

The Senate Committee on Regulated Industries and Utilities offered the following substitute to SB 426:

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:

SECTION 1.

20 This Act shall be known and may be cited as the "Broadband Infrastructure Leads to
21 Development (BILD) Act."
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SECTION 2.

23 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
24 by adding a new chapter to read as follows:
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"CHAPTER 66C

36-66C-1.

As used in this chapter, the term:

(1) 'Antenna' means:

(A) Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services; or

(B) Similar equipment used for the transmission or reception of surface waves.

(2) 'Applicable codes' means:

(A) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.; and

(B) The state minimum standard codes identified in Code Section 8-2-20.

(3) 'Applicant' means any wireless provider that submits an application to an authority pursuant to this chapter.

(4) 'Application' means a request submitted by an applicant to an authority:

(A) For a permit to collocate small wireless facilities; or

(B) To secure approval for the construction, installation, maintenance, modification, operation, or replacement of a utility pole or a wireless support structure.

(5) 'Authority' means any local governing authority, including without limitation any entity through which a municipality furnishes retail electric service.

(6) 'Authority pole' means a utility pole owned or operated by an authority in a right of way.

(7) 'Base station' means wireless facilities or a wireless support structure or utility pole that currently supports wireless facilities. The term shall not include a tower or any equipment associated with a tower.

(8) 'Cable operator' shall have the same meaning as provided in 47 U.S.C. Section 522(5), as it existed on January 1, 2018.

(9) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole.

(10) 'Communications facility' means that set of equipment and network components including wires and cables and associated facilities used by a communications service provider to provide communications service.

(11) 'Communications service' means cable service as defined in 47 U.S.C. Section 522 (6), as it existed on January 1, 2018, telecommunications service as defined in 47 U.S.C. Section 153(53), as it existed on January 1, 2018, information service as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or wireless services.

- 62 (12) 'Communications service provider' means a cable operator as defined in 47 U.S.C.
63 § 522(5), as it existed on January 1, 2018, a telecommunications carrier as defined in 47
64 U.S.C. § 153(51), as it existed on January 1, 2018, a provider of information service as
65 defined in 47 U.S.C. §153(24), as it existed on January 1, 2018, or a wireless provider.
- 66 (13) 'Decorative pole' means a pole owned by an authority that is specially designed and
67 placed for aesthetic purposes and on which no appurtenances or attachments, other than
68 light fixtures, a small wireless facility, specially designed informational or directional
69 signage, or temporary holiday or special event attachments, have been placed or are
70 permitted to be placed according to nondiscriminatory resolutions, ordinances, or codes
71 of such authority.
- 72 (14) 'Electric membership corporation' shall have the same meaning provided in Code
73 Section 46-3-171.
- 74 (15) 'Fee' means a one-time charge.
- 75 (16) 'Historic district' means a group of buildings, properties, or sites that are either listed
76 in the National Register of Historic Places or formally determined eligible for listing by
77 the Keeper of the National Register, the individual who has been delegated the authority
78 by the federal agency to list properties and determine their eligibility for the National
79 Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic
80 Agreement codified at 47 C.F.R. Part 1, Appendix C.
- 81 (17) 'Information service' shall have the same meaning as provided in 47 U.S.C. Section
82 153(24), as it existed on January 1, 2018.
- 83 (18) 'Interstate highways' shall have the same meaning as provided in Code Section
84 32-1-3.
- 85 (19) 'Law' means any federal, state, or local law, statute, common law, code, rule,
86 regulation, order, or ordinance.
- 87 (20) 'Local governing authority' means a municipality or county that has adopted land
88 use or zoning regulations for all or the majority of land use within its jurisdiction or has
89 adopted separate regulations pertaining to the location, construction, collocation,
90 modification, or operation of wireless facilities.
- 91 (21) 'Micro wireless facility' means a small wireless facility not larger in dimension than
92 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior
93 antenna, if any, no longer than 11 inches.
- 94 (22) 'Permit' means a written authorization required by an authority to perform an action
95 or initiate, continue, or complete a project.
- 96 (23) 'Person' means an individual, corporation, limited liability company, partnership,
97 association, trust, or other entity or organization, including an authority.
- 98 (24) 'Rate' means a recurring charge.

