

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to HB 518:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 32 and 46 of the Official Code of Georgia Annotated, relating to highways,
2 bridges, and ferries and public utilities and public transportation, respectively, so as to
3 provide limitations on fees that may be charged for installation of telephone facilities; to
4 provide limitations on the permit fees and other fees that may be assessed by the Department
5 of Transportation for the installation of communications facilities; to provide for the due
6 compensation to be paid to municipal authorities by telephone companies that do not have
7 certain end user customers; to revise terminology for purposes of conformity; to provide for
8 related matters; to provide for an effective date; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,
13 is amended by revising Code Section 32-6-174, relating to the authority of the Department
14 of Transportation to promulgate regulations, as follows:

15 "32-6-174.

16 (a) The department may promulgate reasonable regulations governing the installation,
17 construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits,
18 cables, wires, poles, towers, tracks, traffic and other such signals, and other equipment and
19 appliances of any utility in, on, along, over, or under any part of the state highway system
20 or any public road project which the department has undertaken or agreed to undertake or
21 which has been completed by the department pursuant to its authority. In addition to the
22 requirements of such department regulations, it shall be the responsibility of the utility to
23 obtain whatever franchise is required by law.

24 (b) Any permit fees or other fees assessed by the department for the installation of
25 telephone and other communications facilities in, on, along, over, or under any part of the
26 state highway system or as a part of any public road project which the department has

27 undertaken or agreed to undertake or that has been completed by the department pursuant
 28 to its authority shall not exceed the lesser of:

- 29 (1) The department's actual and reasonable costs of the administration of the permit; or
 30 (2) One hundred dollars per linear mile annually."

31 **SECTION 2.**

32 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
 33 transportation, is amended in Code Section 46-5-1, relating to exercise of power of eminent
 34 domain by telephone companies, placement of posts and other fixtures, regulation of
 35 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
 36 companies for damages, required information, and due compensation, by repealing
 37 paragraph (9) of subsection (b) and enacting a new paragraph (9) to read as follows:

38 "(9) As used in this Code section, the term 'due compensation,' with regard to a municipal
 39 authority, means an amount equal to no more than 3 percent of actual recurring local
 40 service revenues received by such company from its retail end user customers located
 41 within the boundaries of such municipal authority. The term 'actual recurring local
 42 service revenues' means those revenues customarily included in the Uniform System of
 43 Accounts as prescribed by the Federal Communications Commission for Class 'A' and
 44 'B' companies; provided, however, that only the local service portion of the following
 45 accounts shall be included:

46 (A) Basic local service revenue, as defined in 47 C.F.R. Section 32.5000 as such
 47 definition existed on January 1, 2017;

48 (B) Basic area revenue, as defined in 47 C.F.R. Section 32.5001 as such definition
 49 existed on January 1, 2017;

50 (C) Optional extended area revenue, as defined in 47 C.F.R. Section 32.5002 as such
 51 definition existed on January 1, 2017;

52 (D) Public telephone revenue which shall include message revenue, such as that which
 53 is coin paid, and other revenue derived from public and semi-public telephone services
 54 provided within the basic service area;

55 (E) Private line revenue, as defined in 47 C.F.R. Section 32.5040 as such definition
 56 existed on January 1, 2017; provided, however, that the portion of such accounts
 57 attributable to audio and video program transmission service where both terminals of
 58 the private line are within the corporate limits of the municipal authority shall not be
 59 included;

60 (F) Other basic exchange revenue, as defined in 47 C.F.R. Section 32.5060 as such
 61 definition existed on January 1, 2017;

62 (G) Network access revenue, as defined in 47 C.F.R. Section 32.4999 as such
 63 definition existed on January 1, 2017;

64 (H) Directory revenue, as defined in 47 C.F.R. Section 32.5230 as such definition
 65 existed on January 1, 2017; provided, however, that the portion of such accounts
 66 attributable to revenue derived from listings in portions of directories not considered
 67 white pages shall not be included;

68 (I) Nonregulated operating revenue, as defined in 47 C.F.R. Section 32.5280 as such
 69 definition existed on January 1, 2017; provided, however, that the portion of such
 70 accounts attributable to revenue derived from private lines shall not be included; and

71 (J) Uncollectible revenue, as defined in 47 C.F.R. Section 32.5300 as such definition
 72 existed on January 1, 2017.

73 Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory
 74 and competitively neutral manner."

