
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2564 Session of
2018

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SCHLEGEL CULVER, LONGIETTI AND METCALFE, JULY 13, 2018

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JULY 13, 2018

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.

1 "Applicable codes." Uniform building, fire, electrical,
2 plumbing or mechanical codes adopted by a recognized national
3 code organization or local amendments to those codes enacted
4 solely to address imminent threats of destruction of property or
5 injury to persons.

6 "Applicant." A wireless provider that submits an
7 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.

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

20 "Collocation" or "collocate." The placement or installation
21 of small wireless facilities on an existing utility pole or
22 other structure.

23 "Communications service provider." The following:

24 (1) a cable operator, as defined in 47 U.S.C. § 522(5)
25 (relating to definitions);

26 (2) a provider of information service, as defined in 47
27 U.S.C. § 153(24) (relating to definitions);

28 (3) a telecommunications carrier, as defined in 47
29 U.S.C. § 153(51); or

30 (4) a wireless provider.

1 "Decorative pole." A municipal pole that is specially
2 designed and placed for aesthetic purposes.

3 "Electrical transmission tower." An electrical transmission
4 structure used to support overhead power lines consisting of 69
5 kilovolt or greater conducting lines, generally of steel
6 construction and having a height of at least 75 feet. The term
7 shall not include any utility pole having a height of less than
8 75 feet.

9 "Historic district." A group of buildings, properties or
10 sites that are:

11 (1) Listed in the National Register of Historic Places
12 or formally determined eligible for listing by the Keeper of
13 the National Register.

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

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

25 (4) Within a historic district created pursuant to the
26 act of June 13, 1961 (P.L.282, No.167), entitled "An act
27 authorizing counties, cities, boroughs, incorporated towns
28 and townships to create historic districts within their
29 geographic boundaries; providing for the appointment of
30 Boards of Historical Architectural Review; empowering

1 governing bodies of political subdivisions to protect the
2 distinctive historical character of these districts and to
3 regulate the erection, reconstruction, alteration,
4 restoration, demolition or razing of buildings within the
5 historic districts."

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

7 (1) is not larger in dimension than 24 inches in length,
8 15 inches in width and 12 inches in height; and

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

10 "Modification" or "modify." The improvement, upgrade or
11 replacement of a small wireless facility or an existing utility
12 pole that does not substantially change the physical dimension
13 of the small wireless facility or utility pole.

14 "Municipality." Any of the following:

15 (1) A city of the first, second, second class A or third
16 class.

17 (2) A borough.

18 (3) An incorporated town.

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

20 (5) A county.

21 (6) A home rule municipality.

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

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

26 "Right-of-way." The area on, below or above a public
27 roadway, highway, street, sidewalk, alley, utility easement or
28 similar property. The term does not include a Federal interstate
29 highway.

30 "Small wireless facility." The equipment and network

1 components, including antennas, transmitters and receivers, used
2 by a wireless provider that meet the following qualifications:

3 (1) Has an antenna that could fit within an enclosure of
4 no more than six cubic feet in volume.

5 (2) The volume of all other equipment associated with
6 the wireless facility, whether ground-mounted or pole-
7 mounted, is cumulatively no more than 28 cubic feet. As used
8 in this paragraph, the following associated ancillary
9 equipment are not included in the calculation of equipment
10 volume:

11 (i) Electric meter.

12 (ii) Concealment elements.

13 (iii) Telecommunications demarcation box.

14 (iv) Grounding equipment.

15 (v) Power transfer switch.

16 (vi) Cut-off switch.

17 (vii) Vertical cable runs for the connection of power
18 and other services.

19 "Technically feasible." By virtue of engineering or spectrum
20 usage, the proposed placement for a small wireless facility or
21 its design or site location can be implemented without a
22 reduction in the functionality of the small wireless 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 infrastructure provider." A person authorized to
5 provide telecommunications service in this Commonwealth that
6 builds or installs wireless communication transmission
7 equipment, wireless facilities or wireless support structures
8 but is not a wireless services provider.

9 "Wireless provider." A wireless infrastructure provider or a
10 wireless services provider.

11 "Wireless services." Services, whether at a fixed location
12 or mobile, provided to the public using wireless facilities.

13 "Wireless services provider." A person who provides wireless
14 services.

