

The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 887:

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 limit
3 the ability of local governing authorities to prohibit, regulate, or charge for use of public
4 rights of way under certain circumstances; to provide for definitions; to specify that a local
5 governing authority may require permit fees only under certain circumstances; to require a
6 local governing authority to receive and process applications for and issue permits subject
7 to specified requirements; to provide that approval of and charges by a local governing
8 authority are not required for certain activities related to certain wireless facilities; to specify
9 limitations for processing applications to deploy certain structures and wireless facilities in
10 the rights of way; to require a local governing authority to approve the collocation of small
11 wireless facilities on certain utility poles and wireless support structures, subject to certain
12 requirements; to provide requirements for rates, fees, and other terms related to utility poles;
13 to prohibit a local governing authority from adopting or enforcing any regulations on the
14 placement or operation of certain facilities and from regulating any communications services
15 or imposing or collecting any taxes, fees, or charges not specifically authorized under state
16 law; to provide for determination of disputes; to provide for related matters; to provide for
17 an effective date; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

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

22 "CHAPTER 66C

23 36-66C-1.

24 As used in this chapter, the term:

- 25 (1) 'Antenna' means:
26 (A) Communications equipment that transmits or receives electromagnetic radio
27 frequency signals used in the provision of wireless services; or
28 (B) Similar equipment used for the transmission or reception of surface waves.
- 29 (2) 'Applicable codes' means:
30 (A) The Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.; and
31 (B) The state minimum standard codes identified in Code Section 8-2-20.
- 32 (3) 'Applicant' means any wireless provider that submits an application to an authority
33 pursuant to this chapter.
- 34 (4) 'Application' means a request submitted by an applicant to an authority:
35 (A) For a permit to collocate small wireless facilities; or
36 (B) To secure approval for the construction, installation, maintenance, modification,
37 operation, or replacement of a utility pole or a wireless support structure.
- 38 (5) 'Authority' means any local governing authority, including without limitation any
39 entity through which a municipality furnishes retail electric service.
- 40 (6) 'Authority pole' means a utility pole owned or operated by an authority in a right of
41 way.
- 42 (7) 'Base station' means wireless facilities or a wireless support structure or utility pole
43 that currently supports wireless facilities. The term shall not include a tower or any
44 equipment associated with a tower.
- 45 (8) 'Cable operator' shall have the same meaning as provided in 47 U.S.C. Section
46 522(5), as it existed on January 1, 2018.
- 47 (9) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or
48 replace one or more wireless facilities on, under, within, or adjacent to a wireless support
49 structure or utility pole.
- 50 (10) 'Communications facility' means that set of equipment and network components,
51 including wires and cables and associated facilities, used by a communications services
52 provider to provide communications services.
- 53 (11) 'Communications services' means cable service as defined in 47 U.S.C.
54 Section 522(6), as it existed on January 1, 2018, telecommunications service as defined
55 in 47 U.S.C. Section 153(53), as it existed on January 1, 2018, information service as
56 defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or wireless
57 services.
- 58 (12) 'Communications services provider' means a cable operator as defined in 47 U.S.C.
59 Section 522(5), as it existed on January 1, 2018, a telecommunications carrier as defined
60 in 47 U.S.C. Section 153(51), as it existed on January 1, 2018, a provider of information

61 service as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or a
62 wireless provider.

63 (13) 'Decorative pole' means a pole owned by an authority that is specially designed and
64 placed for aesthetic purposes and on which no appurtenances or attachments, other than
65 light fixtures, a small wireless facility, specially designed informational or directional
66 signage, or temporary holiday or special event attachments, have been placed or are
67 permitted to be placed according to nondiscriminatory resolutions, ordinances, or codes
68 of such authority.

69 (14) 'Electric membership corporation' shall have the same meaning provided in Code
70 Section 46-3-171.

71 (15) 'Fee' means a one-time charge.

72 (16) 'Historic district' means an area designated as an historic district under Article 2 of
73 Chapter 10 of Title 44, the 'Georgia Historic Preservation Act,' or a group of buildings,
74 properties, or sites that are either listed in the National Register of Historic Places or
75 formally determined eligible for listing by the Keeper of the National Register, the
76 individual who has been delegated the authority by the federal agency to list properties
77 and determine their eligibility for the National Register, in accordance with Section
78 VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1,
79 Appendix C.

80 (17) 'Information service' shall have the same meaning as provided in 47 U.S.C. Section
81 153(24), as it existed on January 1, 2018.

