SENATE, No. 860



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Senator Singleton

SYNOPSIS

“Small Wireless Facilities Deployment Act”; provides for uniform regulation of small wireless facility deployment in NJ.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act regulating deployment of small wireless facilities by wireless services providers and supplementing Title 40 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “Small Wireless Facilities Deployment Act.”

2. It is the intent of the Legislature in enacting P.L. , c.      (C. ) (pending before the Legislature as this bill) to ensure that public and private New Jersey consumers are able to benefit from new advanced wireless technologies and services as soon as possible and to ensure that providers of wireless access have a fair and predictable process for the deployment of small wireless facilities in a manner consistent with the character of the area in which the small wireless facilities are deployed. Small wireless facilities are critical to delivering wireless access to advanced technology, broadband, and “9-1-1” services to homes, businesses, and schools in New Jersey. The Legislature further declares that delivery of wireless technology plays an integral role in the economic vitality of the State and in the lives of its citizens, and the Legislature declares that P.L. , c. (C. ) (pending before the Legislature as this bill), which specifies how local authorities may regulate the collocation of small wireless facilities, serves the vital interest of the State by addressing the deployment of emerging wireless technologies.

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

"Aerial facility" means a wire, cable, or conduit that is suspended in the air.

"Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

"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 small wireless facilities, and a request that includes the installation of a new utility pole for that collocation, as well as any applicable fee for the review of the application.

"Authority" means a unit of local government, and any board, commission, committee, authority, or agency thereof, that has jurisdiction and control over the use of public rights-of-way for the placement of a wireless facility within those public rights-of-way or has zoning or land use control for the placement of a wireless facility not within public rights-of-way.

"Authority utility pole" means a utility pole owned or operated by an authority in public rights-of-way.

"Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

"Communications service" means cable service, as defined in subsection 6 of 47 U.S.C. s.522, as amended; information service, as defined in subsection 24 of 47 U.S.C. s.153, as amended; telecommunications service, as defined in subsection 53 of 47 U.S.C. s.153, as amended; mobile service, as defined in subsection 33 of 47 U.S.C. s.153, as amended; or wireless service other than mobile service.

"Communications service provider" means a cable operator, as defined in subsection 5 of 47 U.S.C. s.522, as amended; a provider of information service, as defined in subsection 24 of 47 U.S.C. s.153, as amended; a telecommunications carrier, as defined in subsection 51 of 47 U.S.C. s.153, as amended; or a wireless provider as defined in this section.

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

"Fee" means a one-time 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, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register; or

b. Listed on the State Register of Historic Places.

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

"Micro wireless facility" means a small wireless 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 a written authorization required by an authority to perform an action or initiate, continue, or complete a project.

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

"Public safety agency" means the functional division of the federal government, the State, an interstate authority, or a political subdivision, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.

"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.

"Right-of-way" does not include authority-owned aerial facilities.

"Small wireless facility" means a wireless facility that meets both of the following qualifications:

a. each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and

b. all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

"Utility pole" means a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including equipment associated with wireless communications, and radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless facility" includes small wireless facilities.

"Wireless facility" does not include:

a. the structure or improvements on, under, or within which the equipment is collocated; or

b. wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.

"Wireless infrastructure provider" means any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the authority.

"Wireless provider" means a wireless infrastructure provider or a wireless services provider.

"Wireless services" means any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.

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

"Wireless support structure" means a freestanding structure, such as: a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities.

"Wireless support structure" does not include a utility pole.

4. a. This section applies to the activities of a wireless provider within or outside rights-of-way for the period beginning on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) and ending on July 1, 2022.

b. Except as provided in this section, an authority shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

c. Small wireless facilities shall be classified as permitted uses by an authority and subject to administrative review in conformance with P.L. , c. (C. ) (pending before the Legislature as this bill), except as provided in paragraph (5) of subsection d. of this section, but not subject to site plan review or approval if they are collocated:

(1) in rights-of-way in any zone; or

(2) outside rights-of-way in property zoned exclusively for commercial or industrial use.

d. An authority may require an applicant to obtain one or more permits to collocate a small wireless facility. An authority shall accept applications for, process, and issue permits subject to the following requirements:

(1) An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or utility pole space for the authority on the wireless provider's utility pole. An authority may reserve space on authority utility poles for future public safety uses or for the authority's electric utility uses, but a reservation of space may not preclude the collocation of a small wireless facility unless the authority reasonably determines that the authority utility pole cannot accommodate both uses.

