



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1451

Introduced 2/9/2017, by Sen. Terry Link

#### SYNOPSIS AS INTRODUCED:

New Act  
55 ILCS 5/5-12001.2

Creates the Small Wireless Facilities Deployment Act. Provides for legislative intent for the Act and definitions. Provides that an authority (a unit of local government with control over rights-of-way) may not prohibit, regulate, or charge for the collocation of small wireless facilities (the installation, mounting, maintaining, modifying, operating, or replacement of small wireless facilities on or adjacent to a wireless support structure or utility pole). Provides that small wireless facilities shall be classified as permitted uses and not subject to zoning review and approval under specified circumstances. Provides requirements for applications, fees, application review, and issuance of permits for collocation of small wireless facilities. Provides that an authority may not require applications for routine maintenance or replacement of wireless facilities with wireless facilities that are substantially similar, of the same size, or smaller. Requires authorities to allow the collocation of small wireless facilities on authority utility poles under specified circumstances. Prohibits authorities from regulating the design, engineering, construction, installation, or operation of any small wireless facility in specified circumstances. Provides that a circuit court has jurisdiction to resolve all disputes arising under the Act. Prohibits an authority from requiring a wireless provider to indemnify the authority or its officers or employees and from naming the authority on a wireless provider's insurance policy. Limits home rule powers. Amends the Counties Code making conforming changes.

LRB100 09256 AWJ 19412 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

A BILL FOR

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 1. Short title. This Act may be cited as the Small  
5 Wireless Facilities Deployment Act.

6 Section 5. Legislative intent. Small wireless facilities  
7 are critical to delivering wireless access to advanced  
8 technology, broadband, and 9-1-1 services to homes,  
9 businesses, and schools in Illinois. Because of the integral  
10 role that the delivery of wireless technology plays in the  
11 economic vitality of the State of Illinois and in the lives of  
12 its citizens, the General Assembly has determined that a law  
13 addressing the deployment of wireless technology is of vital  
14 interest to the State. To ensure that public and private  
15 Illinois consumers continue to benefit from these services as  
16 soon as possible and to ensure that providers of wireless  
17 access have a fair and predictable process for the deployment  
18 of small wireless facilities, the General Assembly is enacting  
19 this Act, which specifies how local authorities may regulate  
20 the collocation of small wireless facilities.

21 Section 10. Definitions. As used in this Act:

22 "Antenna" means communications equipment that transmits or

1 receives electromagnetic radio frequency signals used in the  
2 provision of wireless services.

3 "Applicable codes" means uniform building, fire,  
4 electrical, plumbing, or mechanical codes adopted by a  
5 recognized national code organization or local amendments to  
6 those codes enacted solely to address imminent threats of  
7 destruction of property or injury to persons to the extent not  
8 inconsistent with the terms of this Act.

9 "Applicant" means any person who submits an application and  
10 is a wireless provider.

11 "Application" means a request submitted by an applicant to  
12 an authority for a permit to collocate small wireless  
13 facilities.

14 "Authority" means a unit of local government that has  
15 jurisdiction and control for use of public rights-of-way as  
16 provided by the Illinois Highway Code for placements within  
17 public rights-of-way or has zoning or land use control for  
18 placements not within public rights-of-way.

19 "Authority utility pole" means a utility pole owned or  
20 operated by an authority in public rights-of-way.

21 "Collocate" or "collocation" means to install, mount,  
22 maintain, modify, operate, or replace wireless facilities on or  
23 adjacent to a wireless support structure or utility pole.

24 "Communications service" means cable service, as defined  
25 in 47 U.S.C. 522(6), as amended; information service, as  
26 defined in 47 U.S.C. 153(24), as amended; telecommunications

1 service as defined in 47 U.S.C. 153(53), as amended; mobile  
2 service as defined in 47 U.S.C. 153(33), as amended; or  
3 wireless service other than mobile service.

4 "Communications service provider" means a cable operator,  
5 as defined in 47 U.S.C. 522(5), as amended; a provider of  
6 information service, as defined in 47 U.S.C. 153(24), as  
7 amended; a telecommunications carrier, as defined in 47 U.S.C.  
8 153(51), as amended; or a wireless provider.

9 "FCC" means the Federal Communications Commission of the  
10 United States.

