

Senate Bill 426

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

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

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

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

20 **SECTION 1.**

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

23 **SECTION 2.**

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

26

"CHAPTER 66C27 36-66C-1.28 As used in this chapter, the term:29 (1) 'Antenna' means:30 (A) Communications equipment that transmits or receives electromagnetic radio
31 frequency signals used in the provision of wireless services; or32 (B) Similar equipment used for the transmission or reception of surface waves.33 (2) 'Applicable codes' means:34 (A) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.; and35 (B) The state minimum standard codes identified in Code Section 8-2-20.36 (3) 'Applicant' means any wireless provider that submits an application to an authority
37 pursuant to this chapter.38 (4) 'Application' means a request submitted by an applicant to an authority:39 (A) For a permit to collocate small wireless facilities; or40 (B) To secure approval for the construction, installation, maintenance, modification,
41 operation, or replacement of a utility pole or a wireless support structure.42 (5) 'Authority' means any local governing authority, including without limitation any
43 entity through which a municipality furnishes retail electric service.44 (6) 'Authority pole' means a utility pole owned or operated by an authority in a right of
45 way.46 (7) 'Base station' means wireless facilities or a wireless support structure or utility pole
47 that currently supports wireless facilities. The term shall not include a tower or any
48 equipment associated with a tower.49 (8) 'Cable operator' shall have the same meaning as provided in 47 U.S.C. Section
50 522(5), as it existed on January 1, 2018.51 (9) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or
52 replace one or more wireless facilities on, under, within, or adjacent to a wireless support
53 structure or utility pole.54 (10) 'Communications facility' means that set of equipment and network components
55 including wires and cables and associated facilities used by a communications service
56 provider to provide communications service.57 (11) 'Communications service' means cable service as defined in 47 U.S.C.
58 Section 522 (6), as it existed on January 1, 2018, telecommunications service as defined
59 in 47 U.S.C. Section 153(53), as it existed on January 1, 2018, information service as
60 defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or wireless
61 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 provided, however, that such term shall not include property or any interest therein
 101 acquired for or devoted to an interstate highway and shall apply only to property or an
 102 interest therein that is under the control of an authority.

103 (26) 'Small wireless facility' means a wireless facility that meets both of the following
 104 qualifications:

105 (A) Each wireless provider's antenna could fit within an enclosure of no more than six
 106 cubic feet in volume; and

107 (B) All other wireless equipment associated with the facility is cumulatively no more
 108 than 28 cubic feet in volume. The following types of associated ancillary equipment
 109 shall not be included in the calculation of equipment volume: electric meters,
 110 concealment elements, telecommunications demarcation boxes, grounding equipment,
 111 power transfer switches, cut-off switches, and vertical cable runs for the connection of
 112 power and other services.

113 (27) 'Substantial modification' means a proposed modification to an existing wireless
 114 support structure or base station which will change the physical dimensions of the
 115 wireless support structure or base station by installing new equipment cabinets for the
 116 technology involved resulting in more than four cabinets total, by installing new
 117 equipment cabinets on the ground if there are no preexisting ground cabinets associated
 118 with the structure, or by installing ground cabinets that are more than 10 percent larger
 119 in height or overall volume than any other ground cabinets associated with the structure.

120 (28) 'Telecommunications carrier' shall have the same meaning as provided in 47 U.S.C.
 121 Section 153(51), as it existed on January 1, 2018.

122 (29) 'Utility pole' means a pole or similar structure that is or may be used in whole or in
 123 part by or for wireline communications, electric distribution, lighting, traffic control,
 124 signage, or a similar function, or for the collocation of small wireless facilities.

