove the small wireless
9 facility and recover the actual and reasonable expenses of the
10 removal from the wireless provider, its successors, or assigns.

11

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

19

20 11. a. An authority may require an applicant to obtain a permit
21 for:

22 (1) the collocation of a small wireless facility not subject to the
23 provisions of P.L.2011, c.199 (C.40:55D-46.2);

24 (2) the mounting or installation of a small wireless facility on a
25 new, modified, or replacement pole; or

26 (3) the installation, modification, or replacement of a pole or
27 antenna equipment as provided in section 3 of P.L. , c. (C.)
28 (pending before the Legislature as this bill).

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

33 b. An authority shall receive and process applications subject to
34 the following requirements:

35 (1) small wireless facilities shall be classified as permitted uses
36 and not subject to zoning review or approval if they are located in the
37 right-of-way in any zone;

38 (2) an authority may not directly or indirectly require an applicant
39 to perform services or provide goods unrelated to the permit, such as
40 in-kind contributions to the authority including, but not limited to,
41 reserving fiber, conduit, or pole space for the authority;

42 (3) an applicant shall not be required to provide additional
43 information to obtain a permit than communications service providers
44 that are not wireless providers, provided that an applicant may be
45 required to include construction and engineering drawings and
46 information demonstrating compliance with the criteria in paragraph
47 (9) of this subsection;

1 (4) an authority may not require:

2 (a) the collocation, mounting, or installation of a small wireless
3 facility on any specific pole or category of poles or require multiple
4 antenna facilities on a single pole;

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

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

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

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

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

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

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

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

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

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

44 If an authority provides written notification to the applicant within
45 10 days of receiving an application certifying that it is experiencing an
46 unusually high overall level of permitting activity or other
47 circumstances beyond the authority's control that prevents the
48 authority from reviewing and processing the application by the

1 deadline, the processing deadline may be extended automatically for
2 up to 30 days.

3 The processing deadline may be tolled by agreement of the
4 applicant and the authority;

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

11 (a) interferes with the safe operation of traffic control equipment;

12 (b) interferes with sight lines or clear zones for transportation or
13 pedestrians;

14 (c) interferes with compliance with the federal "Americans with
15 Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.), or similar federal
16 or State standards regarding pedestrian access or movement;

17 (d) fails to comply with reasonable and non-discriminatory
18 horizontal spacing requirements of general application adopted by
19 ordinance that concern the location of ground-mounted antenna
20 equipment and new poles and which shall not prevent a wireless
21 provider from serving any location;

22 (e) fails to comply with applicable codes; or

23 (f) fails to comply with sections 4, 5, or 6 of P.L. , c. (C.)
24 (pending before the Legislature as this bill);

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

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

43 (12) an applicant shall not file within a 60-day period, three
44 consolidated applications; or multiple applications that collectively
45 seek permits for a combined total of more than 75 small wireless
46 facilities and associated poles and antenna equipment;

47 (13) the denial of one or more small wireless facilities in a
48 consolidated application shall not delay processing of any other small

1 wireless facilities, poles, or antenna equipment in the same
2 consolidated application. A consolidated application shall be
3 collectively processed in accordance with the procedures in this
4 section. A consolidated application that includes a new or replacement
5 pole deployment shall be subject to a 90-day timeframe for approval;

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

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

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

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

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

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

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

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

37 c. An authority shall not require an application for:

38 (1) routine maintenance;

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

44 (3) the installation, placement, maintenance, operation, or
45 replacement of a micro wireless facility that is suspended on cables
46 that are strung between existing poles, in compliance with the
47 applicable codes.

1 An authority may require a permit for work pursuant to subsection
2 a. of this section that requires excavation or closure of sidewalks or
3 vehicular lanes within the right-of-way and the permit shall be issued
4 to the applicant on a non-discriminatory basis upon terms and
5 conditions applied to any other person's activities in the right-of-way
6 that require excavation, closing of sidewalks, or vehicular lanes.

7

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

14

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

24

25 14. a. The rates, fees, and terms and conditions for any make-
26 ready work to collocate, mount, or install a small wireless facility
27 on an authority pole and to install associated antenna equipment
28 shall be non-discriminatory, competitively neutral, commercially
29 reasonable, and shall comply with P.L. , c. (C.) (pending
30 before the Legislature as this bill).

