



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2562

Introduced 2/19/2021, by Rep. Deanne M. Mazzochi

SYNOPSIS AS INTRODUCED:

50 ILCS 840/15

was 50 ILCS 835/15

50 ILCS 840/45 new

Amends the Small Wireless Facilities Deployment Act. Provides that a wireless provider may be required to provide the following additional information when seeking a permit to collocate small wireless facilities: (i) a written affidavit signed by a radio frequency engineer with specified certifications; (ii) a written report that analyzes acoustic levels for the small wireless facility and all associated equipment; (iii) information showing the small wireless facility has received any required review by the FCC under the National Environmental Policy Act; and (iv) a certified copy of the original easement documents and other supporting documentation demonstrating that the applicant has the right to install, mount, maintain, and remove a small wireless facility and associated equipment in specified circumstances. Provides that an authority may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 200 feet (rather than 100 feet) of the proposed collocation. In provisions prohibiting an authority from requiring an application, approval, or permit or requiring any fees or other charges from a communications service provider authorized to occupy the rights-of-way for the replacement of wireless facilities with wireless facilities that are substantially similar, clarifies when changes are not "substantially similar". Provides that an authority may adopt reasonable rules requiring providers to place above-ground small wireless facilities and associated equipment and to replace larger, more visually intrusive small wireless facilities with smaller, less visually intrusive facilities. Adds provisions concerning radio frequency compliance. Makes other changes. Effective immediately.

LRB102 14489 AWJ 19842 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Small Wireless Facilities Deployment Act is
5 amended by changing Section 15 and adding Section 45 as
6 follows:

7 (50 ILCS 840/15) (was 50 ILCS 835/15)

8 (Section scheduled to be repealed on June 1, 2021)

9 Sec. 15. Regulation of small wireless facilities.

10 (a) This Section applies to activities of a wireless
11 provider within or outside rights-of-way.

12 (b) Except as provided in this Section, an authority may
13 not prohibit, regulate, or charge for the collocation of small
14 wireless facilities.

15 (c) Small wireless facilities shall be classified as
16 permitted uses and subject to administrative review in
17 conformance with this Act, except as provided in paragraph (5)
18 of subsection (d) of this Section regarding height exceptions
19 or variances, but not subject to zoning review or approval if
20 they are collocated (i) in rights-of-way in any zone, or (ii)
21 outside rights-of-way in property zoned exclusively for
22 commercial or industrial use.

23 (d) An authority may require an applicant to obtain one or

1 more permits to collocate a small wireless facility. An
2 authority shall receive applications for, process, and issue
3 permits subject to the following requirements:

4 (1) An authority may not directly or indirectly
5 require an applicant to perform services unrelated to the
6 collocation for which approval is sought, such as in-kind
7 contributions to the authority, including reserving fiber,
8 conduit, or utility pole space for the authority on the
9 wireless provider's utility pole. An authority may reserve
10 space on authority utility poles for future public safety
11 uses or for the authority's electric utility uses, but a
12 reservation of space may not preclude the collocation of a
13 small wireless facility unless the authority reasonably
14 determines that the authority utility pole cannot
15 accommodate both uses.

16 (2) An applicant shall not be required to provide more
17 information to obtain a permit than the authority requires
18 of a communications service provider that is not a
19 wireless provider that requests to attach facilities to a
20 structure; however, a wireless provider may be required to
21 provide the following information when seeking a permit to
22 collocate small wireless facilities on a utility pole or
23 wireless support structure:

24 (A) site specific structural integrity and, for an
25 authority utility pole, make-ready analysis prepared
26 by a structural engineer, as that term is defined in

1 Section 4 of the Structural Engineering Practice Act
2 of 1989;

3 (B) the location where each proposed small
4 wireless facility or utility pole would be installed
5 and photographs of the location and its immediate
6 surroundings depicting the utility poles or structures
7 on which each proposed small wireless facility would
8 be mounted or location where utility poles or
9 structures would be installed;

10 (C) specifications and drawings prepared by a
11 structural engineer, as that term is defined in
12 Section 4 of the Structural Engineering Practice Act
13 of 1989, for each proposed small wireless facility
14 covered by the application as it is proposed to be
15 installed;

16 (D) the equipment type and model numbers for the
17 antennas and all other wireless equipment associated
18 with the small wireless facility;

19 (E) a proposed schedule for the installation and
20 completion of each small wireless facility covered by
21 the application, if approved; ~~and~~

22 (F) certification that the collocation complies
23 with paragraph (6) to the best of the applicant's
24 knowledge; ~~and~~

25 (G) a written affidavit signed by a radio
26 frequency engineer certifying: (i) the small wireless

