
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1400 Session of
2019

INTRODUCED BY FARRY, SCHWEYER, ROAE, BURGOS, A. DAVIS, THOMAS,
MILLARD AND SANKEY, JUNE 11, 2019

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JUNE 11, 2019

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 "Accessory equipment." Equipment serving or being used in
12 conjunction with a small wireless facility.

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

16 "Applicable codes." Uniform building, fire, electrical,
17 plumbing or mechanical codes adopted by a recognized national

1 code organization or local amendments to those codes enacted
2 solely to address imminent threats of destruction of property or
3 injury to persons.

4 "Applicant." A wireless provider that submits an
5 application.

6 "Application." A request submitted by an applicant to a
7 municipality:

8 (1) for a permit to collocate small wireless facilities;
9 or

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

13 "Cable facility." Buildings, other structures and equipment
14 used by the owner or operator of a cable television system to
15 provide service. As used in this definition, the term "cable
16 television system" shall have the meaning given to it in section
17 501-B(1) of the act of April 6, 1951 (P.L.69, No.20), known as
18 The Landlord and Tenant Act of 1951.

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

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

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

27 (1) A cable operator as defined in section 522(5) of the
28 Cable Communications Policy Act of 1984 (47 U.S.C. § 522(5)).

29 (2) A provider of information service as defined in
30 section 153(24) of the Cable Communications Policy Act of

1 1984 (47 U.S.C. § 153(24)).

2 (3) A telecommunications carrier as defined in section
3 153(51) of the Cable Communications Policy Act of 1984 (47
4 U.S.C. § 153(51)).

5 (4) A wireless provider.

6 "Decorative pole." A municipal pole that is specially
7 designed and placed for aesthetic purposes.

8 "Electrical transmission structure." A structure used to
9 support overhead power lines consisting of 69 kilovolt or
10 greater conducting lines, generally of steel construction and
11 having a height of at least 75 feet. The term shall not include
12 any utility pole having a height of less than 75 feet.

13 "Historic district." A group of buildings, properties or
14 sites that are:

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

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

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

29 (4) Within a historic district created pursuant to the
30 act of June 13, 1961 (P.L.282, No.167), entitled "An act

1 authorizing counties, cities, boroughs, incorporated towns
2 and townships to create historic districts within their
3 geographic boundaries; providing for the appointment of
4 Boards of Historical Architectural Review; empowering
5 governing bodies of political subdivisions to protect the
6 distinctive historical character of these districts and to
7 regulate the erection, reconstruction, alteration,
8 restoration, demolition or razing of buildings within the
9 historic districts."

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

- 11 (1) does not exceed two cubic feet in volume; and
- 12 (2) has an exterior antenna no longer than 11 inches.

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

19 "Municipality." Any of the following:

- 20 (1) A city of the first, second, second class A or third
21 class.
- 22 (2) A borough.
- 23 (3) An incorporated town.
- 24 (4) A township of the first or second class.
- 25 (5) A county.
- 26 (6) A home rule municipality.
- 27 (7) A similar general purpose unit of government
28 established by the General Assembly.

29 "Municipal ordinance." A zoning ordinance or other ordinance
30 pertaining to activities conducted within a right-of-way.

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 can fit within an enclosure of no more
11 than six 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. As used
15 in this paragraph, the following associated ancillary
16 equipment are not included in the calculation of equipment
17 volume:

18 (i) Electric meter.

19 (ii) Concealment elements.

20 (iii) Telecommunications demarcation box.

21 (iv) Grounding equipment.

22 (v) Power transfer switch.

23 (vi) Cut-off switch.

24 (vii) Vertical cable runs for the connection of
25 power and other services.

26 "Technically feasible." By virtue of engineering or spectrum
27 usage, the proposed placement for a small wireless facility or
28 its design or site location can be implemented without a
29 reduction in the functionality of the small wireless facility.

30 "Utility facility." Buildings, other structures and

1 equipment owned or operated by a public utility, as defined in
2 66 Pa.C.S. § 102 (relating to definitions), to provide service.

3 "Utility pole." A pole or similar structure that is or may
4 be used, in whole or in part, by or for telecommunications,
5 electric distribution, lighting, traffic control, signage or a
6 similar function or for collocation. The term includes the
7 vertical support structure for traffic lights but does not
8 include wireless support structures or horizontal structures to
9 which signal lights or other traffic control devices are
10 attached.