31 b. The authority shall provide a good faith estimate for any
32 make-ready work necessary to enable the authority pole to support
33 the requested collocation, mounting, or installation by a wireless
34 provider, including authority pole replacement if necessary, within
35 60 days after receipt of a complete application. Make-ready work
36 including any authority pole replacement shall be completed within
37 60 days of written acceptance of the good faith estimate by the
38 applicant. An authority may require replacement of the authority
39 pole only if it demonstrates that the collocation would make the
40 authority pole structurally unsound.

41 c. The person owning, managing, or controlling the authority
42 pole shall not require more make-ready work than required to meet
43 applicable codes or industry standards. Fees for make-ready work
44 shall not include costs related to pre-existing or prior damage or
45 noncompliance. Fees for make-ready work, including any pole
46 replacement, shall not exceed either actual costs or the amount
47 charged to other communications service providers for similar work

1 and shall not include any revenue or contingency-based consultant's
2 fees or expenses.

3

4 15. a. All rates and fees established pursuant to subsection b. of
5 this section shall be a reasonable approximation of the authority's
6 reasonable costs, and shall be applied by the authority in a non-
7 discriminatory manner. An authority may not require a wireless
8 provider to pay any rates, fees, or compensation to the authority or
9 other person other than what is expressly authorized by P.L. ,
10 c. (C.) (pending before the Legislature as this bill) for the
11 right to use or occupy the right-of-way for the collocation,
12 mounting, or installation of a small wireless facility on a pole in the
13 right-of-way, or for the installation, maintenance, modification, or
14 replacement of associated antenna equipment or a pole in the right-
15 of-way.

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

19 (1) \$500 for a single up-front application for collocation of a
20 small wireless facility that includes up to five small wireless
21 facilities, with an additional \$100 for each small wireless facility
22 included in the same application thereafter;

23 (2) \$250 for the modification or replacement of an existing pole,
24 together with the mounting or installation of an associated small
25 wireless facility in the right-of-way; and

26 (3) \$1,000 for the installation of a new pole, together with the
27 mounting or installation of an associated small wireless facility in
28 the right of.

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

41

42 16. a. An authority shall not have or exercise any jurisdiction
43 or authority over the design, engineering, construction, installation,
44 or operation of a small wireless facility located in an interior
45 structure or upon the site of a campus, stadium, or athletic facility
46 not owned or controlled by the authority, other than to require
47 compliance with applicable codes.

1 b. Except as it relates to small wireless facilities subject to the
2 permit and fee requirements established pursuant to
3 P.L. , c. (C.) (pending before the Legislature as this bill) or
4 otherwise specifically authorized by State or federal law, an
5 authority shall not adopt or enforce any regulations or requirements
6 on the placement or operation of communications facilities in the
7 right-of-way by a communications service provider authorized by
8 federal, State, or local law to operate in a right-of-way, regulate any
9 communications services, or impose or collect any tax, fee, rate, or
10 charge for the provision of additional communications service over
11 the communications service provider's communications facilities in
12 a right-of-way.

13

14 17. a. An authority may adopt an ordinance that makes
15 available to wireless providers rates, fees, and other terms and
16 conditions that comply with P.L. , c. (C.) (pending before
17 the Legislature as this bill). In the absence of an ordinance, a
18 wireless provider may install and operate a small wireless facility
19 and any associated poles and antenna equipment under the
20 requirements of P.L. , c. (C.) (pending before the
21 Legislature as this bill). An authority may not require a wireless
22 provider to enter into an agreement to implement
23 P.L. , c. (C.) (pending before the Legislature as this bill),
24 but agreements are permissible if voluntary and non-discriminatory.

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

43 c. Any provision of an agreement or ordinance that applies to
44 small wireless facilities and associated poles and antenna equipment
45 that becomes operational on or after the effective date of P.L. , c.
46 (C.) (pending before the Legislature as this bill) is invalid and
47 unenforceable unless it complies with P.L. , c. (C.)
48 (pending before the Legislature as this bill). In the absence of an

1 ordinance or agreement that complies with P.L. , c. (C.)
2 (pending before the Legislature as this bill), a wireless provider
3 may install and operate a small wireless facility and associated
4 poles and antenna equipment in a right-of-way pursuant to the
5 requirements of the remaining valid portions of the ordinance or
6 agreement or P.L. , c. (C.) (pending before the Legislature
7 as this bill), as applicable.