1 facility's compliance with the most stringent of the
2 applicable FCC rules and regulations relative to radio
3 frequency emissions, including the height and location
4 at which compliance was determined and the distance in
5 feet between such location and the source of the radio
6 frequency emissions; (ii) technical data, such as the
7 frequencies in use, power output levels and antenna
8 specifications, reasonably necessary to evaluate
9 compliance with maximum permissible exposure levels
10 set by the FCC; and (iii) a monitoring plan for the
11 applicant's facility capable of tracking and recording
12 the daily amounts or levels of radio frequency
13 emissions produced by the equipment in order to verify
14 on an ongoing basis that the small wireless facility
15 will not exceed applicable FCC radio frequency
16 emissions. An authority may, in addition, require a
17 baseline test by a wireless provider, at the wireless
18 provider's sole cost and expense, of the radio
19 frequency emissions of a small wireless facility at
20 the time of initial activation, with the results to be
21 provided to the authority;

22 (H) a written report that analyzes acoustic levels
23 for the small wireless facility and all associated
24 equipment including, without limitation, all
25 environmental control units, sump pumps, temporary
26 backup power generators, and permanent backup power

1 generators in order to demonstrate compliance with
2 applicable authority noise regulations. The acoustic
3 analysis must be prepared and certified by an engineer
4 and include an analysis of the manufacturers'
5 specifications for all noise-emitting equipment and a
6 depiction of the proposed equipment relative to all
7 adjacent property lines. In lieu of a written report,
8 the applicant may submit evidence from the equipment
9 manufacturer that the ambient noise emitted from all
10 the proposed equipment will not, both individually and
11 cumulatively, exceed the applicable limits;

12 (I) information showing the small wireless
13 facility has received any required review, such as an
14 environmental assessment and review, by the FCC under
15 the National Environmental Policy Act or is exempt
16 from such requirements. If the applicant claims the
17 small wireless facility is exempt, it must state the
18 basis for the exemption and provide proof, including
19 supporting documents that establish that the facility
20 meets such exemption; and

21 (J) where installation is proposed in a
22 right-of-way that consists of a easement dedicated for
23 compatible use, a certified copy of the original
24 easement documents, and other supporting documentation
25 demonstrating that the applicant has the right to
26 install, mount, maintain, and remove a small wireless

1 facility and associated equipment in or on the
2 easement for the length of the permit. If the
3 applicant is claiming access to the easement as an
4 assignee or successor in interest, the applicant
5 shall, in addition, provide documents demonstrating
6 that its assigned or successor rights in the easement
7 are sufficient to allow it to install, mount,
8 maintain, and remove the small wireless facility and
9 associated equipment for the length of the permit.

10 (3) Subject to paragraph (6), an authority may not
11 require the placement of small wireless facilities on any
12 specific utility pole, or category of utility poles, or
13 require multiple antenna systems on a single utility pole;
14 however, with respect to an application for the
15 collocation of a small wireless facility associated with a
16 new utility pole, an authority may propose that the small
17 wireless facility be collocated on an existing utility
18 pole or existing wireless support structure within 200 ~~100~~
19 feet of the proposed collocation, which the applicant
20 shall accept if it has the right to use the alternate
21 structure on reasonable terms and conditions and the
22 alternate location and structure does not impose technical
23 limits or additional material costs ~~as determined by the~~
24 ~~applicant~~. The authority may require the applicant to
25 provide a written certification describing the property
26 rights, technical limits or material cost reasons the

1 alternate location does not satisfy the criteria in this
2 paragraph (3).

3 (4) Subject to paragraph (6), an authority may not
4 limit the placement of small wireless facilities mounted
5 on a utility pole or a wireless support structure by
6 minimum horizontal separation distances.

7 (5) An authority may limit the maximum height of a
8 small wireless facility to 10 feet above the utility pole
9 or wireless support structure on which the small wireless
10 facility is collocated. Subject to any applicable waiver,
11 zoning, or other process that addresses wireless provider
12 requests for an exception or variance and does not
13 prohibit granting of such exceptions or variances, the
14 authority may limit the height of new or replacement
15 utility poles or wireless support structures on which
16 small wireless facilities are collocated to the higher of:
17 (i) 10 feet in height above the tallest existing utility
18 pole, other than a utility pole supporting only wireless
19 facilities, that is in place on the date the application
20 is submitted to the authority, that is located within 300
21 feet of the new or replacement utility pole or wireless
22 support structure and that is in the same right-of-way
23 within the jurisdictional boundary of the authority,
24 provided the authority may designate which intersecting
25 right-of-way within 300 feet of the proposed utility pole
26 or wireless support structures shall control the height

1 limitation for such facility; or (ii) 45 feet above ground
2 level.

