

SENATE SUBSTITUTE TO HB 887:

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
 2 so as to streamline the deployment of wireless broadband in the public rights of way; to 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, but shall not include any local
39 governing entity to the extent that it is acting in the capacity of a provider of retail electric
40 service or as an entity through which a municipality furnishes retail electric service.
- 41 (6) 'Authority pole' means a utility pole owned or operated by an authority in a right of
42 way.
- 43 (7) 'Base station' means wireless facilities or a wireless support structure or utility pole
44 that currently supports wireless facilities. The term shall not include a tower or any
45 equipment associated with a tower.
- 46 (8) 'Cable operator' shall have the same meaning as provided in 47 U.S.C. Section
47 522(5), as it existed on January 1, 2018.
- 48 (9) 'Collocate' or 'collocation' means to install, mount, maintain, modify, operate, or
49 replace one or more wireless facilities on, under, within, or adjacent to a wireless support
50 structure or utility pole.
- 51 (10) 'Communications facility' means that set of equipment and network components,
52 including wires and cables and associated facilities, used by a communications services
53 provider to provide communications services.
- 54 (11) 'Communications services' means cable service as defined in 47 U.S.C.
55 Section 522(6), as it existed on January 1, 2018, telecommunications service as defined
56 in 47 U.S.C. Section 153(53), as it existed on January 1, 2018, information service as
57 defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018, or wireless
58 services.
- 59 (12) 'Communications services provider' means a cable operator as defined in 47 U.S.C.
60 Section 522(5), as it existed on January 1, 2018, a telecommunications carrier as defined
61 in 47 U.S.C. Section 153(51), as it existed on January 1, 2018, a provider of information

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

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

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

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

73 (16) 'Historic district' means an area designated as a historic district under Article 2 of
74 Chapter 10 of Title 44, the 'Georgia Historic Preservation Act;' any area designated as a
75 historic district by a local code, administrative rule, or regulation adopted by a local
76 governing authority through an ordinance prior to January 1, 2018; or a group of
77 buildings, properties, or sites that are either listed in the National Register of Historic
78 Places or formally determined eligible for listing by the Keeper of the National Register,
79 the individual who has been delegated the authority by the federal agency to list
80 properties and determine their eligibility for the National Register, in accordance with
81 Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R.
82 Part 1, Appendix C.

83 (17) 'Information service' shall have the same meaning as provided in 47 U.S.C. Section
84 153(24), as it existed on January 1, 2018.

85 (18) 'Interstate highways' shall have the same meaning as provided in Code Section
86 32-1-3.

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

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

93 (21) 'Micro wireless facility' means a small wireless facility not larger in dimension than
94 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior
95 antenna, if any, no longer than 11 inches.

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

- 98 (23) 'Person' means an individual, corporation, limited liability company, partnership,
99 association, trust, or other entity or organization, including an authority.
- 100 (24) 'Rate' means a recurring charge.
- 101 (25) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3;
102 provided, however, that such term shall not include property or any interest therein
103 acquired for or devoted to an interstate highway and shall apply only to property or an
104 interest therein that is under the control of an authority.
- 105 (26) 'Small wireless facility' means a wireless facility that meets both of the following
106 qualifications:
- 107 (A) Each wireless provider's antenna could fit within an enclosure of no more than six
108 cubic feet in volume; and
- 109 (B) All other wireless equipment associated with the facility is cumulatively no more
110 than 25 cubic feet in volume. The following types of associated ancillary equipment
111 shall not be included in the calculation of equipment volume: electric meters,
112 concealment elements, telecommunications demarcation boxes, grounding equipment,
113 power transfer switches, cut-off switches, and vertical cable runs for the connection of
114 power and other services.
- 115 (27) 'Substantial modification' means a proposed modification to an existing wireless
116 support structure or base station which will change the physical dimensions of the
117 wireless support structure or base station by installing new equipment cabinets for the
118 technology involved resulting in more than four cabinets total, by installing new
119 equipment cabinets on the ground if there are no preexisting ground cabinets associated
120 with the structure, or by installing ground cabinets that are more than 10 percent larger
121 in height or overall volume than any other ground cabinets associated with the structure.
- 122 (28) 'Telecommunications carrier' shall have the same meaning as provided in 47 U.S.C.
123 Section 153(51), as it existed on January 1, 2018.
- 124 (29) 'Utility pole' means a pole or similar structure that is or may be used in whole or in
125 part by or for wireline communications, electric distribution, lighting, traffic control,
126 signage, or a similar function, or for the collocation of small wireless facilities. Such
127 term shall not include electric transmission facilities.
- 128 (30) 'Wireless facility' means equipment at a fixed location that enables wireless
129 communications or surface wave communications between user equipment or nodes of
130 a communications network, or both, including:
- 131 (A) Equipment associated with wireless communications or surface wave
132 communications; and

