
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 769 Session of
2021

INTRODUCED BY BROWNE, BOSCOLA, PHILLIPS-HILL AND KANE,
JUNE 15, 2021

REFERRED TO COMMUNICATIONS AND TECHNOLOGY, JUNE 15, 2021

AN ACT

1 Providing for small wireless facilities deployment.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Small
6 Wireless Facilities Deployment Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Antenna." Telecommunications equipment that transmits and
12 receives electromagnetic radio signals used in the provision of
13 all types of wireless telecommunications services.

14 "Applicable codes." Any of the following:

15 (1) Uniform building, fire, electrical, plumbing or
16 mechanical codes adopted by a recognized national code
17 organization or local amendments to those codes enacted

1 solely to address imminent threats of destruction of property
2 or injury to persons.

3 (2) Local zoning, land use, streets and sidewalks,
4 rights-of-way and permitting ordinances that comply with this
5 act.

6 "Applicant." A communications service provider that submits
7 an application.

8 "Application." A request submitted by an applicant to a
9 municipality:

10 (1) for a permit to collocate small wireless facilities;
11 or

12 (2) to approve the installation, modification or
13 replacement of a utility pole with small wireless facilities
14 attached.

15 "Cable facility." Buildings, other structures and equipment
16 used by the owner or operator of a cable television system to
17 provide service. As used in this definition, the term "cable
18 system" shall have the meaning given to it in section 602(6) of
19 the Cable Communications Policy Act of 1984 (Public Law 98-549,
20 47 U.S.C. § 522(7)).

21 "Collocation" or "collocate." To install, mount, maintain,
22 modify or replace small wireless facilities on an existing
23 utility pole or other wireless support structure.

24 "Communications facility." A set of equipment and network
25 components, including wires and cables and associated
26 facilities, used by a communications service provider to provide
27 a communications service.

28 "Communications service provider." Any of the following:

29 (1) A cable operator as defined in section 602(4) of the
30 Cable Communications Policy Act of 1984 (Public Law 98-549,

1 47 U.S.C. § 522(5)).

2 (2) A provider of information service as defined in
3 section 3(20) of the Communications Act of 1934 (48 Stat.
4 1064, 47 U.S.C. § 153(24)).

5 (3) A telecommunications carrier as defined in section
6 3(44) of the Communications Act of 1934 (48 Stat. 1064, 47
7 U.S.C. § 153(51)).

8 (4) A wireless provider.

9 "Decorative pole." A municipal pole that is specially
10 designed and placed for aesthetic purposes.

11 "FCC." The Federal Communications Commission.

12 "Historic district or building." A building that is or a
13 group of buildings, properties or sites that are:

14 (1) Listed in the National Register of Historic Places
15 or formally determined eligible for listing by the Keeper of
16 the National Register.

17 (2) Determined to be eligible for listing by the Keeper
18 of the National Register of Historic Places who has been
19 delegated the authority by a Federal agency to list
20 properties and determine their eligibility for the National
21 Register of Historic Places in accordance with section
22 VI.D.1.a.i-v of the Nationwide Programmatic Agreement for
23 Review Regarding the Section 106 National Historic
24 Preservation Act Review Process as specified under 47 CFR Pt.
25 1, App. C (relating to Nationwide Programmatic Agreement
26 Regarding the Section 106 National Historic Preservation Act
27 Review Process).

28 (3) Marked as a historical site by the Pennsylvania
29 Historical and Museum Commission pursuant to 37 Pa.C.S.
30 (relating to historical and museums).

1 (4) Within a historic district created pursuant to the
2 act of June 13, 1961 (P.L.282, No.167), entitled "An act
3 authorizing counties, cities, boroughs, incorporated towns
4 and townships to create historic districts within their
5 geographic boundaries; providing for the appointment of
6 Boards of Historical Architectural Review; empowering
7 governing bodies of political subdivisions to protect the
8 distinctive historical character of these districts and to
9 regulate the erection, reconstruction, alteration,
10 restoration, demolition or razing of buildings within the
11 historic districts."

12 "Micro wireless facility." A small wireless facility that:

13 (1) does not exceed two cubic feet in volume; and

14 (2) has an exterior antenna no longer than 11 inches.