3 (6) An authority may require that:

4 (A) the wireless provider's operation of the small
5 wireless facilities does not interfere with the
6 frequencies used by a public safety agency for public
7 safety communications; a wireless provider shall
8 install small wireless facilities of the type and
9 frequency that will not cause unacceptable
10 interference with a public safety agency's
11 communications equipment; unacceptable interference
12 will be determined by and measured in accordance with
13 industry standards and the FCC's regulations
14 addressing unacceptable interference to public safety
15 spectrum or any other spectrum licensed by a public
16 safety agency; if a small wireless facility causes
17 such interference, and the wireless provider has been
18 given written notice of the interference by the public
19 safety agency, the wireless provider, at its own
20 expense, shall take all reasonable steps necessary to
21 correct and eliminate the interference, including, but
22 not limited to, powering down the small wireless
23 facility and later powering up the small wireless
24 facility for intermittent testing, if necessary; the
25 authority may terminate a permit for a small wireless
26 facility based on such interference if the wireless

1 provider is not making a good faith effort to remedy
2 the problem in a manner consistent with the abatement
3 and resolution procedures for interference with public
4 safety spectrum established by the FCC including 47
5 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672
6 through 47 CFR 90.675;

7 (B) the wireless provider comply with requirements
8 that are imposed by a contract between an authority
9 and a private property owner that concern design or
10 construction standards applicable to utility poles and
11 ground-mounted equipment located in the right-of-way;

12 (C) the wireless provider comply with applicable
13 spacing requirements in applicable codes and
14 ordinances concerning the location of ground-mounted
15 equipment located in the right-of-way if the
16 requirements include a waiver, zoning, or other
17 process that addresses wireless provider requests for
18 exception or variance and do not prohibit granting of
19 such exceptions or variances;

20 (D) the wireless provider comply with local code
21 provisions or regulations concerning undergrounding
22 requirements that prohibit the installation of new or
23 the modification of existing utility poles in a
24 right-of-way without prior approval if the
25 requirements include a waiver, zoning, or other
26 process that addresses requests to install such new

1 utility poles or modify such existing utility poles
2 and do not prohibit the replacement of utility poles;

3 (E) the wireless provider comply with generally
4 applicable standards that are consistent with this Act
5 and adopted by an authority for construction and
6 public safety in the rights-of-way, including, but not
7 limited to, reasonable and nondiscriminatory wiring
8 and cabling requirements, grounding requirements,
9 utility pole extension requirements, and signage
10 limitations; and shall comply with reasonable and
11 nondiscriminatory requirements that are consistent
12 with this Act and adopted by an authority regulating
13 the location, size, surface area and height of small
14 wireless facilities, or the abandonment and removal of
15 small wireless facilities;

16 (F) the wireless provider not collocate small
17 wireless facilities on authority utility poles that
18 are part of an electric distribution or transmission
19 system within the communication worker safety zone of
20 the pole or the electric supply zone of the pole;
21 however, the antenna and support equipment of the
22 small wireless facility may be located in the
23 communications space on the authority utility pole and
24 on the top of the pole, if not otherwise unavailable,
25 if the wireless provider complies with applicable
26 codes for work involving the top of the pole; for

1 purposes of this subparagraph (F), the terms
2 "communications space", "communication worker safety
3 zone", and "electric supply zone" have the meanings
4 given to those terms in the National Electric Safety
5 Code as published by the Institute of Electrical and
6 Electronics Engineers;

7 (G) the wireless provider comply with the
8 applicable codes and local code provisions or
9 regulations that concern public safety;

10 (H) the wireless provider comply with written
11 design standards that are generally applicable for
12 decorative utility poles, or reasonable stealth,
13 concealment, and aesthetic requirements that are
14 identified by the authority in an ordinance, written
15 policy adopted by the governing board of the
16 authority, a comprehensive plan, or other written
17 design plan that applies to other occupiers of the
18 rights-of-way, including on a historic landmark or in
19 a historic district; and

20 (I) subject to subsection (c) of this Section, and
21 except for facilities excluded from evaluation for
22 effects on historic properties under 47 CFR
23 1.1307(a)(4), reasonable, technically feasible and
24 non-discriminatory design or concealment measures in a
25 historic district or historic landmark; any such
26 design or concealment measures, including restrictions

1 on a specific category of poles, may not have the
2 effect of prohibiting any provider's technology; such
3 design and concealment measures shall not be
4 considered a part of the small wireless facility for
5 purposes of the size restrictions of a small wireless
6 facility; this paragraph may not be construed to limit
7 an authority's enforcement of historic preservation in
8 conformance with the requirements adopted pursuant to
9 the Illinois State Agency Historic Resources
10 Preservation Act or the National Historic Preservation
11 Act of 1966, 54 U.S.C. Section 300101 et seq., and the
12 regulations adopted to implement those laws.

