

Senate Bill 408

By: Senators Shafer of the 48th, Heath of the 31st, Murphy of the 27th, Rogers of the 21st, Hamrick of the 30th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to  
2 telephone and telegraph service, so as to change certain provisions relating to local  
3 government franchising authority; to provide for related matters; to repeal conflicting laws;  
4 and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

7 Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and  
8 telegraph service, is amended by revising Code Section 46-5-1, relating to the power of  
9 eminent domain by telephone and telegraph companies, the placement of posts and other  
10 fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, and  
11 liability of telegraph and telephone companies for damages, as follows:

12 "46-5-1.

13 (a)(1) Any telegraph or telephone company chartered by the laws of this or any other  
14 state shall have the right to construct, maintain, and operate its lines and facilities upon,  
15 under, along, and over the public roads and highways and rights of way of this state; with  
16 the approval of the county or municipal authorities in charge of such roads, highways,  
17 and rights of way. The approval of such municipal authorities shall be limited to the  
18 process set forth in paragraph (3) of subsection (b) of this Code section, and the approval  
19 of the county shall be limited to the permitting process set forth in subsection (c) of this  
20 Code section. Upon making due compensation, as defined for municipal authorities in  
21 paragraph (9) of subsection (b) of this Code section and as provided for counties in  
22 subsection (c) of this Code section, a telegraph or telephone company shall have the right  
23 to construct, maintain, and operate its lines through or over any lands of this state; on,  
24 along, and upon the right of way and structures of any railroads; and, where necessary,  
25 under or over any private lands; and, to that end, a telegraph or telephone company may  
26 have and exercise the right of eminent domain.

1 (2) Notwithstanding any other law, a municipal authority or county shall not:

2 (A) Require any telephone company to apply for or enter into an individual license,  
3 franchise, or other agreement with such municipal authority or county; or

4 (B) Impose any occupational license tax or fee as a condition of placing or maintaining  
5 lines and facilities in its public roads and highways or rights of way, except as  
6 specifically set forth in this Code section.

7 ~~(b)(3)~~ Whenever a telegraph or telephone company exercises its powers under paragraph  
8 (1) of this subsection, under subsection (a) of this Code section, the posts, arms,  
9 insulators, and other fixtures of its lines ~~must~~ shall be erected, placed, and maintained so  
10 as not to obstruct or interfere with the ordinary use of such railroads or public roads and  
11 highways, or with the convenience of any landowners, more than may be unavoidable.  
12 Any lines constructed by a telegraph or telephone company on the right of way of any  
13 railroad company shall be subject to relocation so as to conform to any uses and needs  
14 of ~~the~~ such railroad company for railroad purposes. Such fixtures, posts, and wires shall  
15 be erected at such distances from the tracks of said railroads as will prevent any and all  
16 damage to said railroad companies by the falling of said fixtures, posts, or wires upon  
17 said railroad tracks; and such telegraph or telephone companies shall be liable to said  
18 railroad companies for all damages resulting from a failure to comply with this Code  
19 section.

20 (4) No municipal authority or county shall impose upon a telephone company any  
21 build-out requirements on network construction or service deployment, and, to the extent  
22 that a telephone company has elected alternative regulation pursuant to Code Section  
23 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code  
24 Section 46-5-169 by providing communications service, at the company's option, through  
25 any affiliated companies and through the use of any technology or service arrangement.

26 (b)(1) Except as set forth in paragraph (6) of this subsection, any telephone company that  
27 places or seeks to place lines and facilities in the public roads and highways or rights of  
28 way of a municipal authority shall provide to such municipal authority the following  
29 information:

30 (A) The name, address, and telephone number of a principal office and local agent of  
31 such telephone company;

32 (B) Proof of certification from the Georgia Public Service Commission of such  
33 telephone company to provide telecommunications services in this state;

34 (C) Proof of insurance or self-insurance of such telephone company adequate to defend  
35 and cover claims of third parties and of municipal authorities;

36 (D) A description of the telephone company's service area, which description shall be  
37 sufficiently detailed so as to allow a municipal authority to respond to subscriber

