

[First Reprint]
SENATE, No. 2674

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JULY 6, 2020

Sponsored by:
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on June 15, 2021, with amendments.



1 AN ACT concerning deployment of small wireless facilities and
2 supplementing Title 40 of the Revised Statutes.

3

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

6

7 1. The Legislature finds and declares that:

8 a. The deployment of small wireless facilities and other next-
9 generation wireless and broadband network facilities is a matter of
10 federal and statewide concern and interest;

11 b. Wireless and broadband products and services are a significant
12 and continually growing part of the State's economy and encouraging
13 the development of strong and robust wireless and broadband
14 communications networks throughout the State is integral to the
15 State's economic competitiveness;

16 c. Rapid deployment of small wireless facilities will serve
17 important Statewide goals, such as: meeting the growing consumer
18 demand for wireless data; increasing competitive options for
19 communications services available to the State's residents; promoting
20 the ability of the State's residents to communicate with their neighbors
21 and with their State and local governments; and promoting public
22 safety;

23 d. Small wireless facilities, including facilities commonly referred
24 to as small cells and distributed antenna systems, are ¹most cost-
25 effective for a wireless service provider when¹ deployed ¹most
26 effectively¹ in ¹right-of-way rights-of-way¹;

27 e. To meet the key objectives of federal law and
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 wireless providers ¹need to have must be granted¹ access to ¹the
30 right-of-way rights-of-way¹ and ¹have¹ the ability to attach to
31 infrastructure in ¹the right-of-way rights-of-way on a competitively
32 neutral basis¹ to densify wireless networks and to provide next-
33 generation wireless services;

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

40 ¹g. Authorities actively manage rights-of-way, acting as trustees of
41 this limited public asset, to protect residents' safety, preserve the
42 character of communities, and maintain availability for current and
43 future uses;¹ and

44 ¹g. ¹h.¹ The procedures, rates, and fees established in P.L. , c.
45 (C.) (pending before the Legislature as this bill) should be
46 consistent with federal law and are fair, reasonable, and further the
47 State's interest in facilitating and supporting a robust, reliable, and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted June 15, 2021.

1 technologically-advanced wireless and broadband network and reflect
2 a balancing of the interests of the wireless providers deploying new
3 small wireless facilities and the interests of authorities in 'managing
4 and' recovering the cost of managing '[access to the right-of-way]
5 the rights-of-way'.
6

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

9 "Antenna" means an apparatus designed for the purpose of
10 emitting radio frequency, to be operated or operating from a fixed
11 location pursuant to Federal Communications Commission
12 authorization, for the provision of personal wireless service and any
13 commingled information services. '["Antenna" shall not include an
14 unintentional radiator, mobile station, or device authorized pursuant to
15 47 C.F.R. Part 15.]'

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

20 "Antenna facility" means an antenna and associated antenna
21 equipment. 'Antenna facility includes small wireless facilities. An
22 antenna facility shall not include:

23 a. the structure or improvements on, under, or within which the
24 equipment is located;

25 b. wireline backhaul facilities; or

26 c. coaxial or fiber optic cables that are not immediately adjacent to
27 or directly associated with a particular antenna.'

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

34 "Applicant" means any person who submits an application and is a
35 wireless provider.

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

43 "Authority" means '[a] the State and any' unit of local
44 government, and any board, commission, committee, authority,
45 agency, office, officer, or employee thereof, which has jurisdiction and
46 control over the use of a '[public]' right-of-way for the placement of
47 a wireless facility within the '[public]' right-of-way or has zoning or

1 land use control for the placement of a wireless facility not within a
2 **1[public]** right-of-way. "Authority" shall not mean a State court
3 having jurisdiction over an authority.

