



State of Tennessee

PUBLIC CHAPTER NO. 819

HOUSE BILL NO. 2279

By Representatives Lamberth, Sargent, Casada, Marsh, Holsclaw, Wirgau, Hawk, Hazlewood, Johnson, Calfee, Crawford, Timothy Hill, Towns, Hardaway, Gilmore, Powell, Beck, Tillis, Sparks, Jernigan, Carr, Jones, Byrd, Goins, Love, Mitchell, Powers, Zachary, Cameron Sexton, Miller, Eldridge, Coley, Matthew Hill, Ramsey, Williams, Favors, Reedy, Kumar, Dawn White, McCormick, Camper, Thompson, Kevin Brooks, Van Huss, Whitson, Cooper, Weaver, Carter, Matheny, Littleton, Howell, Gant, Lynn, Rudd, Terry, Stewart, Jerry Sexton, Hicks, Akbari, Parkinson, Sanderson, Forgety, Mark White

Substituted for: Senate Bill No. 2504

By Senators Ketrone, Johnson, Gresham, Lundberg, Green, Yager, Niceley, Swann, Tate

AN ACT to amend Tennessee Code Annotated, Title 13, relative to enacting the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018.

WHEREAS, Tennessee has benefitted from its long-standing policy of encouraging investment in technologically advanced infrastructure that delivers access to information and connectivity between citizens; and

WHEREAS, this policy has included, in Tennessee Code Annotated, Title 65, a broad and technology neutral grant of access to deploy infrastructure along the streets, highways, and public works of the cities, counties, and the state, which is not intended to be limited by this act; and

WHEREAS, such access has been granted subject to certain local powers but free from local taxation or other fees or charges in excess of cost recovery; and

WHEREAS, Tennessee's economy depends upon the ability of Tennesseans to utilize robust and mobile connectivity to transact business and pursue education; and

WHEREAS, robust and mobile connectivity affords Tennesseans opportunities to be engaged in the civic and political activities of local and state government; and

WHEREAS, Tennessee's law enforcement, first responders, and healthcare providers can use wireless and mobile applications to protect the public's safety and well-being; and

WHEREAS, Tennessee's ability to remain a leader in automotive production, research, and development will be enhanced by rapid deployment of the 5G wireless connectivity that will be critical for safe operation of autonomous vehicles and for numerous smart transportation systems; and

WHEREAS, all of these factors provide a compelling basis for the General Assembly to set aside obstacles and discriminatory policies that may slow deployment of new infrastructure and improvements to existing networks for the purpose of supporting emerging wireless technologies and ensuring that Tennessee networks can keep up with the growing data demands of Tennesseans; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 24, is amended by adding the following new part:

13-24-401. Short title.

This part shall be known and may be cited as the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018."

13-24-402. Part definitions.

As used in this part:

(1) "Aesthetic plan" means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the authority or designated area within the authority. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan;

(2) "Applicant" means any person who submits an application pursuant to this part;

(3) "Application" means a request submitted by an applicant to an authority:

(A) For a permit to deploy or collocate small wireless facilities in the ROW; or

(B) To approve the installation or modification of a PSS associated with deployment or collocation of small wireless facilities in the ROW;

(4)

(A) "Authority" means:

(i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government;

(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

(B) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;

(5) "Authority-owned PSS" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;

(6) "Colocate," "colocating", and "colocation" mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Colocation" does not include the installation of a new PSS or replacement of authority-owned PSS;

(7) "Communications facility" means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;

(8) "Communications service" means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

(9) "Communications service provider" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. §

153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7-59-303, or a wireless provider;

(10) "Fee" means a one-time, nonrecurring charge;

(11) "Historic district" means a property or area zoned as a historic district or zone pursuant to § 13-7-404;

(12) "Local authority" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;

(13) "Micro wireless facility" means a small wireless facility that:

(A) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and

(B) The exterior antenna, if any, does not exceed eleven inches (11") in length;

(14) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(15) "Potential support structure for a small wireless facility" or "PSS" means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(16) "Rate" means a recurring charge;

(17) "Residential neighborhood" means an area within a local authority's geographic boundary that is zoned or otherwise designated by the local authority for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;

