

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.



1 AN ACT regulating deployment of small wireless facilities by
2 wireless services providers and supplementing Title 40 of the
3 Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “Small
9 Wireless Facilities Deployment Act.”

10
11 2. It is the intent of the Legislature in enacting P.L. ,
12 c. (C.) (pending before the Legislature as this bill) to ensure
13 that public and private New Jersey consumers are able to benefit
14 from new advanced wireless technologies and services as soon as
15 possible and to ensure that providers of wireless access have a fair
16 and predictable process for the deployment of small wireless
17 facilities in a manner consistent with the character of the area in
18 which the small wireless facilities are deployed. Small wireless
19 facilities are critical to delivering wireless access to advanced
20 technology, broadband, and “9-1-1” services to homes, businesses,
21 and schools in New Jersey. The Legislature further declares that
22 delivery of wireless technology plays an integral role in the
23 economic vitality of the State and in the lives of its citizens, and the
24 Legislature declares that P.L. , c. (C.) (pending before the
25 Legislature as this bill), which specifies how local authorities may
26 regulate the collocation of small wireless facilities, serves the vital
27 interest of the State by addressing the deployment of emerging
28 wireless technologies.

29
30 3. As used in P.L. , c. (C.) (pending before the
31 Legislature as this bill):

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

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

37 "Applicant" means any person who submits an application and is
38 a wireless provider.

39 "Application" means a request submitted by an applicant to an
40 authority for a permit to collocate small wireless facilities, and a
41 request that includes the installation of a new utility pole for that
42 collocation, as well as any applicable fee for the review of the
43 application.

44 "Authority" means a unit of local government, and any board,
45 commission, committee, authority, or agency thereof, that has
46 jurisdiction and control over the use of public rights-of-way for the
47 placement of a wireless facility within those public rights-of-way or

1 has zoning or land use control for the placement of a wireless
2 facility not within public rights-of-way.

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

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

8 "Communications service" means cable service, as defined in
9 subsection 6 of 47 U.S.C. s.522, as amended; information service,
10 as defined in subsection 24 of 47 U.S.C. s.153, as amended;
11 telecommunications service, as defined in subsection 53 of 47
12 U.S.C. s.153, as amended; mobile service, as defined in subsection
13 33 of 47 U.S.C. s.153, as amended; or wireless service other than
14 mobile service.

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

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

23 "Fee" means a one-time charge.

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

27 a. listed on the National Register of Historic Places or formally
28 determined eligible for listing by the Keeper of the National
29 Register, the individual who has been delegated the authority by the
30 federal agency to list properties and determine their eligibility for
31 the National Register; or

32 b. Listed on the State Register of Historic Places.

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

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

39 "Permit" means a written authorization required by an authority
40 to perform an action or initiate, continue, or complete a project.

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

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

1 "Rate" means a recurring charge.

2 "Right-of-way" means the area on, below, or above a public
3 roadway, highway, street, public sidewalk, alley, or utility easement
4 dedicated for compatible use.

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

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

9 a. each antenna is located inside an enclosure of no more than
10 6 cubic feet in volume or, in the case of an antenna that has exposed
11 elements, the antenna and all of its exposed elements could fit
12 within an imaginary enclosure of no more than 6 cubic feet; and

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

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

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

30 "Wireless facility" includes small wireless facilities.

31 "Wireless facility" does not include:

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

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

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

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

47 "Wireless services" means any services provided to the general
48 public, including a particular class of customers, and made

1 available on a nondiscriminatory basis using licensed or unlicensed
2 spectrum, whether at a fixed location or mobile, provided using
3 wireless facilities.

