

Senate Bill 426

By: Senators Gooch of the 51st, Cowser of the 46th, Miller of the 49th, Kennedy of the 18th, Dugan of the 30th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,  
2 so as to streamline the deployment of wireless broadband in the public rights of way; to enact  
3 the "Broadband Infrastructure Leads to Development (BILD) Act" to limit the ability of local  
4 governing authorities to prohibit, regulate, or charge for use of public rights of way under  
5 certain circumstances; to provide for definitions; to specify that a local governing authority  
6 may require permit fees only under certain circumstances; to require a local governing  
7 authority to receive and process applications for and issue permits subject to specified  
8 requirements; to provide that approval of and charges by a local governing authority are not  
9 required for certain activities related to certain wireless facilities; to specify limitations for  
10 processing applications to deploy certain structures and wireless facilities in the rights of  
11 way; to require a local governing authority to approve the collocation of small wireless  
12 facilities on certain utility poles and wireless support structures, subject to certain  
13 requirements; to provide requirements for rates, fees, and other terms related to utility poles;  
14 to prohibit a local governing authority from adopting or enforcing any regulations on the  
15 placement or operation of certain facilities and from regulating any communications services  
16 or imposing or collecting any taxes, fees, or charges not specifically authorized under state  
17 law; to provide for determination of disputes; to provide a short title; to provide for related  
18 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 This Act shall be known and may be cited as the "Broadband Infrastructure Leads to  
22 Development (BILD) Act."

23 **SECTION 2.**

24 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
25 by adding a new chapter to read as follows:

S. B. 426

26 "CHAPTER 66C27 36-66C-1.28 As used in this chapter, the term:29 (1) 'Antenna' means:30 (A) Communications equipment that transmits or receives electromagnetic radio  
31 frequency signals used in the provision of wireless services; or32 (B) Similar equipment used for the transmission or reception of surface waves.33 (2) 'Applicable codes' means:34 (A) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.; and35 (B) The state minimum standard codes identified in Code Section 8-2-20.36 (3) 'Applicant' means any wireless provider that submits an application to an authority  
37 pursuant to this chapter.38 (4) 'Application' means a request submitted by an applicant to an authority:39 (A) For a permit to collocate small wireless facilities; or40 (B) To secure approval for the construction, installation, maintenance, modification,  
41 operation, or replacement of a utility pole or a wireless support structure.42 (5) 'Authority' means the Department of Transportation or any local governing authority,  
43 including without limitation any entity through which a municipality furnishes retail  
44 electric service.45 (6) 'Authority pole' means a utility pole owned or operated by an authority in a right of  
46 way.47 (7) 'Base station' means wireless facilities or a wireless support structure or utility pole  
48 that currently supports wireless facilities. The term shall not include a tower or any  
49 equipment associated with a tower.50 (8) 'Cable operator' shall have the same meaning as provided in 47 U.S.C. Section  
51 522(5), as it existed on January 1, 2018.52 (9) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or  
53 replace one or more wireless facilities on, under, within, or adjacent to a wireless support  
54 structure or utility pole.55 (10) 'Communications services provider' means a cable operator, a provider of  
56 information service, a telecommunications carrier, or a wireless provider.57 (11) 'Electric membership corporation' shall have the same meaning provided in Code  
58 Section 46-3-171.59 (12) 'Fee' means a one-time charge.60 (13) 'Information service' shall have the same meaning as provided in 47 U.S.C. Section  
61 153(24), as it existed on January 1, 2018.