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

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

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

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

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

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

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

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

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

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

46 a. listed on the National Register of Historic Places or formally
47 determined eligible for listing by the keeper of the National Register of

1 Historic Places, the individual who has been delegated the authority by
2 the federal agency to list properties and determine their eligibility for
3 the National Register of Historic Places, pursuant to 47 C.F.R. Part 1,
4 Appendix C; or

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

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

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

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

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

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

24 "Personal wireless service" means "commercial mobile service,"
25 "unlicensed wireless services," and "common carrier wireless
26 exchange access services," as those terms are defined pursuant to 47
27 U.S.C. s.332, ¹**["and"]¹** "commercial mobile data service," as defined
28 pursuant to 47 U.S.C. s.1401 ¹, and information service provided
29 through wireless fidelity or similar technologies utilizing unlicensed
30 spectrum¹.

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

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

40 "Rate" means a recurring charge.

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

45 "Small wireless facility" means a facility that meets each of the
46 following conditions: the facility is mounted on a structure 50 feet or
47 less in height, including the antenna or is mounted on a structure no

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

14 “Structure” means a pole, tower, base station, as defined pursuant
15 ¹to¹ 47 C.F.R. s.1.6100, or other building, whether or not it has an
16 existing antenna facility, which is used or is to be used for the
17 provision of personal wireless service.

18 “Technically feasible” means that, by virtue of engineering or
19 spectrum usage, the proposed placement for a small wireless facility,
20 or its design, concealment measures, or site location can be
21 implemented without a ¹material¹ reduction in the functionality of the
22 small wireless facility.

23 “Tower” shall have the same meaning as defined pursuant to 47
24 C.F.R. ¹s.¹1.6100.

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

29 “Wireless provider” means a wireless infrastructure provider or a
30 wireless service provider.

31 “Wireless service” means any services provided to the general
32 public and made available on a non-discriminatory basis using
33 licensed or unlicensed spectrum, whether at a fixed location or mobile,
34 provided using ¹【wireless facilities】 an antenna facility¹.

35 “Wireless service provider” means a person who provides wireless
36 services.

37 “Wireline backhaul facility” means ¹【an above-ground or
38 underground wireline facility used to transport communications data or
39 other electric communications from an antenna facility to a
40 communications network】 a physical transmission path, all or part of
41 which is within the right-of-way, used for the transport of
42 communications services or other electronic communications by wire
43 from an antenna facility to a communications network¹.

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

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

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

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

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

8 b. Subject to the provisions of this section, a wireless provider
9 shall have the right, as a permitted use not subject to zoning review or
10 approval, and without the need for ¹ **["municipal"] authority**¹ consent,
11 ¹ **["pursuant to R.S.48:3-19,"]**¹ to:

12 (1) collocate small wireless facilities;

13 (2) mount or install small wireless facilities on new or replacement
14 poles;

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

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

21 Small wireless facilities, antenna equipment, and poles collocated
22 or installed pursuant to this section shall be installed and maintained as
23 not to obstruct or hinder the usual travel or public safety in a right-of-
24 way or obstruct the legal use of a right-of-way by a public utility.
25 ¹Construction and maintenance by wireless providers shall comply
26 with the National Electrical Safety Code, published by the Institute of
27 Electrical and Electronics Engineers, and all applicable laws and
28 regulations for the protection of underground and overhead public
29 utility facilities.¹

30
31 4. a. A new, replaced, or modified pole installed in a right-of-
32 way after the effective date of P.L. , c. (C.) (pending before
33 the Legislature as this bill) for the purpose of collocating, mounting, or
34 installing a small wireless facility shall not exceed 50 feet in height
35 above ground level or ¹ **["ten"] 10**¹ percent taller than the tallest existing
36 pole in place as of the effective date of P.L. , c. (C.) (pending
37 before the Legislature as this bill) in the same right-of-way within 500
38 feet of the new, replaced, or modified pole, whichever is greater.

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

44 c. A wireless provider shall have the right to collocate, mount, or
45 install a small wireless facility and install, maintain, modify, and
46 replace a pole that exceeds the height limits pursuant to subsections a.
47 and b. of this section along, across, upon, and under the right-of-way,

1 subject to section 3 of P.L. , c. (C.) (pending before the
2 Legislature as this bill) and applicable zoning regulations.