- 99 (25) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3.
 100 The term shall not include interstate highways.
- 101 (26) 'Small wireless facility' means a wireless facility that meets both of the following
 102 qualifications:
- 103 (A) Each wireless provider's antenna could fit within an enclosure of no more than six
 104 cubic feet in volume; and
- 105 (B) All other wireless equipment associated with the facility is cumulatively no more
 106 than 28 cubic feet in volume. The following types of associated ancillary equipment
 107 shall not be included in the calculation of equipment volume: electric meters,
 108 concealment elements, telecommunications demarcation boxes, grounding equipment,
 109 power transfer switches, cut-off switches, and vertical cable runs for the connection of
 110 power and other services.
- 111 (27) 'Substantial modification' means a proposed modification to an existing wireless
 112 support structure or base station which will change the physical dimensions of the
 113 wireless support structure or base station by installing new equipment cabinets for the
 114 technology involved resulting in more than four cabinets total, by installing new
 115 equipment cabinets on the ground if there are no preexisting ground cabinets associated
 116 with the structure, or by installing ground cabinets that are more than 10 percent larger
 117 in height or overall volume than any other ground cabinets associated with the structure.
- 118 (28) 'Telecommunications carrier' shall have the same meaning as provided in 47 U.S.C.
 119 Section 153(51), as it existed on January 1, 2018.
- 120 (29) 'Utility pole' means a pole or similar structure that is or may be used in whole or in
 121 part by or for wireline communications, electric distribution, lighting, traffic control,
 122 signage, or a similar function, or for the collocation of small wireless facilities.
- 123 (30) 'Wireless facility' means equipment at a fixed location that enables wireless
 124 communications or surface wave communications between user equipment or nodes of
 125 a communications network, or both, including:
- 126 (A) Equipment associated with wireless communications or surface wave
 127 communications; and
- 128 (B) Radio transceivers, surface wave couplers, antennas, coaxial or fiber optic cables,
 129 regular and backup power supplies, and comparable equipment, regardless of
 130 technological configuration.
- 131 The term shall include small wireless facilities. Such term shall not include the structure
 132 or improvements on, under, or within which the equipment is collocated nor shall it
 133 include wireline backhaul facilities or coaxial or fiber optic cable that is between wireless
 134 structures or utility poles or that is otherwise not immediately adjacent to or directly
 135 associated with a particular antenna.

136 (31) 'Wireless infrastructure provider' means any person, including a person authorized
 137 to provide telecommunications service in this state, that builds or installs wireless or
 138 surface wave communication transmission equipment, wireless facilities, or wireless
 139 support structures but that is not a wireless services provider.

140 (32) 'Wireless provider' means a wireless infrastructure provider or a wireless services
 141 provider.

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

145 (34) 'Wireless services provider' means a person that provides wireless services.

146 (35) 'Wireless support structure' means a structure, such as a monopole; tower, either
 147 guyed or self-supporting; billboard; or other existing or proposed structure designed to
 148 support or capable of supporting wireless facilities. Such term shall not include a utility
 149 pole.

150 (36) 'Wireline backhaul facility' means an above-ground or underground facility used to
 151 transport communications data from a wireless facility to a network.

152 36-66C-2.

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

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

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

165 (A) Ten feet in height above the tallest existing utility pole in place as of
 166 January 1, 2018, located within 500 feet of the new pole in the same right of way; or

167 (B) Fifty feet above ground level.

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

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

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

172 (4) A wireless provider may collocate small wireless facilities that exceed the height
173 limits in paragraph (3) of this subsection and construct, install, maintain, modify, operate,
174 and replace utility poles that exceed the height limits in paragraph (2) of this subsection
175 along, across, upon, and under a right of way if the authority approves an application for
176 such activities under Code Section 36-66C-4. A wireless provider may collocate wireless
177 facilities that are not small wireless facilities and construct, install, maintain, modify,
178 operate, and replace wireless support structures along, across, upon, and under a right of
179 way if such wireless provider has an arrangement with the authority allowing such
180 activities and if the authority approves an application for the deployment under Code
181 Section 36-66C-4.

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

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

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

191 (C) Permits wireless providers to seek a waiver of the underground requirements for
192 the placement of a new utility pole to support small wireless facilities, which waivers
193 shall be addressed in a nondiscriminatory manner that does not have the effect of
194 prohibiting the provision of wireless services to any location.