- 62 (14) 'Interstate highways' shall have the same meaning as provided in Code Section  
63 32-1-3.
- 64 (15) 'Law' means any federal, state, or local law, statute, common law, code, rule,  
65 regulation, order, or ordinance.
- 66 (16) 'Local governing authority' means a municipality or county that has adopted land  
67 use or zoning regulations for all or the majority of land use within its jurisdiction or has  
68 adopted separate regulations pertaining to the location, construction, collocation,  
69 modification, or operation of wireless facilities.
- 70 (17) 'Micro wireless facility' means a small wireless facility not larger in dimension than  
71 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior  
72 antenna, if any, no longer than 11 inches.
- 73 (18) 'Permit' means a written authorization required by an authority to perform an action  
74 or initiate, continue, or complete a project.
- 75 (19) 'Person' means an individual, corporation, limited liability company, partnership,  
76 association, trust, or other entity or organization, including an authority.
- 77 (20) 'Rate' means a recurring charge.
- 78 (21) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3.  
79 The term shall not include interstate highways.
- 80 (22) 'Small wireless facility' means a wireless facility that meets both of the following  
81 qualifications:
- 82 (A) Each wireless provider's antenna could fit within an enclosure of no more than six  
83 cubic feet in volume; and
- 84 (B) All other wireless equipment associated with the facility is cumulatively no more  
85 than 28 cubic feet in volume. The following types of associated ancillary equipment  
86 shall not be included in the calculation of equipment volume: electric meters,  
87 concealment elements, telecommunications demarcation boxes, grounding equipment,  
88 power transfer switches, cut-off switches, and vertical cable runs for the connection of  
89 power and other services.
- 90 (23) 'Substantial modification' means a proposed modification to an existing wireless  
91 support structure or base station which will change the physical dimensions of the  
92 wireless support structure or base station by installing new equipment cabinets for the  
93 technology involved resulting in more than four cabinets total, by installing new  
94 equipment cabinets on the ground if there are no preexisting ground cabinets associated  
95 with the structure, or by installing ground cabinets that are more than 10 percent larger  
96 in height or overall volume than any other ground cabinets associated with the structure.
- 97 (24) 'Telecommunications carrier' shall have the same meaning as provided in 47 U.S.C.  
98 Section 153(51), as it existed on January 1, 2018.

99 (25) 'Utility pole' means a pole or similar structure that is or may be used in whole or in  
 100 part by or for wireline communications, electric distribution, lighting, traffic control,  
 101 signage, or a similar function, or for the collocation of small wireless facilities. The term  
 102 shall not include poles or similar structures owned by an electric membership  
 103 corporation, wireless support structures, or electric transmission structures.

104 (26) 'Wireless facility' means equipment at a fixed location that enables wireless  
 105 communications or surface wave communications between user equipment or nodes of  
 106 a communications network, or both, including:

107 (A) Equipment associated with wireless communications or surface wave  
 108 communications; and

109 (B) Radio transceivers, surface wave couplers, antennas, coaxial or fiber optic cables,  
 110 regular and backup power supplies, and comparable equipment, regardless of  
 111 technological configuration.

112 The term shall include small wireless facilities. Such term shall not include the structure  
 113 or improvements on, under, or within which the equipment is collocated nor shall it  
 114 include coaxial or fiber optic cable that is between wireless structures or utility poles or  
 115 that is otherwise not immediately adjacent to or directly associated with a particular  
 116 antenna.

117 (27) 'Wireless infrastructure provider' means any person, including a person authorized  
 118 to provide telecommunications service in this state, that builds or installs wireless or  
 119 surface wave communication transmission equipment, wireless facilities, or wireless  
 120 support structures but that is not a wireless services provider.

121 (28) 'Wireless provider' means a wireless infrastructure provider or a wireless services  
 122 provider.

123 (29) 'Wireless services' means any services provided using a licensed or unlicensed  
 124 spectrum including, but not limited to the use of Wi-Fi, whether at a fixed location or  
 125 mobile, using wireless facilities.

126 (30) 'Wireless services provider' means a person that provides wireless services.

127 (31) 'Wireless support structure' means a structure, such as a monopole; tower, either  
 128 guyed or self-supporting; billboard; or other existing or proposed structure designed to  
 129 support or capable of supporting wireless facilities. Such term shall not include a utility  
 130 pole.

131 36-66C-2.

132 (a) The provisions of this Code section shall only apply to the collocation of small wireless  
 133 facilities on utility poles and wireless support structures, and the deployment of utility  
 134 poles to support small wireless facilities, by a wireless provider within a right of way.