15 "Modification" or "modify." The improvement, upgrade or
16 replacement of a small wireless facility or an existing utility
17 pole that does not substantially change, as defined in 47 CFR §
18 1.6100(b)(7) (relating to wireless facility modifications), the
19 physical dimension of the small wireless facility or utility
20 pole.

21 "Municipality." Any of the following:

22 (1) A city of the first, second, second class A or third
23 class.

24 (2) A borough.

25 (3) An incorporated town.

26 (4) A township of the first or second class.

27 (5) A county.

28 (6) A home rule municipality.

29 (7) A similar general purpose unit of government
30 established by the General Assembly.

1 "Municipal pole." A utility pole owned, managed or operated
2 by or on behalf of a municipality.

3 "Right-of-way." The area on, below or above a public
4 roadway, highway, street, sidewalk, alley, utility easement or
5 similar property. The term does not include a Federal interstate
6 highway.

7 "Small wireless facility." The equipment and network
8 components, including antennas, transmitters and receivers, used
9 by a wireless provider that meet the following qualifications:

10 (1) Each antenna associated with the deployment is no
11 more than three cubic feet in volume.

12 (2) The volume of all other equipment associated with
13 the wireless facility, whether ground-mounted or pole-
14 mounted, is cumulatively no more than 28 cubic feet. Any
15 equipment used solely for the concealment of the small
16 wireless facility shall not be included in the calculation of
17 equipment volume under this paragraph.

18 "Technically feasible." By virtue of engineering or spectrum
19 usage, the proposed placement for a small wireless facility or
20 its design or site location can be implemented without a
21 material reduction in the functionality of the small wireless
22 facility.

23 "Utility facility." Buildings, other structures and
24 equipment owned or operated by a public utility, as defined in
25 66 Pa.C.S. § 102 (relating to definitions), to provide service.

26 "Utility pole." A pole or similar structure that is or may
27 be used, in whole or in part, by or for telecommunications,
28 electric distribution, lighting, traffic control, signage or a
29 similar function or for collocation. The term includes the
30 vertical support structure for traffic lights but does not

1 include wireless support structures or horizontal structures to
2 which signal lights or other traffic control devices are
3 attached.

4 "Wireless facility." As follows:

5 (1) Equipment at a fixed location that enables wireless
6 service between user equipment and a communications network,
7 including any of the following:

8 (i) Equipment associated with wireless services.

9 (ii) Radio transceivers, antennas, coaxial or fiber
10 optic cables, regular and backup power supplies or
11 comparable equipment, regardless of technological
12 configuration.

13 (2) The term includes a small wireless facility.

14 (3) The term does not include any of the following:

15 (i) The structure or improvements on, under or
16 within which the equipment is collocated.

17 (ii) The coaxial or fiber optic cables that are not
18 immediately adjacent to or directly associated with a
19 particular antenna.

20 "Wireless infrastructure provider." A person authorized by
21 the Pennsylvania Public Utility Commission to provide
22 telecommunications service in this Commonwealth that builds or
23 installs wireless communication transmission equipment, wireless
24 facilities or wireless support structures but is not a wireless
25 services provider.

26 "Wireless provider." A wireless infrastructure provider or a
27 wireless services provider.

28 "Wireless services." Services, whether at a fixed location
29 or mobile, using a licensed or unlicensed spectrum, provided to
30 the public using wireless facilities.

1 "Wireless services provider." A person who provides wireless
2 services.

3 "Wireless support structure." The term shall have the same
4 meaning given to it in the act of October 24, 2012 (P.L.1501,
5 No.191), known as the Wireless Broadband Collocation Act.

6 Section 3. Use of right-of-way for small wireless facilities
7 and utility poles with small wireless facilities
8 attached.

9 (a) Applicability.--The provisions of this section shall
10 only apply to activities of a wireless provider within the
11 right-of-way to deploy small wireless facilities and associated
12 new utility poles with small wireless facilities attached.

13 (b) Exclusive use prohibited.--A municipality shall not
14 enter into an exclusive arrangement with any person for use of
15 the right-of-way for:

16 (1) collocation; or

17 (2) the installation, operation, modification or
18 replacement of utility poles with small wireless facilities
19 attached.