11 "Fee" means a one-time charge.

12 "Law" means a federal or State statute, common law, code,  
13 rule, regulation, order, or local ordinance or resolution.

14 "Permit" means a written authorization required by an  
15 authority to perform an action or initiate, continue, or  
16 complete a project.

17 "Person" means an individual, corporation, limited  
18 liability company, partnership, association, trust, or other  
19 entity or organization, including an authority.

20 "Rate" means a recurring charge.

21 "Rights-of-way" means the area on, below, or above a public  
22 roadway, highway, street, sidewalk, alley, utility easement,  
23 or similar property, but not including a federal interstate  
24 highway.

25 "Small wireless facility" means a wireless facility that  
26 meets both of the following qualifications: (i) each antenna is

1 located inside an enclosure of no more than 6 cubic feet in  
2 volume or, in the case of an antenna that has exposed elements,  
3 the antenna and all of its exposed elements could fit within an  
4 imaginary enclosure of no more than 6 cubic feet; and (ii) all  
5 other wireless equipment associated with the facility is  
6 cumulatively no more than 28 cubic feet in volume. The  
7 following types of associated ancillary equipment are not  
8 included in the calculation of equipment volume: electric  
9 meter, concealment elements, telecommunications demarcation  
10 box, ground-based enclosures, grounding equipment, power  
11 transfer switch, cut-off switch, and vertical cable runs for  
12 the connection of power and other services.

13 "Utility pole" means a pole or similar structure that is  
14 used in whole or in part by a communications service provider  
15 or for electric distribution, lighting, traffic control,  
16 signage, or a similar function.

17 "Wireless facility" means equipment at a fixed location  
18 that enables wireless communications between user equipment  
19 and a communications network, including: (i) equipment  
20 associated with wireless communications; and (ii) radio  
21 transceivers, antennas, coaxial or fiber-optic cable, regular  
22 and backup power supplies, and comparable equipment,  
23 regardless of technological configuration. "Wireless facility"  
24 includes small wireless facilities. "Wireless facility" does  
25 not include the structure or improvements on, under, or within  
26 which the equipment is collocated.

1 "Wireless infrastructure provider" means any person,  
2 including a person authorized to provide telecommunications  
3 service in the State, that builds or installs wireless  
4 communication transmission equipment, wireless facilities,  
5 wireless support structures, or utility poles, but that is not  
6 a wireless services provider.

7 "Wireless provider" means a wireless infrastructure  
8 provider or a wireless services provider.

9 "Wireless services" means any services, whether at a fixed  
10 location or mobile, provided using wireless facilities.

11 "Wireless services provider" means a person who provides  
12 wireless services.

13 "Wireless support structure" means a freestanding  
14 structure, such as a monopole; tower, either guyed or  
15 self-supporting; billboard; or other existing or proposed  
16 structure designed to support or capable of supporting wireless  
17 facilities. "Wireless support structure" does not include a  
18 utility pole.

19 Section 15. Regulation of small wireless facilities.

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

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

25 (c) Small wireless facilities shall be classified as

1 permitted uses and not subject to zoning review or approval if  
2 they are collocated (i) in rights-of-way in any zone or (ii)  
3 outside rights-of-way in property not zoned exclusively for  
4 single family residential use.

5 (d) An authority may require an applicant to obtain one or  
6 more permits to collocate a small wireless facility, provided  
7 that the permits are of general applicability and do not apply  
8 exclusively to wireless facilities. An authority shall receive  
9 applications for, process, and issue permits subject to the  
10 following requirements:

11 (1) An authority may not directly or indirectly require  
12 an applicant to perform services unrelated to the  
13 collocation for which approval is sought, such as in-kind  
14 contributions to the authority including reserving fiber,  
15 conduit, or pole space for the authority.

16 (2) An applicant shall not be required to provide more  
17 information to obtain a permit than communications service  
18 providers that are not wireless providers.

19 (3) An authority may not require the placement of small  
20 wireless facilities on any specific utility pole, or  
21 category of poles, or require multiple antenna systems on a  
22 single utility pole.