82 (18) 'Interstate highways' shall have the same meaning as provided in Code Section
83 32-1-3.

84 (19) 'Law' means any federal, state, or local law, statute, common law, code, rule,
85 regulation, order, or ordinance.

86 (20) 'Local governing authority' means a municipality or county that has adopted land
87 use or zoning regulations for all or the majority of land use within its jurisdiction or has
88 adopted separate regulations pertaining to the location, construction, collocation,
89 modification, or operation of wireless facilities.

90 (21) 'Micro wireless facility' means a small wireless facility not larger in dimension than
91 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior
92 antenna, if any, no longer than 11 inches.

93 (22) 'Permit' means a written authorization required by an authority to perform an action
94 or initiate, continue, or complete a project.

95 (23) 'Person' means an individual, corporation, limited liability company, partnership,
96 association, trust, or other entity or organization, including an authority.

97 (24) 'Rate' means a recurring charge.

98 (25) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3;
 99 provided, however, that such term shall not include property or any interest therein
 100 acquired for or devoted to an interstate highway and shall apply only to property or an
 101 interest therein that is under the control of an authority.

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

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

106 (B) All other wireless equipment associated with the facility is cumulatively no more
 107 than 25 cubic feet in volume. The following types of associated ancillary equipment
 108 shall not be included in the calculation of equipment volume: electric meters,
 109 concealment elements, telecommunications demarcation boxes, grounding equipment,
 110 power transfer switches, cut-off switches, and vertical cable runs for the connection of
 111 power and other services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

153 36-66C-2.

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

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

161 (2) The utility poles and small wireless facilities provided for in paragraph (1) of this
 162 subsection shall be so constructed and maintained as not to obstruct or hinder the usual
 163 travel or public safety on such right of way or obstruct the legal use of such right of way
 164 by other utilities. Each new or modified utility pole installed in such right of way shall
 165 not exceed fifty feet above ground level. New small wireless facilities in a right of way
 166 may not extend more than ten feet above the utility pole or wireless support structure on
 167 which it is collocated.

168 (3) A wireless provider may collocate small wireless facilities that exceed the height
 169 limits in paragraph (2) of this subsection and construct, install, maintain, modify, operate,
 170 and replace utility poles that exceed the height limits in paragraph (2) of this subsection

171 along, across, upon, and under a right of way if the authority approves an application for
172 such activities under Code Section 36-66C-4. A wireless provider may collocate wireless
173 facilities that are not small wireless facilities and construct, install, maintain, modify,
174 operate, and replace wireless support structures along, across, upon, and under a right of
175 way if such wireless provider has an arrangement with the authority allowing such
176 activities and if the authority approves an application for the deployment under Code
177 Section 36-66C-4.

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

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

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

187 (C) Permits wireless providers to seek a waiver of the underground requirements for
188 the placement of a new utility pole to support small wireless facilities, which waivers
189 shall be addressed in a nondiscriminatory manner.

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

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

203 (e) The authority may require a wireless provider to repair all damage to a right of way
204 directly caused by the activities of such wireless provider, while occupying, installing,
205 repairing, or maintaining wireless facilities, wireless support structures, or utility poles in
206 such right of way, and to return such right of way to its functional equivalence before the
207 damage pursuant to the competitively neutral, reasonable requirements and specifications

208 of the authority. If the wireless provider fails to make the repairs required by the authority
209 within 30 days after written notice, the authority may effect those repairs and charge the
210 applicable party the reasonable documented cost of such repairs.

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

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

239 (h) An authority shall not assess a rate for occupancy of the right of way pursuant to
240 paragraph (1) of subsection (b) of this Code section that exceeds, in total, an amount equal
241 to \$25.00 per year per small wireless facility.

242 (i) Subject to Code Section 36-66C-3, and except for facilities excluded from evaluation
243 for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4), as such existed on
244 January 1, 2018, an authority may require reasonable, nondiscriminatory, and

245 technologically neutral design or concealment measures in a historic district. Any such
 246 design or concealment measures shall not be considered a part of the small wireless facility
 247 for purposes of the size restrictions provided in paragraph (26) of Code Section 36-66C-1.
 248 (j) An authority may adopt written guidelines establishing reasonable and objective stealth
 249 or concealment criteria for small wireless facilities in designated downtown or residential
 250 areas, reasonable and objective design criteria for small wireless facilities to be collocated
 251 on decorative poles, and reasonable and objective design criteria for utility poles deployed
 252 in areas with decorative poles. Such guidelines may be adopted only if they apply on a
 253 nondiscriminatory basis to all other occupants of the right of way, including the authority
 254 itself. A wireless provider that seeks to collocate small wireless facilities on a decorative
 255 pole shall comply with Code Section 36-66C-3. A wireless provider that is required to
 256 replace a decorative pole in compliance with Code Section 36-66C-5 shall conform the new
 257 decorative pole to the design aesthetics and material look of the decorative pole being
 258 replaced.