20 (c) Right-of-way rates and fees.--Subject to the fee
21 adjustment requirements under section 7(c), a municipality shall
22 have the right to charge an annual fee for the use of the right-
23 of-way. An annual right-of-way fee shall not exceed \$270 per
24 small wireless facility or \$270 per new utility pole with a
25 small wireless facility unless a municipality demonstrates all
26 of the following:

27 (1) The annual right-of-way fee is a reasonable
28 approximation of the municipality's costs to manage the
29 right-of-way.

30 (2) The municipality's costs under paragraph (1) are

1 reasonable.

2 (3) The annual right-of-way fee is nondiscriminatory.

3 (d) Right of access.--

4 (1) Under the provisions of this act, in accordance with
5 applicable codes, and with the permission of the owner of the
6 structure, a wireless provider shall have the right to
7 perform the following within the right-of-way:

8 (i) Collocate.

9 (ii) Replace an existing utility pole or install a
10 new utility pole with attached small wireless facilities.

11 (2) All structures and facilities shall be installed and
12 maintained so as not to obstruct nor hinder travel or public
13 safety within the right-of-way or obstruct the legal use of
14 the right-of-way by the municipality and utilities.

15 (e) Size limits.--

16 (1) Each new or modified small wireless facility
17 installed in the right-of-way shall be installed on an
18 existing utility pole or a new utility pole subject to the
19 following:

20 (i) The installation of a small wireless facility on
21 an existing utility pole shall not extend more than five
22 feet above the existing utility pole.

23 (ii) If collocation on an existing utility pole
24 cannot be achieved under section 4(i), a small wireless
25 facility may be installed on a new or replacement utility
26 pole. The maximum permitted height of the facility, which
27 shall include the utility pole and small wireless
28 facility, shall not be taller than 50 feet above ground
29 level.

30 (2) Subject to the provisions of this act, a wireless

1 provider may collocate or install a new utility pole with
2 small wireless facilities attached that exceeds these height
3 limits by including a height limit waiver request or
4 variances in the application. Height limit waivers or
5 variances shall be processed subject to applicable codes.

6 (f) Underground district.--A wireless provider shall comply
7 with reasonable and nondiscriminatory requirements that prohibit
8 communications service providers from placing or installing
9 structures in the right-of-way in an area designated solely for
10 underground or buried cable facilities and utility facilities if
11 the municipality:

12 (1) Requires all cable facilities and utility
13 facilities, other than municipal poles and attachments, to be
14 placed underground by a date certain that is three months
15 prior to the submission of the application.

16 (2) Does not prohibit the replacement of municipal poles
17 in the designated area.

18 (3) Permits wireless providers to seek a waiver of the
19 underground requirements for the installation of a new
20 utility pole to support small wireless facilities. Upon the
21 submission of a request for a waiver by a wireless provider,
22 the municipality may require a public hearing and, with the
23 approval of the property owner, permit a waiver request.
24 Waivers shall be addressed in a nondiscriminatory manner and
25 in accordance with applicable codes.

26 (g) Historic district or building.--Except for facilities
27 excluded from evaluation for effects on historic properties
28 under 47 CFR § 1.1307(a)(4) (relating to actions that may have a
29 significant environmental effect, for which Environmental
30 Assessments (EAs) must be prepared), a municipality may require

1 reasonable, technically feasible, nondiscriminatory and
2 technologically neutral design or concealment measures in a
3 historic district or on historic buildings. Any design or
4 concealment measures may not have the effect of prohibiting any
5 provider's technology or be considered a part of the small
6 wireless facility for purposes of the size restrictions of small
7 wireless facilities.

8 (h) Design guidelines.--A municipality may develop objective
9 design guidelines for a small wireless facility regarding the
10 minimization of aesthetic impact in accordance with the
11 following:

12 (1) The design guidelines shall be technically feasible.

13 (2) The design guidelines may not have the effect of
14 prohibiting the wireless provider's technology.

15 (3) The design guidelines may not unreasonably
16 discriminate among wireless providers of functionally
17 equivalent services.