(2) An applicant shall not be required to provide more information to obtain a permit than the authority requires of a communications service provider that is not a wireless provider that requests to attach facilities to a structure. However, a wireless provider may be required to provide the following information when seeking a permit to collocate small wireless facilities on a utility pole or wireless support structure:

(a) site specific structural integrity and, for an authority utility pole, make-ready analysis prepared by a structural engineer;

(b) the location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be mounted or location where utility poles or structures would be installed;

(c) specifications and drawings prepared by a structural engineer for each proposed small wireless facility covered by the application as it is proposed to be installed;

(d) the equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;

(e) a proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and

(f) certification that the collocation complies with paragraph (6) of this subsection to the best of the applicant's knowledge.

(3) Subject to paragraph (6) of this subsection, an authority may not require the placement of small wireless facilities on any specific utility pole, or category of utility poles, or require multiple antenna systems on a single utility pole, however, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, an authority may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant. The authority may require the applicant to provide a written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph (3).

(4) Subject to paragraph (6) of this subsection, an authority may not limit the placement of small wireless facilities mounted on a utility pole or a wireless support structure by minimum horizontal separation distances.

(5) An authority may limit the maximum height of a small wireless facility to 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated. Subject to any applicable waiver, zoning, or other process that addresses wireless provider requests for an exception or variance and does not prohibit granting of exceptions or variances, the authority may limit the height of new or replacement utility poles or wireless support structures on which small wireless facilities are collocated to the higher of:

(a) 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the authority, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the authority, provided the authority may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for a facility; or

(b) 45 feet above ground level.

(6) An authority may require that:

(a) (i) the wireless provider's operation of the small wireless facilities does not interfere with the frequencies used by a public safety agency for public safety communications, including requiring that:

(ii) a wireless provider install small wireless facilities of the type and frequency that will not cause unacceptable interference, as determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency, with a public safety agency's communications equipment; if a small wireless facility causes unacceptable interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider shall, at its own expense, take all reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down the small wireless facility and later powering up the small wireless facility for intermittent testing, if necessary; the authority may terminate a permit for a small wireless facility based on unacceptable interference if the wireless provider does not make good faith efforts to remedy the problem in a manner consistent with the abatement and resolution procedures for interference with the public safety spectrum established by the FCC, including 47 C.F.R. s.22.970 through 47 C.F.R. s.22.973 and 47 C.F.R. s.90.672 through 47 C.F.R. s.90.675;

(b) the wireless provider comply with requirements that are imposed by a contract between an authority and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way;

(c) the wireless provider comply with applicable spacing requirements in applicable regulations and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of exceptions or variances;

(d) the wireless provider comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning, or other process that addresses requests to install new utility poles or modify existing utility poles and do not prohibit the replacement of utility poles;

(e) the wireless provider comply with generally applicable standards that are consistent with this P.L. , c. (C. ) (pending before the Legislature as this bill) and adopted by an authority for public safety in the rights-of-way, including, but not limited to, reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations; and shall comply with reasonable and nondiscriminatory requirements that are consistent with P.L. , c.      (C. ) (pending before the Legislature as this bill) and adopted by an authority regulating the location, size, surface area, and height of small wireless facilities, or the abandonment and removal of small wireless facilities;

(f) (i) the wireless provider not collocate small wireless facilities on authority utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole, however, the antenna and support equipment of the small wireless facility may be located in the communications space on the authority utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable regulations for work involving the top of the pole;

(ii) for purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers;

(g) the wireless provider comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment, and aesthetic requirements that are identified by the authority in an ordinance, written policy adopted by the governing board of the authority, a comprehensive plan, or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district; and

(h) subject to subsection c. of this section, and except for facilities excluded from evaluation for effects on historic properties under subparagraph (4) of paragraph (a) of 47 C.F.R s.1.1307, reasonable, technically feasible, and non-discriminatory design or concealment measures in a historic district or historic landmark. Design or concealment measures, including restrictions on a specific category of poles, shall not have the effect of prohibiting any wireless provider's technology. Design and concealment measures shall not be considered a part of the small wireless facility for purposes of the size restrictions of a small wireless facility. This subparagraph shall not be construed to limit an authority's enforcement of historic preservation in conformance with the National Historic Preservation Act of 1966, 54 U.S.C. s.300101 et seq., any State law, or the regulations adopted to implement those laws.