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

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

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

216 (f) Nothing in this chapter precludes an authority from adopting reasonable and
217 nondiscriminatory requirements with respect to the removal of abandoned small wireless
218 facilities. A small wireless facility that is not operated for a continuous period of 12
219 months shall be considered abandoned and the owner of such wireless facility must remove
220 such small wireless facility within 90 days after receipt of written notice from the authority
221 notifying such owner of such small wireless facility of the abandonment. The authority
222 shall send the notice by certified or registered mail, return receipt requested, to such owner
223 at the last known address of such owner of the small wireless facility. If the owner neither
224 provides written notice that the small wireless facility has not been out of operation for a
225 continuous period of 12 months nor removes such small wireless facility within the 90 day
226 period, the authority may remove or cause the removal of such small wireless facility
227 pursuant to the terms of its wireless support structure or utility pole attachment agreement
228 for authority poles or through whatever actions are provided for abatement of nuisances or
229 by other law for removal and cost recovery.

230 (g) If, in the reasonable exercise of its police powers, the Department of Transportation
231 or a local governing authority requires the widening, repair, reconstruction, or relocation
232 of a public road or highway, a wireless provider shall relocate utility poles or wireless
233 support structures it has installed in the right of way for the collocation of wireless facilities
234 pursuant to this Code section at no cost to the Department of Transportation or local
235 governing authority should such poles be found by the Department of Transportation or
236 local governing authority to be unreasonably interfering with the widening, repair,
237 reconstruction, or relocation project. If widening, repair, reconstruction, or relocation is
238 required as a condition or result of a project by an entity other than the Department of
239 Transportation or a local governing authority, the other entity shall bear the cost of
240 relocating such wireless support structures or utility poles. The wireless provider shall
241 relocate the wireless support structures or utility poles after it receives notice from the
242 Department of Transportation or local governing authority and within the time reasonably
243 provided for the relocation of other similarly situated structures.

244 (h) An authority shall not assess a rate for occupancy of the right of way pursuant to
245 paragraph (1) of subsection (b) of this Code section that exceeds, in total, an amount equal
246 to \$20 per year per small wireless facility.

247 (i) Subject to Code Section 36-66C-3, and except for facilities excluded from evaluation
248 for effects on historic properties under 47 C.F.R. § 1.1307(a)(4), as such existed on
249 January 1, 2018, an authority may require reasonable, technically feasible,
250 nondiscriminatory and technologically neutral design or concealment measures in a historic
251 district. Any such design or concealment measures shall not have the effect of prohibiting
252 any provider's technology; nor shall any such measures be considered a part of the small
253 wireless facility for purposes of the size restrictions provided in paragraph (26) of Code
254 Section 36-66C-1.

255 (j) An authority may adopt written guidelines establishing reasonable and objective stealth
256 or concealment criteria for small wireless facilities in designated downtown or residential
257 areas, reasonable and objective design criteria for small wireless facilities to be collocated
258 on decorative poles, and reasonable and objective design criteria for utility poles deployed
259 in areas with decorative poles. Such guidelines may be adopted only if they apply on a
260 nondiscriminatory basis to all other occupants of the right of way, including the authority
261 itself. A wireless provider that seeks to collocate small wireless facilities on a decorative
262 pole shall comply with Code Section 36-66C-3. A wireless provider that is required to
263 replace a decorative pole in compliance with Code Section 36-66C-3 shall conform the new
264 decorative pole to the design aesthetics and material look of the decorative pole being
265 replaced.

266 36-66C-3.

267 (a) The provisions of this Code section shall apply to the collocation of small wireless
268 facilities that comply with the height requirements of paragraph (3) of subsection (b) of
269 Code Section 36-66C-2 by a wireless provider inside a right of way and to the permitting
270 of the construction, installation, maintenance, modification, operation, and replacement of
271 utility poles that comply with paragraph (2) of subsection (b) of Code Section 36-66C-2
272 by a wireless provider inside such right of way.

273 (b) The authority may require a wireless provider to certify, as part of an application to
274 install a utility pole, that after diligent investigation such wireless provider has determined
275 that it cannot meet the service objectives of the permit request by collocating small wireless
276 facilities on an existing structure:

277 (1) On which it has the right to collocate subject to reasonable terms and conditions; and
278 (2) That collating on an existing structure would impose technical limitations or
279 additional costs.