18 (i) Damage and repair.--A wireless provider shall repair all
19 damage to the right-of-way or any other land so disturbed,
20 directly caused by the activities of the wireless provider or
21 the wireless provider's contractors and return the right-of-way
22 in as good of condition as it existed prior to any work being
23 done in the right-of-way by the wireless provider. If the
24 wireless provider fails to make the repairs required by the
25 municipality within 30 days after written notice, the
26 municipality may perform those repairs and charge the wireless
27 provider the reasonable, documented cost of the repairs plus a
28 penalty not to exceed \$500. The municipality may suspend the
29 ability of an applicant to receive a new permit from the
30 municipality until the applicant has paid the amount assessed

1 for the repair costs and the assessed penalty. The municipality
2 may not suspend the ability of an applicant to receive a new
3 permit that has deposited the amount assessed for the repair
4 costs and the assessed penalty in escrow pending an adjudication
5 of the merits of the dispute by a court of competent
6 jurisdiction.

7 (j) Communications services.--The approval of the
8 installation, placement, maintenance or operation of a small
9 wireless facility under this section shall not authorize the
10 provision of any communications services without compliance with
11 all applicable laws or the installation, placement, maintenance
12 or operation of any communications facilities other than
13 wireless facilities and associated utility poles in the right-
14 of-way.

15 Section 4. Permitting process for small wireless facilities and
16 utility poles within right-of-way.

17 (a) Applicability.--The provisions of this section shall
18 apply to a municipality's permitting of small wireless
19 facilities by a wireless provider or the installation,
20 modification and replacement of utility poles with small
21 wireless facilities attached by a wireless provider within the
22 right-of-way.

23 (b) Review.--An application under this section shall be
24 treated as a permitted use in all areas of a municipality,
25 except underground districts in accordance with section 3(f),
26 and reviewed by municipal staff for conformance with applicable
27 codes. Such applications shall not be subject to discretionary
28 zoning review, including conditional use or special exception
29 requirements.

30 (c) Permits.--

1 (1) A municipality may require an applicant to obtain
2 one or more permits of general applicability to perform the
3 following within the right-of-way:

4 (i) Collocate, maintain and modify small wireless
5 facilities.

6 (ii) Replace existing utility poles for collocation.

7 (iii) Install new utility poles with attached small
8 wireless facilities.

9 (2) Permits of general applicability shall not apply
10 exclusively to small wireless facilities. A municipality
11 shall receive applications for collocation or for
12 installation, modification or replacement of utility poles
13 with small wireless facilities attached and process and issue
14 permits, subject to the requirements of applicable codes. The
15 following apply:

16 (i) A municipality may not directly or indirectly
17 require an applicant to perform services or provide goods
18 unrelated to the permit, such as in-kind contributions to
19 the municipality, including reserving fiber, conduit or
20 pole space for the municipality.

21 (ii) An applicant shall not be required to provide
22 justification for capacity or radio frequency. An
23 applicant may be required to:

24 (A) Include documentation with an application
25 that includes construction and engineering drawings,
26 demonstrates compliance with the criteria specified
27 under subsection (f) and includes all necessary
28 approvals from the pole owner.

29 (B) Self-certify that the filing and approval of
30 the application is required by the wireless provider

1 to provide additional capacity or coverage for
2 wireless services. Nothing in this subsection shall
3 be construed to permit a municipality to require an
4 applicant to submit information about an applicant's
5 business decisions with respect to its service,
6 customer demand for service or quality of service.

7 (C) Include documentation showing compliance
8 with design guidelines consistent with section 3(h).

9 (d) Completed application.--Within 10 business days of
10 receiving an application, a municipality must determine and
11 notify the applicant in writing whether the application is
12 incomplete. If an application is incomplete, the notice must
13 specifically identify the missing information. The processing
14 deadline shall restart at zero on the date the applicant
15 provides the missing information. The processing deadline may be
16 tolled by agreement of the applicant and the municipality.

17 (e) Deadlines.--An application shall be processed on a
18 nondiscriminatory basis and deemed approved if the municipality
19 fails to approve or deny the application within 60 days of
20 receipt of a complete application to collocate and within 90
21 days of receipt of a complete application to replace an existing
22 utility pole or install a new utility pole with small wireless
23 facilities attached. A permit associated with an application
24 deemed approved under this subsection shall be deemed approved
25 if the municipality fails to approve or deny the permit within
26 seven business days after the date of filing the permit
27 application with the municipality unless there is a public
28 safety reason for the delay.