135 (b)(1) Subject to the provisions of this Code section and approval of an application  
 136 pursuant to Code Section 36-66C-3, if required, a wireless provider shall have the right  
 137 to collocate small wireless facilities and construct, install, maintain, modify, operate, and  
 138 replace utility poles along, across, upon, and under a right of way.

139 (2) The utility poles and small wireless facilities provided for in paragraph (1) of this  
 140 subsection shall be so constructed and maintained as not to obstruct or hinder the usual  
 141 travel or public safety on such right of way or obstruct the legal use of such right of way  
 142 by other utilities. Each new or modified utility pole installed in the right of way shall not  
 143 exceed the greater of:

144 (A) Ten feet in height above the tallest existing utility pole in place as of  
 145 January 1, 2018, located within 500 feet of the new pole in the same right of way; or  
 146 (B) Fifty feet above ground level.

147 (3) New small wireless facilities in a right of way may not extend:

148 (A) More than ten feet above any utility pole or wireless support structure in place as  
 149 of January 1, 2018; or

150 (B) Above the height permitted for a new utility pole under this Code section.

151 (4) A wireless provider may collocate small wireless facilities that exceed the height  
 152 limits in paragraph (3) of this subsection and construct, install, maintain, modify, operate,  
 153 and replace utility poles that exceed the height limits in paragraph (2) of this subsection  
 154 along, across, upon, and under a right of way if the authority approves an application for  
 155 such activities under Code Section 36-66C-4. A wireless provider may collocate wireless  
 156 facilities that are not small wireless facilities and construct, install, maintain, modify,  
 157 operate, and replace wireless support structures along, across, upon, and under a right of  
 158 way if such wireless provider has an arrangement with the authority allowing such  
 159 activities and if the authority approves an application for the deployment under Code  
 160 Section 36-66C-4.

161 (5) A wireless provider shall comply with reasonable and nondiscriminatory  
 162 requirements that prohibit communications services providers from installing utility poles  
 163 in a right of way in an area designated solely for underground or buried cable and utility  
 164 facilities where the authority:

165 (A) Has required all cable and utility facilities other than authority poles and  
 166 attachments to be placed underground by a date certain that is three months prior to the  
 167 submission of the application;

168 (B) Does not prohibit the replacement of authority poles or the collocation of small  
 169 wireless facilities in the designated area; and

170 (C) Permits wireless providers to seek a waiver of the underground requirements for  
 171 the placement of a new utility pole to support small wireless facilities, which waivers

172 shall be addressed in a nondiscriminatory manner that does not have the effect of  
173 prohibiting the provision of wireless service to any location.

174 (c) The authority, in the exercise of its administration and regulation related to the  
175 management of a right of way, shall be competitively neutral with regard to other users of  
176 such right of way, and terms shall not be unreasonable or discriminatory and shall not  
177 violate any applicable law. The authority shall not enter into an exclusive arrangement  
178 with any person for use of the right of way for the collocation of small wireless facilities  
179 or the installation, operation, marketing, maintenance, modification, or replacement of  
180 utility poles or wireless support structures.

181 (d) If the authority determines that a wireless provider's activity in a right of way pursuant  
182 to this Code section creates an imminent risk to public safety, the authority may provide  
183 written notice to the wireless provider and demand that such provider address such risk.  
184 If the wireless provider fails to reasonably address the risk with 24 hours of the written  
185 notice, the authority may take or cause to be taken actions to reasonably address such risk  
186 and charge such wireless provider the reasonable documented cost of such actions.

187 (e) The authority may require a wireless provider to repair all damage to a right of way  
188 directly caused by the activities of such wireless provider, while occupying, installing,  
189 repairing, or maintaining wireless facilities, wireless support structures, or utility poles in  
190 the right of way, and to return the right of way to its functional equivalence before the  
191 damage pursuant to the competitively neutral, reasonable requirements and specifications  
192 of the authority. If the wireless provider fails to make the repairs required by the authority  
193 within 60 days after written notice, the authority may effect those repairs and charge the  
194 applicable party the reasonable documented cost of such repairs.