23 (4) An authority may not limit the placement of small  
24 wireless facilities, either by minimum separation  
25 distances or maximum height limitations, except that the  
26 authority may limit the height of a small wireless facility

1 to 10 feet above the utility pole or wireless support  
2 structure on which the small wireless facility is  
3 collocated. Subject to any exception process in an  
4 authority zoning ordinance, the authority may (i) limit the  
5 height of new or replacement utility poles or wireless  
6 support structures on which small wireless facilities are  
7 collocated to 10 feet above the tallest existing utility  
8 pole measured from grade in place within 500 feet of the  
9 proposed location of the small wireless facility; or (ii)  
10 limit the height of the new or replacement utility pole or  
11 wireless support structure to 50 feet if there is no  
12 utility pole within 500 feet.

13 (5) Within 10 days after receiving an application, an  
14 authority must determine and notify the applicant by  
15 electronic mail whether the application is complete. If an  
16 application is incomplete, an authority must specifically  
17 identify the missing information. An application shall be  
18 deemed complete if the authority fails to provide  
19 notification to the applicant within 10 days or when all  
20 documents, information, and fees specifically enumerated  
21 in the authority's permit application form are submitted by  
22 the applicant to the authority.

23 (6) An application shall be processed on a  
24 nondiscriminatory basis and deemed approved if the  
25 authority fails to approve or deny the application within  
26 60 days.



1           (7) An authority shall approve an application unless it  
2 does not meet the authority's applicable codes. The  
3 authority must document the basis for a denial, including  
4 the specific code provisions on which the denial was based,  
5 and send the documentation to the applicant by electronic  
6 mail on or before the day the authority denies an  
7 application. The applicant may cure the deficiencies  
8 identified by the authority and resubmit the application  
9 within 30 days after notice of denial is sent to the  
10 applicant without paying an additional application fee.  
11 The authority shall approve or deny the revised application  
12 within 30 days after notice of denial is sent to the  
13 applicant or it is deemed approved. Any subsequent review  
14 shall be limited to the deficiencies cited in the denial.

15           (8) An applicant seeking to collocate small wireless  
16 facilities within the jurisdiction of a single authority  
17 shall be allowed, at the applicant's discretion, to file a  
18 consolidated application and receive a single permit for  
19 the collocation of multiple small wireless facilities.

20           (9) Collocation for which a permit is granted shall  
21 commence within one year after issuance of the permit and  
22 shall be pursued to completion. Any time limitation placed  
23 on permits shall be void unless the applicant subsequently  
24 and voluntarily requests that the permit be terminated.

25           (10) An authority may not institute, either expressly  
26 or de facto, a moratorium on (i) filing, receiving, or

1 processing applications or (ii) issuing permits or other  
2 approvals, if any, for the collocation of small wireless  
3 facilities.

4 (e) Application fees shall be subject to the following  
5 requirements:

6 (1) An authority may charge an application fee only if  
7 such fee is required for similar types of commercial  
8 development within the authority's jurisdiction.

9 (2) An authority shall only charge fees for the actual,  
10 direct, and reasonable costs incurred by the authority  
11 relating to the granting or processing of an application.  
12 Such fees shall be reasonably related in time to the  
13 incurring of such costs. Where such costs are already  
14 recovered by existing fees, rates, or taxes paid by a  
15 wireless provider, no application fee shall be assessed to  
16 recover such costs.

17 (3) A fee may not include (i) travel expenses incurred  
18 by a third party in its review of an application or (ii)  
19 direct payment or reimbursement of third-party rates or  
20 fees charged on a contingency basis or a result-based  
21 arrangement.

22 (4) In any controversy concerning the appropriateness  
23 of a fee, an authority shall have the burden of proving  
24 that the fee is reasonably related to the actual, direct,  
25 and reasonable costs incurred by the authority.

26 (5) Total application fees, where permitted, shall not

1 exceed the lesser of: (i) the amount charged by the  
2 authority for a building permit for any similar commercial  
3 construction, activity, or land use development; or (ii)  
4 \$100 each for up to 5 small wireless facilities addressed  
5 in an application and \$50 for each additional small  
6 wireless facility addressed in the application.

7 (f) An authority shall not require an application for (i)  
8 routine maintenance or (ii) the replacement of wireless  
9 facilities with wireless facilities that are substantially  
10 similar, the same size, or smaller. An authority may, however,  
11 require a permit to work within rights-of-way for items (i) and  
12 (ii) of this subsection, if applicable. Any permits for work  
13 within rights-of-way shall be subject to the requirements  
14 provided in this Section.