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

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

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

11

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

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

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

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

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

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

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

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

- 1 (a) site specific structural integrity and, for an authority utility
2 pole, make-ready analysis prepared by a structural engineer;
- 3 (b) the location where each proposed small wireless facility or
4 utility pole would be installed and photographs of the location and
5 its immediate surroundings depicting the utility poles or structures
6 on which each proposed small wireless facility would be mounted
7 or location where utility poles or structures would be installed;
- 8 (c) specifications and drawings prepared by a structural
9 engineer for each proposed small wireless facility covered by the
10 application as it is proposed to be installed;
- 11 (d) the equipment type and model numbers for the antennas and
12 all other wireless equipment associated with the small wireless
13 facility;
- 14 (e) a proposed schedule for the installation and completion of
15 each small wireless facility covered by the application, if approved;
16 and
- 17 (f) certification that the collocation complies with paragraph (6)
18 of this subsection to the best of the applicant's knowledge.
- 19 (3) Subject to paragraph (6) of this subsection, an authority may
20 not require the placement of small wireless facilities on any specific
21 utility pole, or category of utility poles, or require multiple antenna
22 systems on a single utility pole, however, with respect to an
23 application for the collocation of a small wireless facility associated
24 with a new utility pole, an authority may propose that the small
25 wireless facility be collocated on an existing utility pole or existing
26 wireless support structure within 100 feet of the proposed
27 collocation, which the applicant shall accept if it has the right to use
28 the alternate structure on reasonable terms and conditions and the
29 alternate location and structure does not impose technical limits or
30 additional material costs as determined by the applicant. The
31 authority may require the applicant to provide a written certification
32 describing the property rights, technical limits or material cost
33 reasons the alternate location does not satisfy the criteria in this
34 paragraph (3).
- 35 (4) Subject to paragraph (6) of this subsection, an authority may
36 not limit the placement of small wireless facilities mounted on a
37 utility pole or a wireless support structure by minimum horizontal
38 separation distances.
- 39 (5) An authority may limit the maximum height of a small
40 wireless facility to 10 feet above the utility pole or wireless support
41 structure on which the small wireless facility is collocated. Subject
42 to any applicable waiver, zoning, or other process that addresses
43 wireless provider requests for an exception or variance and does not
44 prohibit granting of exceptions or variances, the authority may limit
45 the height of new or replacement utility poles or wireless support
46 structures on which small wireless facilities are collocated to the
47 higher of:

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

10 (b) 45 feet above ground level.

11 (6) An authority may require that:

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

16 (ii) a wireless provider install small wireless facilities of the
17 type and frequency that will not cause unacceptable interference, as
18 determined by and measured in accordance with industry standards
19 and the FCC's regulations addressing unacceptable interference to
20 public safety spectrum or any other spectrum licensed by a public
21 safety agency, with a public safety agency's communications
22 equipment; if a small wireless facility causes unacceptable
23 interference, and the wireless provider has been given written notice
24 of the interference by the public safety agency, the wireless
25 provider shall, at its own expense, take all reasonable steps
26 necessary to correct and eliminate the interference, including, but
27 not limited to, powering down the small wireless facility and later
28 powering up the small wireless facility for intermittent testing, if
29 necessary; the authority may terminate a permit for a small wireless
30 facility based on unacceptable interference if the wireless provider
31 does not make good faith efforts to remedy the problem in a manner
32 consistent with the abatement and resolution procedures for
33 interference with the public safety spectrum established by the
34 FCC, including 47 C.F.R. s.22.970 through 47 C.F.R. s.22.973 and
35 47 C.F.R. s.90.672 through 47 C.F.R. s.90.675;

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

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

47 (d) the wireless provider comply with local code provisions or
48 regulations concerning undergrounding requirements that prohibit

1 the installation of new or the modification of existing utility poles
2 in a right-of-way without prior approval if the requirements include
3 a waiver, zoning, or other process that addresses requests to install
4 new utility poles or modify existing utility poles and do not prohibit
5 the replacement of utility poles;