125 (30) 'Wireless facility' means equipment at a fixed location that enables wireless
 126 communications or surface wave communications between user equipment or nodes of
 127 a communications network, or both, including:

128 (A) Equipment associated with wireless communications or surface wave
 129 communications; and

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

133 The term shall include small wireless facilities. Such term shall not include the structure
 134 or improvements on, under, or within which the equipment is collocated nor shall it
 135 include wireline backhaul facilities or coaxial or fiber optic cable that is between wireless

136 structures or utility poles or that is otherwise not immediately adjacent to or directly
 137 associated with a particular antenna.

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

142 (32) 'Wireless provider' means a wireless infrastructure provider or a wireless services
 143 provider.

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

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

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

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

154 36-66C-2.

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

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

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

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

169 (B) Fifty feet above ground level.

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

- 171 (A) More than ten feet above any utility pole or wireless support structure in place as
172 of January 1, 2018; or
- 173 (B) Above the height permitted for a new utility pole under this Code section.
- 174 (4) A wireless provider may collocate small wireless facilities that exceed the height
175 limits in paragraph (3) of this subsection and construct, install, maintain, modify, operate,
176 and replace utility poles that exceed the height limits in paragraph (2) of this subsection
177 along, across, upon, and under a right of way if the authority approves an application for
178 such activities under Code Section 36-66C-4. A wireless provider may collocate wireless
179 facilities that are not small wireless facilities and construct, install, maintain, modify,
180 operate, and replace wireless support structures along, across, upon, and under a right of
181 way if such wireless provider has an arrangement with the authority allowing such
182 activities and if the authority approves an application for the deployment under Code
183 Section 36-66C-4.
- 184 (5) A wireless provider shall comply with reasonable and nondiscriminatory
185 requirements that prohibit communications service providers from installing utility poles
186 in a right of way in an area designated solely for underground or buried cable and utility
187 facilities where the authority:
- 188 (A) Has required all cable and utility facilities other than authority poles and
189 attachments to be placed underground by a date certain that is three months prior to the
190 submission of the application;
- 191 (B) Does not prohibit the replacement of authority poles or the collocation of small
192 wireless facilities in the designated area; and
- 193 (C) Permits wireless providers to seek a waiver of the underground requirements for
194 the placement of a new utility pole to support small wireless facilities, which waivers
195 shall be addressed in a nondiscriminatory manner that does not have the effect of
196 prohibiting the provision of wireless services to any location.
- 197 (c) The authority, in the exercise of its administration and regulation related to the
198 management of a right of way, shall be competitively neutral with regard to other users of
199 such right of way, and terms shall not be unreasonable or discriminatory and shall not
200 violate any applicable law. The authority shall not enter into an exclusive arrangement
201 with any person for use of the right of way for the collocation of small wireless facilities
202 or the installation, operation, marketing, maintenance, modification, or replacement of
203 utility poles or wireless support structures.
- 204 (d) If the authority determines that a wireless provider's activity in a right of way pursuant
205 to this Code section creates an imminent risk to public safety, the authority may provide
206 written notice to the wireless provider and demand that such provider address such risk.
207 If the wireless provider fails to reasonably address the risk with 24 hours of the written

208 notice, the authority may take or cause to be taken actions to reasonably address such risk
209 and charge such wireless provider the reasonable documented cost of such actions.

210 (e) The authority may require a wireless provider to repair all damage to a right of way
211 directly caused by the activities of such wireless provider, while occupying, installing,
212 repairing, or maintaining wireless facilities, wireless support structures, or utility poles in
213 such right of way, and to return such right of way to its functional equivalence before the
214 damage pursuant to the competitively neutral, reasonable requirements and specifications
215 of the authority. If the wireless provider fails to make the repairs required by the authority
216 within 30 days after written notice, the authority may effect those repairs and charge the
217 applicable party the reasonable documented cost of such repairs.

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

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

244 Department of Transportation or local governing authority and within the time reasonably
245 provided for the relocation of other similarly situated structures.

246 (h) An authority shall not assess a rate for occupancy of the right of way pursuant to
247 paragraph (1) of subsection (b) of this Code section that exceeds, in total, an amount equal
248 to \$20.00 per year per small wireless facility.