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

18 Section 3. Use of right-of-way for small wireless facilities
19 and utility poles.

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

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

27 (1) collocation; or

28 (2) the installation, operation, modification or
29 replacement of utility poles.

30 (c) Right-of-way rates and fees.--A municipality shall have

1 the right to charge an annual fee for the use of the right-of-
2 way not to exceed \$25 per small wireless facility or \$25 per new
3 utility pole with a small wireless facility.

4 (d) Right of access.--

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

9 (i) Collocate, maintain and modify small wireless
10 facilities on existing utility poles.

11 (ii) Install new utility poles with attached small
12 wireless facilities.

13 (iii) Replace existing utility poles.

14 (iv) Collocate on other structures within the right-
15 of-way.

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

20 (e) Size limits.--

21 (1) Each new or modified small wireless facility
22 installed in the right-of-way shall be installed on an
23 existing utility pole or a new utility pole subject to the
24 following:

25 (i) The installation of a small wireless facility on
26 an existing utility pole shall not extend more than five
27 feet above the existing utility pole in the same
28 municipality that is in place as of the effective date of
29 this act.

30 (ii) If collocation cannot be achieved under section

1 4(i), a small wireless facility may be installed on a new
2 utility pole. The maximum permitted height of the
3 facility, which shall include the utility pole and small
4 wireless facility, shall not be taller than:

5 (A) the greater of five feet in height above the
6 tallest existing utility pole that is within 500 feet
7 of the new pole in the same right-of-way and in the
8 same municipality; or

9 (B) fifty feet above ground level.

10 (2) Subject to the provisions of this act, a wireless
11 provider shall have the right to collocate and install,
12 modify or replace a utility pole that exceeds these height
13 limits along, across and under the right-of-way by including
14 a height limit waiver request in the application. Height
15 limit waivers shall be processed under section 4 and on a
16 nondiscriminatory basis.

17 (f) Underground district.--A wireless provider shall comply
18 with reasonable and nondiscriminatory requirements that prohibit
19 communications service providers from placing or installing
20 structures in the right-of-way in an area designated solely for
21 underground or buried cable facilities and utility facilities if
22 the municipality:

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

27 (2) Does not prohibit the replacement of municipal poles
28 in the designated area.

29 (3) Permits wireless providers to seek a waiver of the
30 underground requirements for the installation of a new

1 utility pole to support small wireless facilities. Upon the
2 submission of a request for a waiver by a wireless provider,
3 the municipality may require a public hearing and, with the
4 approval of the property owner, permit a waiver request.

5 Waivers shall be addressed in a nondiscriminatory manner.

6 (g) Historic district.--Except for facilities excluded from
7 evaluation for effects on historic properties under 47 CFR
8 1.1307(a)(4) (relating to actions that may have a significant
9 environmental effect, for which Environmental Assessments (EAs)
10 must be prepared), a municipality may require reasonable,
11 technically feasible, nondiscriminatory and technologically
12 neutral design or concealment measures in a historic district.
13 Any design or concealment measures may not have the effect of
14 prohibiting any provider's technology or be considered a part of
15 the small wireless facility for purposes of the size
16 restrictions of small wireless facilities.

17 (h) Discrimination prohibited.--The municipality, in the
18 exercise of its administration and regulation related to the
19 management of the right-of-way, must be competitively neutral
20 with regard to other users of the right-of-way. Terms may not be
21 unreasonable or discriminatory and may not violate any
22 applicable law.

23 (i) Damage and repair.--A wireless provider shall repair all
24 damage to the right-of-way directly caused by the activities of
25 the wireless provider and return the right-of-way to its
26 functional equivalence as it existed prior to any work being
27 done in the right-of-way by the wireless provider. If the
28 wireless provider fails to make the repairs required by the
29 municipality within 30 days after written notice, the
30 municipality may effect those repairs and charge the wireless

1 provider the reasonable, documented cost of the repairs.

2 (j) Permitted use.--Subject to the provisions of this act or
3 a municipal ordinance consistent with this act, a wireless
4 provider shall have the right as a permitted use subject to a
5 permitted use process and not subject to zoning review or
6 approval to:

7 (1) Collocate and modify or replace existing utility
8 poles associated with a small wireless facility if the
9 utility poles are installed in the right-of-way.

10 (2) Install a new utility pole within the right-of-way
11 that includes small wireless facilities.

