Senate Bill 426
By: Senators Gooch of the 51st, Cowsert 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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

SECTION 2.

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

36-66C-1.

As used in this chapter, the term:

1) 'Antenna' means:
   (A) Communications equipment that transmits or receives electromagnetic radio
       frequency signals used in the provision of wireless services; or
   (B) Similar equipment used for the transmission or reception of surface waves.

2) 'Applicable codes' means:
   (A) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.; and
   (B) The state minimum standard codes identified in Code Section 8-2-20.

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

4) 'Application' means a request submitted by an applicant to an authority:
   (A) For a permit to collocate small wireless facilities; or
   (B) To secure approval for the construction, installation, maintenance, modification,
       operation, or replacement of a utility pole or a wireless support structure.

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

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

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

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

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

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

11) 'Communications service' means cable service as defined in 47 U.S.C.
    Section 522 (6), as it existed on January 1, 2018, telecommunications service as defined
    in 47 U.S.C. Section 153(53), as it existed on January 1, 2018, information service as
    defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or wireless
    services.
(12) 'Communications service provider' means a cable operator as defined in 47 U.S.C.
§ 522(5), as it existed on January 1, 2018, a telecommunications carrier as defined in 47
U.S.C. § 153(51), as it existed on January 1, 2018, a provider of information service as
defined in 47 U.S.C. §153(24), as it existed on January 1, 2018, or a wireless provider.
(13) 'Decorative pole' means a pole owned by an authority that is specially designed and
placed for aesthetic purposes and on which no appurtenances or attachments, other than
light fixtures, a small wireless facility, specially designed informational or directional
signage, or temporary holiday or special event attachments, have been placed or are
permitted to be placed according to nondiscriminatory resolutions, ordinances, or codes
of such authority.
(14) 'Electric membership corporation' shall have the same meaning provided in Code
Section 46-3-171.
(15) 'Fee' means a one-time charge.
(16) 'Historic district' means a group of buildings, properties, or sites that are either listed
in the National Register of Historic Places or formally determined eligible for listing by
the Keeper of the National Register, the individual who has been delegated the authority
by the federal agency to list properties and determine their eligibility for the National
Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic
Agreement codified at 47 C.F.R. Part 1, Appendix C.
(17) 'Information service' shall have the same meaning as provided in 47 U.S.C. Section
153(24), as it existed on January 1, 2018.
(18) 'Interstate highways' shall have the same meaning as provided in Code Section
32-1-3.
(19) 'Law' means any federal, state, or local law, statute, common law, code, rule,
regulation, order, or ordinance.
(20) 'Local governing authority' means a municipality or county that has adopted land
use or zoning regulations for all or the majority of land use within its jurisdiction or has
adopted separate regulations pertaining to the location, construction, collocation,
modification, or operation of wireless facilities.
(21) 'Micro wireless facility' means a small wireless facility not larger in dimension than
24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior
antenna, if any, no longer than 11 inches.
(22) 'Permit' means a written authorization required by an authority to perform an action
or initiate, continue, or complete a project.
(23) 'Person' means an individual, corporation, limited liability company, partnership,
association, trust, or other entity or organization, including an authority.
(24) 'Rate' means a recurring charge.
(25) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3; provided, however, that such term shall not include property or any interest therein acquired for or devoted to an interstate highway and shall apply only to property or an interest therein that is under the control of an authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36-66C-2.

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

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

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

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

(B) Fifty feet above ground level.

(3) New small wireless facilities in a right of way may not extend:
(A) More than ten feet above any utility pole or wireless support structure in place as of January 1, 2018; or
(B) Above the height permitted for a new utility pole under this Code section.

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

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

(A) Has required all cable and utility facilities other than authority poles and attachments to be placed underground by a date certain that is three months prior to the submission of the application;
(B) Does not prohibit the replacement of authority poles or the collocation of small wireless facilities in the designated area; and
(C) Permits wireless providers to seek a waiver of the underground requirements for the placement of a new utility pole to support small wireless facilities, which waivers shall be addressed in a nondiscriminatory manner that does not have the effect of prohibiting the provision of wireless services to any location.

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

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

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

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

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

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

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

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

36-66C-3.

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

(b) A wireless provider shall not apply to install a utility pole unless such wireless provider
has determined after diligent investigation that it cannot meet the service objectives of the
permit by collocating on an existing structure that meets the criteria set forth in
paragraphs (1) and (2) of this subsection. The authority may require a wireless provider
to certify that such wireless provider has made such a determination in good faith and to
provide a documented summary of the basis for such determination. The wireless
provider's determination shall be based on whether such wireless provider can meet the
service objectives of the permit by collocating small wireless facilities on an existing
structure on which:

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

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

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

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

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

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

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

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

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

(A) Materially interferes with the operation of traffic control equipment;
(B) Materially interferes with sight lines or clear zones for transportation or
pedestrians;
(C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section
12101, et seq., or similar federal or state standards regarding pedestrian access or
movement;
(D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
general application adopted by ordinance concerning the location of ground mounted
equipment or new utility poles. Such spacing requirements shall not prevent a wireless
provider from serving any location;
(E) Fails to comply with applicable codes; or
(F) Fails to comply with paragraph (2) of subsection (b) or subsections (i) or (j) of
Code Section 36-66C-2.