13 (7) Within 30 days after receiving an application, an
14 authority must determine whether the application is
15 complete and notify the applicant. If an application is
16 incomplete, an authority must specifically identify the
17 missing information. An application shall be deemed
18 complete if the authority fails to provide notification to
19 the applicant within 30 days after when all documents,
20 information, and fees specifically enumerated in the
21 authority's permit application form are submitted by the
22 applicant to the authority. Processing deadlines are
23 tolled from the time the authority sends the notice of
24 incompleteness to the time the applicant provides the
25 missing information.

26 (8) An authority shall process applications as

1 follows:

2 (A) an application to collocate a small wireless
3 facility on an existing utility pole or wireless
4 support structure shall be processed on a
5 nondiscriminatory basis and deemed approved if the
6 authority fails to approve or deny the application
7 within 90 days; however, if an applicant intends to
8 proceed with the permitted activity on a deemed
9 approved basis, the applicant must notify the
10 authority in writing of its intention to invoke the
11 deemed approved remedy no sooner than 75 days after
12 the submission of a completed application; the permit
13 shall be deemed approved on the latter of the 90th day
14 after submission of the complete application or the
15 10th day after the receipt of the deemed approved
16 notice by the authority; the receipt of the deemed
17 approved notice shall not preclude the authority's
18 denial of the permit request within the time limits as
19 provided under this Act; and

20 (B) an application to collocate a small wireless
21 facility that includes the installation of a new
22 utility pole shall be processed on a nondiscriminatory
23 basis and deemed approved if the authority fails to
24 approve or deny the application within 120 days;
25 however, if an applicant intends to proceed with the
26 permitted activity on a deemed approved basis, the

1 applicant must notify the authority in writing of its
2 intention to invoke the deemed approved remedy no
3 sooner than 105 days after the submission of a
4 completed application; the permit shall be deemed
5 approved on the latter of the 120th day after
6 submission of the complete application or the 10th day
7 after the receipt of the deemed approved notice by the
8 authority; the receipt of the deemed approved notice
9 shall not preclude the authority's denial of the
10 permit request within the time limits as provided
11 under this Act.

12 (9) An authority shall approve an application unless
13 the application does not meet the requirements of this
14 Act. If an authority determines that applicable codes,
15 local code provisions or regulations that concern public
16 safety, or the requirements of paragraph (6) require that
17 the utility pole or wireless support structure be replaced
18 before the requested collocation, approval may be
19 conditioned on the replacement of the utility pole or
20 wireless support structure at the cost of the provider.
21 The authority must document the basis for a denial,
22 including the specific code provisions or application
23 conditions on which the denial was based, and send the
24 documentation to the applicant on or before the day the
25 authority denies an application. The applicant may cure
26 the deficiencies identified by the authority and resubmit

1 the revised application once within 30 days after notice
2 of denial is sent to the applicant without paying an
3 additional application fee. The authority shall approve or
4 deny the revised application within 30 days after the
5 applicant resubmits the application or it is deemed
6 approved; however, the applicant must notify the authority
7 in writing of its intention to proceed with the permitted
8 activity on a deemed approved basis, which may be
9 submitted with the resubmitted application. Any subsequent
10 review shall be limited to the deficiencies cited in the
11 denial. However, this revised application cure does not
12 apply if the cure requires the review of a new location,
13 new or different structure to be collocated upon, new
14 antennas, or other wireless equipment associated with the
15 small wireless facility.

16 (10) The time period for applications may be further
17 tolled by:

18 (A) the express agreement in writing by both the
19 applicant and the authority; or

20 (B) a local, State, or federal disaster
21 declaration or similar emergency that causes the
22 delay.

23 (11) An applicant seeking to collocate small wireless
24 facilities within the jurisdiction of a single authority
25 shall be allowed, at the applicant's discretion, to file a
26 consolidated application and receive a single permit for

1 the collocation of up to 25 small wireless facilities if
2 the collocations each involve substantially the same type
3 of small wireless facility and substantially the same type
4 of structure. If an application includes multiple small
5 wireless facilities, the authority may remove small
6 wireless facility collocations from the application and
7 treat separately small wireless facility collocations for
8 which incomplete information has been provided or that do
9 not qualify for consolidated treatment or that are denied.
10 The authority may issue separate permits for each
11 collocation that is approved in a consolidated
12 application.