195 (f) Nothing in this chapter precludes an authority from adopting reasonable and  
196 nondiscriminatory requirements with respect to the removal of abandoned small wireless  
197 facilities. A small wireless facility that is not operated for a continuous period of 12  
198 months shall be considered abandoned and the owner of such wireless facility must remove  
199 such small wireless facility within 90 days after receipt of written notice from the authority  
200 notifying such owner of such small wireless facility of the abandonment. The authority  
201 shall send the notice by certified or registered mail, return receipt requested, to such owner  
202 at the last known address of such owner of the small wireless facility. If the owner neither  
203 provides written notice that the small wireless facility has not been out of operation for a  
204 continuous period of 12 months nor removes such small wireless facility within the 90 day  
205 period, the authority may remove or cause the removal of such small wireless facility  
206 pursuant to the terms of its wireless support structure or utility pole attachment agreement  
207 for authority poles or through whatever actions are provided for abatement of nuisances or  
208 by other law for removal and cost recovery.

209 (g) If, in the reasonable exercise of its police powers, the Department of Transportation  
210 or a local governing authority requires the widening, repair, reconstruction, or relocation  
211 of a public road or highway, a wireless provider shall relocate utility poles or wireless  
212 support structures it has installed in the right of way for the collocation of wireless facilities  
213 pursuant to this Code section at no cost to the Department of Transportation or local  
214 governing authority should such poles be found by the Department of Transportation or  
215 local governing authority to be unreasonably interfering with the widening, repair,  
216 reconstruction, or relocation project. If widening, repair, reconstruction, or relocation is  
217 required as a condition or result of a project by an entity other than the Department of  
218 Transportation or a local governing authority, the other entity shall bear the cost of  
219 relocating such wireless support structures or utility poles. The wireless provider shall  
220 relocate the wireless support structures or utility poles after it receives notice from the  
221 Department of Transportation or local governing authority and within the time reasonably  
222 provided for the relocation of other similarly situated structures.  
223 (h) An authority shall not assess a rate for occupancy of the right of way pursuant to  
224 paragraph (1) of subsection (b) of this Code section that exceeds, in total, an amount equal  
225 to \$20 per year per small wireless facility.

226 36-66C-3.

227 (a) The provisions of this Code section shall apply to the collocation of small wireless  
228 facilities that comply with the height requirements of paragraph (3) of subsection (b) of  
229 Code Section 36-66C-2 by a wireless provider inside the right of way and to the permitting  
230 of the construction, installation, maintenance, modification, operation, and replacement of  
231 utility poles that comply with paragraph (2) of subsection (b) of Code Section 36-66C-2  
232 by a wireless provider inside the right of way.

233 (b) Except as otherwise provided in this chapter, an authority may not prohibit, regulate,  
234 or charge for the collocation of small wireless facilities.

235 (c) An authority may require an applicant to obtain one or more permits to collocate a  
236 small wireless facility or to construct, install, maintain, modify, operate, or replace a utility  
237 pole, provided that such permits are of general applicability and do not apply exclusively  
238 to small wireless facilities. An authority shall receive applications for, process, and issue  
239 such permits subject to the following requirements:

240 (1) An authority may not directly or indirectly require an applicant to perform services  
241 unrelated to the collocation for which approval is sought, such as in-kind contributions  
242 to the authority, including reserving fiber, conduit, or space on a utility pole or a wireless  
243 support structure for the authority, and such authority may not require an applicant to  
244 transfer small wireless facilities or wireless support structures to the authority, provided

245 that the authority may require transfer of an authority pole replaced by the applicant to  
246 accommodate its collocation;

247 (2) An applicant shall not be required to provide more information to obtain a permit  
248 than communications services providers that are not wireless providers; provided,  
249 however, that an applicant shall be required to include construction and engineering  
250 drawings and information demonstrating compliance with the criteria in paragraph (6) of  
251 this subsection;