(18) "Right-of-way" or "ROW" means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the authority, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the authority;

(19)

(A) "Small wireless facility" means a wireless facility with:

(i) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision (19)(A)(ii), "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a

vertical cable run for the connection of power and other services;
and

(B) "Small wireless facility" includes a micro wireless facility;

(20) "Wireline backhaul facility" means a communications facility used to transport communications services by wire from a wireless facility to a network;

(21)

(A) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(i) Equipment associated with wireless communications;
and

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(B) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is colocated;

(ii) Wireline backhaul facilities; or

(iii) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna; and

(C) "Wireless facility" includes small wireless facilities;

(22) "Wireless provider" means a person who provides wireless service;
and

(23) "Wireless services" means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

13-24-403. Construction and applicability of part.

(a) This part shall be construed to maximize investment in wireless connectivity across the state by creating a uniform and predictable framework that limits local obstacles to deployment of small wireless facilities in the ROW and to encourage, where feasible, shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory.

(b) This part does not apply to:

(1) Deployment of infrastructure outside of the ROW; or

(2) Taller towers or monopoles traditionally used to provide wireless services that are governed by §§ 13-24-304 and 13-24-305.

13-24-404. Local option and local preemption.

(a) Nothing in this part requires any local authority to promulgate any limits, permitting requirements, zoning requirements, approval policies, or any process to obtain permission to deploy small wireless facilities. However, any local authority that promulgates limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities shall not impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in this part;

(2) In excess of that which is granted by this part; or

(3) Otherwise in conflict with this part.

(b) Any local authority limits, requirements, policies, or processes that are more restrictive, in conflict with, or in excess of that which is granted by this part are void, regardless of the date on which the requirement, policy, or process was enacted or became law.

(c) For colocation of small wireless facilities in the ROW that is within the jurisdiction of a local authority that does not require an application and does not require work permits for deployment of infrastructure within the ROW, an applicant shall provide notice of the colocation by providing the materials set forth in § 13-24-409(g) to the office of the county mayor and the chief administrative officer of the county highway department, if the colocation is in the unincorporated area, or the city, if the colocation is in an incorporated area.

13-24-405. Existing law unaffected.

This part does not:

(1) Create regulatory jurisdiction for any subdivision of the state regarding communications services that does not exist under applicable law, regardless of the technology used to deliver the services;

(2) Restrict access granted by § 65-21-201 or expand access authorized under § 54-16-112;

(3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;

(4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59;

(5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018;

(6) Alter the requirements or exempt any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any facility pursuant to title 54, chapter 5, part 8, or other similar generally applicable requirement imposed on entities who deploy infrastructure in ROW;

(7) Prohibit a local authority from the nondiscriminatory enforcement of breakaway sign post requirements and safety restrictions generally imposed for all structures within a ROW;

(8) Prohibit a local authority from the nondiscriminatory enforcement of vegetation control requirements that are imposed upon entities that deploy infrastructure in a ROW for the purpose of limiting the chances of damage or injury as a result of infrastructure that is obscured from view due to vegetation; or

(9) Prohibit a local authority from the nondiscriminatory enforcement of generally applicable local rules regarding removal of unsafe, abandoned, or inoperable obstructions in a ROW.

13-24-406. Prohibited activities.

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, marketing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

13-24-407. Uniform local authority fees for deployment of small wireless facilities; exceptions.

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars (\$100) each for the first five (5) small wireless facilities and fifty dollars (\$50.00) each for additional small wireless facilities included in a single application. A local authority may also require an additional fee of two hundred dollars (\$200) on the first application an applicant files following the effective date of this act to offset the local authority's initial costs of preparing to comply with this part. Beginning on January 1, 2020, and at each five-year interval thereafter, the maximum application fees established in this section must increase in an amount of ten percent (10%), rounded to the nearest dollar; and

(2) The maximum annual rate for colocation of a small wireless facility on a local authority-owned PSS is one hundred dollars (\$100).

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own facilities. In no event shall replacement of a PSS constitute regular maintenance.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)

(1) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deployment or the continuing presence of a small wireless facility.