3 ¹d. A wireless provider shall not apply to install a new pole unless
4 it has determined after diligent investigation that it cannot meet its
5 wireless service objectives by collocating on a pre-existing pole or
6 other structure on which:

7 (1) the wireless provider has the right to collocate subject to
8 reasonable terms and conditions, including the right to mount antenna
9 equipment on a pre-existing pole; and

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

15 e. For applications for new poles in the right-of-way in areas
16 zoned for residential use, the authority may propose an alternate
17 location in the right-of-way within 100 feet of the location set forth in
18 the application, and the wireless provider shall use the authority's
19 proposed alternate location unless the location imposes technical limits
20 or significant additional costs. The wireless provider shall certify that
21 it has made the determination in good faith, based on the assessment of
22 a licensed engineer, and it shall provide a written summary of the basis
23 for that determination.¹

24

25 5. a. An authority may adopt aesthetics requirements governing
26 the deployment of small wireless facilities and associated antenna
27 equipment and poles in a right-of-way, ¹which may include pre-
28 approved designs for new poles in specified areas,¹ subject to the
29 following:

30 (1) the aesthetic requirements shall be reasonable, in that they are
31 technically feasible and reasonably directed at avoiding or remedying
32 unsightly or out-of-character deployments, are no more burdensome
33 than those applied to ¹["other types of"] functionally equivalent¹
34 infrastructure deployments, and are ¹["objective and"]¹ published in
35 advance;

36 (2) any design or concealment measures are not considered a part
37 of the small wireless facility for purposes of the size parameters in the
38 definition of small wireless facility; ¹and¹

39 (3) an authority may deny an application for not complying with
40 an aesthetic requirement only if the authority finds that the denial does
41 not prohibit or have the effect of prohibiting the provision of wireless
42 service ¹[";"].¹

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

1 (1) a wireless provider shall be permitted to collocate small
2 wireless facilities on, ¹or¹ modify ¹["**】**"]¹ or replace ¹,¹ decorative poles
3 when necessary to deploy a small wireless facility ¹["**. An**"], provided
4 that an¹ authority may require the collocation or decorative pole
5 replacement to reasonably conform to the design aesthetics of the
6 original decorative pole or poles ¹["**】**"], provided the aesthetic
7 requirements are technically feasible¹].

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

10
11 6. a. A wireless provider shall comply with undergrounding
12 requirements that are consistent with subsection a. of section 5
13 of P.L. , c. (C.) (pending before the Legislature as this bill)
14 when:

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

18 (2) a pole the authority allows to remain shall be made available to
19 wireless providers for the collocation of small wireless facilities, and a
20 pole may be modified or replaced by a wireless provider to
21 accommodate the collocation, mounting, or installation of small
22 wireless facilities, in compliance with P.L. , c. (C.) (pending
23 before the Legislature as this bill); and

24 (3) ¹subject to the application process established pursuant to
25 section 11 of P.L. , c. (C.) (pending before the Legislature as
26 this bill),¹ a wireless provider may install a new pole in the designated
27 area that otherwise complies with P.L. , c. (C.) (pending
28 before the Legislature as this bill) when the wireless provider is not
29 able to provide wireless service by collocating on a remaining
30 structure.

31 b. For small wireless facilities installed before an authority adopts
32 requirements that electric and telecommunications lines be placed
33 underground, an authority adopting these requirements shall permit:

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

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

39
40 7. ¹["**The authority may require a**"] A¹ wireless provider ¹["**to**"]
41 shall¹ repair all damage to a right-of-way caused by the activities of
42 the wireless provider and ¹["**to**"]¹ return the right-of-way to its
43 functional ¹and aesthetic¹ equivalence before the damage, pursuant to
44 the competitively neutral, reasonable requirements and specifications
45 of the authority. If the wireless provider fails to make the repairs
46 required by the authority within a reasonable time after written notice,

1 the authority may make those repairs and charge the applicable party
2 the reasonable, documented cost of the repairs.