1 inquiries. For the purposes of this paragraph, a telephone company may, in lieu of or  
2 as supplement to a written description, provide a map on 8 1/2 by 11 inch paper that is  
3 clear and legible and that fairly depicts the service area within the boundaries of the  
4 municipal authority. If such service area is less than the boundaries of an entire  
5 municipal authority, the map shall describe the boundaries of the geographic area to be  
6 served in clear and concise terms;

7 (E) A description of the services to be provided;

8 (F) An affirmative declaration that the telephone company shall comply with all  
9 applicable federal, state, and local laws and regulations, including municipal ordinances  
10 and regulations, regarding the placement and maintenance of facilities in the public  
11 rights of way that are reasonable, nondiscriminatory, and applicable to all users of the  
12 public rights of way, including the requirements of Chapter 9 of Title 25, the 'Georgia  
13 Utility Facility Protection Act'; and

14 (G) A statement in bold type at the top of the application as follows: 'Pursuant to  
15 paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia  
16 Annotated, the municipal authority shall notify the applicant of any deficiencies in this  
17 application within 15 business days of receipt of this application.'

18 (2) If an application is incomplete, the municipal authority shall notify the telephone  
19 company within 15 business days of the receipt of such application; such notice shall  
20 specifically identify all application deficiencies. If no such notification is given within  
21 15 business days of the receipt of an application, such application shall be deemed  
22 complete.

23 (3) Within 60 calendar days of the receipt of a completed application, the municipal  
24 authority shall adopt such application by resolution. The failure of a municipal authority  
25 to adopt an application within 60 calendar days of the receipt of a completed application  
26 shall constitute final adoption of such application.

27 (4) If it modifies its service area or provisioned services identified in the original  
28 application, the telephone company shall notify the municipal authority of changes to the  
29 service area or the services provided. Such notice shall be given at least 20 days prior to  
30 the effective date of such change. Such notification shall contain a geographic description  
31 of the new service area or areas and new services to be provided within the jurisdiction  
32 of the affected municipal authority, if any. The municipal authority shall provide to all  
33 telephone companies located in its rights of way written notice of annexations and  
34 changes in municipal corporate boundaries which, for the purposes of this Code section,  
35 shall become effective 30 days following receipt.

36 (5) An application adopted pursuant to this Code section may be terminated by a  
37 telephone company by submitting a notice of termination to the affected municipal

1 authority. For purposes of this Code section, such notice shall identify the telephone  
2 company, the affected service area, and the effective date of such termination, which shall  
3 not be less than 60 calendar days from the date of filing the notice of termination.

4 (6) Any telephone company that has previously obtained permits for the placement of  
5 its facilities, has specified the name of such telephone company in such permit  
6 application, has previously placed its facilities in any public right of way, and has paid  
7 and continues to pay any applicable municipal authority's occupational license taxes,  
8 permit fees, franchise fees, except as set forth in paragraph (8) of this subsection, or, if  
9 applicable, county permit fees shall be deemed to have complied with this Code section  
10 without any further action on the part of such telephone company except as set forth in  
11 paragraphs (8), (9), (11), and (17) of this subsection.

12 (7) Any telephone company that has placed lines and facilities in the public roads and  
13 highways or rights of way of a municipal authority without first obtaining permits or  
14 otherwise notifying the appropriate municipal authority of its presence in the public roads  
15 and highways or rights of way shall provide the information required by paragraph (1)  
16 of this subsection, if applicable, to such municipal authority on or before July 1, 2008.

17 As of July 1, 2008, if any telephone company, other than those who meet the  
18 requirements of paragraph (6) of this subsection, has failed or fails to provide the  
19 information required by paragraph (1) of this subsection to the municipal authority in  
20 which its lines or facilities are located, such municipal authority shall provide written  
21 notice to such telephone company giving that company 15 calendar days from the date  
22 of receipt of such notice to comply with subsection (b) of this Code section. In the event  
23 the 15 calendar day cure period expires without compliance, such municipal authority  
24 may petition the Georgia Public Service Commission which shall, after an opportunity  
25 for a hearing, order the appropriate relief.