(2) No local authority shall require approval, or any applications, fees, or rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104.

(3) No local authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) A local authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in-kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities. The prohibition in this subdivision (e)(4) does not preclude the approval of an application to collocate a small cell in which the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the authority.

13-24-408. Uniform local authority requirements for deployment and maintenance of small wireless facilities; exceptions.

(a)

(1) No local authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit collocation on PSSs, except a local authority shall require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;

(ii) Fifty feet (50') above ground level; or

(iii) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.

(B) Small wireless facilities deployed in the ROW after the effective date of this part shall not extend:

(i) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(C) Nothing in this part applies to or restricts the ability of an electric distributor or its agent or designated party to change the height of a utility pole used for electric distribution, regardless of whether a small wireless facility is colocated on the utility pole. This section does not authorize a wireless provider to install or replace a PSS above the height restrictions in subdivision (a)(1)(A).

(2) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1) only if approved under the local authority's generally applicable zoning regulations that expressly allow for the taller structures or if approved pursuant to a zoning appeal.

(b) A local authority may require an applicant to comply with a local authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the local authority:

(1) Has required all electric, communications, and cable facilities, other than authority-owned PSSs and attachments, to be placed underground prior to the date on which the application is submitted;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner.

(c)

(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. § 1.1307(a)(4) or any subsequently enacted similar regulations, a local authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility, and the local authority permits alternative design or concealment measures that are reasonably similar; and

(B) The design or concealment measures are not considered a part of the small wireless facility for purposes of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits a local authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 codified in 54 U.S.C. § 300101 et seq., and the regulations adopted and amended from time to time to implement those laws.

(d) No local authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No local authority shall limit the placement

of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated. The prohibitions in this subsection (d) do not preclude a local authority from providing general guidance regarding preferred designs or from requesting consideration of design alternatives in accordance with the process set forth in § 13-24-409(b).

(e) A local authority may prohibit colocation on local authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for the exception set out in this subsection (e), an authority must publish a list of the PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to an application. A local authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace an existing local authority-owned PSS when colocating a small wireless facility. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

(g) When replacing a local authority-owned PSS, the replacement PSS becomes the property of the local authority and maintenance and repair obligations are as follows:

(1) For local authority-owned PSSs used for lighting, a local authority may require the applicant to provide lighting on the replacement PSS. Both the PSS and the lighting shall become the property of the local authority only upon completion of the local authority's inspection of the new PSS to ensure it is in working condition and that any lighting is equivalent to the quality and standards of the lighting on the PSS prior to replacement. After satisfactory inspection, the local authority's ownership shall include responsibility for electricity and ordinary maintenance, but the local authority shall not be responsible for electric power, maintenance or repair of the small wireless facility collocated on the local authority-owned PSS; and

(2) When the applicant's design for replacing a local authority-owned PSS substantially alters the PSS, then the applicant shall indicate in its application whether the applicant will manage maintenance and repairs in case of damage or whether the applicant agrees that, if the PSS is damaged and requires repair, then the local authority may replace the PSS without regard to the alterations and require the applicant to perform any work necessary to remove or dispose of the small wireless facility. If the applicant assumes the responsibility for repair, then the applicant is entitled to a right of subrogation with regard to local authority insurance coverage or any recovery obtained from third parties liable for the damage.

(h) A local authority may conduct periodic training sessions or seminars for the purpose of sharing local information relevant to deployment of small wireless facilities and best practices. Applicants must make a good faith effort to participate in the opportunities.

13-24-409. Uniform application procedures for local authorities.

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20) small wireless facilities within a single application;

(2) A local authority shall, within thirty (30) days of receiving an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3)

(A) Within thirty (30) days of receiving an application, a local authority may notify an applicant of the need for a conference with the applicant to assist the local authority in understanding or evaluating the applicant's design with regard to one (1) or more small wireless facilities contained in its application.

(B) For an application containing multiple small wireless facilities, the local authority shall specify the specific small wireless facilities for which conference is needed, and the sixty-day period for reviewing the application must be extended to seventy-five (75) days as provided in subdivision (b)(7).