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

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

19 (b) Review.--An application for the installation,
20 collocation, modification or replacement of a small wireless
21 facility under this section shall be reviewed for conformance
22 with the municipality's applicable codes, including requirements
23 applicable to the added structural loading of the proposed small
24 wireless facility.

25 (c) Permits.--

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

29 (i) Collocate, maintain and modify small wireless
30 facilities.

1 (ii) Replace existing utility poles for collocation.

2 (iii) Install new utility poles with attached small
3 wireless facilities.

4 (2) Permits of general applicability shall not apply
5 exclusively to small wireless facilities. A municipality
6 shall receive applications for collocation or for
7 installation, modification or replacement of utility poles
8 and process and issue permits, subject to the following
9 requirements:

10 (i) A municipality may not directly or indirectly
11 require an applicant to perform services or provide goods
12 unrelated to the permit, such as in-kind contributions to
13 the municipality, including reserving fiber, conduit or
14 pole space for the municipality.

15 (ii) An applicant shall not be required to provide
16 more information to obtain a permit than other
17 communications service providers or to provide
18 justification for capacity or radio frequency. An
19 applicant may be required to:

20 (A) Include documentation with an application
21 that includes construction and engineering drawings.

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

30 (iii) A municipality may not require the placement

1 of small wireless facilities on any specific utility pole
2 or category of poles or require multiple antenna systems
3 on a single utility pole.

4 (iv) A municipality may not limit the placement of
5 small wireless facilities by minimum separation
6 distances.

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

14 (d) Completed application.--Within 15 business days of
15 receiving an application, a municipality must determine and
16 notify the applicant in writing whether the application is
17 complete. If an application is incomplete, the notice must
18 specifically identify the missing information. The municipality
19 shall have the remaining time of the original 15 business days
20 or five additional business days, whichever is greater, to
21 determine whether the applicant has corrected the stated
22 deficiencies. The processing deadline shall be tolled from the
23 time the municipality sends the notice of incompleteness to the
24 time the applicant provides the missing information. The
25 processing deadline also may be tolled by agreement of the
26 applicant and the municipality.

27 (e) Processing deadline.--An application shall be processed
28 on a nondiscriminatory basis and deemed approved if the
29 municipality fails to approve or deny the application within 60
30 days of receipt of a complete application.

1 (f) Denial.--

2 (1) A municipality may only deny an application under
3 this section that does not meet the requirements of this act
4 or a municipal ordinance consistent with this act if the
5 granting of a permit:

6 (i) Would materially interfere with the safe
7 operation of traffic control equipment, sight lines or
8 clear zones for transportation or pedestrians or
9 compliance with the Americans with Disabilities Act of
10 1990 (Public Law 101-336, 104 Stat. 327) or similar
11 Federal or State standards regarding pedestrian access or
12 movement.

13 (ii) Fails to comply with reasonable and
14 nondiscriminatory spacing requirements of general
15 application adopted by ordinance that concern the
16 location of ground-mounted equipment and new utility
17 poles. The spacing requirements shall not prevent or have
18 the effect of preventing a wireless provider from serving
19 any location.

20 (iii) Fails to comply with applicable codes.

21 (2) Within 60 days of receiving a complete application,
22 the municipality shall document the basis for a denial,
23 including the specific code provisions on which the denial
24 was based, and send the documentation to the applicant within
25 five business days of the denial.

26 (3) The applicant may cure the deficiencies identified
27 by the municipality and resubmit the application within 30
28 days of the denial. The applicant shall not be required to
29 pay an additional application fee if the applicant's revised
30 application addresses all deficiencies listed in the denial.

1 The municipality shall approve or deny the revised
2 application within 30 days of the application being
3 resubmitted for review. Any subsequent review shall be
4 limited to the deficiencies cited in the denial. If the
5 resubmitted application addresses or changes other sections
6 of the application that were not previously denied, the
7 municipality shall be given an additional 15 days to review
8 the resubmitted application and may charge an additional fee
9 for the review.

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

15 (1) The consolidated application does not exceed 20
16 small wireless facilities.

17 (2) The denial of one or more small wireless facilities
18 in a consolidated application shall not delay processing of
19 any other small wireless facilities in the same consolidated
20 application.