252 (3) Within 20 days of receiving an application, an authority shall determine and notify  
253 the applicant whether the application is complete. If an application is incomplete, the  
254 authority shall specifically identify the missing information and the applicant may cure  
255 the deficiencies identified by the authority and resubmit the application within 20 days  
256 of the notice without paying an additional application fee. The processing deadline in  
257 paragraph (5) of this subsection shall be tolled from the time the authority sends the  
258 notice of incompleteness to the time the applicant provides the missing information, and  
259 such processing deadline also may be tolled by agreement of the applicant and the  
260 authority;

261 (4) The authority may require an applicant to include an attestation that the small  
262 wireless facilities will be operational for use by a wireless services provider within nine  
263 months after the permit issuance date, unless the authority and the applicant agree to  
264 extend such period or delay occurs due to lack of power to the wireless support structure  
265 or utility pole or lack of communications transport facilities to the wireless support  
266 structure or utility pole;

267 (5) An application shall be processed on a nondiscriminatory basis and deemed approved  
268 if the authority fails to approve or deny the application within 75 days. An applicant shall  
269 inform the authority in writing when it intends to act upon an application that has been  
270 deemed approved pursuant to this subsection;

271 (6) An authority shall approve an application unless it:

272 (A) Materially interferes with the operation of traffic control equipment;

273 (B) Materially interferes with sight lines or clear zones for transportation or  
274 pedestrians;

275 (C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section  
276 12101, et seq., or similar federal or state standards regarding pedestrian access or  
277 movement;

278 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of  
279 general application adopted by ordinance concerning the location of ground mounted  
280 equipment or new utility poles. Such spacing requirements shall not prevent a wireless  
281 provider from serving any location; or



282 (E) Fails to comply with applicable codes;

283 (7) The authority shall document the basis for a denial, including the specific provisions  
 284 of law on which the denial was based, and send the documentation to the applicant on or  
 285 before the day the authority denies an application. The applicant may cure the  
 286 deficiencies identified by the authority and resubmit the application within 30 days of the  
 287 denial without paying an additional application fee. The authority shall approve or deny  
 288 the revised application within 30 days. Any subsequent review shall be limited to the  
 289 deficiencies cited in the denial;

290 (8) An applicant seeking to collocate small wireless facilities within the jurisdiction of  
 291 a single authority shall be allowed at the applicant's discretion to file a consolidated  
 292 application and receive a single permit for the collocation of multiple small wireless  
 293 facilities; provided, however, that the denial of one or more small wireless facilities in a  
 294 consolidated application shall not delay processing of any other small wireless facilities  
 295 in the same application;

296 (9) Collocation for which a permit is granted shall be operational for use by a wireless  
 297 service provider within nine months after the permit issuance date unless the authority  
 298 and the applicant agree to extend this period or a delay occurs due to lack of power to the  
 299 wireless support structure or utility pole or lack of communications facilities to the  
 300 wireless support structure or utility pole. Approval of an application authorizes the  
 301 applicant to:

302 (A) Undertake the installation or collocation; and

303 (B) Subject to applicable relocation requirements and the applicant's right to terminate  
 304 at any time, operate and maintain the small wireless facilities and any associated utility  
 305 poles covered by the permit for a period of not less than ten years, which shall be  
 306 renewed for equivalent durations so long as they are in compliance with the criteria set  
 307 forth in paragraph (6) of this subsection; and

308 (10) An authority may not institute, either expressly or de facto, a moratorium on:

309 (A) Filing, receiving, or processing applications; or

310 (B) Issuing permits or other approvals, if any, for the collocation of small wireless  
 311 facilities.