3

4 8. A wireless provider shall not be required to replace or
5 upgrade an existing pole except for reasons of structural necessity
6 or compliance with applicable codes. A wireless provider may, with
7 the permission of the pole owner, replace or modify the existing
8 pole, but any replacement or modification shall be consistent with
9 the design aesthetics of the pole being modified or replaced.

10

11 9. A wireless provider ¹【is required to】 shall¹ notify the authority
12 at least 30 days before the abandonment of a small wireless facility.
13 Following receipt of the notice, the authority shall direct the wireless
14 provider to remove all or any portion of the small wireless facility and
15 associated antenna equipment that the authority determines would be
16 in the best interest of ¹the¹ public ¹【safety】¹. If the wireless provider
17 fails to remove the abandoned small wireless facility within 90 days
18 after the notice, the authority may undertake to remove the small
19 wireless facility and recover the actual and reasonable expenses of the
20 removal from the wireless provider, its successors, or assigns.

21

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

29

30 11. a. An authority may require an applicant to obtain a permit
31 for:

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

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

36 (3) the installation, modification, or replacement of ¹【an
37 associated】 a¹ pole or antenna equipment as provided in section 3 of
38 P.L. , c. (C.) (pending before the Legislature as this bill).

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

43 b. An authority shall receive and process applications subject to
44 the following requirements:

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

- 1 (2) an authority may not directly or indirectly require an applicant
2 to perform services or provide goods unrelated to the permit, such as
3 in-kind contributions to the authority including, but not limited to,
4 reserving fiber, conduit, or pole space for the authority;
- 5 (3) an applicant shall not be required to provide additional
6 information to obtain a permit than communications service providers
7 that are not wireless providers, provided that an applicant may be
8 required to include construction and engineering drawings and
9 information demonstrating compliance with the criteria in paragraph
10 (9) of this subsection;
- 11 (4) an authority may not require:
- 12 (a) the collocation, mounting, or installation of a small wireless
13 facility on any specific pole or category of poles or require multiple
14 antenna facilities on a single pole;
- 15 (b) the use of specific pole types or configurations when installing
16 a new or replacement pole; or
- 17 (c) the underground placement of a small wireless facility or
18 antenna equipment that is or are designated in an application to be
19 pole-mounted or ground-mounted ¹, provided that an authority may:
- 20 (i) require, pursuant to section 6 of P.L. , c. (C.) (pending
21 before the Legislature as this bill), that a wireless provider place
22 underground fiber that is part of a small wireless facility and not in or
23 on a pole; or
- 24 (ii) prohibit, pursuant to section 6 of P.L. , c. (C.) (pending
25 before the Legislature as this bill), ground-mounted antenna
26 equipment¹;
- 27 (5) ¹subject to the provisions of subparagraph (d) of paragraph (9)
28 of subsection b. of this section,¹ an authority may not limit the
29 collocation of a small wireless facility or the mounting or installation
30 of a small wireless facility on a new ¹**[, modified,]**¹ or replacement
31 pole by minimum horizontal separation distance requirements from an
32 existing small wireless facility ¹**[or structure]**¹;
- 33 (6) the authority may require an applicant to include an attestation
34 that the small wireless facility ¹**[will]** shall¹ be operational for use by
35 a wireless service provider within one year after the permit issuance
36 date, unless the authority and the applicant agree to extend this period
37 or a delay is caused by lack of commercial power, communications
38 ¹**[transport]**¹ facilities to the site, or any other factors outside of the
39 applicant's control;
- 40 (7) within ¹**[ten]** 10¹ days of receiving an application, an authority
41 shall determine and notify the applicant in writing whether the
42 application is complete. If an application is incomplete, an authority
43 shall specifically identify the missing information in writing. The
44 processing deadline provided in paragraph (8) of this subsection shall
45 restart on the date the applicant provides the missing information to
46 complete the application;

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

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

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

8 ¹If an authority provides written notification to the applicant within
9 10 days of receiving an application certifying that it is experiencing an
10 unusually high overall level of permitting activity or other
11 circumstances beyond the authority's control that prevents the
12 authority from reviewing and processing the application by the
13 deadline, the processing deadline may be extended automatically for
14 up to 30 days.¹