(C) The local authority is responsible for scheduling the conference and shall permit the applicant to attend telephonically. The seventy-five-day period is not tolled while the conference is scheduled unless the applicant agrees to an additional extension of the review period.

(D) Issues that may be addressed by the conference include, but are not limited to:

(i) Safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;

(ii) Potential of conflict with another applicant's application for the same or a nearby location;

(iii) Impact of planned construction or other public works projects at or near the location identified by the application; and

(iv) Alternative design options that may enable colocation on an existing PSS instead of deployment of a new PSS or opportunities and potential benefits of alternative design that would incorporate other features or elements of benefit to the local authority. However, the existence of alternatives does not constitute a basis for denial of an application that otherwise satisfies all generally applicable standards for construction in the ROW and the requirements established by this part;

(4) A local authority shall process all applications on a nondiscriminatory basis;

(5) Except when extension of the review period is allowed by this section, a local authority shall approve or deny all small wireless facilities within an application within sixty (60) days of receipt of the application. For those applications seeking permission to deploy or collocate multiple small wireless facilities, the local authority shall deny permission only as to those small wireless facilities for which the application does not demonstrate compliance with all generally applicable ROW standards imposed on entities entitled to place infrastructure in the ROW and the requirements established by this part. A local authority shall not deny permission solely on the basis that the small wireless facility was contained in the same application as other small wireless facilities that are not approved;

(6) Any application or any portion of an application that is not approved or denied within sixty (60) days is deemed approved, unless the sixty-day period

has been extended consistent with this section. If the period has been extended, then the date on which approval will be deemed to occur is also extended to the same date of the applicable extension;

(7) Except as otherwise provided in this subdivision (7), a local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. The sixty (60) day review period may be tolled or extended only as follows:

(A) The sixty-day period is tolled if a local authority sends notice to the applicant that the application is incomplete within thirty (30) days after the initial application is filed, but this tolling ceases once additional or supplemental information is provided to the local authority. If supplemental information is not received within thirty (30) days of the date on which notice of incompleteness is sent by the authority, then the application may be denied and a new application required;

(B) The local authority and the applicant may mutually agree to toll the sixty-day period;

(C) The sixty-day review period is extended to seventy-five (75) days upon timely notice by the authority of the need for a conference as provided in subdivision (b)(3), but the seventy-five-day period must not be further extended for applications under subdivision (b)(7)(D) or (E);

(D) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than thirty (30), but fewer than fifty (50), small wireless facilities within any thirty-day period, then the local authority may upon notice to the applicant extend the sixty-day period for reviewing the applications to seventy-five (75) days, but the seventy-five-day period shall not be further extended for a conference as provided in subdivision (b)(7)(C);

(E) If an applicant submits applications to the same local authority seeking permission to deploy or colocate fifty (50) or more small wireless facilities within any thirty-day period, then the local authority may, upon notice to the applicant, extend the period for reviewing the applications to ninety (90) days, but the ninety-day period must not be further extended for a conference as provided in subdivision (b)(7)(C);

(F) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than one hundred twenty (120) small wireless facilities within any sixty-day period, then the local authority may issue notice to the applicant that the authority requires the applicant to select from the following two (2) options for high-volume applicants:

(i) Pay a surcharge to maintain the same review time period that would be otherwise applicable. The surcharge is in addition to the ordinary application fee provided in § 13-24-407. The surcharge is one hundred dollars (\$100) for each small wireless facility that the applicant elects to have reviewed using the otherwise applicable review period, and the applicant shall submit its list identifying the specific small wireless facilities it elects to have reviewed in the ordinarily applicable period with its surcharge payment within five (5) days of receiving the local authority's notice that applications have been received, triggering the election of either a surcharge or extension of the review time period described in (b)(7), (C), (D), or (E); or

(ii) If no identifying list is provided or if payment of a surcharge is not made within the applicable time period, or, for those small wireless facilities not timely identified and for which no

surcharge is timely paid, the ordinarily applicable review period shall be extended to one hundred-twenty (120) days;