13 (12) Collocation for which a permit is granted shall
14 be completed within 180 days after issuance of the permit,
15 unless the authority and the wireless provider agree to
16 extend this period or a delay is caused by make-ready work
17 for an authority utility pole or by the lack of commercial
18 power or backhaul availability at the site, provided the
19 wireless provider has made a timely request within 60 days
20 after the issuance of the permit for commercial power or
21 backhaul services, and the additional time to complete
22 installation does not exceed 360 days after issuance of
23 the permit. Otherwise, the permit shall be void unless the
24 authority grants an extension in writing to the applicant.

25 (13) The duration of a permit shall be for a period of
26 not less than 5 years, and the permit shall be renewed for

1 equivalent durations unless the authority makes a finding
2 that the small wireless facilities or the new or modified
3 utility pole do not comply with the applicable codes or
4 local code provisions or regulations in paragraphs (6) and
5 (9). If this Act is repealed as provided in Section 90,
6 renewals of permits shall be subject to the applicable
7 authority code provisions or regulations in effect at the
8 time of renewal.

9 (14) An authority may not prohibit, either expressly
10 or de facto, the (i) filing, receiving, or processing
11 applications, or (ii) issuing of permits or other
12 approvals, if any, for the collocation of small wireless
13 facilities unless there has been a local, State, or
14 federal disaster declaration or similar emergency that
15 causes the delay.

16 (15) Applicants shall submit applications, supporting
17 information, and notices by personal delivery or as
18 otherwise required by the authority. An authority may
19 require that permits, supporting information, and notices
20 be submitted by personal delivery at the authority's
21 designated place of business, by regular mail postmarked
22 on the date due, or by any other commonly used means,
23 including electronic mail, as required by the authority.

24 (e) Application fees are subject to the following
25 requirements:

26 (1) An authority may charge an application fee of up

1 to \$650 for an application to collocate a single small
2 wireless facility on an existing utility pole or wireless
3 support structure and up to \$350 for each small wireless
4 facility addressed in an application to collocate more
5 than one small wireless facility on existing utility poles
6 or wireless support structures.

7 (2) An authority may charge an application fee of
8 \$1,000 for each small wireless facility addressed in an
9 application that includes the installation of a new
10 utility for such collocation.

11 (3) Notwithstanding any contrary provision of State
12 law or local ordinance, applications pursuant to this
13 Section must be accompanied by the required application
14 fee.

15 (4) Within 2 months after the effective date of this
16 Act, an authority shall make available application fees
17 consistent with this subsection, through ordinance, or in
18 a written schedule of permit fees adopted by the
19 authority.

20 (f) An authority shall not require an application,
21 approval, or permit, or require any fees or other charges,
22 from a communications service provider authorized to occupy
23 the rights-of-way, for: (i) routine maintenance; (ii) the
24 replacement of wireless facilities with wireless facilities
25 that are substantially similar, the same size, or smaller if
26 the wireless provider notifies the authority at least 10 days

1 prior to the planned replacement and includes equipment
2 specifications for the replacement of equipment consistent
3 with the requirements of subparagraph (D) of paragraph (2) of
4 subsection (d) of this Section; or (iii) the installation,
5 placement, maintenance, operation, or replacement of micro
6 wireless facilities that are suspended on cables that are
7 strung between existing utility poles in compliance with
8 applicable safety codes. However, an authority may require a
9 permit to work within rights-of-way for activities that affect
10 traffic patterns or require lane closures. Wireless facilities
11 that vary significantly in design, increase power output,
12 frequency, bandwidth, or performance, change the location of
13 the small wireless facility upon the utility pole or wireless
14 support structure, increase signal strength, or make other
15 modifications in other key components are not substantially
16 similar and are subject to standard application processes,
17 permitting requirements, and fees.

18 (g) Nothing in this Act authorizes a person to collocate
19 small wireless facilities on: (1) property owned by a private
20 party or property owned or controlled by a unit of local
21 government that is not located within rights-of-way, subject
22 to subsection (j) of this Section, or a privately owned
23 utility pole or wireless support structure without the consent
24 of the property owner; (2) property owned, leased, or
25 controlled by a park district, forest preserve district, or
26 conservation district for public park, recreation, or

1 conservation purposes without the consent of the affected
2 district, excluding the placement of facilities on
3 rights-of-way located in an affected district that are under
4 the jurisdiction and control of a different unit of local
5 government as provided by the Illinois Highway Code; or (3)
6 property owned by a rail carrier registered under Section
7 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or
8 any other public commuter rail service, or an electric utility
9 as defined in Section 16-102 of the Public Utilities Act,
10 without the consent of the rail carrier, public commuter rail
11 service, or electric utility. The provisions of this Act do
12 not apply to an electric or gas public utility or such
13 utility's wireless facilities if the facilities are being
14 used, developed, and maintained consistent with the provisions
15 of subsection (i) of Section 16-108.5 of the Public Utilities
16 Act.