26 (8)(A) In the event any telephone company has an existing, valid municipal franchise  
27 agreement as of January 1, 2008, the terms and conditions of such existing franchise  
28 agreement shall only remain effective and enforceable until the expiration of the  
29 existing agreement or December 31, 2012, whichever shall first occur.

30 (B) In the event any telephone company is paying an existing occupational license tax  
31 or fee, based on actual recurring local services revenues, as of January 1, 2008, such  
32 payment shall be considered the payment of due compensation without further action  
33 on the part of the municipal authority. In the event that the rate of such existing tax or  
34 fee exceeds 3 percent of actual recurring local service revenues, a payment by such  
35 telephone company at the rate of 3 percent shall be considered the payment of due  
36 compensation without further action on the part of the municipal authority.

1 (9) As used in this Code section, 'due compensation' for a municipal authority means an  
 2 amount equal to no more than 3 percent of actual recurring local service revenues  
 3 received by such company from its retail, end user customers located within the  
 4 boundaries of such municipal authority. 'Actual recurring local service revenues' means  
 5 those revenues customarily included in the Uniform System of Accounts as prescribed  
 6 by the Federal Communications Commission for Class 'A' and 'B' companies; provided,  
 7 however, that only the local service portion of the following accounts shall be included:

8 (A) Basic local service revenue, as defined in 47 C.F.R. 32.5000;

9 (B) Basic area revenue, as defined in 47 C.F.R. 32.5001;

10 (C) Optional extended area revenue, as defined in 47 C.F.R. 32.5002;

11 (D) Public telephone revenue, as defined in 47 C.F.R. 32.5010;

12 (E) Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however,  
 13 that the portion of such accounts attributable to audio and video program transmission  
 14 service where both terminals of the private line are within the corporate limits of the  
 15 municipal authority shall not be included;

16 (F) Other local exchange revenue, as defined in 47 C.F.R. 32.5060;

17 (G) Local exchange service, as defined in 47 C.F.R. 32.5069;

18 (H) Network access revenue, as defined in 47 C.F.R. 32.5080;

19 (I) Directory revenue, as defined in 47 C.F.R. 32.5320; provided, however, that the  
 20 portion of such accounts attributable to revenue derived from listings in portion of  
 21 directories not considered white pages shall not be included;

22 (J) Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided,  
 23 however, that the portion of such accounts attributable to revenues derived from private  
 24 lines shall not be included; and

25 (K) Uncollectible revenue, as defined in 47 C.F.R. 32.5300.

26 Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory  
 27 and competitively neutral manner.

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

34 (11) A telephone company with facilities in the public rights of way of a municipal  
 35 authority shall begin assessing due compensation, as defined in paragraph (a) of this  
 36 subsection, on subscribers on the date that service commences unless such company is  
 37 currently paying a municipal authority's occupational license tax. Such due

1 compensation shall be paid directly to each affected municipal authority within 30  
2 calendar days after the last day of each calendar quarter. In the event that due  
3 compensation is not paid on or before 30 calendar days after the last day of each calendar  
4 quarter, the affected municipal authority shall provide written notice to such telephone  
5 company, giving such company 15 calendar days from the date such company receives  
6 such notice to cure any such nonpayment. In the event the due compensation remitted  
7 to the affected municipal authority is not postmarked on or before the expiration of the  
8 15 day cure period, such company shall pay interest thereon at a rate of 1 percent per  
9 month to the affected municipal authority. If the 15 day cure period expires on a  
10 Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day.  
11 A telephone company shall not be assessed any interest on late payments if due  
12 compensation was submitted in error to a neighboring municipal authority.