15 (g) Nothing in this Act authorizes a person to collocate  
16 small wireless facilities on a privately owned utility pole or  
17 wireless support structure or other private property without  
18 the consent of the property owner.

19 (h) An authority shall allow the collocation of small  
20 wireless facilities on authority utility poles as follows:

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

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

1           (3) The rate to collocate on authority utility poles  
2 may not exceed the annual recurring rate that would be  
3 permitted under rules adopted by the FCC under 47 U.S.C.  
4 224(e) if the rates were regulated by the FCC or \$20 per  
5 year per authority utility pole, whichever is less.

6           (4) If an authority has an existing pole attachment  
7 rate, fee, or other term that does not comply with the  
8 requirements in this Section, the authority shall, no later  
9 than 6 months after the effective date of this Act, reform  
10 such rate, fee, or term in compliance with this subsection.

11           (5) Persons owning or controlling authority utility  
12 poles shall offer rates, fees, and other terms that comply  
13 with subparagraphs (A) through (D) of this paragraph (5).  
14 Within 6 months after the effective date of this Act or 3  
15 months after receiving a request to collocate its first  
16 small wireless facility on an authority utility pole,  
17 whichever is later, a person owning or controlling  
18 authority utility poles shall make available, through  
19 ordinance or otherwise, the rates, fees, and terms for the  
20 collocation of small wireless facilities on such poles that  
21 comply with subparagraphs (A) through (D) of this paragraph  
22 (5).

23           (A) The rates, fees, and terms must be  
24 nondiscriminatory, competitively neutral, and  
25 commercially reasonable and must comply with this  
26 subsection (h).

1           (B) For authority utility poles that support  
2 aerial facilities used to provide communications  
3 services or electric service the parties shall comply  
4 with the process for make-ready work under 47 U.S.C.  
5 224 and its implementing regulations. The good faith  
6 estimate of the person owning or controlling the pole  
7 for any make-ready work necessary to enable the pole to  
8 support the requested collocation shall include pole  
9 replacement, if necessary.

10           (C) For authority utility poles that do not support  
11 aerial facilities used to provide communications  
12 services or electric service, the authority shall  
13 provide a good faith estimate for any make-ready work  
14 necessary to enable the pole to support the requested  
15 collocation, including pole replacement, if necessary,  
16 within 60 days after receipt of a complete application.  
17 Make-ready work including any pole replacement shall  
18 be completed within 60 days of written acceptance of  
19 the good faith estimate by the applicant.

20           (D) The authority shall not require more  
21 make-ready work than required to meet applicable codes  
22 or industry standards. Fees for make-ready work shall  
23 not include costs related to pre-existing or prior  
24 damage or noncompliance. Fees for make-ready work,  
25 including any pole replacement, shall not exceed  
26 actual costs or the amount charged to communications

1 service providers for similar work and shall not  
2 include any consultants' fees or expenses.

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

12 Section 20. Local authority. Subject to this Act and  
13 applicable federal law, an authority may continue to exercise  
14 zoning, land use, planning, and permitting authority within its  
15 territorial boundaries, including with respect to wireless  
16 support structures and utility poles; except that no authority  
17 shall have or exercise any jurisdiction or authority over the  
18 design, engineering, construction, installation, or operation  
19 of any small wireless facility located in an interior structure  
20 or upon the site of any campus, stadium, or athletic facility  
21 not otherwise owned or controlled by the authority, other than  
22 to comply with applicable codes. Nothing in this Act authorizes  
23 the State or any political subdivision, including an authority,  
24 to require wireless facility deployment or to regulate wireless  
25 services.

1           Section 25. Dispute resolution. A circuit court has  
2 jurisdiction to resolve all disputes arising under this Act.  
3 Pending resolution of a dispute concerning rates for  
4 collocation of small wireless facilities on authority utility  
5 poles, the authority shall allow the collocating person to  
6 collocate on its poles at annual rates of no more than \$20 per  
7 year per utility pole, with rates to be determined upon final  
8 resolution of the dispute. Complaints shall be adjudicated no  
9 later than 180 days after a complaint or petition is filed.