15 The processing deadline may be tolled by agreement of the
16 applicant and the authority;

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

23 (a) ¹**materially**¹ interferes with the safe operation of traffic
24 control equipment;

25 (b) ¹**materially**¹ interferes with sight lines or clear zones for
26 transportation or pedestrians;

27 (c) ¹**materially**¹ interferes with compliance with the federal
28 "Americans with Disabilities Act of 1990" (42 U.S.C. s.12101 et seq.),
29 or similar federal or State standards regarding pedestrian access or
30 movement;

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

36 (e) ¹**designates** the location of a new pole for the purpose of
37 mounting or installing a small wireless facility within seven feet in any
38 direction of an electrical conductor, unless the wireless provider
39 obtains the written consent of the public utility that owns or manages
40 the electrical conductor;

41 (f) ¹**fails** to comply with applicable codes; or

42 ¹**(g) (f)**¹ fails to comply with sections 4, 5, or 6 of P.L. , c.
43 (C.) (pending before the Legislature as this bill);

44 (10) the authority shall document the basis for an application
45 denial, including the specific code, rule, or statutory provisions on
46 which the denial was based, and send the documentation to the
47 applicant on or before the day the authority denies an application. The

1 applicant may cure the deficiencies identified by the authority and
2 resubmit the application within 30 days of the denial without paying
3 an additional application fee. The authority shall approve or deny the
4 revised application within 30 days of resubmission and limit its review
5 to the deficiencies cited in the denial;

6 (11) an applicant seeking to collocate, mount, or install more than
7 one small wireless facility within the jurisdiction of a single authority
8 may file a consolidated application for small wireless facilities and
9 associated poles and antenna equipment and receive a single permit for
10 the collocation, mounting, or installation of ¹~~multiple~~ up to 25¹
11 small wireless facilities and the placement of associated poles and
12 antenna equipment ¹~~;~~¹ provided ¹~~;~~¹ however, ¹~~;~~¹ that all small
13 wireless facilities within the consolidated application are substantially
14 the same type and proposed for collocation on substantially the same
15 types of structures;

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

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

27 ¹~~[(12)] (14)~~¹ installations, mountings, modifications,
28 replacements, and collocations for which a permit is granted pursuant
29 to this section shall be completed by the applicant within one year after
30 the permit issuance date unless the authority and the applicant agree to
31 extend this period, or a delay is caused by the lack of commercial
32 power or communications facilities at the site ¹~~;~~¹

33 ¹~~[(13)] (15)~~¹ approval of an application authorizes the applicant
34 to:

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

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

44 ¹~~[(13)] (16)~~¹ an authority may not institute, either expressly or de
45 facto, a moratorium on:

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

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

5 ¹If the State or another authority has declared an emergency and
6 the State or another authority institutes a temporary moratorium that is
7 generally applicable and competitively neutral, is necessary to address
8 the emergency, disaster, or related public safety needs within the
9 authority's jurisdiction, is targeted to those geographic areas that are
10 affected by the disaster or emergency, and applies only for the duration
11 of declaration of emergency, then the provisions of subparagraphs (a)
12 and (b) of this paragraph shall not apply.¹

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

14 (1) routine maintenance;

15 (2) the replacement of a small wireless facility or antenna
16 equipment ¹[with a] , provided the replacement¹ small wireless
17 facility or antenna equipment ¹[that]¹ is substantially similar ¹to¹ or
18 the same size ¹as¹ or smaller ¹[as the replacement]¹ than the original
19 small wireless facility or antenna equipment and continues to meet all
20 other requirements of the original permit¹; or

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

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

31
32 12. A person owning, managing, or controlling an authority pole
33 in the right-of-way may not enter into an exclusive arrangement
34 with any person for the right to attach to the pole. A person who
35 purchases or otherwise acquires an authority pole is subject to the
36 requirements of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

38
39 13. An authority shall allow the collocation of a small wireless
40 facility and the installation of associated antenna equipment on an
41 existing authority pole, ¹and¹ the mounting or installation of a small
42 wireless facility and the installation of associated antenna equipment
43 on a replacement authority ¹[poles]¹ pole,¹ on non-discriminatory
44 terms and conditions using the standards in section 5 of P.L. , c.
45 (C.) (pending before the Legislature as this bill) and the
46 application requirements in section 11 of P.L. , c. (C.)
47 (pending before the Legislature as this bill).