(7) Within 45 days after receiving an application, an authority shall determine whether the application is complete and notify the applicant as provided in this paragraph. If an application is incomplete, an authority shall specifically identify the missing information. An application shall be deemed complete if the authority fails to provide notification to the applicant within 45 days after the date when all documents, information, and fees specifically enumerated in the authority's permit application form are submitted by the applicant to the authority. If the applicant believes that the 45 days have elapsed, then the applicant may apply to Superior Court in a summary manner for an order certifying the completeness of the application. An applicant shall not commence with installation of a small wireless facility until the court certifies the completeness of the associated application or until the authority voluntarily determines that the application is complete.

(8) An authority shall process applications as follows:

(a) an application to collocate a small wireless facility on an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within 90 days, however, an applicant may submit a written notice to the authority no sooner than 75 days after the submission of a completed application stating the applicant’s intent to proceed with the permitted activity on a deemed approved basis; if an applicant submits a notice under this subparagraph, the permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the authority; the receipt of the deemed approved notice shall not preclude the authority's denial of the permit request within the time limits as provided under P.L. , c. (C. ) (pending before the Legislature as this bill); and

(b) an application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the authority fails to approve or deny the application within 120 days, however, an applicant may submit a written notice to the authority no sooner than 105 days after the submission of a completed application stating the applicant’s intent to proceed with the permitted activity on a deemed approved basis; if an applicant submits a notice under this subparagraph, the permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the authority; the receipt of the deemed approved notice shall not preclude the authority's denial of the permit request within the time limits as provided under P.L. , c. (C. ) (pending before the Legislature as this bill).

(9) An authority shall approve an application unless the application does not meet the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill). If an authority determines that applicable regulations, or the requirements of paragraph (6), require that the utility pole or wireless support structure be replaced before the requested collocation, approval may be conditioned on the replacement of the utility pole or wireless support structure at the cost of the wireless service provider. The authority shall document the basis for a denial, including the specific code provisions or application conditions 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 revised application once within 30 days after notice of denial is sent by the authority to the applicant without paying an additional application fee. The authority shall approve or deny the revised application within 30 days after the applicant resubmits the application or the revised application is deemed approved; however, the applicant shall notify the authority in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the resubmitted application. An authority’s review of a revised application shall be limited to the deficiencies cited in the initial denial. However, this revised application cure does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

(10) The time period for applications may be further counted by:

(a) the express agreement in writing by both the applicant and the authority; or

(b) a local, State, or federal disaster declaration or similar emergency that causes the delay.

(11) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure. If an application includes multiple small wireless facilities, the authority may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The authority may issue separate permits for each collocation that is approved in a consolidated application.

(12) Collocation for which a permit is granted by an authority shall be completed within 180 days after issuance of the permit, unless the authority and the wireless provider agree to extend this period or a delay is caused by make-ready work for an authority utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. If the applicant does not complete installation within 360 days, the permit shall be void unless the authority grants an extension in writing to the applicant.

(13) The duration of a permit shall be for a period of not less than five years, and the permit shall be renewed for equivalent durations unless the authority makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable regulations or local code provisions or regulations in paragraphs (6) and (9). If P.L. , c. (C. ) (pending before the Legislature as this bill) is repealed as provided in section 10 of P.L.    , c. (C. ) (pending before the Legislature as this bill) renewals of permits shall be subject to the applicable authority code provisions or regulations in effect at the time of renewal.

(14) An authority shall not prohibit the:

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

(b) issuing of permits or other approvals, if any, for the collocation of small wireless facilities unless there has been a local, State, or federal disaster declaration or similar emergency that causes delay.