11 "Wireless facility." As follows:

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

15 (i) Equipment associated with wireless services.

16 (ii) Radio transceivers, antennas, coaxial or fiber
17 optic cables, regular and backup power supplies or
18 comparable equipment, regardless of technological
19 configuration.

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

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

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

24 (ii) The coaxial or fiber optic cables that are not
25 immediately adjacent to or directly associated with a
26 particular antenna.

27 "Wireless infrastructure provider." A person authorized to
28 provide telecommunications service in this Commonwealth that
29 builds or installs wireless communication transmission
30 equipment, wireless facilities or wireless support structures

1 but is not a wireless services provider.

2 "Wireless provider." A wireless infrastructure provider or a
3 wireless services provider.

4 "Wireless services." Services, whether at a fixed location
5 or mobile, using a licensed or unlicensed spectrum, provided to
6 the public using wireless facilities.

7 "Wireless services provider." A person who provides wireless
8 services.

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

12 Section 3. Use of right-of-way for small wireless facilities
13 and utility poles with small wireless facilities
14 attached.

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

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

22 (1) collocation; or

23 (2) the installation, operation, modification or
24 replacement of utility poles with small wireless facilities
25 attached.

26 (c) Right-of-way rates and fees.--A municipality shall have
27 the right to charge an annual fee for the use of the right-of-
28 way. An annual right-of-way fee shall not exceed \$100 per small
29 wireless facility or \$100 per new utility pole with a small
30 wireless facility.

1 (d) Right of access.--

2 (1) Under the provisions of this act, including those
3 governing municipal approvals, and with the permission of the
4 owner of the structure, a wireless provider shall have the
5 right to perform the following within the right-of-way:

6 (i) Collocate.

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

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

13 (e) Size limits.--

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

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

21 (ii) If collocation cannot be achieved under section
22 4(i), a small wireless facility may be installed on a new
23 utility pole. The maximum permitted height of the
24 facility, which shall include the utility pole and small
25 wireless facility, shall not be taller than 50 feet above
26 ground level.

27 (2) Subject to the provisions of this act, a wireless
28 provider may collocate or install a new utility pole with
29 small wireless facilities attached that exceeds these height
30 limits along, across and under the right-of-way by including

1 a height limit waiver request in the application. Height
2 limit waivers shall be processed subject to applicable zoning
3 regulations.

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

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

14 (2) Does not prohibit the replacement of municipal poles
15 in the designated area.

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

23 (g) Historic district.--Except for facilities excluded from
24 evaluation for effects on historic properties under 47 CFR
25 1.1307(a)(4) (relating to actions that may have a significant
26 environmental effect, for which Environmental Assessments (EAs)
27 must be prepared), a municipality may require reasonable,
28 technically feasible, nondiscriminatory and technologically
29 neutral design or concealment measures in a historic district.
30 Any design or concealment measures may not have the effect of

1 prohibiting any provider's technology or be considered a part of
2 the small wireless facility for purposes of the size
3 restrictions of small wireless facilities.

4 (h) Discrimination prohibited.--The municipality, in the
5 exercise of its administration and regulation related to the
6 management of the right-of-way, must be competitively neutral
7 with regard to other users of the right-of-way. Terms may not be
8 unreasonable or discriminatory and may not violate any
9 applicable law.

10 (i) Damage and repair.--A wireless provider shall repair all
11 damage to the right-of-way or any other land so disturbed,
12 directly caused by the activities of the wireless provider and
13 return the right-of-way to its functional equivalence as it
14 existed prior to any work being done in the right-of-way by the
15 wireless provider. If the wireless provider fails to make the
16 repairs required by the municipality within 30 days after
17 written notice, the municipality may perform those repairs and
18 charge the wireless provider the reasonable, documented cost of
19 the repairs plus a penalty not to exceed \$500. The municipality
20 may suspend the ability of an applicant to receive a new permit
21 from the municipality until the applicant has paid the amount
22 assessed for the repair costs and the assessed penalty. The
23 municipality may not suspend the ability of an applicant to
24 receive a new permit that has deposited the amount assessed for
25 the repair costs and the assessed penalty in escrow pending an
26 adjudication of the merits of the dispute by a court of
27 competent jurisdiction.

28 (j) Communications services.--The approval of the
29 installation, placement, maintenance or operation of a wireless
30 facility under this section shall not authorize the provision of

1 any communications services without compliance with all
2 applicable laws or the installation, placement, maintenance or
3 operation of any communications facilities other than wireless
4 facilities and associated utility poles in the right-of-way.