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

7 b. The authority shall provide a good faith estimate for any
8 make-ready work necessary to enable the authority pole to support
9 the requested collocation, mounting, or installation by a wireless
10 provider, including authority pole replacement if necessary, within
11 60 days after receipt of a complete application. Make-ready work
12 including any authority pole replacement shall be completed within
13 60 days of written acceptance of the good faith estimate by the
14 applicant. An authority may require replacement of the authority
15 pole only if it demonstrates that the collocation would make the
16 authority pole structurally unsound.

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

26
27 15. a. All rates and fees established pursuant to subsection b. of
28 this section shall be a reasonable approximation of the authority's
29 reasonable costs, and shall be applied by the authority in a non-
30 discriminatory manner. An authority may not require a wireless
31 provider to pay any rates, fees, or compensation to the authority or
32 other person other than what is expressly authorized by
33 P.L. , c. (C.) (pending before the Legislature as this bill) for
34 the right to use or occupy the right-of-way for the collocation,
35 mounting, or installation of a small wireless facility on a pole in the
36 right-of-way, or for the installation, maintenance, modification, or
37 replacement of associated antenna equipment or a pole in the right-of-
38 way.

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

41 (1) \$500 for a single up-front application for collocation of a small
42 wireless facility that includes up to five small wireless facilities, with
43 an additional \$100 for each small wireless facility included in the same
44 application thereafter;

45 (2) \$250 for the modification or replacement of an existing pole,
46 together with the mounting or installation of an associated small
47 wireless facility in the right-of-way; ¹and¹

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

4 (4) subject to subsection a. of this section, if ¹].

5 c. Notwithstanding the provisions of any law, rule, regulation, or
6 order to the contrary, ¹ an authority ¹ ~~elects~~ may elect ¹ to charge for
7 use of the right-of-way or the collocation of a small wireless facility on
8 an authority pole in the right-of-way, ¹ provided, however, that ¹ the
9 rate ¹ for that use ¹ shall not exceed ¹ ~~[\$20]~~ \$200 ¹ per small wireless
10 facility per year for right-of-way access and ¹ ~~[\$100]~~ \$70 ¹ per
11 authority pole per year for a small wireless facility collocated,
12 mounted, or installed on an authority pole. The rates established
13 pursuant to this paragraph, together with a one-time application fee,
14 shall be the total compensation that the wireless provider is required to
15 pay the authority for the deployment of each small wireless facility in
16 the right-of-way and any associated antenna equipment or pole.

17
18 16. a. An authority shall not have or exercise any jurisdiction
19 or authority over the design, engineering, construction, installation,
20 or operation of a small wireless facility located in an interior
21 structure or upon the site of a campus, stadium, or athletic facility
22 not owned or controlled by the authority, other than to require
23 compliance with applicable codes.

24 b. Except as it relates to small wireless facilities subject to the
25 permit and fee requirements established pursuant to
26 P.L. , c. (C.) (pending before the Legislature as this bill) or
27 otherwise specifically authorized by State or federal law, an
28 authority shall not adopt or enforce any regulations or requirements
29 on the placement or operation of communications facilities in the
30 right-of-way by a communications service provider authorized by
31 federal, State, or local law to operate in a right-of-way, regulate any
32 communications services, or impose or collect any tax, fee, rate, or
33 charge for the provision of additional communications service over
34 the communications service provider's communications facilities in
35 a right-of-way.