17 For the purposes of this subsection, "public utility" has
18 the meaning given to that term in Section 3-105 of the Public
19 Utilities Act. Nothing in this Act shall be construed to
20 relieve any person from any requirement (1) to obtain a
21 franchise or a State-issued authorization to offer cable
22 service or video service or (2) to obtain any required
23 permission to install, place, maintain, or operate
24 communications facilities, other than small wireless
25 facilities subject to this Act.

26 (h) Agreements between authorities and wireless providers

1 that relate to the collocation of small wireless facilities in
2 the right-of-way, including the collocation of small wireless
3 facilities on authority utility poles, that are in effect on
4 the effective date of this Act remain in effect for all small
5 wireless facilities collocated on the authority's utility
6 poles pursuant to applications submitted to the authority
7 before the effective date of this Act, subject to applicable
8 termination provisions. Such agreements entered into after the
9 effective date of the Act shall comply with the Act.

10 (i) An authority shall allow the collocation of small
11 wireless facilities on authority utility poles subject to the
12 following:

13 (1) An authority may not enter into an exclusive
14 arrangement with any person for the right to attach small
15 wireless facilities to authority utility poles.

16 (2) The rates and fees for collocations on authority
17 utility poles shall be nondiscriminatory regardless of the
18 services provided by the collocating person.

19 (3) An authority may charge an annual recurring rate
20 to collocate a small wireless facility on an authority
21 utility pole located in a right-of-way that equals (i)
22 \$200 per year or (ii) the actual, direct, and reasonable
23 costs related to the wireless provider's use of space on
24 the authority utility pole. Rates for collocation on
25 authority utility poles located outside of a right-of-way
26 are not subject to these limitations. In any controversy

1 concerning the appropriateness of a cost-based rate for an
2 authority utility pole located within a right-of-way, the
3 authority shall have the burden of proving that the rate
4 does not exceed the actual, direct, and reasonable costs
5 for the applicant's proposed use of the authority utility
6 pole. Nothing in this paragraph (3) prohibits a wireless
7 provider and an authority from mutually agreeing to an
8 annual recurring rate of less than \$200 to collocate a
9 small wireless facility on an authority utility pole.

10 (4) Authorities or other persons owning or controlling
11 authority utility poles within the right-of-way shall
12 offer rates, fees, and other terms that comply with
13 subparagraphs (A) through (E) of this paragraph (4).
14 Within 2 months after the effective date of this Act, an
15 authority or a person owning or controlling authority
16 utility poles shall make available, through ordinance or
17 an authority utility pole attachment agreement, license or
18 other agreement that makes available to wireless
19 providers, the rates, fees, and terms for the collocation
20 of small wireless facilities on authority utility poles
21 that comply with this Act and with subparagraphs (A)
22 through (E) of this paragraph (4). In the absence of such
23 an ordinance or agreement that complies with this Act, and
24 until such a compliant ordinance or agreement is adopted,
25 wireless providers may collocate small wireless facilities
26 and install utility poles under the requirements of this

1 Act.

2 (A) The rates, fees, and terms must be
3 nondiscriminatory, competitively neutral, and
4 commercially reasonable, and may address, among other
5 requirements, the requirements in subparagraphs (A)
6 through (I) of paragraph (6) of subsection (d) of this
7 Section; subsections (e), (i), and (k) of this
8 Section; Section 30; and Section 35, and must comply
9 with this Act.

10 (B) For authority utility poles that support
11 aerial facilities used to provide communications
12 services or electric service, wireless providers shall
13 comply with the process for make-ready work under 47
14 U.S.C. 224 and its implementing regulations, and the
15 authority shall follow a substantially similar process
16 for make-ready work except to the extent that the
17 timing requirements are otherwise addressed in this
18 Act. The good-faith estimate of the person owning or
19 controlling the authority utility pole for any
20 make-ready work necessary to enable the pole to
21 support the requested collocation shall include
22 authority utility pole replacement, if necessary.