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

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

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

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

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

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

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

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

157 36-66C-2.

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

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

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

169 not exceed fifty feet above ground level. New small wireless facilities in a right of way
170 may not extend more than ten feet above the utility pole or wireless support structure on
171 which it is collocated.

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

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

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

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

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

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

201 (d) If the authority determines that a wireless provider's activity in a right of way pursuant
202 to this Code section creates an imminent risk to public safety, the authority may provide
203 written notice to the wireless provider and demand that such provider address such risk.
204 If the wireless provider fails to reasonably address the risk within 24 hours of the written

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

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

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

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

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

243 (h) An authority shall not assess a rate for occupancy of the right of way pursuant to
244 paragraph (1) of subsection (b) of this Code section that exceeds, in total, an amount equal
245 to \$125.00 per year per small wireless facility.

246 (i) Subject to Code Section 36-66C-3, an authority may require written reasonable and
247 objective design or concealment measures in a historic district that do not discriminate
248 between wireless providers. Any such design or concealment measures shall not be
249 considered a part of the small wireless facility for purposes of the size restrictions provided
250 in paragraph (26) of Code Section 36-66C-1. An authority may deny an application to
251 install a utility pole at a location in a historic district that such authority determines would
252 detract from the historic character of the surrounding area. An authority may waive any
253 ordinances or other requirements that are subject to this subsection.

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

265 36-66C-3.

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

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

277 good faith, based on the assessment of a licensed engineer, and to provide a documented
278 summary of the basis for such determination. The wireless provider's determination shall
279 be based on whether such wireless provider can meet the service objectives of the permit
280 by collocating small wireless facilities on an existing structure on which:

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

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

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

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

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

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

- 313 (4) The authority may require an applicant to include an attestation that the small
314 wireless facilities will be operational for use by a wireless services provider within nine
315 months after the permit issuance date, unless the authority and the applicant agree to
316 extend such period or delay occurs due to lack of power to the wireless support structure
317 or utility pole or lack of communications transport facilities to the wireless support
318 structure or utility pole;
- 319 (5) An application shall be processed on a nondiscriminatory basis and deemed approved
320 if the authority fails to approve or deny the application within 75 days. An applicant shall
321 inform the authority in writing when it intends to act upon an application that has been
322 deemed approved pursuant to this subsection;
- 323 (6) An authority shall approve an application unless it:
- 324 (A) Materially interferes with the operation of traffic control equipment;
- 325 (B) Materially interferes with sight lines or clear zones for transportation or
326 pedestrians;
- 327 (C) Fails to comply with the Americans with Disabilities Act, 42 U.S.C. Section
328 12101, et seq., or similar federal or state standards regarding pedestrian access or
329 movement;
- 330 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
331 general application adopted by ordinance concerning the location of ground mounted
332 equipment or new utility poles. Such spacing requirements shall not prevent a wireless
333 provider from serving any location;
- 334 (E) Fails to comply with applicable codes; or
- 335 (F) Fails to comply with paragraph (2) of subsection (b) or subsections (i) or (j) of
336 Code Section 36-66C-2.
- 337 (7) The authority shall document the basis for a denial, including the specific provisions
338 of law on which the denial was based, and send the documentation to the applicant on or
339 before the day the authority denies an application. The applicant may cure the
340 deficiencies identified by the authority and resubmit the application within 30 days of the
341 denial without paying an additional application fee. The authority shall approve or deny
342 the revised application within 30 days. Any subsequent review shall be limited to the
343 deficiencies cited in the denial;
- 344 (8) An applicant seeking to collocate small wireless facilities within the jurisdiction of
345 a single authority shall be allowed at the applicant's discretion to file a consolidated
346 application for the collocation of up to 15 small wireless facilities and receive a single
347 permit for the collocation of multiple small wireless facilities; provided, however, that
348 the denial of one or more small wireless facilities in a consolidated application shall not
349 delay processing of any other small wireless facilities in the same application. An