(15) An applicant shall submit an application, supporting information, and notices by personal delivery or as otherwise required by the authority. An authority may require that permits, supporting information, and notices be submitted by personal delivery at the authority's designated place of business, by regular mail postmarked on the date due, or by any other commonly used means, including electronic mail, as required by the authority.

e. Application fees are subject to the following requirements:

(1) An authority may charge an application fee of up to $650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and up to $350 for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility poles or wireless support structures.

(2) An authority may charge an application fee of $1,000 for each small wireless facility addressed in an application that includes the installation of a new utility for collocation.

(3) An application submitted pursuant to this section shall be accompanied by the required application fee.

(4) Within two months after the effective date of P.L. , c.      (C. ) (pending before the Legislature as this bill), an authority shall make available application fees consistent with this subsection, through ordinance, or in a written schedule of permit fees adopted by the authority.

f. An authority shall not require an application, approval, or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:

(1) routine maintenance;

(2) the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the authority at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with the requirements of subparagraph (d) of paragraph (2) of subsection d. of this section; or

(3) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are strung between existing utility poles in compliance with applicable safety codes, however, an authority may require a permit to work within rights-of-way for activities that affect traffic patterns or require traffic lane closures.

g. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) authorizes a person to collocate small wireless facilities on:

(1) property owned by a private party or property owned or controlled by an authority that is not located within rights-of-way, subject to subsection j. of this section, or a privately owned utility pole or wireless support structure without the consent of the property owner;

(2) property owned, leased, or controlled by the State or a political subdivision of this State that is used as a public park for recreation or conservation purposes without the consent of the entity; or

(3) property owned by a rail carrier, as that term is defined in 49 U.S.C. s.10102, or passenger rail service, or an electric public utility, as that term is defined in R.S.48:2-13, without the consent of the rail carrier, public commuter rail service, or electric public utility.

h. Agreements between authorities and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on authority utility poles, that are in effect on the effective date of P.L.    , c. (C. ) (pending before the Legislature as this bill) remain in effect for all small wireless facilities collocated on the authority's utility poles pursuant to applications submitted to the authority before the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), subject to applicable termination provisions. An agreement entered into after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), but before July 1, 2022, shall comply with P.L. , c. (C. ) (pending before the Legislature as this bill).

i. An authority shall allow the collocation of small wireless facilities on authority utility poles subject to the following:

(1) An authority shall not enter into an exclusive arrangement with any person for the right to attach small wireless facilities to authority utility poles.

(2) The rates and fees for collocations on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person.

(3) An authority may charge an annual recurring rate to collocate a small wireless facility on an authority utility pole located in a right-of-way that equals:

(a) $200 per year; or

(b) the actual, direct, and reasonable costs related to the wireless provider's use of space on the authority utility pole.

Rates for collocation on authority utility poles located outside of a right-of-way are not subject to the limitations of this paragraph. In any controversy concerning the appropriateness of a cost-based rate for an authority utility pole located within a right-of-way, the authority shall have the burden of proving that the rate does not exceed the actual, direct, and reasonable costs for the applicant's proposed use of the authority utility pole. Nothing in this paragraph prohibits a wireless provider and an authority from mutually agreeing to an annual recurring rate of less than $200 to collocate a small wireless facility on an authority utility pole.

(4) Authorities or other persons owning or controlling authority utility poles within the right-of-way shall offer rates, fees, and other terms that comply with subparagraphs (a) through (e) of this paragraph. Within two months after the effective date of P.L. , c.      (C. ) (pending before the Legislature as this bill), an authority or a person owning or controlling authority utility poles shall make available, through ordinance or an authority utility pole attachment agreement, license, or other agreement that makes available to wireless providers, the rates, fees, and terms for the collocation of small wireless facilities on authority utility poles that comply with P.L. , c. (C. ) (pending before the Legislature as this bill) and with subparagraphs (a) through (e) of this paragraph. In the absence of an ordinance or agreement that complies with P.L.    , c. (C. ) (pending before the Legislature as this bill), and until the authority adopts a compliant ordinance or agreement, a wireless provider may collocate small wireless facilities and install utility poles under the requirements of P.L. , c. (C. ) (pending before the Legislature as this bill).