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

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

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

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

40 (h) subject to subsection c. of this section, and except for
41 facilities excluded from evaluation for effects on historic properties
42 under subparagraph (4) of paragraph (a) of 47 C.F.R s.1.1307,
43 reasonable, technically feasible, and non-discriminatory design or
44 concealment measures in a historic district or historic landmark.
45 Design or concealment measures, including restrictions on a
46 specific category of poles, shall not have the effect of prohibiting
47 any wireless provider's technology. Design and concealment
48 measures shall not be considered a part of the small wireless facility

1 for purposes of the size restrictions of a small wireless facility.
2 This subparagraph shall not be construed to limit an authority's
3 enforcement of historic preservation in conformance with the
4 National Historic Preservation Act of 1966, 54 U.S.C. s.300101 et
5 seq., any State law, or the regulations adopted to implement those
6 laws.

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

22 (8) An authority shall process applications as follows:

23 (a) an application to collocate a small wireless facility on an
24 existing utility pole or wireless support structure shall be processed
25 on a nondiscriminatory basis and deemed approved if the authority
26 fails to approve or deny the application within 90 days, however, an
27 applicant may submit a written notice to the authority no sooner
28 than 75 days after the submission of a completed application stating
29 the applicant's intent to proceed with the permitted activity on a
30 deemed approved basis; if an applicant submits a notice under this
31 subparagraph, the permit shall be deemed approved on the latter of
32 the 90th day after submission of the complete application or the
33 10th day after the receipt of the deemed approved notice by the
34 authority; the receipt of the deemed approved notice shall not
35 preclude the authority's denial of the permit request within the time
36 limits as provided under P.L. , c. (C.) (pending before the
37 Legislature as this bill); and

38 (b) an application to collocate a small wireless facility that
39 includes the installation of a new utility pole shall be processed on a
40 nondiscriminatory basis and deemed approved if the authority fails
41 to approve or deny the application within 120 days, however, an
42 applicant may submit a written notice to the authority no sooner
43 than 105 days after the submission of a completed application
44 stating the applicant's intent to proceed with the permitted activity
45 on a deemed approved basis; if an applicant submits a notice under
46 this subparagraph, the permit shall be deemed approved on the latter
47 of the 120th day after submission of the complete application or the
48 10th day after the receipt of the deemed approved notice by the

1 authority; the receipt of the deemed approved notice shall not
2 preclude the authority's denial of the permit request within the time
3 limits as provided under P.L. , c. (C.) (pending before the
4 Legislature as this bill).

5 (9) An authority shall approve an application unless the
6 application does not meet the requirements of P.L. , c. (C.)
7 (pending before the Legislature as this bill). If an authority
8 determines that applicable regulations, or the requirements of
9 paragraph (6), require that the utility pole or wireless support
10 structure be replaced before the requested collocation, approval may
11 be conditioned on the replacement of the utility pole or wireless
12 support structure at the cost of the wireless service provider. The
13 authority shall document the basis for a denial, including the
14 specific code provisions or application conditions on which the
15 denial was based, and send the documentation to the applicant on or
16 before the day the authority denies an application. The applicant
17 may cure the deficiencies identified by the authority and resubmit
18 the revised application once within 30 days after notice of denial is
19 sent by the authority to the applicant without paying an additional
20 application fee. The authority shall approve or deny the revised
21 application within 30 days after the applicant resubmits the
22 application or the revised application is deemed approved; however,
23 the applicant shall notify the authority in writing of its intention to
24 proceed with the permitted activity on a deemed approved basis,
25 which may be submitted with the resubmitted application. An
26 authority's review of a revised application shall be limited to the
27 deficiencies cited in the initial denial. However, this revised
28 application cure does not apply if the cure requires the review of a
29 new location, new or different structure to be collocated upon, new
30 antennas, or other wireless equipment associated with the small
31 wireless facility.