36
37 17. a. An authority may adopt an ordinance that makes available
38 to wireless providers rates, fees, and other terms and conditions that
39 comply with P.L. , c. (C.) (pending before the Legislature as
40 this bill). ¹ ~~Pursuant to the provisions of this section, in~~ In ¹ the
41 absence of an ordinance ¹ ~~that fully complies with~~
42 P.L. , c. (C.) (pending before the Legislature as this bill) and
43 until a compliant ordinance is adopted ¹, a wireless provider may
44 install and operate a small wireless facility and any associated poles
45 and antenna equipment under the requirements of P.L. , c.
46 (C.) (pending before the Legislature as this bill). An authority
47 may not require a wireless provider to enter into an agreement to

1 implement P.L. , c. (C.) (pending before the Legislature as
2 this bill), but agreements are permissible if voluntary and non-
3 discriminatory.

4 b. An ordinance or agreement ¹or any provision thereof¹ that does
5 not ¹**fully**¹ comply with P.L. , c. (C.) (pending before the
6 Legislature as this bill) shall apply only to small wireless facilities and
7 any associated poles and antenna equipment that were operational
8 before the effective date of P.L. , c. (C.) (pending before the
9 Legislature as this bill) and shall be deemed invalid and unenforceable
10 beginning on the 181st day after the effective date of
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 unless amended to ¹**fully**¹ comply with P.L. , c. (C.)
13 (pending before the Legislature as this bill). If an ordinance or
14 agreement ¹or any provision thereof¹ is invalid pursuant to this
15 subsection, small wireless facilities and associated poles and antenna
16 equipment that became operational before the effective date of P.L. ,
17 c. (C.) (pending before the Legislature as this bill), pursuant to
18 the ordinance or agreement, may remain installed and be operated
19 under the requirements of ¹the remaining valid portions of the
20 ordinance or agreement or¹ P.L. , c. (C.) (pending before the
21 Legislature as this bill) ¹, as applicable¹.

22 c. ¹**[An]** Any provision of an¹ agreement or ordinance that
23 applies to small wireless facilities and associated poles and antenna
24 equipment that becomes operational on or after the effective date of
25 P.L. , c. (C.) (pending before the Legislature as this bill) is
26 invalid and unenforceable unless it ¹**fully**¹ complies with P.L. , c.
27 (C.) (pending before the Legislature as this bill). In the absence of
28 an ordinance or agreement that ¹**fully**¹ complies with P.L. , c.
29 (C.) (pending before the Legislature as this bill), a wireless
30 provider may install and operate a small wireless facility and
31 associated poles and antenna equipment in a right-of-way pursuant to
32 the requirements of ¹the remaining valid portions of the ordinance or
33 agreement or¹ P.L. , c. (C.) (pending before the Legislature as
34 this bill) ¹, as applicable¹.

35
36 18. a. An authority may adopt reasonable indemnification,
37 insurance, and bonding requirements related to a small wireless facility
38 and associated pole permits and antenna equipment pursuant to the
39 requirements of this section and section 6 of P.L. , c.
40 (C.) (pending before the Legislature as this bill).

41 b. ¹**[An]** authority shall not require a wireless provider to
42 indemnify and hold the authority and its officers and employees
43 harmless against any claims, lawsuits, judgments, costs, liens, losses,
44 expenses, or fees, except when a court of competent jurisdiction has
45 found that the negligence of the wireless provider while installing,
46 repairing, or maintaining a small wireless facility or associated poles
47 and antenna equipment caused the harm that created the claims,

1 lawsuits, judgments, costs, liens, losses, expenses, or fees] A wireless
2 provider that owns or operates small wireless facilities or public utility
3 poles in the right-of-way shall indemnify, protect, defend, and hold the
4 authority and its elected officials, officers, employees, agents, and
5 volunteers harmless against any and all claims, lawsuits, judgments,
6 costs, liens, losses, expenses, fees including reasonable attorney fees
7 and costs of defense, proceedings, actions, demands, causes of action,
8 liability, and suits of any kind and nature, including, but not limited to,
9 personal or bodily injury or death, property damage or other harm for
10 which recovery of damages is sought, to the extent that it is caused by
11 the negligence of the wireless provider who owns or operates small
12 wireless facilities or public utility poles in the right-of-way, any agent,
13 officer, director, representative, employee, affiliate, or subcontractor of
14 the wireless provider, or their respective officers, agents, employees,
15 directors, or representatives while installing, repairing, operating, or
16 maintaining facilities in rights-of-way¹.