312 (d) Application fees shall be subject to the following requirements:

313 (1) An authority may charge an application fee only if such fee is required for similar  
 314 types of commercial development within the authority's jurisdiction;

315 (2) An authority shall only charge fees for the actual, direct, and reasonable costs  
 316 incurred by the authority relating to the granting or processing of an application. Such  
 317 fees shall be reasonably related in time to the incurring of such costs. Where such costs

318 are already recovered by existing fees, rates, or taxes paid by a wireless provider, no  
319 application fee shall be assessed to recover such costs;

320 (3) A fee may not include:

321 (A) Travel expenses incurred by a third party in its review of an application; or

322 (B) Direct payment or reimbursement of third-party rates or fees charged on a  
323 contingency basis or a result based arrangement;

324 (4) In any controversy concerning the appropriateness of a fee, the authority shall have  
325 the burden of proving that the fee is reasonably related to the actual, direct, and  
326 reasonable costs incurred by the authority;

327 (5) Except as provided in paragraph (6) of this subsection, total application fees, where  
328 permitted, shall not exceed the lesser of the amount charged by the authority for:

329 (A) A building permit for any similar commercial construction, activity, or land use  
330 development; or

331 (B) One hundred dollars each for up to five small wireless facilities addressed in an  
332 application and \$50.00 for each additional small wireless facility addressed in the  
333 application; and

334 (6) For the collocation of small cell wireless facilities on authority poles that are not  
335 owned or operated by an entity through which a municipality furnishes retail electric  
336 service, total application fees shall not exceed the lesser of the amount charged by the  
337 authority for:

338 (A) A building permit for any similar commercial construction, activity, or land use  
339 development; or

340 (B) Two hundred dollars each for up to five small wireless facilities addressed in an  
341 application and \$100.00 for each additional small wireless facility addressed in the  
342 application.

343 (e)(1) An authority shall not require an application for:

344 (A) Routine maintenance; or

345 (B) The replacement of wireless facilities with wireless facilities that are substantially  
346 similar in nature or the same size or smaller.

347 (2) An authority may, however, require a permit to work within a right of way for such  
348 activities, if applicable. Any such permits shall be subject to the requirements provided  
349 in subsections (c) and (d) of this Code section.

350 (f) A local governing authority shall not require an application for the installation,  
351 placement, maintenance, operation, or replacement of micro wireless facilities that are  
352 strung or clamped on cables or power lines between existing utility poles, in compliance  
353 with the National Electrical Safety Code. A local governing authority may, however,  
354 require a permit to work within the right of way for such activities, if applicable. Any such

355 permits shall be subject to the requirements provided in subsections (c) and (d) of this Code  
 356 section. Nothing in this subsection allows the installation, placement, maintenance,  
 357 operation, or replacement of micro wireless facilities on such cables or power lines without  
 358 the agreement, authorization or permission of the person owning, managing, or controlling  
 359 such cables or power lines.

360 (g) If multiple applications are received by the authority to install two or more utility poles  
 361 that would violate applicable spacing requirements under subparagraph (c)(6)(D) of this  
 362 Code section, or to collocate two or more small wireless facilities on the same wireless  
 363 support structure or utility pole, the authority shall resolve conflicting requests in an  
 364 appropriate, reasonable, and nondiscriminatory manner.

365 36-66C-4.

366 (a) The provisions of this Code section shall apply to reviews of applications for the  
 367 construction, installation, maintenance, modification, operation, or replacement of wireless  
 368 facilities, wireless support structures, and utility poles and for substantial modifications  
 369 inside the right of way. The provisions of the Code section shall not apply to the  
 370 collocation of small wireless facilities or the permitting of the construction, installation,  
 371 maintenance, modification, operation, and replacement of utility poles to which Code  
 372 section 36-66C-3 applies.

373 (b) Authorities shall process applications within the following time frames:

374 (1) Within 30 days of receiving an application under this Code section, an authority shall  
 375 notify the applicant as to whether the application is complete, and if incomplete, the  
 376 authority shall specifically identify the missing information;

377 (2) An application under this Code section shall be processed on a nondiscriminatory  
 378 basis and deemed approved if the authority fails to approve or deny the application  
 379 within 150 calendar days of receipt of an application for installation of a new wireless  
 380 support structure or within 90 calendar days of receipt of an application described in  
 381 subsection (a) of this Code section or for a substantial modification. The time period for  
 382 approval may be tolled to accommodate timely requests for information required to  
 383 complete the application or may be extended by mutual agreement between the applicant  
 384 and the authority; and

385 (3) A decision to deny an application pursuant to this Code section shall be in writing  
 386 and supported by substantial evidence contained in a written record and publicly released  
 387 contemporaneously. If an authority denies an application, there must be a reasonable  
 388 basis for the denial. An authority shall not deny an application if such denial is  
 389 discriminatory against the applicant with respect to the placement of the facilities of other  
 390 wireless providers.