21 (3) A single applicant may not submit more than one
22 consolidated or 20 single applications in a 30-day period in
23 a municipality with a population of less than 50,000.

24 (h) Time limit for work.--The proposed collocation, the
25 modification or replacement of a utility pole or the
26 installation of a new utility pole for which a permit is granted
27 under this section shall be completed within one year of the
28 permit issuance date unless the municipality and the applicant
29 agree to extend the period.

30 (i) Utility poles.--When applying to install a new utility

1 pole under this act, the municipality may require the wireless
2 provider to demonstrate that it cannot meet the service
3 reliability and functional objectives of the application by
4 collocating on an existing utility pole or municipal pole
5 instead of installing a new utility pole. The municipality may
6 require the wireless provider to self-certify that the wireless
7 provider has made this determination in good faith and to
8 provide a documented summary of the basis for the determination.
9 The wireless provider's determination shall be based on whether
10 the wireless provider can meet the service objectives of the
11 application by collocating on an existing utility pole or
12 municipal pole on which:

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

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

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

18 (j) Approval.--Approval of an application authorizes the
19 applicant to:

20 (1) Collocate on an existing utility pole, modify or
21 replace a utility pole or install a new utility pole.

22 (2) Subject to the permit requirements and the
23 applicant's right to terminate at any time, operate and
24 maintain small wireless facilities and any associated
25 equipment on a utility pole covered by the permit for a
26 period of not less than five years, which shall be renewed
27 for two additional five-year periods if the applicant is in
28 compliance with the criteria set forth in this act or a
29 municipal ordinance consistent with this act.

30 (k) Removal of equipment.--Within 60 days of suspension or

1 revocation of a permit due to noncompliance with this act or a
2 municipal ordinance consistent with this act, the applicant
3 shall remove the small wireless facility and any associated
4 equipment after receiving adequate notice and an opportunity to
5 cure any noncompliance.

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

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

9 (2) issuing permits for:

10 (i) collocation;

11 (ii) modification or replacement of utility poles to
12 support small wireless facilities; or

13 (iii) installation of new utility poles to support
14 small wireless facilities.

15 (m) When applications not required.--

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

17 (i) Routine maintenance.

18 (ii) The replacement of small wireless facilities
19 with small wireless facilities that are similar or the
20 same size or smaller.

21 (iii) The installation, placement, maintenance,
22 operation or replacement of micro wireless facilities
23 that are strung on cables between existing utility poles,
24 in compliance with the National Electrical Safety Code.

25 (2) A municipality may require a permit to perform work
26 within the right-of-way for the activities under paragraph

27 (1), if applicable. Permits shall be subject to the
28 requirements provided in this act or a municipal ordinance
29 consistent with this act.

30 (n) Application fees.--Application fees shall be subject to

1 the following requirements:

2 (1) A municipality shall have the right to charge an
3 application fee for the review of a permit application and
4 plans submitted for the work to be done within the right-of-
5 way. The application fee shall be similar to application fees
6 charged to other applicants for the right to access the
7 right-of-way but shall not exceed \$100.

8 (2) An application fee shall not include third-party
9 rates or fees charged on a contingency basis or a result-
10 based arrangement.

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

12 (a) Applicability.--The provisions of this section shall
13 apply to activities of the wireless provider within a right-of-
14 way.

15 (b) Exclusive use prohibited.--A municipality may not enter
16 into an exclusive arrangement with any person for the right to
17 collocate on municipality-owned utility poles.

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

28 (d) Rates.--

29 (1) The rates to collocate on municipal poles shall be
30 nondiscriminatory regardless of the services provided by the

1 collocating applicant.

2 (2) The annual rate for collocation to a municipal pole
3 shall not exceed \$50 per attachment to a municipal pole per
4 year.

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

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

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

21 (3) The municipality shall not require more make-ready
22 work than required to meet applicable codes or industry
23 standards. Fees for make-ready work on a nonreplacement
24 utility pole shall not include costs related to preexisting
25 or prior damage or noncompliance. Fees for make-ready work,
26 including replacement, shall not exceed actual costs or the
27 amount charged to other communications service providers for
28 similar work and shall not include any consultant fees or
29 expenses that are charged on a contingency basis.

30 Section 6. Local authority.

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

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

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

15 Section 7. Implementation.

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

24 Section 8. Effective date.

25 This act shall take effect in 60 days.