75 **SECTION 3.**

76 Said title is further amended in Code Section 46-5-1, relating to exercise of power of eminent
 77 domain by telephone companies, placement of posts and other fixtures, regulation of
 78 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
 79 companies for damages, required information, and due compensation, by revising
 80 paragraphs (10), (18), and (19) of subsection (b) and revising subsection (c) as follows:

81 "(10)(A) Any due compensation paid to municipal authorities pursuant to paragraph (9)
 82 of this subsection or subparagraph (B) of this paragraph shall be in lieu of any other
 83 permit fee, encroachment fee, degradation fee, disruption fee, business license tax,
 84 occupational license tax, occupational license fee, or other fee otherwise permitted
 85 pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section
 86 36-34-2 or Code Section 32-4-92, et seq., or any other provision of law regardless of
 87 nomenclature.

88 (B) If a telephone company that holds a certificate of authority granted by the
 89 commission does not have retail end user customers located within the boundaries of
 90 a municipal authority, then the payment by such company at a rate of an annual amount
 91 not to exceed \$100.00 per linear mile or portion thereof shall be considered the payment
 92 of due compensation. Any telephone company that is paying due compensation under
 93 paragraph (9) of this subsection shall not be required to pay the additional fees set forth
 94 in this subparagraph. Any telephone company that is paying video franchise fees
 95 pursuant to Chapter 76 of Title 36 or due compensation pursuant to this Code section
 96 shall not be charged any additional permit fee, encroachment fee, degradation fee,
 97 disruption fee, business license tax, occupational license tax, occupational license fee,

98 or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of
 99 paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92, et seq., or any other
 100 provision of law regardless of nomenclature."

101 "(18) If a telephone company does not have retail; end user customers located within the
 102 boundaries of a municipal authority, then the payment by such company at the same rates
 103 that such payments were being made as of January 1, 2008, to a municipal authority for
 104 the use of its rights of way shall be considered the payment of due compensation;
 105 provided, however, that ~~at the expiration date of any existing agreement for use of such~~
 106 ~~municipal rights of way or December 31, 2012, whichever is earlier, the payment at rates~~
 107 ~~in accordance with the rates set by regulations promulgated by the Department of~~
 108 ~~Transportation shall be considered the payment of due compensation. Provided, further,~~
 109 ~~that if a telephone company begins providing service after January 1, 2008, and such~~
 110 ~~telephone company does not have retail, end user customers located within the~~
 111 ~~boundaries of a municipal authority, the payment by such company at rates in accordance~~
 112 ~~with the rates set by regulations promulgated by the Department of Transportation to a~~
 113 ~~municipal authority for the use of its rights of way shall be considered the payment of due~~
 114 ~~compensation effective December 31, 2018, payment at rates that do not exceed the lesser~~
 115 of:

116 (A) The actual and reasonable cost of the municipal authority's administration of the
 117 telephone company's use of its rights of way; or
 118 (B) One hundred dollars per linear mile annually
 119 shall be considered the payment of due compensation.

120 (19) Nothing in this Code section shall be construed to affect any franchise fee payments
 121 which were in dispute on or before January 1, 2008."

122 "(c) If a telephone company accesses the public roads and highways and rights of way of
 123 a county and such county requires such telephone company to pay due compensation, such
 124 due compensation shall be limited to an administrative cost recoupment fee which shall not
 125 exceed such county's direct, actual costs incurred in its permitting process, including
 126 issuing and processing permits, plan reviews, physical inspection and direct administrative
 127 costs; and such costs shall be demonstrable and shall be equitable among applicable users
 128 of such county's roads and highways or rights of way. Permit fees shall not include the
 129 costs of highway or rights of way acquisition or any general administrative, management,
 130 or maintenance costs of the roads and highways or rights of way and shall not be imposed
 131 for any activity that does not require the physical disturbance of such public roads and
 132 highways or rights of way or does not impair access to or full use of such public roads and
 133 highways or rights of way.

134 (d) Nothing in this Code section shall affect the authority of a county to require a
135 telephone company to comply with reasonable regulations for construction of telephone
136 lines and facilities in public highways or rights of way pursuant to the provisions of
137 paragraph (6) of Code Section 32-4-42."

138 **SECTION 4.**

139 Said title is further amended in Code Section 46-5-1, relating to exercise of power of eminent
140 domain by telephone companies, placement of posts and other fixtures, regulation of
141 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
142 companies for damages, required information, and due compensation, by replacing "Georgia
143 Public Service Commission" with "commission" everywhere such term occurs.

144 **SECTION 5.**

145 This Act shall become effective upon its approval by the Governor or upon its becoming law
146 without such approval.

147 **SECTION 6.**

148 All laws and parts of laws in conflict with this Act are repealed.