

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

**AS PASSED SENATE**

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 **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 telegraph or telephone company to apply for or enter into an  
 3 individual license, franchise, or other agreement with such municipal authority or  
 4 county; or

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

8 (3) A county or municipal authority shall not impose any occupational license, tax, fee,  
 9 regulation, obligation, or requirement upon the provision of the services described in  
 10 paragraphs (1) and (2) of Code Section 46-5-221, including any occupational license, tax,  
 11 fee, regulation, obligation, or requirement specifically set forth in any part of this chapter  
 12 other than Part 4.

13 ~~(b)(4)~~ Whenever a telegraph or telephone company exercises its powers under paragraph  
 14 (1) of this subsection, under subsection (a) of this Code section, the posts, arms,  
 15 insulators, and other fixtures of its lines ~~must~~ shall be erected, placed, and maintained so  
 16 as not to obstruct or interfere with the ordinary use of such railroads or public roads and  
 17 highways, or with the convenience of any landowners, more than may be unavoidable.  
 18 Any lines constructed by a telegraph or telephone company on the right of way of any  
 19 railroad company shall be subject to relocation so as to conform to any uses and needs  
 20 of ~~the~~ such railroad company for railroad purposes. Such fixtures, posts, and wires shall  
 21 be erected at such distances from the tracks of said railroads as will prevent any and all  
 22 damage to said railroad companies by the falling of said fixtures, posts, or wires upon  
 23 said railroad tracks; and such telegraph or telephone companies shall be liable to said  
 24 railroad companies for all damages resulting from a failure to comply with this Code  
 25 section.

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

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

1 (A) The name, address, and telephone number of a principal office and local agent of  
2 such telegraph or telephone company;

3 (B) Proof of certification from the Georgia Public Service Commission of such  
4 telegraph or telephone company to provide telecommunications services in this state;

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

7 (D) A description of the telegraph or telephone company's service area, which  
8 description shall be sufficiently detailed so as to allow a municipal authority to respond  
9 to subscriber inquiries. For the purposes of this paragraph, a telegraph or telephone  
10 company may, in lieu of or as supplement to a written description, provide a map on 8  
11 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area  
12 within the boundaries of the municipal authority. If such service area is less than the  
13 boundaries of an entire municipal authority, the map shall describe the boundaries of  
14 the geographic area to be served in clear and concise terms;

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

16 (F) An affirmative declaration that the telegraph or telephone company shall comply  
17 with all applicable federal, state, and local laws and regulations, including municipal  
18 ordinances and regulations, regarding the placement and maintenance of facilities in the  
19 public rights of way that are reasonable, nondiscriminatory, and applicable to all users  
20 of the public rights of way, including the requirements of Chapter 9 of Title 25, the  
21 'Georgia Utility Facility Protection Act'; and

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

26 (2) If an application is incomplete, the municipal authority shall notify the telegraph or  
27 telephone company within 15 business days of the receipt of such application; such notice  
28 shall specifically identify all application deficiencies. If no such notification is given  
29 within 15 business days of the receipt of an application, such application shall be deemed  
30 complete.

31 (3) Within 60 calendar days of the receipt of a completed application, the municipal  
32 authority may adopt such application by adoption of a resolution or ordinance or by  
33 notification to the telegraph or telephone company. The failure of a municipal authority  
34 to adopt an application within 60 calendar days of the receipt of a completed application  
35 shall constitute final adoption of such application.

36 (4) If it modifies its service area or provisioned services identified in the original  
37 application, the telegraph or telephone company shall notify the municipal authority of

1 changes to the service area or the services provided. Such notice shall be given at least  
2 20 days prior to the effective date of such change. Such notification shall contain a  
3 geographic description of the new service area or areas and new services to be provided  
4 within the jurisdiction of the affected municipal authority, if any. The municipal  
5 authority shall provide to all telegraph and telephone companies located in its rights of  
6 way written notice of annexations and changes in municipal corporate boundaries which,  
7 for the purposes of this Code section, shall become effective 30 days following receipt.