(a) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and commercially reasonable, and may address, among other requirements, the requirements in subparagraphs (a) through (h) of paragraph (6) of subsection d. of this section; subsections e., i., and k. of this section; sections 7 and 8 of P.L. , c. (C. ) (pending before the Legislature as this bill), and shall comply with P.L. , c. (C. ) (pending before the Legislature as this bill).

(b) For authority utility poles that support aerial facilities used to provide communications services or electric service, wireless providers shall comply with the process for make-ready work under 47 U.S.C. s.224 and its implementing regulations, and the authority shall follow a substantially similar process for make-ready work except to the extent that the timing requirements are otherwise addressed in P.L. , c. (C. ) (pending before the Legislature as this bill). The good-faith estimate of the person owning or controlling the authority utility pole for any make-ready work necessary to enable the pole to support the requested collocation shall include authority utility pole replacement, if necessary.

(c) For authority utility poles that do not support aerial facilities used to provide communications services or electric service, the authority shall provide a good-faith estimate for any make-ready work necessary to enable the authority utility pole to support the requested collocation, including pole replacement, if necessary, within 90 days after receipt of a complete application. Make-ready work, including any authority utility pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant at the wireless provider's sole cost and expense. Alternatively, if the authority determines that applicable regulations require the authority utility pole to be replaced to support the requested collocation, the authority may require the wireless provider to replace the authority utility pole at the wireless provider's sole cost and expense.

(d) The authority shall not require more make-ready work than required to meet applicable regulations or industry standards. Make-ready work may include work needed to accommodate additional public safety communications needs that are identified in a documented and approved plan for the deployment of public safety equipment as specified in paragraph (1) of subsection d. of this section and included in an existing or preliminary authority or public service agency budget for attachment within one year of the application. Fees for make-ready work, including any authority utility pole replacement, shall not exceed actual costs or the amount charged to communications service providers for similar work and shall not include any consultants' fees or expenses for authority utility poles that do not support aerial facilities used to provide communications services or electric service. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the wireless provider, at the wireless provider’s sole cost and expense.

(e) A wireless provider that has an existing agreement with the authority on the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) may accept the rates, fees, and terms that an authority makes available under P.L. , c. (C. ) (pending before the Legislature as this bill) for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) as provided in this paragraph (4) by notifying the authority that it opts to accept the rates, fees, and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the authority's utility poles pursuant to applications submitted to the authority before the wireless provider provides the notice and exercises the option described in this subparagraph.

j. An authority shall authorize the collocation of small wireless facilities on utility poles owned or controlled by the authority that are not located within rights-of-way to the same extent the authority currently permits access to utility poles for other commercial projects or uses. The collocations shall be subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the authority and the wireless provider.

k. Nothing in this section precludes an authority from adopting reasonable rules with respect to the removal of abandoned small wireless facilities. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and the owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the authority notifying the owner of the abandonment. The authority shall send the notice by certified or registered mail, return receipt requested, to the owner at the last known address of the owner. If the small wireless facility is not removed within 90 days of the notice, the authority may remove or cause the removal of the facility pursuant to the terms of its pole attachment agreement for authority utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery. An authority may require a wireless provider to provide written notice to the authority if it sells or transfers small wireless facilities subject to P.L. , c. (C. ) (pending before the Legislature as this bill) within the authority’s jurisdictional boundary. The sale or transfer notice shall include the name and contact information of the new wireless provider.

l. Nothing in this section requires an authority to install or maintain any specific utility pole or to continue to install or maintain utility poles in any location if the authority makes a non-discriminatory decision to eliminate above-ground utility poles of a particular type generally, such as electric utility poles, in all or a significant portion of its geographic jurisdiction. For authority utility poles with collocated small wireless facilities in place when an authority makes a decision to eliminate above-ground utility poles of a particular type generally, the authority shall either:

(1) continue to maintain the authority utility pole or install and maintain a reasonable alternative utility pole or wireless support structure for the collocation of the small wireless facility, or

(2) offer to sell the utility pole to the wireless provider at a reasonable cost or allow the wireless provider to install its own utility pole so it can maintain service from that location.

m. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed to relieve any person from any requirement:

(i) to obtain a municipal franchise or system-wide franchise to offer cable television services; or

(ii) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to P.L. , c. (C. ) (pending before the Legislature as this bill).