259 36-66C-3.

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

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

275 (1) Such wireless provider has the right to collocate on the utility pole or wireless
 276 support structure, subject to reasonable terms and conditions; and

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

279 (c) An authority may require an applicant to obtain one or more permits to collocate a
 280 small wireless facility or to construct, install, maintain, modify, operate, or replace a utility

281 pole, provided that such permits are of general applicability and do not apply exclusively
282 to small wireless facilities. An authority shall receive applications for, process, and issue
283 such permits subject to the following requirements:

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

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

298 (3) If within 30 days of receiving an application the authority does not notify the
299 applicant that such application is incomplete, then such application shall be deemed
300 complete. If an application is incomplete, the authority shall specifically identify the
301 missing information and the applicant may cure the deficiencies identified by the
302 authority and resubmit the application within 20 days of the notice without paying an
303 additional application fee. The processing deadline in paragraph (5) of this subsection
304 shall be tolled from the time the authority sends the notice of incompleteness to the time
305 the applicant provides the missing information, and such processing deadline also may
306 be tolled by agreement of the applicant and the authority;

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

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

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

- 318 (A) Materially interferes with the operation of traffic control equipment;
319 (B) Materially interferes with sight lines or clear zones for transportation or
320 pedestrians;
321 (C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section
322 12101, et seq., or similar federal or state standards regarding pedestrian access or
323 movement;
324 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
325 general application adopted by ordinance concerning the location of ground mounted
326 equipment or new utility poles. Such spacing requirements shall not prevent a wireless
327 provider from serving any location;
328 (E) Fails to comply with applicable codes; or
329 (F) Fails to comply with paragraph (2) of subsection (b) or subsections (i) or (j) of
330 Code Section 36-66C-2.
- 331 (7) The authority shall document the basis for a denial, including the specific provisions
332 of law on which the denial was based, and send the documentation to the applicant on or
333 before the day the authority denies an application. The applicant may cure the
334 deficiencies identified by the authority and resubmit the application within 30 days of the
335 denial without paying an additional application fee. The authority shall approve or deny
336 the revised application within 30 days. Any subsequent review shall be limited to the
337 deficiencies cited in the denial;
- 338 (8) An applicant seeking to collocate small wireless facilities within the jurisdiction of
339 a single authority shall be allowed at the applicant's discretion to file a consolidated
340 application for the collocation of up to 15 small wireless facilities and receive a single
341 permit for the collocation of multiple small wireless facilities; provided, however, that
342 the denial of one or more small wireless facilities in a consolidated application shall not
343 delay processing of any other small wireless facilities in the same application. An
344 authority may prohibit an applicant from submitting an additional application when such
345 applicant has at least eight pending consolidated applications. For purposes of this
346 paragraph, a request to install a utility pole with a collocated small wireless facility shall
347 constitute a single request;
- 348 (9) Collocation for which a permit is granted shall be operational for use by a wireless
349 services provider within nine months after the permit issuance date unless the authority
350 and the applicant agree to extend this period or a delay occurs due to lack of power to the
351 wireless support structure or utility pole or lack of communications facilities to the
352 wireless support structure or utility pole. If the wireless services provider fails within
353 such nine-month period to collocate small wireless facilities that are operational for use
354 by a wireless services provider, the permit shall be void and such wireless services

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

358 (A) Undertake the installation or collocation; and

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

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

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

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

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

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

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

376 (3) A fee may not include:

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

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

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

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

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

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

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

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

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

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

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

400 (A) Routine maintenance; or

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

403 (2) An authority may, however, require a permit to work within a right of way for such
 404 activities, if applicable. Any such permits shall not be subject to the requirements
 405 provided in subsections (c) and (d) of this Code section.

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

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

419 36-66C-4.