8 (5) An application adopted pursuant to this Code section may be terminated by a  
9 telegraph or telephone company by submitting a notice of termination to the affected  
10 municipal authority. For purposes of this Code section, such notice shall identify the  
11 telegraph or telephone company, the affected service area, and the effective date of such  
12 termination, which shall not be less than 60 calendar days from the date of filing the  
13 notice of termination.

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

23 (7) Any telegraph or telephone company that has placed lines and facilities in the public  
24 roads and highways or rights of way of a municipal authority without first obtaining  
25 permits or otherwise notifying the appropriate municipal authority of its presence in the  
26 public roads and highways or rights of way shall provide the information required by  
27 paragraph (1) of this subsection, if applicable, to such municipal authority on or before  
28 October 1, 2008. As of October 1, 2008, if any telegraph or telephone company, other  
29 than those who meet the requirements of paragraph (6) of this subsection, has failed or  
30 fails to provide the information required by paragraph (1) of this subsection to the  
31 municipal authority in which its lines or facilities are located, such municipal authority  
32 shall provide written notice to such telegraph or telephone company giving that company  
33 15 calendar days from the date of receipt of such notice to comply with subsection (b) of  
34 this Code section. In the event the 15 calendar day cure period expires without  
35 compliance, such municipal authority may petition the Georgia Public Service  
36 Commission which shall, after an opportunity for a hearing, order the appropriate relief.

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

5 (B) In the event any telegraph or telephone company is paying an existing occupational  
6 license tax or fee, based on actual recurring local services revenues, as of January 1,  
7 2008, such payment shall be considered the payment of due compensation without  
8 further action on the part of the municipal authority. In the event that the rate of such  
9 existing tax or fee exceeds 3 percent of actual recurring local service revenues, that rate  
10 shall remain effective until December 31, 2012; thereafter, the payment by such  
11 telegraph or telephone company at the rate of 3 percent shall be considered the payment  
12 of due compensation without further action on the part of the municipal authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (11) A telegraph or telephone company with facilities in the public rights of way of a  
10 municipal authority shall begin assessing due compensation, as defined in paragraph (a)  
11 of this subsection, on subscribers on the date that service commences unless such  
12 company is currently paying a municipal authority's occupational license tax. Such due  
13 compensation shall be paid directly to each affected municipal authority within 30  
14 calendar days after the last day of each calendar quarter. In the event that due  
15 compensation is not paid on or before 30 calendar days after the last day of each calendar  
16 quarter, the affected municipal authority shall provide written notice to such telegraph or  
17 telephone company, giving such company 15 calendar days from the date such company  
18 receives such notice to cure any such nonpayment. In the event the due compensation  
19 remitted to the affected municipal authority is not postmarked on or before the expiration  
20 of the 15 day cure period, such company shall pay interest thereon at a rate of 1 percent  
21 per month to the affected municipal authority. If the 15 day cure period expires on a  
22 Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day.  
23 A telegraph or telephone company shall not be assessed any interest on late payments if  
24 due compensation was submitted in error to a neighboring municipal authority.

25 (12) Each municipal authority may, no more than once annually, audit the business  
26 records of a telegraph or telephone company to the extent necessary to ensure payment  
27 in accordance with this Code section. As used in this Code section, 'audit' means a  
28 comprehensive review of the records of a company which is reasonably related to the  
29 calculation and payment of due compensation. Once any audited period of a company has  
30 been the subject of a requested audit, such audited period of such company shall not again  
31 be the subject of any audit. In the event of a dispute concerning the amount of due  
32 compensation due to an affected municipal authority under this Code section, an action  
33 may be brought in a court of competent jurisdiction by an affected municipal authority  
34 seeking to recover an additional amount alleged to be due or by a company seeking a  
35 refund of an alleged overpayment; provided, however, that any such action shall be  
36 brought within three years following the end of the quarter to which the disputed amount  
37 relates, although such time period may be extended by written agreement between the