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

285 (1) An authority may not directly or indirectly require an applicant to perform services
286 unrelated to the collocation for which approval is sought, such as in-kind contributions
287 to the authority, including reserving fiber, conduit, or space on a utility pole or a wireless
288 support structure for the authority, and such authority may not require an applicant to
289 transfer small wireless facilities or wireless support structures to the authority, provided
290 that the authority may require transfer of an authority pole replaced by the applicant to
291 accommodate its collocation;

292 (2) An applicant shall not be required to provide more information to obtain a permit
293 than communications service providers that are not wireless providers; provided,
294 however, that an applicant shall be required to include construction and engineering
295 drawings and information demonstrating compliance with the criteria in paragraph (6) of
296 this subsection;

297 (3) Within 30 days of receiving an application, an authority shall determine and notify
298 the applicant whether the application is complete. If an application is incomplete, the
299 authority shall specifically identify the missing information and the applicant may cure
300 the deficiencies identified by the authority and resubmit the application within 20 days
301 of the notice without paying an additional application fee. The processing deadline in
302 paragraph (5) of this subsection shall be tolled from the time the authority sends the
303 notice of incompleteness to the time the applicant provides the missing information, and
304 such processing deadline also may be tolled by agreement of the applicant and the
305 authority;

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

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

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

- 317 (A) Materially interferes with the operation of traffic control equipment;
318 (B) Materially interferes with sight lines or clear zones for transportation or
319 pedestrians;
320 (C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section
321 12101, et seq., or similar federal or state standards regarding pedestrian access or
322 movement;
323 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
324 general application adopted by ordinance concerning the location of ground mounted
325 equipment or new utility poles. Such spacing requirements shall not prevent a wireless
326 provider from serving any location;
327 (E) Fails to comply with applicable codes; or
328 (F) Fails to comply with paragraph (2) of subsection (b) or subsections (i) or (j) of
329 Code Section 36-66C-2.
- 330 (7) The authority shall document the basis for a denial, including the specific provisions
331 of law on which the denial was based, and send the documentation to the applicant on or
332 before the day the authority denies an application. The applicant may cure the
333 deficiencies identified by the authority and resubmit the application within 30 days of the
334 denial without paying an additional application fee. The authority shall approve or deny
335 the revised application within 30 days. Any subsequent review shall be limited to the
336 deficiencies cited in the denial;
- 337 (8) An applicant seeking to collocate small wireless facilities within the jurisdiction of
338 a single authority shall be allowed at the applicant's discretion to file a consolidated
339 application for the collation of up to 25 small wireless facilities and receive a single
340 permit for the collocation of multiple small wireless facilities; provided, however, that
341 the denial of one or more small wireless facilities in a consolidated application shall not
342 delay processing of any other small wireless facilities in the same application. An
343 authority may prohibit an applicant from submitting an additional application when such
344 applicant has at least ten pending consolidated applications. For purposes of this
345 paragraph, a request to install a utility pole with a collocated small wireless facility shall
346 constitute a single request;
- 347 (9) Collocation for which a permit is granted shall be operational for use by a wireless
348 services provider within nine months after the permit issuance date unless the authority
349 and the applicant agree to extend this period or a delay occurs due to lack of power to the
350 wireless support structure or utility pole or lack of communications facilities to the
351 wireless support structure or utility pole. If the wireless services provider fails within
352 such nine-month period to collocate small wireless facilities that are operational for use
353 by a wireless services provider, the permit shall be void and such wireless services

354 provider shall be subject to a fine of not more than \$500.00, unless such time period is
 355 extended or the failure is due to delay provided for in this paragraph. Approval of an
 356 application authorizes the applicant to:

357 (A) Undertake the installation or collocation; and

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

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

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

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

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

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

370 (2) An authority shall only charge fees for the actual, direct, and reasonable costs
 371 incurred by the authority relating to the granting or processing of an application. Such
 372 fees shall be reasonably related in time to the incurring of such costs. Where such costs
 373 are already recovered by existing fees, rates, or taxes paid by a wireless provider, no
 374 application fee shall be assessed to recover such costs;

375 (3) A fee may not include:

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

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

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

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

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

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

389 (6) For the collocation of small cell wireless facilities on authority poles that are not
 390 owned or operated by an entity through which a municipality furnishes retail electric

391 service, total application fees shall not exceed the lesser of the amount charged by the
 392 authority for:

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

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

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

399 (A) Routine maintenance; or

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

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

405 (f) An authority shall not require a permit or any other approval or require fees or rates for
 406 the installation, placement, maintenance, operation, or replacement of micro wireless
 407 facilities that are suspended on cables or power lines that are strung between utility poles
 408 or wireless support structures in compliance with applicable codes. Nothing in this
 409 subsection shall be construed to allow the installation, placement, maintenance, operation,
 410 or replacement of micro wireless facilities on such cables or power lines without the
 411 agreement, authorization, or permission of the person owning, managing, or controlling
 412 such cables or power lines.