29 (f) Denial.--

30 (1) A municipality may deny an application under this

1 section only if any of the following apply:

2 (i) The small wireless facility materially
3 interferes with the safe operation of traffic control
4 equipment, sight lines or clear zones for transportation
5 or pedestrians or compliance with the Americans with
6 Disabilities Act of 1990 (Public Law 101-336, 104 Stat.
7 327) or similar Federal or State standards regarding
8 pedestrian access or movement.

9 (ii) The small wireless facility fails to comply
10 with applicable codes.

11 (iii) The small wireless facility fails to comply
12 with the requirements specified under this act.

13 (iv) The applicant fails to submit a report by a
14 qualified engineering expert which shows that the small
15 wireless facility will comply with applicable FCC
16 regulations.

17 (2) Within the time frame established under subsection
18 (e), the municipality shall document the basis for a denial,
19 including the specific provisions of applicable codes on
20 which the denial was based, and send the documentation to the
21 applicant within five business days of the denial.

22 (3) The applicant may cure the deficiencies identified
23 by the municipality and resubmit the application within 30
24 days of receiving the written basis for the denial without
25 being required to pay an additional application fee. The
26 municipality shall approve or deny the revised application
27 within 30 days of the application being resubmitted for
28 review or the resubmitted application shall be deemed
29 approved 30 days after resubmission. Any subsequent review
30 shall be limited to the deficiencies cited in the denial. If

1 the resubmitted application addresses or changes other
2 sections of the application that were not previously denied,
3 the municipality shall be given an additional 15 days to
4 review the resubmitted application and may charge an
5 additional fee for the review.

6 (g) Consolidated application.--An applicant seeking to
7 collocate within the jurisdiction of a single municipality shall
8 be allowed at the applicant's discretion to file a consolidated
9 application for collocation of multiple small wireless
10 facilities as follows:

11 (1) The consolidated application does not exceed 20
12 small wireless facilities.

13 (2) The denial of one or more small wireless facilities
14 in a consolidated application shall not delay processing of
15 any other small wireless facilities in the same consolidated
16 application.

17 (3) A single applicant may not submit more than one
18 consolidated or 20 single applications in a 30-day period in
19 a municipality with a population of less than 50,000. If a
20 municipality with a population of less than 50,000 receives
21 more than one consolidated application or 20 single
22 applications within a 45-day period, the processing deadline
23 shall be extended 15 days in addition to the processing
24 deadline specified under subsection (d) to allow the
25 municipality to complete its initial review under subsection
26 (d).

27 (4) The following apply:

28 (i) For the purpose of counting the number of small
29 wireless facilities each applicant has before a single
30 municipality at a given time, small wireless facilities

1 and poles that a wireless provider applicant has
2 requested a third party to deploy and that are included
3 in a pending application by the third party shall be
4 counted as pending requests by the wireless provider
5 applicant.

6 (ii) An application tolled under paragraph (3) shall
7 count toward the total number of applications included in
8 a consolidated application unless the application is
9 withdrawn by the applicant. As the processing of
10 applications is completed, the municipality shall begin
11 processing previously tolled applications in the order in
12 which the tolled applications were submitted, unless the
13 applicant specifies a different order.

14 (h) Time limit for work.--The proposed collocation, the
15 modification or replacement of a utility pole or the
16 installation of a new utility pole with small wireless
17 facilities attached for which a permit is granted under this
18 section shall be completed within one year of the permit
19 issuance date unless the municipality and the applicant agree in
20 writing to extend the period.

21 (i) Utility poles.--When applying to install a new utility
22 pole under this act, the municipality may require the wireless
23 provider to demonstrate that it cannot meet the service
24 reliability and functional objectives of the application by
25 collocating on an existing utility pole or municipal pole
26 instead of installing a new utility pole. The municipality may
27 require the wireless provider to self-certify that the wireless
28 provider has made this determination in good faith and to
29 provide a documented summary of the basis for the determination.
30 The wireless provider's determination shall be based on whether

1 the wireless provider can meet the service objectives of the
2 application by collocating on an existing utility pole or
3 municipal pole on which:

4 (1) The wireless provider has the right to collocation.