1 company and such affected municipal authority. Each party shall bear the party's own  
2 costs incurred in connection with any dispute. No municipal authority shall make the  
3 employment, appointment, payment, or retention of any person or entity engaged to  
4 perform an audit in any manner dependent or contingent upon the outcome of any such  
5 audit, including, without limitation, the audit findings and the recovery of fees, or the  
6 recovery of any other payments. A person or entity performing an audit may not solicit  
7 or accept compensation dependent or contingent in any manner upon the outcome of any  
8 such audit, including, without limitation, the audit findings, the recovery of fees, or the  
9 recovery of any other payments by a municipal authority. The auditing municipal  
10 authority shall bear the cost of the audit; provided, however, that if an affected municipal  
11 authority files an action to recover alleged underpayments of due compensation and a  
12 court of competent jurisdiction determines the company has underpaid due compensation  
13 due for any 12 month period by 10 percent or more, such company shall be required to  
14 pay such municipal authority's reasonable costs associated with such audit along with any  
15 due compensation underpayments; provided, further, that late payments shall not apply.  
16 All undisputed amounts due to a municipal authority resulting from an audit shall be paid  
17 to the municipal authority within 45 days, or interest shall accrue.

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

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

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

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

34 (17) Nothing in this Code section shall affect the authority of a municipal authority to  
35 require telegraph or telephone companies accessing the public roads and highways and  
36 rights of way of a municipal authority to obtain permits and otherwise comply with the

1 reasonable regulations established pursuant to paragraph (10) of subsection (a) of Code  
 2 Section 32-4-92.

3 (18) If a telegraph or telephone company does not have retail, end user customers located  
 4 within the boundaries of a municipal authority, then the payment by such company at the  
 5 same rates that such payments were being made as of January 1, 2008, to a municipal  
 6 authority for the use of its rights of way shall be considered the payment of due  
 7 compensation; provided, however, that at the expiration date of any existing agreement  
 8 for use of such municipal rights of way or December 31, 2012, whichever is earlier, the  
 9 payment at rates in accordance with the rates set by regulations promulgated by the  
 10 Department of Transportation shall be considered the payment of due compensation.  
 11 Provided, further, that if a telegraph or telephone company begins providing service after  
 12 January 1, 2008, and such telegraph or telephone company does not have retail, end user  
 13 customers located within the boundaries of a municipal authority, the payment by such  
 14 company at rates in accordance with the rates set by regulations promulgated by the  
 15 Department of Transportation to a municipal authority for the use of its rights of way  
 16 shall be considered the payment of due compensation.

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

19 (c) If a telegraph or telephone company accesses the public roads and highways and rights  
 20 of way of a county and such county requires such telegraph or telephone company to pay  
 21 due compensation, such due compensation shall be limited to an administrative cost  
 22 recoupment fee which shall not exceed such county's direct, actual costs incurred in its  
 23 permitting process, including issuing and processing permits, plan reviews, physical  
 24 inspection and direct administrative costs; and such costs shall be demonstrable and shall  
 25 be equitable among applicable users of such county's roads and highways or rights of way.  
 26 Permit fees shall not include the costs of highway or rights of way acquisition or any  
 27 general administrative, management, or maintenance costs of the roads and highways or  
 28 rights of way and shall not be imposed for any activity that does not require the physical  
 29 disturbance of such public roads and highways or rights of way or does not impair access  
 30 to or full use of such public roads and highways or rights of way. Nothing in this Code  
 31 section shall affect the authority of a county to require a telegraph or telephone company  
 32 to comply with reasonable regulations for construction of telephone lines and facilities in  
 33 public highways or rights of way pursuant to the provisions of paragraph (6) of Code  
 34 Section 32-4-42."

## 35 SECTION 2.

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