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

418 36-66C-4.

419 (a) The provisions of this Code section shall apply to reviews of applications for the
 420 construction, installation, maintenance, modification, operation, or replacement of wireless
 421 facilities, wireless support structures, and utility poles and for substantial modifications
 422 inside a right of way. The provisions of the Code section shall not apply to the collocation
 423 of small wireless facilities or the permitting of the construction, installation, maintenance,
 424 modification, operation, and replacement of utility poles to which Code section 36-66C-3
 425 applies.

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

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

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

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

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

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

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

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

453 (1) An applicant's business decision on the type and location of wireless facilities,
454 wireless support structures, utility poles, or technology to be used shall be presumed
455 reasonable. This presumption shall not apply with respect to the height of wireless
456 facilities, wireless support structures, or utility poles. An authority may consider the
457 height of such structures in its review of an application, provided that it may not
458 unreasonably discriminate between the applicant and other communications service
459 providers;

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

- 463 (3) An authority shall not require an applicant to submit information about or evaluate
 464 an applicant's business decisions with respect to its service, customer demand for service,
 465 or quality of service;
- 466 (4) Any requirements regarding the appearance of facilities, including those relating to
 467 materials used for arranging, screening, or landscaping, must be reasonable;
- 468 (5) Any setback or fall zone requirements must be substantially similar to such a
 469 requirement that is imposed on other types of commercial structures of a similar height;
- 470 (6) An approval term of an application shall be without expiration, except that
 471 construction of the approved structure or facilities shall commence within one year of
 472 final approval, and be diligently pursued to completion; and
- 473 (7) An authority may not institute, either expressly or de facto, a moratorium on:
- 474 (A) Filing, receiving, or processing applications; or
- 475 (B) Issuing approvals for substantial modifications or installations that are subject to
 476 this Code section.

477 36-66C-5.

- 478 (a) An authority shall not enter into an exclusive arrangement with any person for the right
 479 to attach to authority poles. A person who purchases or otherwise acquires an authority
 480 pole is subject to the requirements of this Code section unless such requirements are
 481 contrary to federal law.
- 482 (b) Except as set forth in subsection (c) of this Code section, the rates and fees for
 483 collocations on authority poles shall be nondiscriminatory regardless of the services
 484 provided by the collocating wireless provider and shall not exceed \$40.00 per year per
 485 authority pole.
- 486 (c) To the extent that a written agreement between a wireless provider and an authority
 487 providing rates and fees for collocations on poles owned or operated by any entity through
 488 which a municipality furnishes retail electric service becomes effective between June 1,
 489 2018, and May 31, 2019, such rates and fees shall apply as set forth in such agreement.
- 490 (d) In any controversy concerning the appropriateness of a rate for an authority pole, the
 491 authority shall have the burden of proving that the rates are reasonably related to the actual,
 492 direct, and reasonable costs incurred for use of space on the pole for such period. This
 493 subsection shall not apply to rates and fees for collocations on authority poles set forth in
 494 a written agreement described in subsection (c) of this Code section.
- 495 (e) Should an authority have an existing authority pole attachment rate, fee, or other term
 496 that does not comply with the requirements of this Code section, it shall reform such rate,
 497 fee, or term in compliance with this Code section by January 1, 2019.