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

257 (j) An authority may adopt written guidelines establishing reasonable and objective stealth
258 or concealment criteria for small wireless facilities in designated downtown or residential
259 areas, reasonable and objective design criteria for small wireless facilities to be collocated
260 on decorative poles, and reasonable and objective design criteria for utility poles deployed
261 in areas with decorative poles. Such guidelines may be adopted only if they apply on a
262 nondiscriminatory basis to all other occupants of the right of way, including the authority
263 itself. A wireless provider that seeks to collocate small wireless facilities on a decorative
264 pole shall comply with Code Section 36-66C-3. A wireless provider that is required to
265 replace a decorative pole in compliance with Code Section 36-66C-5 shall conform the new
266 decorative pole to the design aesthetics and material look of the decorative pole being
267 replaced.

268 36-66C-3.

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

275 (b) A wireless provider shall not apply to install a utility pole unless such wireless provider
276 has determined after diligent investigation that it cannot meet the service objectives of the
277 permit by collocating on an existing structure that meets the criteria set forth in
278 paragraphs (1) and (2) of this subsection. The authority may require a wireless provider
279 to certify that such wireless provider has made such a determination in good faith and to

280 provide a documented summary of the basis for such determination. The wireless
281 provider's determination shall be based on whether such wireless provider can meet the
282 service objectives of the permit by collocating small wireless facilities on an existing
283 structure on which:

284 (1) Such wireless provider has the right to collocate, subject to reasonable terms and
285 conditions of the authority; and

286 (2) Such collocation would not impose technical limitations or additional costs.

287 (c) An authority may require an applicant to obtain one or more permits to collocate a
288 small wireless facility or to construct, install, maintain, modify, operate, or replace a utility
289 pole, provided that such permits are of general applicability and do not apply exclusively
290 to small wireless facilities. Excluding any historic district, an authority shall receive
291 applications for, process, and issue such permits subject to the following requirements:

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

299 (2) An applicant shall not be required to provide more information to obtain a permit
300 than communications service providers that are not wireless providers; provided,
301 however, that an applicant shall be required to include construction and engineering
302 drawings and information demonstrating compliance with the criteria in paragraph (6) of
303 this subsection; provided, further that if the application includes a request to install a
304 utility pole, such applicant shall be required to provide the certification and
305 documentation required by subsection (b) of this Code section;

306 (3) Within 30 days of receiving an application, an authority shall determine and notify
307 the applicant whether the application is complete. If an application is incomplete, the
308 authority shall specifically identify the missing information and the applicant may cure
309 the deficiencies identified by the authority and resubmit the application within 20 days
310 of the notice without paying an additional application fee. The processing deadline in
311 paragraph (5) of this subsection shall be tolled from the time the authority sends the
312 notice of incompleteness to the time the applicant provides the missing information, and
313 such processing deadline also may be tolled by agreement of the applicant and the
314 authority;

315 (4) The authority may require an applicant to include an attestation that the small
316 wireless facilities will be operational for use by a wireless services provider within nine

317 months after the permit issuance date, unless the authority and the applicant agree to
318 extend such period or delay occurs due to lack of power to the wireless support structure
319 or utility pole or lack of communications transport facilities to the wireless support
320 structure or utility pole;

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

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

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

327 (B) Materially interferes with sight lines or clear zones for transportation or
328 pedestrians;

329 (C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section
330 12101, et seq., or similar federal or state standards regarding pedestrian access or
331 movement;

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

336 (E) Fails to comply with applicable codes; or

337 (F) Fails to comply with paragraph (2) of subsection (b) or subsections (i) or (j) of
338 Code Section 36-66C-2.