350 authority may prohibit an applicant from submitting an additional application when such
 351 applicant has at least eight pending consolidated applications. For purposes of this
 352 paragraph, a request to install a utility pole with a collocated small wireless facility shall
 353 constitute a single request;

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

364 (A) Undertake the installation or collocation; and

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

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

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

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

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

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

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

382 (3) A fee may not include:

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

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

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

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

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

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

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

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

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

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

406 (A) Routine maintenance; or

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

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

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

420 (g) If multiple applications are received by the authority to install two or more utility poles
421 that would violate applicable spacing requirements under subparagraph (c)(6)(D) of this
422 Code section, or to collocate two or more small wireless facilities on the same wireless

423 support structure or utility pole, the authority shall resolve conflicting requests in an
424 appropriate, reasonable, and nondiscriminatory manner.

425 36-66C-4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

478 36-66C-5.

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

483 (b) The rates and fees for collocations on authority poles shall be nondiscriminatory
 484 regardless of the services provided by the collocating wireless provider and shall not
 485 exceed \$40.00 per year per authority pole.

486 (c) In any controversy concerning the appropriateness of a rate for an authority pole, the
 487 authority shall have the burden of proving that the rates are reasonably related to the actual,
 488 direct, and reasonable costs incurred for the use of space on the pole for such period.

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

492 (e) Authorities shall offer rates, fees, and other terms that comply with subsections (b)
 493 through (d) of this Code section. On and after January 1, 2019, an authority shall make

494 available the rates, fees, and terms for the collocation of small wireless facilities on
 495 authority poles that comply with the following:

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

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

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

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

522 36-66C-6.

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

526 36-66C-7.

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

529 36-66C-8.

530 (a) An authority shall not require a communications services provider to indemnify and
531 hold the authority and its officers and employees harmless against any claims, lawsuits,
532 judgments, costs, liens, losses, expenses, or fees, except when a court of competent
533 jurisdiction has found that the negligence of the communications services provider while
534 installing, repairing, or maintaining caused the harm that created such claims, lawsuits,
535 judgments, costs, liens, losses, expenses, or fees, or to require a communications services
536 provider to obtain insurance naming the authority or its officers and employees an
537 additional insured against any of the foregoing.

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

545 36-66C-9.

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

558 36-66C-10.

559 (a) To the extent an authority does not adopt any ordinances or resolutions or enter into
560 agreements that implement the provisions of this chapter or to the extent such ordinances,
561 resolutions, or agreements are determined not to comply with this chapter or are otherwise
562 determined to be invalid, wireless providers may collocate small wireless facilities and

563 construct, install, maintain, modify, operate, and replace utility poles in the right of way
 564 pursuant to the requirements set forth in this chapter.

565 (b) Except as provided in this chapter or otherwise specifically authorized by state law, an
 566 authority shall not adopt or enforce any ordinances, regulations, or requirements as to the
 567 placement or operation of communications facilities in a right of way by a communications
 568 services provider authorized by state or local law to operate in a right of way, regulate any
 569 communications services, or impose or collect any tax, fee, or charge for the provision of
 570 communications services over the communications services provider's communications
 571 facilities in a right of way.

572 36-66C-11.

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

578 36-66C-12.

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