23 (C) For authority utility poles that do not
24 support aerial facilities used to provide
25 communications services or electric service, the
26 authority shall provide a good-faith estimate for any

1 make-ready work necessary to enable the authority
2 utility pole to support the requested collocation,
3 including pole replacement, if necessary, within 90
4 days after receipt of a complete application.
5 Make-ready work, including any authority utility pole
6 replacement, shall be completed within 60 days of
7 written acceptance of the good-faith estimate by the
8 applicant at the wireless provider's sole cost and
9 expense. Alternatively, if the authority determines
10 that applicable codes or public safety regulations
11 require the authority utility pole to be replaced to
12 support the requested collocation, the authority may
13 require the wireless provider to replace the authority
14 utility pole at the wireless provider's sole cost and
15 expense.

16 (D) The authority shall not require more
17 make-ready work than required to meet applicable codes
18 or industry standards. Make-ready work may include
19 work needed to accommodate additional public safety
20 communications needs that are identified in a
21 documented and approved plan for the deployment of
22 public safety equipment as specified in paragraph (1)
23 of subsection (d) of this Section and included in an
24 existing or preliminary authority or public service
25 agency budget for attachment within one year of the
26 application. Fees for make-ready work, including any

1 authority utility pole replacement, shall not exceed
2 actual costs or the amount charged to communications
3 service providers for similar work and shall not
4 include any consultants' fees or expenses for
5 authority utility poles that do not support aerial
6 facilities used to provide communications services or
7 electric service. Make-ready work, including any pole
8 replacement, shall be completed within 60 days of
9 written acceptance of the good-faith estimate by the
10 wireless provider, at its sole cost and expense.

11 (E) A wireless provider that has an existing
12 agreement with the authority on the effective date of
13 the Act may accept the rates, fees, and terms that an
14 authority makes available under this Act for the
15 collocation of small wireless facilities or the
16 installation of new utility poles for the collocation
17 of small wireless facilities that are the subject of
18 an application submitted 2 or more years after the
19 effective date of the Act as provided in this
20 paragraph (4) by notifying the authority that it opts
21 to accept such rates, fees, and terms. The existing
22 agreement remains in effect, subject to applicable
23 termination provisions, for the small wireless
24 facilities the wireless provider has collocated on the
25 authority's utility poles pursuant to applications
26 submitted to the authority before the wireless

1 provider provides such notice and exercises its option
2 under this subparagraph.

3 (j) An authority shall authorize the collocation of small
4 wireless facilities on utility poles owned or controlled by
5 the authority that are not located within rights-of-way to the
6 same extent the authority currently permits access to utility
7 poles for other commercial projects or uses. The collocations
8 shall be subject to reasonable and nondiscriminatory rates,
9 fees, and terms as provided in an agreement between the
10 authority and the wireless provider.

11 (k) Nothing in this Section precludes an authority from
12 adopting reasonable rules with respect to the removal of
13 abandoned small wireless facilities. A small wireless facility
14 that is not operated for a continuous period of 12 months shall
15 be considered abandoned and the owner of the facility must
16 remove the small wireless facility and any associated wireless
17 support structure or utility pole within 90 days after receipt
18 of written notice from the authority notifying the owner of
19 the abandonment. The requirement that a wireless support
20 structure or utility pole associated with an abandoned small
21 wireless facility be removed does not apply if the owner does
22 not own or otherwise have the right to remove the structure or
23 pole, and does not apply to authority-owned utility poles
24 unless requested by the authority. The notice shall be sent by
25 certified or registered mail, return receipt requested, by the
26 authority to the owner at the last known address of the owner.

1 If the small wireless facility and associated wireless support
2 structure or utility pole, if any, is not removed within 90
3 days of such notice, the authority may remove or cause the
4 removal of the ~~such~~ facility and associated structure or pole
5 pursuant to the terms of its pole attachment agreement for
6 authority utility poles or through whatever actions are
7 provided for abatement of nuisances or by other law for
8 removal and cost recovery. An authority may require a wireless
9 provider to provide written notice to the authority if it
10 sells or transfers small wireless facilities subject to this
11 Act within the jurisdictional boundary of the authority. Such
12 notice shall include the name and contact information of the
13 new wireless provider.

14 (1) Nothing in this Section requires an authority to
15 install or maintain any specific utility pole or to continue
16 to install or maintain utility poles in any location if the
17 authority makes a non-discriminatory decision to eliminate
18 above-ground utility poles of a particular type generally,
19 such as electric utility poles, in all or a significant
20 portion of its geographic jurisdiction. For authority utility
21 poles with collocated small wireless facilities in place when
22 an authority makes a decision to eliminate above-ground
23 utility poles of a particular type generally, the authority
24 shall either (i) continue to maintain the authority utility
25 pole or install and maintain a reasonable alternative utility
26 pole or wireless support structure for the collocation of the

1 small wireless facility, or (ii) offer to sell the utility
2 pole to the wireless provider at a reasonable cost or allow the
3 wireless provider to install its own utility pole so it can
4 maintain service from that location.