391 (c) Application fees shall be subject to the same requirements as in subsection (d) of Code  
 392 Section 36-66C-3 and total application fees, where permitted, shall not exceed the lesser  
 393 of the amount charged by the authority for:

394 (1) A building permit for any similar commercial construction, activity, or land use  
 395 development; or

396 (2) One thousand dollars for a new wireless support structure or a substantial  
 397 modification of a wireless support structure.

398 (d) An authority shall receive and process applications under this Code section subject to  
 399 the following requirements:

400 (1) An applicant's business decision on the type and location of wireless facilities,  
 401 wireless support structures, utility poles, or technology to be used shall be presumed  
 402 reasonable. This presumption shall not apply with respect to the height of wireless  
 403 facilities, wireless support structures, or utility poles. An authority may consider the  
 404 height of such structures in its review of an application, provided that it may not  
 405 unreasonably discriminate between the applicant and other communications services  
 406 providers;

407 (2) An authority shall not require an applicant to submit information about an applicant's  
 408 business decisions with respect to the need for the wireless facilities, wireless support  
 409 structure, or utility pole;

410 (3) An authority shall not require an applicant to submit information about or evaluate  
 411 an applicant's business decisions with respect to its service, customer demand for service,  
 412 or quality of service;

413 (4) Any requirements regarding the appearance of facilities, including those relating to  
 414 materials used for arranging, screening, or landscaping, must be reasonable;

415 (5) Any setback or fall zone requirements must be substantially similar to such a  
 416 requirement that is imposed on other types of commercial structures of a similar height;

417 (6) An approval term of an application shall be without expiration, except that  
 418 construction of the approved structure or facilities shall commence within one year of  
 419 final approval, and be diligently pursued to completion; and

420 (7) An authority may not institute, either expressly or de facto, a moratorium on:

421 (A) Filing, receiving, or processing applications; or

422 (B) Issuing approvals for substantial modifications or installations that are subject to  
 423 this Code section.

424 36-66C-5.

425 (a) An authority shall not enter into an exclusive arrangement with any person for the right  
 426 to attach to authority poles. A person who purchases or otherwise acquires an authority

427 pole is subject to the requirements of this Code section unless such requirements are  
428 contrary to federal law.

429 (b) Except as set forth in subsection (c) of this Code section, the rates and fees for  
430 collocations on authority poles shall be nondiscriminatory regardless of the services  
431 provided by the collocating wireless provider and shall not exceed \$40.00 per year per  
432 authority pole.

433 (c) To the extent that a written agreement between a wireless provider and an authority  
434 providing rates and fees for collocations on poles owned or operated by any entity through  
435 which a municipality furnishes retail electric service becomes effective between June 1,  
436 2018, and May 31, 2019, such rates and fees shall apply as set forth in such agreement.

437 (d) In any controversy concerning the appropriateness of a rate for an authority pole, the  
438 authority shall have the burden of proving that the rates are reasonably related to the actual,  
439 direct, and reasonable costs incurred for use of space on the pole for such period. This  
440 subsection shall not apply to rates and fees for collocations on authority poles set forth in  
441 a written agreement described in subsection (c) of this Code section.

442 (e) Should an authority have an existing authority pole attachment rate, fee, or other term  
443 that does not comply with the requirements of this Code section, it shall reform such rate,  
444 fee, or term in compliance with this Code section by January 1, 2019.