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

7 (a) Applicability.--The provisions of this section shall
8 apply to a municipality's permitting of small wireless
9 facilities by a wireless provider or the installation,
10 modification and replacement of utility poles with small
11 wireless facilities attached by a wireless provider within the
12 right-of-way.

13 (b) Review.--An application under this section shall be
14 reviewed for conformance with the municipality's applicable
15 codes, including requirements applicable to the added structural
16 loading of the proposed small wireless facility.

17 (c) Permits.--

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

21 (i) Collocate, maintain and modify small wireless
22 facilities.

23 (ii) Replace existing utility poles for collocation.

24 (iii) Install new utility poles with attached small
25 wireless facilities.

26 (2) Permits of general applicability shall not apply
27 exclusively to small wireless facilities. A municipality
28 shall receive applications for collocation or for
29 installation, modification or replacement of utility poles
30 with small wireless facilities attached and process and issue

1 permits, subject to the following requirements:

2 (i) A municipality may not directly or indirectly
3 require an applicant to perform services or provide goods
4 unrelated to the permit, such as in-kind contributions to
5 the municipality, including reserving fiber, conduit or
6 pole space for the municipality.

7 (ii) An applicant shall not be required to provide
8 more information to obtain a permit than other
9 communications service providers or to provide
10 justification for capacity or radio frequency. An
11 applicant may be required to:

12 (A) Include documentation with an application
13 that includes construction and engineering drawings,
14 as well as documentation demonstrating that the
15 applicant has obtained all necessary approvals from
16 the pole owner.

17 (B) Self-certify that the filing and approval of
18 the application is required by the wireless provider
19 to provide additional capacity or coverage for
20 wireless services. Nothing in this subsection shall
21 be construed to permit a municipality to require an
22 applicant to submit information about an applicant's
23 business decisions with respect to its service,
24 customer demand for service or quality of service.

25 (iii) A municipality may not require the placement
26 of small wireless facilities on any specific utility pole
27 or category of poles or require multiple antenna systems
28 on a single utility pole.

29 (iv) A municipality may not limit the placement of
30 small wireless facilities by minimum separation

1 distances.

2 (v) A municipality shall have the authority to
3 prohibit collocation on a decorative pole. The
4 municipality and wireless provider shall work
5 cooperatively to determine whether the collocation can
6 occur if the wireless provider replaces the decorative
7 pole in a manner that shall conform to the design
8 aesthetics of the decorative pole being replaced.

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.

24 (f) Denial.--

25 (1) A municipality may only deny an application under
26 this section that does not meet the requirements of this act
27 or a municipal ordinance consistent with this act if the
28 granting of a permit:

29 (i) Would materially interfere with the safe
30 operation of traffic control equipment, sight lines or

1 clear zones for transportation or pedestrians or
2 compliance with the Americans with Disabilities Act of
3 1990 (Public Law 101-336, 104 Stat. 327) or similar
4 Federal or State standards regarding pedestrian access or
5 movement.

6 (ii) Fails to comply with reasonable and
7 nondiscriminatory spacing requirements of general
8 application adopted by ordinance that concern the
9 location of ground-mounted equipment and new utility
10 poles. The spacing requirements shall not prevent or have
11 the effect of preventing a wireless provider from serving
12 any location.

13 (iii) Fails to comply with applicable codes.

14 (2) Within 60 days of receiving a complete application,
15 the municipality shall document the basis for a denial,
16 including the specific code provisions on which the denial
17 was based, and send the documentation to the applicant within
18 five business days of the denial.

19 (3) The applicant may cure the deficiencies identified
20 by the municipality and resubmit the application within 30
21 days of the denial. The applicant shall not be required to
22 pay an additional application fee if the applicant's revised
23 application addresses all deficiencies listed in the denial.
24 The municipality shall approve or deny the revised
25 application within 30 days of the application being
26 resubmitted for review or the resubmitted application shall
27 be deemed approved 30 days after resubmission. Any subsequent
28 review shall be limited to the deficiencies cited in the
29 denial. If the resubmitted application addresses or changes
30 other sections of the application that were not previously

1 denied, the municipality shall be given an additional 15 days
2 to review the resubmitted application and may charge an
3 additional fee for the review.

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

9 (1) The consolidated application does not exceed 20
10 small wireless facilities.