13 (12) Each municipal authority may, no more than once annually, audit the business  
14 records of a telephone company to the extent necessary to ensure payment in accordance  
15 with this Code section. As used in this Code section, 'audit' means a comprehensive  
16 review of the records of a company which is reasonably related to the calculation and  
17 payment of due compensation. Once any audited period of a company has been the  
18 subject of a requested audit, such audited period of such company shall not again be the  
19 subject of any audit. In the event of a dispute concerning the amount of due compensation  
20 due to an affected municipal authority under this Code section, an action may be brought  
21 in a court of competent jurisdiction by an affected municipal authority seeking to recover  
22 an additional amount alleged to be due or by a company seeking a refund of an alleged  
23 overpayment; provided, however, that any such action shall be brought within three years  
24 following the end of the quarter to which the disputed amount relates, although such time  
25 period may be extended by written agreement between the company and such affected  
26 municipal authority. Each party shall bear the party's own costs incurred in connection  
27 with any dispute. No municipal authority shall make the employment, appointment,  
28 payment, or retention of any person or entity engaged to perform an audit in any manner  
29 dependent or contingent upon the outcome of any such audit, including, without  
30 limitation, the audit findings and the recovery of fees, or the recovery of any other  
31 payments. A person or entity performing an audit may not solicit or accept compensation  
32 dependent or contingent in any manner upon the outcome of any such audit, including,  
33 without limitation, the audit findings, the recovery of fees, or the recovery of any other  
34 payments by a municipal authority. The auditing municipal authority shall bear the cost  
35 of the audit; provided, however, that if an affected municipal authority files an action to  
36 recover alleged underpayments of due compensation and a court of competent  
37 jurisdiction determines the company has underpaid due compensation due for any 12

1 month period by 10 percent or more, such company shall be required to pay such  
2 municipal authority's reasonable costs associated with such audit along with any due  
3 compensation underpayments; provided, further, that late payments shall not apply. All  
4 undisputed amounts due to a municipal authority resulting from an audit shall be paid to  
5 the municipal authority within 45 days, or interest shall accrue.

6 (13) The information provided pursuant to paragraph (1) of this subsection and any  
7 records or information furnished or disclosed by a telephone company to an affected  
8 municipal authority pursuant to paragraph (12) of this subsection shall be exempt from  
9 public inspection under Code Section 50-18-70. It shall be the duty of such telephone  
10 company to mark all such documents as exempt from Code Section 50-18-70, et seq., and  
11 the telephone company shall defend, indemnify, and hold harmless any municipal  
12 authority and any municipal officer or employee in any request for, or in any action  
13 seeking, access to such records.

14 (14) No acceptance of any payment shall be construed as a release or as an accord and  
15 satisfaction of any claim an affected municipal authority may have for further or  
16 additional sums payable as due compensation.

17 (15) Any amounts overpaid by a company as due compensation shall be deducted from  
18 future due compensation owed.

19 (16) A telephone company paying due compensation pursuant to this Code section may  
20 designate that portion of a subscriber's bill attributable to such charge as a separate line  
21 item of the bill and recover such amount from the subscriber.

22 (17) Nothing in this Code section shall affect the authority of a municipal authority to  
23 require telephone companies accessing the public roads and highways and rights of way  
24 of a municipal authority to obtain permits and otherwise comply with the reasonable  
25 regulations established pursuant to paragraph (10) of subsection (a) of Code Section  
26 32-4-92.

27 (18) If a telephone company does not have retail, end user customers located within the  
28 boundaries of a municipal authority, then the payment by such company to a municipal  
29 authority for the use of its rights of way at rates that do not exceed the rates set by  
30 regulations promulgated by the Department of Transportation shall be considered the  
31 payment of due compensation.

32 (c) If a telephone company accesses the public roads and highways and rights of way of  
33 a county and such county requires such telephone company to pay due compensation, such  
34 due compensation shall be limited to an administrative cost recoupment fee which shall not  
35 exceed such county's direct, actual costs incurred in its permitting process, including  
36 issuing and processing permits, plan reviews, physical inspection and direct administrative  
37 costs; and such costs shall be demonstrable and shall be equitable among users of such

1 county's roads and highways or rights of way. Permit fees shall not include the costs of  
2 highway or rights of way acquisition or any general administrative, management, or  
3 maintenance costs of the roads and highways or rights of way and shall not be imposed for  
4 any activity that does not require the physical disturbance of such public roads and  
5 highways or rights of way or does not impair access to or full use of such public roads and  
6 highways or rights of way. Nothing in this Code section shall affect the authority of a  
7 county to require a telephone company to comply with reasonable regulations for  
8 construction of telephone lines and facilities in public highways or rights of way pursuant  
9 to the provisions of paragraph (6) of Code Section 32-4-42."

10

**SECTION 2.**

11

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