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

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

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

37 (11) An applicant seeking to collocate small wireless facilities
38 within the jurisdiction of a single authority shall be allowed, at the
39 applicant's discretion, to file a consolidated application and receive
40 a single permit for the collocation of up to 25 small wireless
41 facilities if the collocations each involve substantially the same type
42 of small wireless facility and substantially the same type of
43 structure. If an application includes multiple small wireless
44 facilities, the authority may remove small wireless facility
45 collocations from the application and treat separately small wireless
46 facility collocations for which incomplete information has been
47 provided or that do not qualify for consolidated treatment or that are

1 denied. The authority may issue separate permits for each
2 collocation that is approved in a consolidated application.

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

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

26 (14) An authority shall not prohibit the:

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

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

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

39 e. Application fees are subject to the following requirements:

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

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

- 1 (3) An application submitted pursuant to this section shall be
2 accompanied by the required application fee.
- 3 (4) Within two months after the effective date of P.L. ,
4 c. (C.) (pending before the Legislature as this bill), an
5 authority shall make available application fees consistent with this
6 subsection, through ordinance, or in a written schedule of permit
7 fees adopted by the authority.
- 8 f. An authority shall not require an application, approval, or
9 permit, or require any fees or other charges, from a communications
10 service provider authorized to occupy the rights-of-way, for:
- 11 (1) routine maintenance;
- 12 (2) the replacement of wireless facilities with wireless facilities
13 that are substantially similar, the same size, or smaller if the
14 wireless provider notifies the authority at least 10 days prior to the
15 planned replacement and includes equipment specifications for the
16 replacement of equipment consistent with the requirements of
17 subparagraph (d) of paragraph (2) of subsection d. of this section; or
18 (3) the installation, placement, maintenance, operation, or
19 replacement of micro wireless facilities that are suspended on
20 cables that are strung between existing utility poles in compliance
21 with applicable safety codes, however, an authority may require a
22 permit to work within rights-of-way for activities that affect traffic
23 patterns or require traffic lane closures.
- 24 g. Nothing in P.L. , c. (C.) (pending before the
25 Legislature as this bill) authorizes a person to collocate small
26 wireless facilities on:
- 27 (1) property owned by a private party or property owned or
28 controlled by an authority that is not located within rights-of-way,
29 subject to subsection j. of this section, or a privately owned utility
30 pole or wireless support structure without the consent of the
31 property owner;
- 32 (2) property owned, leased, or controlled by the State or a
33 political subdivision of this State that is used as a public park for
34 recreation or conservation purposes without the consent of the
35 entity; or
- 36 (3) property owned by a rail carrier, as that term is defined in 49
37 U.S.C. s.10102, or passenger rail service, or an electric public
38 utility, as that term is defined in R.S.48:2-13, without the consent of
39 the rail carrier, public commuter rail service, or electric public
40 utility.
- 41 h. Agreements between authorities and wireless providers that
42 relate to the collocation of small wireless facilities in the right-of-
43 way, including the collocation of small wireless facilities on
44 authority utility poles, that are in effect on the effective date of
45 P.L. , c. (C.) (pending before the Legislature as this bill)
46 remain in effect for all small wireless facilities collocated on the
47 authority's utility poles pursuant to applications submitted to the
48 authority before the effective date of P.L. , c. (C.) (pending

1 before the Legislature as this bill), subject to applicable termination
2 provisions. An agreement entered into after the effective date of
3 P.L. , c. (C.) (pending before the Legislature as this bill),
4 but before July 1, 2022, shall comply with P.L. , c. (C.)
5 (pending before the Legislature as this bill).

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

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

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

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

17 (a) \$200 per year; or

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

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

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

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

9 (b) For authority utility poles that support aerial facilities used
10 to provide communications services or electric service, wireless
11 providers shall comply with the process for make-ready work under
12 47 U.S.C. s.224 and its implementing regulations, and the authority
13 shall follow a substantially similar process for make-ready work
14 except to the extent that the timing requirements are otherwise
15 addressed in P.L. , c. (C.) (pending before the Legislature as
16 this bill). The good-faith estimate of the person owning or
17 controlling the authority utility pole for any make-ready work
18 necessary to enable the pole to support the requested collocation
19 shall include authority utility pole replacement, if necessary.