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

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

25 (4) For the purpose of counting the number of small
26 wireless facilities each applicant has before a single
27 municipality at a given time, the following apply:

28 (i) Small wireless facilities and poles that a
29 wireless provider applicant has requested a third party
30 to deploy and that are included in a pending application

1 by the third party shall be counted as pending requests
2 by the wireless provider applicant.

3 (ii) When the processing of an application is tolled
4 under paragraph (3), the application shall no longer
5 count as pending. As the processing of applications is
6 completed, the municipality shall begin processing
7 previously tolled applications in the order in which the
8 tolled applications were submitted, unless the applicant
9 specifies a different order.

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

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

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

1 (2) The collocation would not impose technical
2 limitations or additional costs.

3 (3) The collocation would not obstruct or hinder travel
4 or public safety.

5 (j) Approval.--Approval of an application authorizes the
6 applicant to:

7 (1) Collocate on an existing utility pole, modify or
8 replace a utility pole or install a new utility pole with
9 small wireless facilities attached.

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

20 (k) Removal of equipment.--Within 60 days of suspension or
21 revocation of a permit due to noncompliance with this act or a
22 municipal ordinance consistent with this act, the applicant
23 shall remove the small wireless facility and any associated
24 equipment after receiving adequate notice and an opportunity to
25 cure any noncompliance.

26 (l) Moratorium prohibited.--A municipality may not
27 institute, either expressly or de facto, a moratorium on:

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

29 (2) issuing permits for:

30 (i) collocation;

1 (ii) modification or replacement of utility poles to
2 support small wireless facilities; or

3 (iii) installation of new utility poles to support
4 small wireless facilities.

5 (m) When applications not required.--

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

7 (i) Routine maintenance or repair work.

8 (ii) The replacement of small wireless facilities
9 with small wireless facilities that are similar or the
10 same size or smaller.

11 (iii) The installation, placement, maintenance,
12 operation or replacement of micro wireless facilities
13 that are strung on cables between existing utility poles
14 by or for a communications service provider authorized to
15 occupy the right-of-way, in compliance with the National
16 Electrical Safety Code.

17 (2) A municipality may require a permit to perform work
18 within the right-of-way for the activities under paragraph
19 (1) or subsection (c), if applicable for work that involves
20 excavation, closure of a sidewalk or closure of a vehicular
21 lane. Permits shall be subject to the requirements provided
22 in this act or a municipal ordinance consistent with this
23 act.

24 (n) Application fees.--Application fees shall be subject to
25 the following requirements:

26 (1) A municipality shall have the right to charge an
27 application fee for the review of a permit application and
28 plans submitted for the work to be done within the right-of-
29 way. A municipality may charge a one-time application fee of
30 up to \$500 for an application seeking approval for no more

1 than five small wireless facilities and up to \$100 for each
2 small wireless facility beyond five.

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

4 (a) Applicability.--The provisions of this section shall
5 apply to activities of the wireless provider within a right-of-
6 way.

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

10 (c) Collocation.--A municipality shall allow collocation on
11 municipal poles using the process required under this act or a
12 municipal ordinance consistent with this act unless the small
13 wireless facility would cause structural or safety deficiencies
14 to the municipal pole, in which case the municipality and
15 applicant shall work together for any make-ready work or
16 modifications or replacements that are needed to accommodate the
17 small wireless facility. All structures and facilities shall be
18 installed and maintained so as not to obstruct nor hinder travel
19 or public safety within the right-of-way.

20 (d) Rates.--The rates to collocate on municipal poles shall
21 not exceed \$170 per small wireless facility per year.

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

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

27 (2) The municipality shall provide a good faith estimate
28 for any make-ready work necessary to enable the municipal
29 pole to support the requested collocation by a wireless
30 provider, including pole replacement if necessary, within 60

1 days after receipt of a complete application. Make-ready
2 work, including pole replacement, shall be completed within
3 60 days of written acceptance of the good faith estimate by
4 the applicant. A municipality may require replacement of the
5 municipal pole only if the municipality demonstrates that the
6 collocation would make the municipal pole structurally
7 unsound.

8 (3) The municipality shall not require more make-ready
9 work than required to meet applicable codes or industry
10 standards. Fees for make-ready work on a nonreplacement
11 municipal pole shall not include costs related to preexisting
12 or prior damage or noncompliance. Fees for make-ready work,
13 including replacement, shall not exceed actual costs or the
14 amount charged to other similarly situated communications
15 service providers for similar work and shall not include any
16 consultant fees or expenses that are charged on a contingency
17 basis.

