AN ACT

Providing for small wireless facilities deployment.

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

Section 1. Short title.

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

Section 2. Definitions.

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

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

"Antenna." Telecommunications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless telecommunications services.
"Applicable codes." Uniform building, fire, electrical, plumbing or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

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

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

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

or

(2) to approve the installation, modification or replacement of a utility pole.

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

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

"Communications service provider." The following:

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

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

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

(4) a wireless provider.
"Decorative pole." A municipal pole that is specially designed and placed for aesthetic purposes.

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

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

1. Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register.
2. Determined to be eligible for listing by the keeper of the National Register of Historic Places who has been delegated the authority by a Federal agency to list properties and determine their eligibility for the National Register in accordance with section VI.D.1.a.i-v of the Nationwide Programmatic Agreement for Review Regarding the Section 106 National Historic Preservation Act Review Process (47 CFR Pt. 1, App. C).
3. Marked as a historical site by the Pennsylvania Historical and Museum Commission pursuant to 37 Pa.C.S. (relating to historical and museums).
4. Within a historic district created pursuant to the act of June 13, 1961 (P.L.282, No.167), entitled "An act authorizing counties, cities, boroughs, incorporated towns and townships to create historic districts within their geographic boundaries; providing for the appointment of Boards of Historical Architectural Review; empowering
governing bodies of political subdivisions to protect the
distinctive historical character of these districts and to
regulate the erection, reconstruction, alteration,
restoration, demolition or razing of buildings within the
historic districts."

"Micro wireless facility." A small wireless facility that:
(1) is not larger in dimension than 24 inches in length,
15 inches in width and 12 inches in height; and
(2) has an exterior antenna no longer than 11 inches.

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

"Municipality." Any of the following:
(1) A city of the first, second, second class A or third
class.
(2) A borough.
(3) An incorporated town.
(4) A township of the first or second class.
(5) A county.
(6) A home rule municipality.
(7) A similar general purpose unit of government established by the General Assembly.

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

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

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

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

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

   (i) Electric meter.
   (ii) Concealment elements.
   (iii) Telecommunications demarcation box.
   (iv) Grounding equipment.
   (v) Power transfer switch.
   (vi) Cut-off switch.
   (vii) Vertical cable runs for the connection of power and other services.

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

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

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

"Wireless infrastructure provider." A person authorized to provide telecommunications service in this Commonwealth that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures but is not a wireless services provider.

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

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

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

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

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

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

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

   (1) collocation; or
   
   (2) the installation, operation, modification or replacement of utility poles.

(c) Right-of-way rates and fees.--A municipality shall have 20180HB2564PN3863
the right to charge an annual fee for the use of the right-of-way not to exceed $25 per small wireless facility or $25 per new utility pole with a small wireless facility.

(d) Right of access.--

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

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

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

(iii) Replace existing utility poles.

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

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

(e) Size limits.--

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

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

(ii) If collocation cannot be achieved under section
4(i), a small wireless facility may be installed on a new utility pole. The maximum permitted height of the facility, which shall include the utility pole and small wireless facility, shall not be taller than:

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

(B) fifty feet above ground level.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Permits.--

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

(i) Collocate, maintain and modify small wireless facilities.
(ii) Replace existing utility poles for collocation.
(iii) Install new utility poles with attached small wireless facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Fails to comply with applicable codes.

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

(3) The applicant may cure the deficiencies identified by the municipality and resubmit the application within 30 days of the denial. The applicant shall not be required to pay an additional application fee if the applicant's revised application addresses all deficiencies listed in the denial.
The municipality shall approve or deny the revised application within 30 days of the application being resubmitted for review. Any subsequent review shall be limited to the deficiencies cited in the denial. If the resubmitted application addresses or changes other sections of the application that were not previously denied, the municipality shall be given an additional 15 days to review the resubmitted application and may charge an additional fee for the review.

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

1. The consolidated application does not exceed 20 small wireless facilities.
2. The denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same consolidated application.
3. A single applicant may not submit more than one consolidated or 20 single applications in a 30-day period in a municipality with a population of less than 50,000.

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

(i) Utility poles.--When applying to install a new utility
pole under this act, the municipality may require the wireless
provider to demonstrate that it cannot meet the service
reliability and functional objectives of the application by
collocating on an existing utility pole or municipal pole
instead of installing a new utility pole. The municipality may
require the wireless provider to self-certify that the wireless
provider has made this determination in good faith and to
provide a documented summary of the basis for the determination.
The wireless provider's determination shall be based on whether
the wireless provider can meet the service objectives of the
application by collocating on an existing utility pole or
municipal pole on which:
   (1) The wireless provider has the right to collocation.
   (2) The collocation would not impose technical
       limitations or additional costs.
   (3) The collocation would not obstruct or hinder travel
       or public safety.
(j) Approval.--Approval of an application authorizes the
applicant to:
   (1) Collocate on an existing utility pole, modify or
       replace a utility pole or install a new utility pole.
   (2) Subject to the permit requirements and the
       applicant's right to terminate at any time, operate and
       maintain small wireless facilities and any associated
       equipment on a utility pole covered by the permit for a
       period of not less than five years, which shall be renewed
       for two additional five-year periods if the applicant is in
       compliance with the criteria set forth in this act or a
       municipal ordinance consistent with this act.
(k) Removal of equipment.--Within 60 days of suspension or
revocation of a permit due to noncompliance with this act or a
municipal ordinance consistent with this act, the applicant
shall remove the small wireless facility and any associated
equipment after receiving adequate notice and an opportunity to
cure any noncompliance.

(l) Moratorium prohibited.--A municipality may not
institute, either expressly or de facto, a moratorium on:
(1) filing, receiving or processing applications; or
(2) issuing permits for:
   (i) collocation;
   (ii) modification or replacement of utility poles to
        support small wireless facilities; or
   (iii) installation of new utility poles to support
        small wireless facilities.

(m) When applications not required.--
(1) A municipality shall not require an application for:
   (i) Routine maintenance.
   (ii) The replacement of small wireless facilities
        with small wireless facilities that are similar or the
        same size or smaller.
   (iii) The installation, placement, maintenance,
        operation or replacement of micro wireless facilities
        that are strung on cables between existing utility poles,
        in compliance with the National Electrical Safety Code.
(2) A municipality may require a permit to perform work
within the right-of-way for the activities under paragraph
(1), if applicable. Permits shall be subject to the
requirements provided in this act or a municipal ordinance
consistent with this act.

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

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

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

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

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

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

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

(d) Rates.—

(1) The rates to collocate on municipal poles shall be nondiscriminatory regardless of the services provided by the
(2) The annual rate for collocation to a municipal pole shall not exceed $50 per attachment to a municipal pole per year.

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

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

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

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

Section 6. Local authority.
Subject to the provisions of this act and applicable Federal and State law, nothing in this act shall be construed to:

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

(2) Grant the authority to a municipality to exercise jurisdiction over the design, engineering, construction, installation or operation of a small wireless facility located in an interior structure or on the site of a campus, stadium or athletic facility not owned or controlled by the municipality, other than to comply with applicable codes.

Nothing in this act authorizes the Commonwealth or any municipality to require small wireless facility deployment or to regulate wireless services.

Section 7. Implementation.

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

Section 8. Effective date.

This act shall take effect in 60 days.