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

34 (d) The authority shall not require more make-ready work than
35 required to meet applicable regulations or industry standards.
36 Make-ready work may include work needed to accommodate
37 additional public safety communications needs that are identified in
38 a documented and approved plan for the deployment of public
39 safety equipment as specified in paragraph (1) of subsection d. of
40 this section and included in an existing or preliminary authority or
41 public service agency budget for attachment within one year of the
42 application. Fees for make-ready work, including any authority
43 utility pole replacement, shall not exceed actual costs or the amount
44 charged to communications service providers for similar work and
45 shall not include any consultants' fees or expenses for authority
46 utility poles that do not support aerial facilities used to provide
47 communications services or electric service. Make-ready work,
48 including any pole replacement, shall be completed within 60 days

1 of written acceptance of the good-faith estimate by the wireless
2 provider, at the wireless provider's sole cost and expense.

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

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

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

46 l. Nothing in this section requires an authority to install or
47 maintain any specific utility pole or to continue to install or
48 maintain utility poles in any location if the authority makes a non-

1 discriminatory decision to eliminate above-ground utility poles of a
2 particular type generally, such as electric utility poles, in all or a
3 significant portion of its geographic jurisdiction. For authority
4 utility poles with collocated small wireless facilities in place when
5 an authority makes a decision to eliminate above-ground utility
6 poles of a particular type generally, the authority shall either:

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

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

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

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

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

22
23 5. Subject to P.L. , c. (C.) (pending before the
24 Legislature as this bill) and applicable federal and State law, an
25 authority may continue to exercise zoning, land use, planning, and
26 permitting authority within its territorial boundaries, including with
27 respect to wireless support structures and utility poles, except that
28 no authority shall have or exercise any jurisdiction or authority over
29 the design, engineering, construction, installation, or operation of
30 any small wireless facility located in an interior structure or upon
31 the site of any campus, stadium, or athletic facility not otherwise
32 owned or controlled by the authority. Nothing in P.L. ,
33 c. (C.) (pending before the Legislature as this bill) authorizes
34 the State or any political subdivision, including an authority, to
35 require wireless facility deployment or to regulate wireless services.
36

37 6. A court of competent jurisdiction may resolve all disputes
38 arising under P.L. , c. (C.) (pending before the Legislature
39 as this bill). Pending resolution of a dispute concerning rates for
40 collocation of small wireless facilities on authority utility poles
41 within the right-of-way, the authority shall allow the collocating
42 person to collocate on the authority's poles at annual rates of no
43 more than \$200 per year per authority utility pole, with final rates to
44 be determined upon resolution of the dispute.
45

46 7. A wireless provider shall indemnify and hold an authority
47 harmless against any and all liability or loss from personal injury or
48 property damage resulting from or arising out of, in whole or in

1 part, the use or occupancy of the authority improvements or right-
2 of-way associated with the improvements by the wireless provider
3 or its employees, agents, or contractors arising out of the rights and
4 privileges granted under P.L. , c. (C.) (pending before the
5 Legislature as this bill). A wireless provider has no obligation to
6 indemnify or hold harmless against any liabilities and losses as may
7 be due to or caused by the sole negligence of the authority or its
8 employees or agents. A wireless provider shall waive any liability
9 claims that the wireless provider may have against an authority with
10 respect to consequential, incidental, or special damages, however
11 caused.

12
13 8. a. Except for a wireless provider with an existing right to
14 occupy and operate in the rights-of-way, during the period in which
15 the wireless provider's facilities are located on the authority
16 improvements or rights-of-way, the authority may require the
17 wireless provider to carry, at the wireless provider's own cost and
18 expense, the following insurance:

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

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

22 (3) commercial general liability insurance with respect to the
23 wireless provider's activities on the authority improvements or
24 rights-of-way to afford minimum protection limits consistent with
25 its requirements of other users of authority improvements or rights-
26 of-way, including coverage for bodily injury and property damage.
27 An authority may require a wireless provider to include the
28 authority as an additional insured on the commercial general
29 liability policy and provide certification and documentation of
30 inclusion of the authority in a commercial general liability policy as
31 reasonably required by the authority.