(G) If an applicant submits an application in which the proposed design will affect in any manner a regulatory sign, as defined by the Manual on Uniform Traffic Control Devices, or any sign subject to a requirement for breakaway supports, then the local authority may reject the application. If an application is rejected on that basis, however, the local authority shall permit the applicant to seek reconsideration of its design. If the applicant requests reconsideration, then the local authority shall provide the opportunity for the applicant to schedule a conference to discuss the local authority's specific concerns within thirty (30) days of the reconsideration request. The applicant must submit a revised design or otherwise respond to the local authority's concerns within thirty (30) days of the conference, and upon receipt of the revised design or response, the local authority shall approve or deny the application within sixty (60) days, and the local authority has complete discretion to approve or deny the application in a nondiscriminatory manner;

(8) If a local authority denies an application, it shall provide written explanation of this denial at the same time the local authority issues the denial.

(c) A local authority shall not deny an application unless the applicant has failed to satisfy this part or has failed to submit a design that complies with the generally applicable requirements that the local authority imposes on a nondiscriminatory basis upon entities deploying or constructing infrastructure in a ROW.

(d) Contemporaneous with an approval of an application in which the design includes replacement or construction of a new or replacement PSS, a local authority may notify the applicant of the further requirement that the applicant shall provide a professional engineer's certification that the installation of the new or replacement PSS has been completed consistent with the approved design as well as all generally applicable safety and engineering standards.

(e) After denial of an application, if an applicant provides a revised application that cures deficiencies identified by the local authority within thirty (30) days of the denial, then no additional application fee shall be required. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application by a local government must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the revised application and that were not contained in the original application;

(f) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process; and

(g) A local authority shall not require applicants to provide any information not listed in this subsection (g). A local authority may require the following information to be provided in an application:

(1) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the local authority to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;

(2) The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;

(3) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;

(4) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

(5) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(6) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

(h) An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the local authority and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (h), then the local authority may require that the applicant complete a new application and pay an application fee.

(i) If a local authority receives multiple applications seeking to deploy or colocate small wireless facilities at the same location in an incompatible manner, then the local authority may deny the later filed application.

(j) A local authority may require the applicant to designate a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. After the applicant's construction is complete, the applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the applicant shall provide notice of the evidence to the safety contact.

(k) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

13-24-410. Provisions applicable solely to the state as an authority.

Notwithstanding any other provision in this part to the contrary, the deployment of small wireless facilities in state ROW is subject to the provisions of this section, as follows:

(1) In those instances in which an applicant seeks to deploy a small wireless facility or new PSS within a state ROW under the control of the department of transportation or to colocate on state-owned PSSs that are subject to oversight by the department of transportation, an application must be made to the department of transportation;

(2)

(A) The department of transportation may charge an applicant an application fee of one hundred dollars (\$100) for each application to deploy small wireless facilities in a state ROW up to a maximum of five (5) small wireless facilities. The department may charge an additional fee in the amount of fifty dollars (\$50) for each additional small wireless facility included in a single application. Beginning on January 1, 2020, and at each five-year interval thereafter, the application fees established in this subdivision (2)(A) shall increase by the amount of ten percent (10%);

(B) The department of transportation shall not require a permit or charge an application fee for routine maintenance or replacement of a small wireless facility in a state ROW unless the maintenance or replacement requires the installation of a new PSS or the replacement of a PSS or the maintenance or replacement activity will require disturbance of the highway pavement or shoulders;

(C) The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in a state ROW; and

(D) The department of transportation may require the applicant to provide a surety bond in the same manner as a surety bond is required with respect to other entities that deploy infrastructure in a state ROW;

(3) The application shall conform to the department of transportation's generally applicable rules or policies applicable to those entities that the department of transportation permits to deploy infrastructure in a state ROW;

(4) The department of transportation shall endeavor, when feasible in its discretion, to comply with the timetable for review of applications by local authorities set out in § 13-24-409, but the department of transportation shall have discretion to extend the time for review and shall provide notice to the applicant of additional time needed. No application to the department of transportation shall be deemed approved until the application is affirmatively acted upon;

(5) Until the department of transportation promulgates rules for the deployment of small wireless facilities as set forth in subdivision (8), the department of transportation shall accept applications to deploy small wireless facilities in a state ROW and shall consider each application on a case-by-case basis and shall, in its complete discretion, grant or deny such applications;

(6) Nothing in this part precludes the department of transportation from exercising any regulatory power or conducting any action necessary to comply with 23 USC § 131 and § 54-21-116 relating to the regulation of billboards or to satisfy any requirements of federal funding established by state and federal law.