17 c. ¹[An authority may require a wireless provider to have in
18 effect insurance coverage consistent with this section, so long as the
19 authority imposes similar requirements on other right-of-way users and
20 the requirements are reasonable and non-discriminatory.

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

24 (2) An authority may require a wireless provider to furnish proof
25 of insurance, if required, prior to the effective date of any permit
26 issued for a small wireless facility work] Except for a wireless
27 provider with an existing agreement to occupy and operate in the
28 rights-of-way, during the period in which the wireless provider's
29 facilities are located on the authority's improvements or rights-of-way,
30 the authority may require the wireless provider to carry, at the wireless
31 provider's own cost and expense, the following insurance:

32 (a) property insurance for its property's replacement cost against
33 all risks;

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

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

44 A wireless provider may self-insure all or a portion of the
45 insurance coverage and limit requirements required by an authority. A
46 wireless provider that self-insures is not required, to the extent of the
47 self-insurance, to comply with the requirement for the naming of
48 additional insureds under this section. A wireless provider that elects

1 to self-insure shall provide to the authority evidence sufficient to
2 demonstrate its financial ability to self-insure the insurance coverage
3 and limits required by the authority¹.

4 d. ¹[An authority may adopt bonding requirements for small
5 wireless facilities if the authority imposes similar requirements in
6 connection with permits issued for other right-of-way users.

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

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

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

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

20 (2) Bonding requirements may not exceed \$200 per small wireless
21 facility. For wireless providers with multiple small wireless facilities
22 within the jurisdiction of a single authority, the total bond amount
23 across all facilities may not exceed \$10,000, which may be combined
24 into one bond instrument] An authority may impose reasonable and
25 non-discriminatory requirements for bonds, escrow deposits, letters of
26 credit, or any other type of financial surety to ensure removal of
27 abandoned or unused wireless facilities or damage to the right-of-way
28 or authority property caused by the wireless provider or its agent¹.

29

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

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

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

1 d. Nothing in P.L. , c. (C.) (pending before the
2 Legislature as this bill) shall ¹【apply to poles owned by an investor-
3 owned public utility, except as it concerns a wireless provider’s access
4 to a right-of-way and permits for the collocation, mounting, or
5 installation of a small wireless facility on investor-owned public utility
6 poles pursuant to a pole attachment agreement between the wireless
7 provider and the investor-owned public utility】 authorize a person to
8 collocate a small wireless facility on property owned by a public utility
9 without consent of the public utility nor be construed to impact,
10 modify, or supersede any construction standard, engineering practice,
11 tariff provision, collective bargaining agreement, contractual
12 obligation or right, or federal or State law or regulation relating to
13 facilities, equipment, or poles owned or controlled by a public utility
14 or its affiliate, an electric cooperative, or an independent electric
15 transmission company, that is not a wireless provider¹.
16

17 20. A court of competent jurisdiction shall have jurisdiction to
18 determine disputes arising pursuant to P.L. , c. (C.)
19 (pending before the Legislature as this bill). Pending resolution of a
20 dispute concerning rates for collocation, mounting, and installation
21 of small wireless facilities on authority poles in the right-of-way
22 and the installation of associated antenna equipment, the authority
23 owning or controlling the pole shall allow the collocating person or
24 entity to collocate at annual rates established pursuant to section 15
25 of P.L. , c. (C.) (pending before the Legislature as this
26 bill), with rates to be reconciled upon final resolution of the dispute.
27 A dispute shall be pursued in accordance with accelerated docket or
28 complaint procedures, where available.

29
30 21. This act shall take effect on the first day of the seventh
31 month next following enactment.