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

346 (8) An applicant seeking to collocate small wireless facilities within the jurisdiction of
347 a single authority shall be allowed at the applicant's discretion to file a consolidated
348 application for the collation of up to 25 small wireless facilities and receive a single
349 permit for the collocation of multiple small wireless facilities; provided, however, that
350 the denial of one or more small wireless facilities in a consolidated application shall not
351 delay processing of any other small wireless facilities in the same application. An
352 authority may prohibit an applicant from submitting an additional application when such
353 applicant has at least ten pending consolidated applications. For purposes of this

354 paragraph, a request to install a utility pole with a collocated small wireless facility shall
 355 constitute a single request;

356 (9) Collocation for which a permit is granted shall be operational for use by a wireless
 357 services provider within nine months after the permit issuance date unless the authority
 358 and the applicant agree to extend this period or a delay occurs due to lack of power to the
 359 wireless support structure or utility pole or lack of communications facilities to the
 360 wireless support structure or utility pole. If the wireless services provider fails within
 361 such nine-month period to collocate small wireless facilities that are operational for use
 362 by a wireless services provider, the permit shall be void and such wireless services
 363 provider shall be subject to a fine of not more than \$500.00, unless such time period is
 364 extended or the failure is due to delay provided for in this paragraph. Approval of an
 365 application authorizes the applicant to:

366 (A) Undertake the installation or collocation; and

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

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

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

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

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

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

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

384 (3) A fee may not include:

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

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

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

391 (5) Except as provided in paragraph (6) of this subsection, total application fees, where
392 permitted, shall not exceed the lesser of the amount charged by the authority for:
393 (A) A building permit for any similar commercial construction, activity, or land use
394 development; or
395 (B) One hundred dollars each for up to five small wireless facilities addressed in an
396 application and \$50.00 for each additional small wireless facility addressed in the
397 application; and
398 (6) For the collocation of small cell wireless facilities on authority poles that are not
399 owned or operated by an entity through which a municipality furnishes retail electric
400 service, total application fees shall not exceed the lesser of the amount charged by the
401 authority for:
402 (A) A building permit for any similar commercial construction, activity, or land use
403 development; or
404 (B) Two hundred dollars each for up to five small wireless facilities addressed in an
405 application and \$100.00 for each additional small wireless facility addressed in the
406 application.
407 (e)(1) An authority shall not require an application for:
408 (A) Routine maintenance; or
409 (B) The replacement of wireless facilities with wireless facilities that are substantially
410 similar in nature or the same size or smaller.
411 (2) An authority may, however, require a permit to work within a right of way for such
412 activities, if applicable. Any such permits shall be subject to the requirements provided
413 in subsections (c) and (d) of this Code section.
414 (f) An authority shall not require a permit or any other approval or require fees or rates for
415 the installation, placement, maintenance, operation, or replacement of micro wireless
416 facilities that are suspended on cables or power lines that are strung between utility poles
417 or wireless support structures in compliance with applicable codes. Nothing in this
418 subsection shall be construed to allow the installation, placement, maintenance, operation,
419 or replacement of micro wireless facilities on such cables or power lines without the
420 agreement, authorization, or permission of the person owning, managing, or controlling
421 such cables or power lines.
422 (g) If multiple applications are received by the authority to install two or more utility poles
423 that would violate applicable spacing requirements under subparagraph (c)(6)(D) of this
424 Code section, or to collocate two or more small wireless facilities on the same wireless
425 support structure or utility pole, the authority shall resolve conflicting requests in an
426 appropriate, reasonable, and nondiscriminatory manner.

427 36-66C-4.

428 (a) The provisions of this Code section shall apply to reviews of applications for the
429 construction, installation, maintenance, modification, operation, or replacement of wireless
430 facilities, wireless support structures, and utility poles and for substantial modifications
431 inside a right of way. The provisions of this Code section shall not apply to the collocation
432 of small wireless facilities or the permitting of the construction, installation, maintenance,
433 modification, operation, and replacement of utility poles to which Code section 36-66C-3
434 applies.