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

(8) An applicant seeking to collocate small wireless facilities within the jurisdiction of
a single authority shall be allowed at the applicant's discretion to file a consolidated
application for the collocation of up to 25 small wireless facilities and receive a single
permit for the collocation of multiple small wireless facilities; provided, however, that
the denial of one or more small wireless facilities in a consolidated application shall not
delay processing of any other small wireless facilities in the same application. An
authority may prohibit an applicant from submitting an additional application when such
applicant has at least ten pending consolidated applications. For purposes of this
paragraph, a request to install a utility pole with a collocated small wireless facility shall constitute a single request;

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

(A) Undertake the installation or collocation; and

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

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

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

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

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

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

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

(3) A fee may not include:

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

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

(4) In any controversy concerning the appropriateness of a fee, the authority shall have the burden of proving that the fee is reasonably related to the actual, direct, and reasonable costs incurred by the authority;
(5) Except as provided in paragraph (6) of this subsection, total application fees, where permitted, shall not exceed the lesser of the amount charged by the authority for:

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

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

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

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

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

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

(A) Routine maintenance; or

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

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

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

(g) If multiple applications are received by the authority to install two or more utility poles that would violate applicable spacing requirements under subparagraph (c)(6)(D) of this Code section, or to collocate two or more small wireless facilities on the same wireless support structure or utility pole, the authority shall resolve conflicting requests in an appropriate, reasonable, and nondiscriminatory manner.
36-66C-4.

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

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

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

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

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

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

1. A building permit for any similar commercial construction, activity, or land use development; or

2. One thousand dollars for a new wireless support structure or a substantial modification of a wireless support structure.

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

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

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

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

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

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

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

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

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

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

36-66C-5.

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

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

(c) To the extent that a written agreement between a wireless provider and an authority providing rates and fees for collocations on poles owned or operated by any entity through which a municipality furnishes retail electric service becomes effective between June 1, 2018, and May 31, 2019, such rates and fees shall apply as set forth in such agreement.
(d) In any controversy concerning the appropriateness of a rate for an authority pole, the
authority shall have the burden of proving that the rates are reasonably related to the actual,
direct, and reasonable costs incurred for use of space on the pole for such period. This
subsection shall not apply to rates and fees for collocations on authority poles set forth in
a written agreement described in subsection (c) of this Code section.
(e) Should an authority have an existing authority pole attachment rate, fee, or other term
that does not comply with the requirements of this Code section, it shall reform such rate,
fee, or term in compliance with this Code section by January 1, 2019.
(f) Authorities shall offer rates, fees, and other terms that comply with subsections (b)
through (e) of this Code section. On and after January 1, 2019, an authority shall make
available the rates, fees, and terms for the collocation of small wireless facilities on
authority poles that comply with the following:
   (1) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and
commercially reasonable and shall comply with this chapter. Such rates, fees, and terms
shall be made publicly available so that a wireless provider may accept them without
negotiation. Documents reflecting the rates, fees, and terms entered into with each
wireless provider shall be made publicly available;
   (2) For make-ready work required for authority poles that support aerial cables used for
the provision of services by communications service providers or for electric service, the
parties shall comply with all applicable federal laws and rules and regulations
promulgated thereunder as such existed on January 1, 2018, including, but not limited to
47 U.S.C. Section 224. The good faith estimate of the person owning or controlling the
authority pole for any make-ready work necessary to enable the authority pole to support
the requested collocation shall include authority pole replacement if necessary;
   (3) For authority poles that do not support aerial cables used for video, communications
service, or electric service, the authority shall provide a good faith estimate for any
make-ready work necessary to enable the authority pole to support the requested
collocation, including authority pole replacement if necessary, within 60 days after
receipt of a complete application. Make-ready work including any authority pole
replacement shall be completed within 60 days of written acceptance of the good faith
estimate by the applicant; and
   (4) An authority shall not require more make-ready work than required to meet
applicable codes or the authority's generally applicable safety, reliability, or engineering
standards that reasonably accommodate the collocation of small wireless facilities. Fees
for make-ready work shall not include costs related to preexisting or prior damage or
noncompliance. Fees for make-ready work including any authority pole replacement
shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultants' fees or expenses.

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

36-66C-6.
Nothing in this chapter shall authorize this state or any political subdivision thereof, including, but not limited to, an authority, to require wireless facility deployment or to regulate wireless services.

36-66C-7.
A court of competent jurisdiction shall have jurisdiction to determine all disputes arising under this chapter.

36-66C-8.
(a) An authority shall not require a communications service provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, except when a court of competent jurisdiction has found that the negligence of the communications service provider while installing, repairing, or maintaining caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, or to require a communications service provider to obtain insurance naming the authority or its officers and employees an additional insured against any of the foregoing.

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

36-66C-9.
A wireless provider that installs utility poles designed to support its own small wireless
facilities in the rights of way in this state shall allow another wireless provider to collocate
small wireless facilities on such utility poles, subject to technical feasibility and
commercially reasonable rates, terms, and conditions, if the other wireless provider agrees
in writing to make available similar utility poles in the rights of way in this state for
collocation subject to the same rates, terms, and conditions. The wireless provider seeking
collocation shall be entitled to collocate on the same number of utility poles designed to
support small wireless facilities as such wireless provider makes available in this state to
the wireless provider that installed the poles upon which it seeks to collocate. A wireless
provider that installs a utility pole designed to support the small wireless facilities of other
wireless providers shall allow more than one wireless provider to collocate on the pole,
subject to technical feasibility and commercially reasonable rates, terms and conditions.

36-66C-10.
The approval of the installation, placement, maintenance, or operation of a small wireless
facility pursuant to this chapter shall not authorize the provision of any communications
service or the installation, placement, maintenance, or operation of any communications
facility, including a wireline backhaul facility, other than a small wireless facility, in a right
of way.

36-66C-11.
Nothing in this chapter shall be construed to impose or otherwise affect any tariff,
contractual obligation or right, or federal or state law addressing utility poles, wireless
support structures, or electric transmission structures or equipment of any type owned or
controlled by an investor owned electric utility or an electric membership corporation.

SECTION 3.
This Act shall become effective on July 1, 2018.

SECTION 4.
All laws and parts of laws in conflict with this Act are repealed.