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

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

507 (2) For make-ready work required for authority poles that support aerial cables used for
508 the provision of services by communications service providers or for electric service, the
509 parties shall comply with all applicable federal laws and rules and regulations
510 promulgated thereunder as such existed on January 1, 2018, including, but not limited to
511 47 U.S.C. Section 224. The good faith estimate of the person owning or controlling the
512 authority pole for any make-ready work necessary to enable the authority pole to support
513 the requested collocation shall include authority pole replacement if necessary;

514 (3) For authority poles that do not support aerial cables used for video, communications
515 service, or electric service, the authority shall provide a good faith estimate for any
516 make-ready work necessary to enable the authority pole to support the requested
517 collocation, including authority pole replacement if necessary, within 60 days after
518 receipt of a complete application. Make-ready work including any authority pole
519 replacement shall be completed within 60 days of written acceptance of the good faith
520 estimate by the applicant; and

521 (4) An authority shall not require more make-ready work than required to meet
522 applicable codes or the authority's generally applicable safety, reliability, or engineering
523 standards that reasonably accommodate the collocation of small wireless facilities. Fees
524 for make-ready work shall not include costs related to preexisting or prior damage or
525 noncompliance. Fees for make-ready work including any authority pole replacement
526 shall not exceed actual costs or the amount charged to other communications service
527 providers for similar work and shall not include any consultants' fees or expenses.

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

534 36-66C-6.

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

538 36-66C-7.

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

541 36-66C-8.

542 (a) An authority shall not require a communications service provider to indemnify and
543 hold the authority and its officers and employees harmless against any claims, lawsuits,
544 judgments, costs, liens, losses, expenses, or fees, except when a court of competent
545 jurisdiction has found that the negligence of the communications service provider while
546 installing, repairing, or maintaining caused the harm that created such claims, lawsuits,
547 judgments, costs, liens, losses, expenses, or fees, or to require a communications service
548 provider to obtain insurance naming the authority or its officers and employees an
549 additional insured against any of the foregoing.

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

557 36-66C-9.

558 A wireless provider that installs utility poles designed to support its own small wireless
559 facilities in the rights of way in this state shall allow another wireless provider to collocate
560 small wireless facilities on such utility poles, subject to technical feasibility and
561 commercially reasonable rates, terms, and conditions, if the other wireless provider agrees
562 in writing to make available similar utility poles in the rights of way in this state for
563 collocation subject to the same rates, terms, and conditions. The wireless provider seeking
564 collocation shall be entitled to collocate on the same number of utility poles designed to
565 support small wireless facilities as such wireless provider makes available in this state to
566 the wireless provider that installed the poles upon which it seeks to collocate. A wireless
567 provider that installs a utility pole designed to support the small wireless facilities of other

568 wireless providers shall allow more than one wireless provider to collocate on the pole,
569 subject to technical feasibility and commercially reasonable rates, terms and conditions.

570 36-66C-10.

571 (a) This chapter fully occupies the entire field governing the placement and regulation of
572 small wireless facilities and associated utility poles in the public rights of way and
573 supersedes and preempts any ordinance, resolution, or similar matter adopted by a
574 municipality or county that purports to address or otherwise regulate the placement of such
575 small wireless facilities and utility poles in the public rights of way.

576 (b) To the extent an authority does not adopt ordinances or enter into agreements that
577 implement the provisions of this chapter or to the extent such ordinances or agreements are
578 determined not to comply with this chapter or are otherwise determined to be invalid,
579 wireless providers may collocate small wireless facilities and construct, install, maintain,
580 modify, operate, and replace utility poles in the right of way pursuant to the requirements
581 set forth in this chapter.

582 (c) Except as provided in this chapter or otherwise specifically authorized by state law, an
583 authority shall not adopt or enforce any ordinances, regulations, or requirements as to the
584 placement or operation of communications facilities in a right of way by a communications
585 service provider authorized by state or local law to operate in a right of way, regulate any
586 communications service, or impose or collect any tax, fee, or charge for the provision of
587 communications service over the communications service provider's communications
588 facilities in a right of way.

589 36-66C-11.

590 The approval of the installation, placement, maintenance, or operation of a small wireless
591 facility pursuant to this chapter shall not authorize the provision of any communications
592 service or the installation, placement, maintenance, or operation of any communications
593 facility, including a wireline backhaul facility, other than a small wireless facility, in a right
594 of way.

595 36-66C-12.

596 Nothing in this chapter shall be construed to impose or otherwise affect any tariff,
597 contractual obligation or right, or federal or state law addressing utility poles, wireless
598 support structures, or electric transmission structures or equipment of any type owned or
599 controlled by an investor owned electric utility or an electric membership corporation."

600

SECTION 3.

601

This Act shall become effective on July 1, 2018.

602

SECTION 4.

603

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