5 (2) The collocation is technically feasible and would
6 not impose substantial additional cost.

7 (3) The collocation would not obstruct or hinder travel
8 or have a negative impact on public safety.

9 (j) Approval.--Approval of an application authorizes the
10 applicant to:

11 (1) Collocate on an existing utility pole, modify or
12 replace a utility pole or install a new utility pole with
13 small wireless facilities attached as identified in the
14 initial application.

15 (2) Subject to the permit requirements and the
16 applicant's right to terminate at any time, operate and
17 maintain small wireless facilities and any associated
18 equipment on a utility pole covered by the permit for a
19 period of not less than five years, which shall be renewed
20 for two additional five-year periods if the applicant is in
21 compliance with the criteria specified in this act or
22 applicable codes consistent with this act and the applicant
23 has obtained all necessary consent from the utility pole
24 owner.

25 (k) Removal of equipment.--

26 (1) Within 60 days of suspension or revocation of a
27 permit due to noncompliance with this act or applicable codes
28 consistent with this act, the applicant shall remove the
29 small wireless facility and any associated equipment,
30 including the utility pole and any support structures if the

1 applicant's wireless facilities and associated equipment are
2 the only facilities on the utility pole, after receiving
3 adequate notice and an opportunity to cure any noncompliance.

4 (2) Within 90 days of the end of a permit term or an
5 extension of the permit term, the applicant shall remove the
6 small wireless facility and any associated equipment,
7 including the utility pole and any support structures if the
8 applicant's wireless facilities and associated equipment are
9 the only facilities on the utility pole.

10 (1) Moratorium prohibited.--A municipality may not
11 institute, either expressly or de facto, a moratorium on:

12 (1) filing, receiving or processing applications; or

13 (2) issuing permits for:

14 (i) collocation;

15 (ii) modification or replacement of utility poles to
16 support small wireless facilities; or

17 (iii) installation of new utility poles to support
18 small wireless facilities.

19 (m) When applications not required.--

20 (1) A municipality shall not require an application for:

21 (i) Routine maintenance or repair work.

22 (ii) The replacement of small wireless facilities
23 with small wireless facilities that are substantially
24 similar or the same size or smaller and still qualify as
25 a small wireless facility.

26 (iii) The installation, placement, maintenance,
27 operation or replacement of micro wireless facilities
28 that are strung on cables between existing utility poles
29 by or for a communications service provider authorized to
30 occupy the right-of-way, in compliance with the National

1 Electrical Safety Code.

2 (2) A municipality may require a permit to perform work
3 within the right-of-way for the activities under paragraph
4 (1) or subsection (c), if applicable for work that involves
5 excavation, closure of a sidewalk or closure of a vehicular
6 lane. Permits shall be subject to the requirements provided
7 in this act or applicable codes consistent with this act.

8 (n) Application fees.--Subject to the fee adjustment
9 requirements under section 7(c), a municipality shall have the
10 right to charge an application fee for the review of a permit
11 application and plans submitted for the work to be done within
12 the right-of-way. A municipality may charge a one-time
13 application fee of up to the following:

14 (1) Five hundred dollars for an application seeking
15 approval for no more than five collocated small wireless
16 facilities and up to \$100 for each collocated small wireless
17 facility beyond five.

18 (2) One thousand dollars for an application seeking
19 approval of a small wireless facility that requires the
20 installation of a new or replacement utility pole.

21 Section 5. Access to municipal poles within right-of-way.

22 (a) Applicability.--The provisions of this section shall
23 apply to activities of the wireless provider within a right-of-
24 way.

25 (b) Exclusive use prohibited.--A municipality may not enter
26 into an exclusive arrangement with any person for the right to
27 collocate on municipal poles.

28 (c) Collocation.--A municipality shall allow collocation on
29 municipal poles using the process required under this act and
30 applicable codes unless the small wireless facility would cause

1 structural or safety deficiencies to the municipal pole, in
2 which case the municipality and applicant shall work together
3 for any make-ready work or modifications or replacements that
4 are needed to accommodate the small wireless facility. All
5 structures and facilities shall be installed and maintained so
6 as not to obstruct nor hinder travel or public safety within the
7 right-of-way.