18 (f) Future use.--A municipality may reserve space on an
19 existing municipal pole for future public safety or
20 transportation uses in a documented and approved plan as adopted
21 at the time an application is filed. A reservation of space
22 shall not preclude collocation, the replacement of an existing
23 utility pole or the installation of a new utility pole. If the
24 replacement of a municipal pole is necessary to accommodate
25 collocation and the reserved future use, the wireless provider
26 shall pay for the replacement municipal pole and the municipal
27 pole shall accommodate the future use.

28 Section 6. Local authority.

29 Subject to the provisions of this act and applicable Federal
30 and State law, nothing in this act shall be construed to:

1 (1) Limit or preempt the scope of a municipality's
2 review of zoning, land use, planning and permitting authority
3 as it relates to small wireless facilities.

4 (2) Grant the authority to a municipality to exercise
5 jurisdiction over the design, engineering, construction,
6 installation or operation of a small wireless facility
7 located in an interior structure or on the site of a campus,
8 stadium or athletic facility not owned or controlled by the
9 municipality, other than to comply with applicable codes.
10 Nothing in this act authorizes the Commonwealth or any
11 municipality to require small wireless facility deployment or
12 to regulate wireless services.

13 Section 7. Implementation.

14 (a) Ordinances.--A municipality may adopt ordinances that
15 comply with this act and shall amend existing ordinances as
16 necessary to comply with this act within 60 days of the
17 effective date of this section. If a municipality does not adopt
18 an ordinance that complies with this act, applications seeking
19 permits to collocate, modify or replace existing utility poles
20 or install new utility poles shall be processed in compliance
21 with this act. A municipality shall not require a wireless
22 provider to enter into an agreement to implement this act.
23 Nothing in this subsection shall be construed to prohibit an
24 agreement between a municipality and a wireless provider to
25 implement this act if nondiscriminatory and entered into
26 voluntarily.

27 (b) Agreements.--All agreements between municipalities and
28 wireless service providers that are in effect on the effective
29 date of this act shall remain in effect, subject to any
30 termination provisions in the agreements. When an application is

1 submitted after the effective date of this act, a wireless
2 provider may elect to have the rates, fees, terms and conditions
3 established under this act apply to the small wireless facility
4 or utility pole installed after the effective date of this act.

5 (c) Rate or fee adjustments.--

6 (1) If the Federal Communications Commission adjusts its
7 levels for fees under section 253 of the Cable Communications
8 Policy Act of 1984 (Public Law 98-549, 47 U.S.C. § 253) or
9 332(c)(7) (47 U.S.C. § 332(c)(7)), a municipality may adjust
10 any impacted rate or fee under sections 3(c), 4(n)(1) or
11 5(d), on a pro rata basis, and consistent with the Federal
12 Communications Commission's adjustment.

13 (2) If, in a final adjudication not subject to further
14 appeal or to review by the United States Supreme Court, a
15 Federal court reviewing Accelerating Wireless Broadband
16 Deployment by Removing Barriers to Infrastructure Investment,
17 et al., Declaratory Ruling and Third Report and Order, WT
18 Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133268
19 (released September 27, 2018), reverses or repeals the rates
20 outlined in that Federal Communications Commission order,
21 then the monetary caps under sections (3)(c), (4)(n)(1) and
22 (5)(d) may increase 1.5% annually beginning January 1, 2021,
23 at the discretion of a municipality.

24 Section 8. Indemnification.

25 Except for a wireless provider with an existing franchise to
26 occupy and operate in a right-of-way, a wireless provider shall
27 indemnify and hold the municipality and its officers, employees
28 and agents harmless against any claims, lawsuits, judgments,
29 costs, liens, expenses or fees or any other damages sought that
30 are found by a court of competent jurisdiction to have been

1 caused solely by the negligent act, error or omission of the
2 wireless provider or its officers, agents, employees, directors,
3 contractors or subcontractors while installing, repairing or
4 maintaining small wireless facilities or utility poles within
5 the right-of-way.

6 Section 9. Construction.

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

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

18 "Electric distribution company." As defined in 66 Pa.C.S. §
19 2803 (relating to definitions).

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

22 Section 10. Effective date.

23 This act shall take effect in 60 days.