445 (f) Authorities shall offer rates, fees, and other terms that comply with subsections (b)  
446 through (e) of this Code section. On and after January 1, 2019, an authority shall make  
447 available the rates, fees, and terms for the collocation of small wireless facilities on  
448 authority poles that comply with the following:

449 (1) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and  
450 commercially reasonable and shall comply with this chapter. Such rates, fees, and terms  
451 shall be made publicly available so that a wireless provider may accept them without  
452 negotiation. Documents reflecting the rates, fees, and terms entered into with each  
453 wireless provider shall be made publicly available;

454 (2) For make-ready work required for authority poles that support aerial cables used for  
455 the provision of services by communications services providers or for electric service, the  
456 parties shall comply with all applicable federal laws and rules and regulations  
457 promulgated thereunder as such existed on January 1, 2018, including, but not limited to  
458 47 U.S.C. Section 224. The good faith estimate of the person owning or controlling the  
459 authority pole for any make-ready work necessary to enable the authority pole to support  
460 the requested collocation shall include authority pole replacement if necessary;

461 (3) For authority poles that do not support aerial cables used for video, communications  
462 service, or electric service, the authority shall provide a good faith estimate for any  
463 make-ready work necessary to enable the authority pole to support the requested

464 collocation, including authority pole replacement if necessary, within 60 days after  
465 receipt of a complete application. Make-ready work including any authority pole  
466 replacement shall be completed within 60 days of written acceptance of the good faith  
467 estimate by the applicant; and

468 (4) An authority shall not require more make-ready work than required to meet  
469 applicable codes or the authority's generally applicable safety, reliability, or engineering  
470 standards that reasonably accommodate the collocation of small wireless facilities. Fees  
471 for make-ready work shall not include costs related to preexisting or prior damage or  
472 noncompliance. Fees for make-ready work including any authority pole replacement  
473 shall not exceed actual costs or the amount charged to other communications services  
474 providers for similar work and shall not include any consultants' fees or expenses.

475 (g) An authority shall authorize the collocation of small wireless facilities on authority  
476 poles and wireless support structures owned or controlled by an authority that are not  
477 located within the right of way to the same extent the authority permits access to such  
478 structures for other commercial projects or uses. Such collocations shall be subject to  
479 reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement  
480 between the authority and the wireless provider.

481 36-66C-6.

482 Nothing in this chapter shall authorize this state or any political subdivision thereof,  
483 including, but not limited to, an authority, to require wireless facility deployment or to  
484 regulate wireless services.

485 36-66C-7.

486 A court of competent jurisdiction shall have jurisdiction to determine all disputes arising  
487 under this chapter.

488 36-66C-8.

489 (a) An authority shall not require a communications services provider to indemnify and  
490 hold the authority and its officers and employees harmless against any claims, lawsuits,  
491 judgments, costs, liens, losses, expenses, or fees, except when a court of competent  
492 jurisdiction has found that the negligence of the communications services provider while  
493 installing, repairing, or maintaining caused the harm that created such claims, lawsuits,  
494 judgments, costs, liens, losses, expenses, or fees, or to require a communications service  
495 provider to obtain insurance naming the authority or its officers and employees an  
496 additional insured against any of the foregoing.

497 (b) In no event shall any authority or any officer, employee, or agent affiliated therewith  
498 be liable for any claim related to the siting or location of wireless equipment, facilities,  
499 poles, or infrastructure, including, but not limited to, any claim for destruction, damage,  
500 business interruption, or signal interference with other communications services providers  
501 wherein such siting or location and associated installation and permitting was undertaken  
502 in substantial compliance with this chapter. This subsection shall not apply to gross  
503 negligence or willful misconduct.

504 36-66C-9.

505 This chapter fully occupies the entire field governing the placement and regulation of small  
506 wireless facilities and associated utility poles in the public right of way and supersedes and  
507 preempts any ordinance, resolution, or similar matter adopted by a municipality or county  
508 that purports to address or otherwise regulate the placement of such small wireless facilities  
509 and utility poles in the public right of way."

510 **SECTION 3.**

511 This Act shall become effective on July 1, 2018.

512 **SECTION 4.**

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