10           Section 30. Indemnification. An authority shall not: (i)  
11 require a wireless provider to indemnify and hold the authority  
12 and its officers and employees harmless against any claims,  
13 lawsuits, judgments, costs, liens, losses, expenses, or fees,  
14 except when a court of competent jurisdiction has found that  
15 the negligence of the wireless provider while installing,  
16 repairing, or maintaining caused the harm that created the  
17 claims, lawsuits, judgments, costs, liens, losses, expenses,  
18 or fees; or (ii) require a wireless provider to obtain  
19 insurance naming the authority or its officers and employees an  
20 additional insured against any claims, lawsuits, judgments,  
21 costs, liens, losses, expenses, or fees.

22           Section 35. Home rule. A home rule unit may not regulate  
23 small wireless facilities in a manner inconsistent with this

1 Act. This Section is a limitation under subsection (i) of  
2 Section 6 of Article VII of the Illinois Constitution on the  
3 concurrent exercise by home rule units of powers and functions  
4 exercised by the State.

5 Section 100. The Counties Code is amended by changing  
6 Section 5-12001.2 as follows:

7 (55 ILCS 5/5-12001.2)

8 Sec. 5-12001.2. Regulation of telecommunications  
9 facilities; Lake County pilot project. In addition to any other  
10 requirements under this Division concerning the regulation of  
11 telecommunications facilities and except as provided by the  
12 Small Wireless Facilities Deployment Act, the following  
13 applies to any new telecommunications facilities in Lake County  
14 that are not AM telecommunications towers or facilities:

15 (a) For every new wireless telecommunications facility  
16 requiring a new tower structure, a telecommunications  
17 carrier shall provide the county with documentation  
18 consisting of the proposed location, a site plan, and an  
19 elevation that sufficiently describes a proposed wireless  
20 facility location.

21 (b) The county shall have 7 days to review the facility  
22 proposal and contact the telecommunications carrier in  
23 writing via e-mail or other written means as specified by  
24 the telecommunications carrier. This written communication



1 shall either approve the proposed location or request a  
2 meeting to review other possible alternative locations. If  
3 requested, the meeting shall take place within 7 days after  
4 the date of the written communication.

5 (c) At the meeting, the telecommunications carrier  
6 shall provide the county documentation consisting of radio  
7 frequency engineering criteria and a corresponding  
8 telecommunications facility search ring map, together with  
9 documentation of the carrier's efforts to site the proposed  
10 facility within the telecommunications facility search  
11 ring.

12 (d) Within 21 days after receipt of the carrier's  
13 documentation, the county shall propose either an  
14 alternative site within the telecommunications facility  
15 search ring, or an alternative site outside of the  
16 telecommunications search ring that meets the radio  
17 frequency engineering criteria provided by the  
18 telecommunications carrier and that will not materially  
19 increase the construction budget beyond what was estimated  
20 on the original carrier proposed site.

21 (e) If the county's proposed alternative site meets the  
22 radio frequency engineering criteria provided by the  
23 telecommunications carrier, and will not materially  
24 increase the construction budget beyond what was estimated  
25 on the original carrier proposed site, then the  
26 telecommunications carrier shall agree to build the

1 facility at the alternative location, subject to the  
2 negotiation of a lease with commercially reasonable terms  
3 and the obtainment of the customary building permits.

4 (f) If the telecommunications carrier can demonstrate  
5 that: (i) the county's proposed alternative site does not  
6 meet the radio frequency engineering criteria, (ii) the  
7 county's proposed alternative site will materially  
8 increase the construction budget beyond what was estimated  
9 on the original carrier proposed site, (iii) the county has  
10 failed to provide an alternative site, or (iv) after a  
11 period of 90 days after receipt of the alternative site,  
12 the telecommunications carrier has failed, after acting in  
13 good faith and with due diligence, to obtain a lease or, at  
14 a minimum, a letter of intent to lease the alternative site  
15 at lease rates not materially greater than the lease rate  
16 for the original proposed site; then the carrier can  
17 proceed to permit and construct the site under the  
18 provisions and standards of Section 5-12001.1 of this Code.

19 (Source: P.A. 98-197, eff. 8-9-13; 98-756, eff. 7-16-14.)