8 (d) Rates.--Subject to the fee adjustment requirements under
9 section 7(c), a municipality shall not charge a wireless
10 provider a fee to collocate on municipal poles.

11 (e) Implementation and make-ready work.--

12 (1) The rates, fees and terms and conditions for the
13 make-ready work to collocate on a municipal pole must be
14 nondiscriminatory, competitively neutral and commercially
15 reasonable and must comply with this act.

16 (2) The municipality shall provide a good faith estimate
17 for any make-ready work necessary to enable the municipal
18 pole to support the requested collocation by a wireless
19 provider, including pole replacement if necessary, within 60
20 days after receipt of a complete application. Make-ready
21 work, including pole replacement, shall be completed within
22 60 days of written acceptance of the good faith estimate by
23 the applicant. A municipality may require replacement of the
24 municipal pole only if the municipality demonstrates that the
25 collocation would make the municipal pole structurally
26 unsound.

27 (3) The municipality shall not require more make-ready
28 work than required to meet applicable codes or industry
29 standards. Fees for make-ready work on a nonreplacement
30 municipal pole shall not include costs related to preexisting

1 or prior damage or noncompliance. Fees for make-ready work,
2 including replacement, shall not exceed actual costs or the
3 amount charged to other similarly situated communications
4 service providers for similar work and shall not include any
5 consultant fees or expenses that are charged on a contingency
6 basis.

7 (f) Future use.--A municipality may reserve space on an
8 existing municipal pole for future public safety or
9 transportation uses in a documented and approved plan as adopted
10 at the time an application is filed. A reservation of space
11 shall not preclude collocation, the replacement of an existing
12 utility pole or the installation of a new utility pole. If the
13 replacement of a municipal pole is necessary to accommodate
14 collocation and the reserved future use, the wireless provider
15 shall pay for the replacement municipal pole and the municipal
16 pole shall accommodate the future use.

17 Section 6. Local authority.

18 Subject to the provisions of this act and applicable Federal
19 and State laws and regulations, nothing in this act shall be
20 construed to:

21 (1) Limit or preempt the scope of a municipality's
22 zoning, land use, planning, streets and sidewalks, rights-of-
23 way and permitting authority as it relates to small wireless
24 facilities.

25 (2) Grant the authority to a municipality to exercise
26 zoning jurisdiction over the design, engineering,
27 construction, installation or operation of a small wireless
28 facility located in an interior structure or on the site of a
29 campus, stadium or athletic facility not owned or controlled
30 by the municipality. Nothing in this act authorizes the

1 Commonwealth or any municipality to require small wireless
2 facility deployment or to regulate wireless services.

3 Section 7. Implementation.

4 (a) Ordinances.--A municipality may adopt ordinances that
5 comply with this act and shall amend existing ordinances as
6 necessary to comply with this act. If a municipality does not
7 adopt an ordinance that complies with this act within 60 days of
8 the effective date of this section, applications seeking permits
9 to collocate, modify or replace existing utility poles or
10 install new utility poles shall be processed in compliance with
11 this act. A municipality shall not require a wireless provider
12 to enter into an agreement to implement this act. Nothing in
13 this subsection shall be construed to prohibit an agreement
14 between a municipality and a wireless provider to implement this
15 act if nondiscriminatory and entered into voluntarily.

16 (b) Agreements.--All agreements between municipalities and
17 wireless service providers that are in effect on the effective
18 date of this act shall remain in effect, subject to any
19 termination provisions in the agreements. When an application is
20 submitted after the effective date of this act, a wireless
21 provider may elect to have the rates, fees, terms and conditions
22 established under this act apply to the small wireless facility
23 or utility pole installed after the effective date of this act.

24 (c) Rate or fee adjustments.--

25 (1) If the FCC adjusts its levels for fees for small
26 wireless facilities, a municipality may adjust any impacted
27 rate or fee under section 3(c), 4(n) or 5(d), on a pro rata
28 basis and consistent with the FCC's adjustment.