(7) To ensure that this part does not impose new costs significant enough to outweigh the benefits of small wireless facilities, the department of transportation shall not be required to reimburse the costs of relocation of small wireless facilities from a state ROW, notwithstanding any decision the department of transportation may make to exercise its discretionary authority under § 54-5-804 to reimburse other owners of utility facilities for relocation costs arising from a highway construction project;

(8) The department of transportation shall promulgate rules or establish agency policies applicable to deployment of small wireless facilities within state ROW and the colocation of small wireless facilities on state-owned PSS in state ROW, including, but not limited to, the establishment of an annual rate for the colocation of a small wireless facility on state-owned PSS in a state ROW. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(9) Nothing in this act restricts the department of transportation from the management of a state ROW or a state-owned PSS in a state ROW as otherwise established by law.

13-24-411. Authority powers preserved.

Consistent with the limitations in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements for entities that deploy infrastructure or perform construction in a ROW:

(A) Requiring structures and facilities placed within a ROW to be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;

(B) Requiring compliance with Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards adopted by the authority to achieve compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), including Public Rights-of-Way Accessibility Guidelines (PROWAG) if adopted by the authority;

(C) Requiring compliance with measures necessary for public safety; and

(D) Prohibiting obstruction of the legal use of a ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan. Notwithstanding this subdivision (2), in residential neighborhoods, an authority may impose generally applicable standards that limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(A) Not contiguous with paved roads or alleys on which vehicles are permitted;

(B) Located along the rear of residential lots; and

(C) Subject to a generally applicable restriction that no electric distribution or telephone utility poles are permitted to be deployed;

(3) In residential neighborhoods, deploy new PSS in a ROW to be located within twenty-five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and may require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller;

(4) Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW based on generally applicable and nondiscriminatory requirements imposed by the authority; and

(5) Require maintenance or relocation of infrastructure deployed in the ROW; timely removal of infrastructure no longer utilized; and insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in ROW based on generally applicable and nondiscriminatory requirements imposed by the authority.

13-24-412. Private right of action.

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3.

(a) The Tennessee Advisory Commission on Intergovernmental Relations shall study and prepare a report on the impact of this act, including:

- (1) The impact on deployment of broadband;
- (2) The fiscal impact on authorities resulting from the administrative process required by this act;
- (3) Best practices from the perspective of applicants and authorities;
- (4) Best practices in other states and identify opportunities to advance the quality of transportation in this state by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by small wireless facilities; and
- (5) Recommendations for changes to this act based on the study's findings.

(b) The report must be delivered to the chairs of the house business and utilities committee of the house of representatives and commerce and labor committee of the senate by January 1, 2021.

SECTION 4.

(a) All applications to deploy or colocate small wireless facilities that are pending on the date this act becomes law shall be granted or denied consistent with the substantive requirements of this act within either ninety (90) days of the effective date of this act or ninety (90) days from the date such applications were originally submitted, whichever is later.

(b) For all applications submitted after the effective date of this act but before July 1, 2018, the applicable review periods shall not begin to run until July 1, 2018. Beginning on July 1, 2018 and thereafter, the review periods established herein shall be calculated consistent with the actual date such applications are filed.

SECTION 5. Except for the review periods established in Section 1 in § 13-24-409, all other provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 2279

PASSED: April 12, 2018

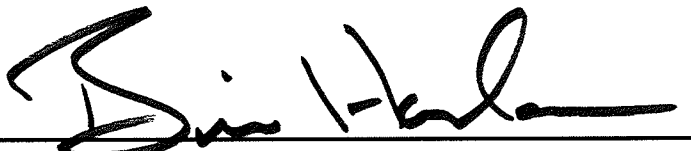


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES



RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 24th day of April 2018



BILL HASLAM, GOVERNOR