5. Subject to P.L. , c. (C. ) (pending before the Legislature as this bill) and applicable federal and State law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, including with respect to wireless support structures and utility poles, except that no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the authority. Nothing in P.L. , c.      (C.    ) (pending before the Legislature as this bill) authorizes the State or any political subdivision, including an authority, to require wireless facility deployment or to regulate wireless services.

6. A court of competent jurisdiction may resolve all disputes arising under P.L. , c. (C. ) (pending before the Legislature as this bill). Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority utility poles within the right-of-way, the authority shall allow the collocating person to collocate on the authority’s poles at annual rates of no more than $200 per year per authority utility pole, with final rates to be determined upon resolution of the dispute.

7. A wireless provider shall indemnify and hold an authority harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the authority improvements or right-of-way associated with the improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under P.L. , c. (C. ) (pending before the Legislature as this bill). A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the authority or its employees or agents. A wireless provider shall waive any liability claims that the wireless provider may have against an authority with respect to consequential, incidental, or special damages, however caused.

8. a. Except for a wireless provider with an existing right 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:

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

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

(3) commercial general liability insurance with respect to the wireless provider’s 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.

b. 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.

9. An authority shall not regulate small wireless facilities in a manner inconsistent with P.L. , c. (C. ) (pending before the Legislature as this bill) and section 1 of P.L.2011, c.199 (C.40:55D-46.2).

10. a. The provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) shall supersede the provisions of any other State statute, local law or ordinance of a municipality of the State, and any rule or regulation adopted pursuant to those sources of law, except as specifically provided in P.L. , c. (C. ) (pending before the Legislature as this bill).

b. The provisions of the “Small Wireless Facilities Deployment Act,” P.L. , c. (C. ) (pending before the Legislature as this bill), shall apply to the extent that the act’s provisions are not inconsistent with provisions of any federal law to the contrary.

c. Approval of an application submitted pursuant to P.L. , c.      (C. ) (pending before the Legislature as this bill) shall not be considered to be a decision of an administrative officer of the municipality for the purposes of section 59 of P.L.1975 c.291 (C. 40:55D-72).

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

STATEMENT

This bill, to be known and cited as the “Small Wireless Facilities Deployment Act,” provides for the uniform regulation of small wireless facility deployment by local governmental units (authorities) in this State. The bill prohibits authorities from regulating small wireless facilities in a manner inconsistent with the bill.

The bill broadly limits the ability of an authority to prohibit, regulate, or charge for the collocation of small wireless facilities in the State for the period beginning on the effective date of the bill and ending on July 1, 2022. The bill requires that small wireless facilities be classified as permitted uses and subject to administrative review under the bill, and not be subject to zoning review or approval if the small wireless facilities are collocated in rights-of-way or outside rights-of-way in property zoned exclusively for commercial or industrial use.

Under the bill, an authority may require an applicant to obtain one or more permits to collocate a small wireless facility, and an authority is required to accept applications for, process, and issue permits, subject to requirements as specified and detailed in the bill.

The bill requires that authorities adopt application fees within two months after the effective date of the bill and provides monetary limits for the application fees. The bill specifies that an authority may charge an application fee of up to $650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and up to $350 for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility poles or wireless support structures. Under the bill, an authority may charge an application fee of $1,000 for each small wireless facility addressed in an application that includes the installation of a new utility for the collocation. The bill specifies that applications are required to be accompanied by the required application fee.

The bill prohibits an authority from requiring an application, approval, or permit, or from requiring any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for routine maintenance, the replacement of wireless facilities under specific circumstances, or the installation, placement, maintenance, operation, or replacement of certain micro wireless facilities. The bill specifies, however, that an authority may require certain permits to work within rights-of-way for activities that affect traffic patterns or require traffic lane closures.