5 (m) Nothing in this Section precludes an authority from
6 adopting reasonable rules requiring providers, where feasible,
7 as new technology becomes available, and after receiving all
8 necessary permits and approvals required by the authority, to:

9 (1) Place above-ground small wireless facilities and
10 associated equipment, including accessory equipment that
11 has been mounted to a utility pole or wireless support
12 structure, below ground, at the wireless provider's sole
13 cost and expense.

14 (2) When replacing larger, more visually intrusive
15 small wireless facilities with smaller, less visually
16 intrusive facilities, to replace them with facilities with
17 the smallest visual profile, to the extent such facilities
18 are commercially available, technologically compatible
19 with the wireless provider's local network system, and
20 already used in the wireless provider's national or
21 regional wireless network system.

22 (Source: P.A. 100-585, eff. 6-1-18.)

23 (50 ILCS 840/45 new)

24 Sec. 45. Radio frequency compliance. Wireless providers
25 shall comply with the most stringent of the applicable FCC's

1 radio frequency emissions standards at all times and at all
2 locations. All radio frequency compliance testing shall
3 specify the height and location at which the readings were
4 taken and, to the extent possible, the distance in feet
5 between the reading location and the source of radio frequency
6 emissions. If an area is deemed to be an area in which the
7 FCC's general population limits would not apply, its
8 boundaries must be clearly marked and posted with signs, at
9 the wireless provider's expense, stating "Warning Potential
10 Unsafe Radiation Area" prior to the installation or
11 modification of the source. No provider or person shall cause,
12 allow, or contribute to a violation of the applicable radio
13 frequency emission standards which standards shall be met on
14 an aggregate basis. All providers and persons responsible
15 shall be jointly and severally liable for any violations to
16 which their emissions have contributed. Compliance with the
17 FCC radio frequency limit shall not be deemed to be compliance
18 with any other applicable standard, including any prohibition
19 against causing a public or private nuisance. Wireless
20 providers may be required by an ordinance of an authority to
21 perform on-going monitoring of small wireless facilities to
22 ensure all equipment continues to operate within allowable FCC
23 radio frequency emission ranges and to provide, on either a
24 quarterly or annual basis, as determined by an authority, a
25 certification with supporting information confirming whether
26 all of the wireless provider's small wireless facilities

1 within an authority's jurisdiction operated in compliance with
2 all FCC radio frequency emission limits during the quarterly
3 or annual reporting period. The certified quarterly or annual
4 report shall, where required, be delivered to the attention of
5 the chief executive officer of the authority by the 30th of the
6 month following the end of the calendar quarter or year, as
7 applicable. A wireless provider shall, upon request of an
8 authority at any time, perform radio frequency testing of all
9 or specific small wireless facilities, provide such testing
10 results to the authority, and shall promptly respond to all
11 authority requests for information or cooperation with respect
12 to any of the foregoing. Authority staff may, at an
13 authority's option, accompany the wireless provider or its
14 agents in the performance of such testing. An authority has
15 the right, but not the obligation, to employ a qualified radio
16 frequency engineer to conduct periodic random and unannounced
17 testing of permitted small wireless facilities to determine
18 their compliance with all FCC radio frequency emission limits.
19 In the event the authority decides to perform its own testing
20 on small wireless facilities the authority may, where it deems
21 it necessary, request that the wireless provider be present
22 for the test. Any small wireless facility found not to comply
23 with FCC radio frequency emission standards shall be
24 immediately reported by the wireless provider to the FCC, with
25 a copy of such report sent at the same time to the chief
26 executive officer of the authority and shall be powered-down,

1 adjusted, repaired, replaced, shut off, or removed by the
2 wireless provider within 3 calendar days of the provider
3 becoming aware of the violation. Small wireless facilities
4 that exceed the FCC's radio frequency emissions standards are
5 declared a public nuisance and may be summarily abated by an
6 authority. Failure by a wireless provider to cure a violation
7 of the FCC radio frequency emission standards within 3
8 calendar days may result in a revocation of the applicable
9 small wireless facility permit and a citation for maintaining
10 a public nuisance with a fine in the amount of \$750, with each
11 day of continued operation without cure being a separate
12 violation. If an authority determines through its own testing
13 that a small wireless facility is not in compliance with any
14 legal requirements or conditions related to radio frequency,
15 the wireless provider shall, in addition to the other
16 requirements of this Section, be responsible for all costs and
17 expenses incurred by the authority in connection with the
18 investigation, testing, enforcement, or remediation of such
19 noncompliance.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.