8

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

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

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

36 (1) property insurance for its property's replacement cost
37 against all risks;

38 (2) workers' compensation insurance, as required by law; or

39 (3) commercial general liability insurance with respect to its
40 activities on the authority improvements or rights-of-way to afford
41 minimum protection limits consistent with its requirements of other
42 users of authority improvements or rights-of-way, including
43 coverage for bodily injury and property damage. An authority may
44 require a wireless provider to include the authority as an additional
45 insured on the commercial general liability policy and provide
46 certification and documentation of inclusion of the authority in a
47 commercial general liability policy as reasonably required by the
48 authority.

1 A wireless provider may self-insure all or a portion of the
2 insurance coverage and limit requirements required by an authority.
3 A wireless provider that self-insures is not required, to the extent of
4 the self-insurance, to comply with the requirement for the naming
5 of additional insureds under this section. A wireless provider that
6 elects to self-insure shall provide to the authority evidence
7 sufficient to demonstrate its financial ability to self-insure the
8 insurance coverage and limits required by the authority.

9 d. An authority may impose reasonable and non-discriminatory
10 requirements for bonds, escrow deposits, letters of credit, or any
11 other type of financial surety to ensure removal of abandoned or
12 unused wireless facilities or damage to the right-of-way or authority
13 property caused by the wireless provider or its agent.

14

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

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

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

34 d. Nothing in P.L. , c. (C.) (pending before the
35 Legislature as this bill) authorize a person to collocate a small
36 wireless facility on property owned by a public utility without
37 consent of the public utility nor be construed to impact, modify, or
38 supersede any construction standard, engineering practice, tariff
39 provision, collective bargaining agreement, contractual obligation
40 or right, or federal or State law or regulation relating to facilities or
41 equipment owned or controlled by a public utility or its affiliate, an
42 electric cooperative, or an independent electric transmission
43 company, that is not a wireless provider, nor shall
44 P.L. , c. (C.) (pending before the Legislature as this bill)
45 be construed to apply to a public utility's use of its own poles,
46 facilities, or both for communications associated with its public
47 utility operations.

1 20. A court of competent jurisdiction shall have jurisdiction to
2 determine disputes arising pursuant to P.L. , c. (C.)
3 (pending before the Legislature as this bill). Pending resolution of a
4 dispute concerning rates for collocation, mounting, and installation
5 of small wireless facilities on authority poles in the right-of-way
6 and the installation of associated antenna equipment, the authority
7 owning or controlling the pole shall allow the collocating person or
8 entity to collocate at annual rates established pursuant to section 15
9 of P.L. , c. (C.) (pending before the Legislature as this
10 bill), with rates to be reconciled upon final resolution of the dispute.
11 A dispute shall be pursued in accordance with accelerated docket or
12 complaint procedures, where available.

13

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

16

17

18

STATEMENT

19

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

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

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

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

46 The bill provides that each new, replaced, or modified pole
47 installed in the right-of-way for the purpose of collocating, mounting,
48 or installing a small wireless facility is to follow certain height

1 restrictions pursuant to the bill. A wireless provider is not to install a
2 new pole unless the wireless provider has determined it cannot meet its
3 service objectives by collocating on existing poles or structures. An
4 authority may adopt aesthetics requirements governing the deployment
5 of small wireless facilities and associated antenna equipment and poles
6 in the right-of-way, subject to certain requirements pursuant to the bill.
7 A wireless provider is to comply with undergrounding requirements
8 that are consistent with the bill.

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

18 Under the bill, a wireless provider is not required to replace or
19 upgrade an existing pole, except for reasons of structural necessity or
20 compliance with applicable building codes. A wireless provider may,
21 with the permission of the pole owner, replace or modify the existing
22 pole, but any replacement or modification is to be consistent with the
23 design aesthetics of the pole being modified or replaced. The bill
24 requires wireless provider to notify an authority at least 30 days before
25 the abandonment of a small wireless facility located within the
26 authority's jurisdiction. Following receipt of the notice, the authority is
27 to 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 the public. If the wireless
30 provider fails to remove the abandoned small wireless facility within
31 90 days after the notice, the authority may undertake to remove the
32 small wireless facility and recover the actual and reasonable expenses
33 of the removal from the wireless provider, its successors, or assigns.

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

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

41 Each permit issued pursuant to the bill is to be of general
42 applicability and is not to apply exclusively to a small wireless facility
43 and an authority is to receive and process applications following
44 certain requirements pursuant to the bill. Application fees for any
45 permit issued pursuant to the bill are not to exceed certain amounts
46 pursuant to the bill.

47 Under the bill, the rates, fees, and terms and conditions for any
48 make-ready work to collocate, mount, or install a small wireless

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

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

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

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

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

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

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