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

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

428 (1) If within 30 days of receiving an application the authority does not notify the
429 applicant that such application is incomplete, then such application shall be deemed
430 complete. If an application is incomplete, the authority shall specifically identify the
431 missing application information in the notice;

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

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

446 (c) Application fees shall be subject to the same requirements as in paragraphs (1) through
447 (4) of subsection (d) of Code Section 36-66C-3 and the total application fees, where
448 permitted, shall not exceed the lesser of the amount charged by the authority for:

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

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

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

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

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

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

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

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

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

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

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

472 36-66C-5.

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

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

481 (c) To the extent that a written agreement between a wireless provider and an authority
482 providing rates and fees for collocations on poles owned or operated by any entity through
483 which a municipality furnishes retail electric service becomes effective between June 1,
484 2018, and May 31, 2019, such rates and fees shall apply as set forth in such agreement.

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

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

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

497 (1) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and
498 commercially reasonable and shall comply with this chapter. Such rates, fees, and terms
499 shall be made publicly available so that a wireless provider may accept them without

500 negotiation. Documents reflecting the rates, fees, and terms entered into with each
501 wireless provider shall be made publicly available;

502 (2) For make-ready work required for authority poles that support aerial cables used for
503 the provision of services by communications services providers or for electric service, the
504 parties shall comply with all applicable federal laws and rules and regulations
505 promulgated thereunder as such existed on January 1, 2018, including, but not limited to
506 47 U.S.C. Section 224. The good faith estimate of the person owning or controlling the
507 authority pole for any make-ready work necessary to enable the authority pole to support
508 the requested collocation shall include authority pole replacement if necessary;

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

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

523 36-66C-6.

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

527 36-66C-7.

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

530 36-66C-8.

531 (a) An authority shall not require a communications services provider to indemnify and
532 hold the authority and its officers and employees harmless against any claims, lawsuits,
533 judgments, costs, liens, losses, expenses, or fees, except when a court of competent

534 jurisdiction has found that the negligence of the communications services provider while
535 installing, repairing, or maintaining caused the harm that created such claims, lawsuits,
536 judgments, costs, liens, losses, expenses, or fees, or to require a communications services
537 provider to obtain insurance naming the authority or its officers and employees an
538 additional insured against any of the foregoing.

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

546 36-66C-9.

547 A wireless provider that installs utility poles designed to support its own small wireless
548 facilities in the rights of way in this state shall allow another wireless provider to collocate
549 small wireless facilities on such utility poles, subject to technical feasibility and
550 commercially reasonable rates, terms, and conditions, if the other wireless provider agrees
551 in writing to make available similar utility poles in the rights of way in this state for
552 collocation subject to the same rates, terms, and conditions. The wireless provider seeking
553 collocation shall be entitled to collocate on the same number of utility poles designed to
554 support small wireless facilities as such wireless provider makes available in this state to
555 the wireless provider that installed the poles upon which it seeks to collocate. A wireless
556 provider that installs a utility pole designed to support the small wireless facilities of other
557 wireless providers shall allow more than one wireless provider to collocate on the pole,
558 subject to technical feasibility and commercially reasonable rates, terms and conditions.

559 36-66C-10.

560 (a) To the extent an authority does not adopt any ordinances or resolutions or enter into
561 agreements that implement the provisions of this chapter or to the extent such ordinances,
562 resolutions, or agreements are determined not to comply with this chapter or are otherwise
563 determined to be invalid, wireless providers may collocate small wireless facilities and
564 construct, install, maintain, modify, operate, and replace utility poles in the right of way
565 pursuant to the requirements set forth in this chapter.

566 (b) Except as provided in this chapter or otherwise specifically authorized by state law, an
567 authority shall not adopt or enforce any ordinances, regulations, or requirements as to the
568 placement or operation of communications facilities in a right of way by a communications

569 services provider authorized by state or local law to operate in a right of way, regulate any
570 communications services, or impose or collect any tax, fee, or charge for the provision of
571 communications services over the communications services provider's communications
572 facilities in a right of way.

573 36-66C-11.

574 The approval of the installation, placement, maintenance, or operation of a small wireless
575 facility pursuant to this chapter shall not authorize the provision of any communications
576 services or the installation, placement, maintenance, or operation of any communications
577 facility, including a wireline backhaul facility, other than a small wireless facility, in a right
578 of way.

579 36-66C-12.

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

584 36-66C-13.

585 In the event of any conflict between the provisions of this chapter and the provisions of
586 Chapter 66B of this title, this chapter shall control as to the collocation of wireless facilities
587 and the construction installation, maintenance, modification, operation, and replacement
588 of utility poles and wireless support structures by wireless providers in the right of way."

589 **SECTION 2.**

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

591 **SECTION 3.**

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