The bill does not authorize a person to collocate small wireless facilities on:

(1) property owned by a private party or property owned or controlled by an authority that is not located within rights-of-way or a privately owned utility pole or wireless support structure without the consent of the property owner;

(2) property owned, leased, or controlled by the State or a political subdivision of this State that is used as a public park for recreation or conservation purposes without the consent of the entity; or

(3) property owned by a rail carrier, as defined in federal law, or passenger rail service, or an electric public utility, as that term is defined in law, without the consent of the rail carrier, passenger rail service, or electric public utility.

Under the bill, agreements between an authority and a wireless provider that relate to the collocation of small wireless facilities in the right-of-way, that are in effect on the effective date of the bill remain in effect for all small wireless facilities collocated on the authority's utility poles, subject to applicable termination provisions.

Under the bill, an authority is required to allow the collocation of small wireless facilities on authority utility poles subject to requirements detailed and specified in the bill. Under the bill, an authority is also required to authorize the collocation of small wireless facilities on utility poles owned or controlled by the authority that are not located within rights-of-way to the same extent the authority currently permits access to utility poles for other commercial projects or uses.

The bill specifies that authorities are not precluded from adopting reasonable rules with respect to the removal of abandoned small wireless facilities. Under the bill, a small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned and the bill requires the owner of the facility to remove the small wireless facility within 90 days after receipt of written notice from an authority notifying the owner of the abandonment. If the small wireless facility is not removed within 90 days of the notice, the authority may remove or cause the removal of the facility. The bill also specifies that an authority may require a wireless provider to provide written notice to the authority if it sells or transfers small wireless facilities within the authority’s jurisdictional boundary. The sale or transfer notice is required to include the name and contact information of the new wireless provider.

The bill specifies that an authority is not required to install or maintain any specific utility pole or to continue to install or maintain utility poles in any location if the authority makes a non-discriminatory decision to eliminate above-ground utility poles. For authority utility poles with collocated small wireless facilities in place when an authority decides to eliminate above-ground utility poles, the authority is required to either:

(1) continue to maintain the utility pole or install and maintain a reasonable alternative utility pole or wireless support structure for the collocation of the small wireless facility, or

(2) offer to sell the utility pole to the wireless provider at a reasonable cost or allow the wireless provider to install its own utility pole so it can maintain service from that location.

The bill also specifies that nothing within the bill is to be construed to relieve any person from any requirement to obtain a municipal franchise or system-wide franchise to offer cable television services, or to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities.

The bill specifies that an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries, subject to federal law and the provisions of the bill, including with respect to wireless support structures and utility poles. The bill, however, also states that an authority has no jurisdiction over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the authority.

The bill specifies that a court of competent jurisdiction may resolve all disputes arising under the bill. Under the bill, pending resolution of a dispute concerning rates for collocation of small wireless facilities, the authority is required to allow the collocating person to collocate on the authority’s poles at annual rates of no more than $200 per year per authority utility pole, with final rates to be determined upon resolution of the dispute.

Under the bill, a wireless provider is required to indemnify and hold an authority harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the authority improvements or right-of-way associated with those improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under the bill. The bill also specifies that a wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the authority or its employees or agents. The bill further requires a wireless provider to waive any liability claims that the wireless provider may have against an authority with respect to consequential, incidental, or special damages.

Under the bill, an authority may require wireless providers to carry, at the wireless provider's own cost and expense, certain specified types of insurance. The bill specifies that a wireless provider may self-insure all or a portion of the insurance coverage and limit requirements mandated by an authority. Under the bill, a wireless provider that elects to self-insure is required to provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

The bill specifies that the provisions of the bill supersede the provisions of any other State statute, local law or ordinance of a municipality of the State, and any rule or regulation adopted pursuant to those sources of law, except as specifically provided in the bill. The bill further specifies that the provisions of the bill apply to the extent that the bill’s provisions are not inconsistent with any provisions of federal law to the contrary. Under the bill, approval of an application submitted pursuant to P.L. , c.      (C.    ) (pending before the Legislature as this bill) is not subject to an appeal to a board of adjustments by otherwise interested parties.

The bill takes effect on the first day of the seventh month next following enactment.