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

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

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

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

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

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

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

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

462 (1) An applicant's business decision on the type and location of wireless facilities,
463 wireless support structures, utility poles, or technology to be used shall be presumed

464 reasonable. This presumption shall not apply with respect to the height of wireless
 465 facilities, wireless support structures, or utility poles. An authority may consider the
 466 height of such structures in its review of an application, provided that it may not
 467 unreasonably discriminate between the applicant and other communications service
 468 providers;

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

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

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

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

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

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

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

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

486 36-66C-5.

487 (a) An authority shall not enter into an exclusive arrangement with any person for the right
 488 to attach to authority poles. A person who purchases or otherwise acquires an authority
 489 pole is subject to the requirements of this Code section unless such requirements are
 490 contrary to federal law.

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

495 (c) To the extent that a written agreement between a wireless provider and an authority
 496 providing rates and fees for collocations on poles owned or operated by any entity through
 497 which a municipality furnishes retail electric service becomes effective between June 1,
 498 2018, and May 31, 2019, such rates and fees shall apply as set forth in such agreement.

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

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

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

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

516 (2) For make-ready work required for authority poles that support aerial cables used for
517 the provision of services by communications service providers or for electric service, the
518 parties shall comply with all applicable federal laws and rules and regulations
519 promulgated thereunder as such existed on January 1, 2018, including, but not limited to
520 47 U.S.C. Section 224. The good faith estimate of the person owning or controlling the
521 authority pole for any make-ready work necessary to enable the authority pole to support
522 the requested collocation shall include authority pole replacement if necessary;

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

530 (4) An authority shall not require more make-ready work than required to meet
531 applicable codes or the authority's generally applicable safety, reliability, or engineering
532 standards that reasonably accommodate the collocation of small wireless facilities. Fees
533 for make-ready work shall not include costs related to preexisting or prior damage or
534 noncompliance. Fees for make-ready work including any authority pole replacement

535 shall not exceed actual costs or the amount charged to other communications service
536 providers for similar work and shall not include any consultants' fees or expenses.

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

543 36-66C-6.

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

547 36-66C-7.

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

550 36-66C-8.

551 (a) An authority shall not require a communications service provider to indemnify and
552 hold the authority and its officers and employees harmless against any claims, lawsuits,
553 judgments, costs, liens, losses, expenses, or fees, except when a court of competent
554 jurisdiction has found that the negligence of the communications service provider while
555 installing, repairing, or maintaining caused the harm that created such claims, lawsuits,
556 judgments, costs, liens, losses, expenses, or fees, or to require a communications service
557 provider to obtain insurance naming the authority or its officers and employees an
558 additional insured against any of the foregoing.

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

566 36-66C-9.

567 A wireless provider that installs utility poles designed to support its own small wireless
568 facilities in the rights of way in this state shall allow another wireless provider to collocate
569 small wireless facilities on such utility poles, subject to technical feasibility and
570 commercially reasonable rates, terms, and conditions, if the other wireless provider agrees
571 in writing to make available similar utility poles in the rights of way in this state for
572 collocation subject to the same rates, terms, and conditions. The wireless provider seeking
573 collocation shall be entitled to collocate on the same number of utility poles designed to
574 support small wireless facilities as such wireless provider makes available in this state to
575 the wireless provider that installed the poles upon which it seeks to collocate. A wireless
576 provider that installs a utility pole designed to support the small wireless facilities of other
577 wireless providers shall allow more than one wireless provider to collocate on the pole,
578 subject to technical feasibility and commercially reasonable rates, terms and conditions.

579 36-66C-10.

580 The approval of the installation, placement, maintenance, or operation of a small wireless
581 facility pursuant to this chapter shall not authorize the provision of any communications
582 service or the installation, placement, maintenance, or operation of any communications
583 facility, including a wireline backhaul facility, other than a small wireless facility, in a right
584 of way.

585 36-66C-11.

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

590 **SECTION 3.**

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

592 **SECTION 4.**

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