29 (2) If, in a final adjudication not subject to further
30 appeal or to review by the United States Supreme Court, a

1 Federal court reviewing Accelerating Wireless Broadband
2 Deployment by Removing Barriers to Infrastructure Investment,
3 et al., Declaratory Ruling and Third Report and Order, WT
4 Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133
5 (released September 27, 2018), reverses or repeals the rates
6 outlined in that FCC order, then the monetary caps under
7 sections (3) (c), (4) (n) and (5) (d) may increase 3% annually
8 beginning January 1, 2021, at the discretion of a
9 municipality.

10 Section 8. Indemnification.

11 Except for a wireless provider with an existing agreement to
12 occupy and operate in a right-of-way, a wireless provider shall
13 fully indemnify and hold the municipality and its officers,
14 employees and agents harmless against any claims, lawsuits,
15 judgments, costs, liens, expenses or fees or any other damages
16 caused by the act, error or omission of the wireless provider or
17 its officers, agents, employees, directors, contractors or
18 subcontractors while installing, repairing or maintaining small
19 wireless facilities or utility poles within the right-of-way. A
20 wireless provider shall not be required to indemnify for an act
21 of negligence or willful misconduct by the municipality, its
22 elected and appointed officials, employees and agents.

23 Section 9. General requirements for uses of rights-of-way.

24 The following apply:

25 (1) Structures and facilities deployed by a wireless
26 provider under this act shall be constructed, maintained and
27 located in a manner as to not obstruct, endanger or hinder
28 the usual travel or public safety on a right-of-way, damage
29 or interfere with other utility facilities located within a
30 right-of-way or interfere with the other utility's use of the

1 utility's facilities located or to be located within the
2 right-of-way.

3 (2) The construction and maintenance of structures and
4 facilities by the wireless provider shall comply with the
5 2017 National Electrical Safety Code and all applicable laws,
6 ordinances and regulations for the protection of underground
7 and overhead utility facilities.

8 (3) An applicant or the applicant's affiliate shall
9 ensure that a contractor or subcontractor performing
10 construction, reconstruction, demolition, repair or
11 maintenance work on a small wireless facility deployed under
12 this act meets and attests to all of the following
13 requirements:

14 (i) Maintain all valid licenses, registrations or
15 certificates required by the Federal Government, the
16 Commonwealth or a local government entity that are
17 necessary to do business or perform applicable work.

18 (ii) Maintain compliance with the act of June 2,
19 1915 (P.L.736, No.338), known as the Workers'
20 Compensation Act, the act of December 5, 1936 (2nd
21 Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
22 Compensation Law, and bonding and liability insurance
23 requirements as specified in the contract for the
24 project.

25 (iii) Has not defaulted on a project, declared
26 bankruptcy, been debarred or suspended on a project by
27 the Federal Government, the Commonwealth or a local
28 government entity within the previous three years.

29 (iv) Has not been convicted of a misdemeanor or
30 felony relating to the performance or operation of the

1 business of the contractor or subcontractor within the
2 previous 10 years.

3 (v) Has completed a minimum of the United States
4 Occupational Safety and Health Administration's 10-hour
5 safety training course or similar training sufficient to
6 prepare workers for any hazards that may be encountered
7 during their work on the small wireless facility.

8 Section 10. Construction.

9 (a) Obligations.--Nothing in this act shall be construed to
10 impact, modify or supersede any construction standard,
11 engineering practice, tariff provision, collective bargaining
12 agreement, contractual obligation or right, Federal or State law
13 or regulation relating to facilities or equipment owned or
14 controlled by an electric distribution company or its affiliate,
15 a telecommunications carrier, an electric cooperative or an
16 independent transmission company that is not a wireless
17 provider.

18 (b) Definitions.--As used in this section, the following
19 words and phrases shall have the meanings given to them in this
20 subsection unless the context clearly indicates otherwise:

21 "Electric distribution company." As defined in 66 Pa.C.S. §
22 2803 (relating to definitions).

23 "Facilities." As defined in 66 Pa.C.S. § 102 (relating to
24 definitions).

25 "Telecommunications carrier." As defined in 66 Pa.C.S. §
26 3012 (relating to definitions).

27 Section 11. Effective date.

28 This act shall take effect in 60 days.