32 b. A wireless provider may self-insure all or a portion of the
33 insurance coverage and limit requirements required by an authority.
34 A wireless provider that self-insures is not required, to the extent of
35 the self-insurance, to comply with the requirement for the naming
36 of additional insureds under this section. A wireless provider that
37 elects to self-insure shall provide to the authority evidence
38 sufficient to demonstrate its financial ability to self-insure the
39 insurance coverage and limits required by the authority.

40
41 9. An authority shall not regulate small wireless facilities in a
42 manner inconsistent with P.L. , c. (C.) (pending before the
43 Legislature as this bill) and section 1 of P.L.2011, c.199 (C.40:55D-
44 46.2).

45
46 10. a. The provisions of P.L. , c. (C.) (pending before
47 the Legislature as this bill) shall supersede the provisions of any
48 other State statute, local law or ordinance of a municipality of the

1 State, and any rule or regulation adopted pursuant to those sources
2 of law, except as specifically provided in P.L. , c. (C.)
3 (pending before the Legislature as this bill).

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

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

13
14 11. 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, to be known and cited as the “Small Wireless Facilities
21 Deployment Act,” provides for the uniform regulation of small
22 wireless facility deployment by local governmental units
23 (authorities) in this State. The bill prohibits authorities from
24 regulating small wireless facilities in a manner inconsistent with the
25 bill.

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

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

39 The bill requires that authorities adopt application fees within
40 two months after the effective date of the bill and provides
41 monetary limits for the application fees. The bill specifies that an
42 authority may charge an application fee of up to \$650 for an
43 application to collocate a single small wireless facility on an
44 existing utility pole or wireless support structure and up to \$350 for
45 each small wireless facility addressed in an application to collocate
46 more than one small wireless facility on existing utility poles or
47 wireless support structures. Under the bill, an authority may charge
48 an application fee of \$1,000 for each small wireless facility

1 addressed in an application that includes the installation of a new
2 utility for the collocation. The bill specifies that applications are
3 required to be accompanied by the required application fee.

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

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

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

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

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

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

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

41 The bill specifies that authorities are not precluded from
42 adopting reasonable rules with respect to the removal of abandoned
43 small wireless facilities. Under the bill, a small wireless facility
44 that is not operated for a continuous period of 12 months shall be
45 considered abandoned and the bill requires the owner of the facility
46 to remove the small wireless facility within 90 days after receipt of
47 written notice from an authority notifying the owner of the
48 abandonment. If the small wireless facility is not removed within

1 90 days of the notice, the authority may remove or cause the
2 removal of the facility. The bill also specifies that an authority may
3 require a wireless provider to provide written notice to the authority
4 if it sells or transfers small wireless facilities within the authority's
5 jurisdictional boundary. The sale or transfer notice is required to
6 include the name and contact information of the new wireless
7 provider.

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

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

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

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

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

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

43 Under the bill, a wireless provider is required to indemnify and
44 hold an authority harmless against any and all liability or loss from
45 personal injury or property damage resulting from or arising out of,
46 in whole or in part, the use or occupancy of the authority
47 improvements or right-of-way associated with those improvements
48 by the wireless provider or its employees, agents, or contractors

1 arising out of the rights and privileges granted under the bill. The
2 bill also specifies that a wireless provider has no obligation to
3 indemnify or hold harmless against any liabilities and losses as may
4 be due to or caused by the sole negligence of the authority or its
5 employees or agents. The bill further requires a wireless provider
6 to waive any liability claims that the wireless provider may have
7 against an authority with respect to consequential, incidental, or
8 special damages.

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

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

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