

SENATE T&E COMMITTEE SUBSTITUTE FOR SB264

SYNOPSIS: This bill would establish a procedure by which wireless providers would be authorized to collocate, mount, or install small wireless facilities on existing poles, or install new poles on the right-of-way of the state or any agency, county, or municipality thereof.

This bill exempt small wireless facilities from certain zoning review and approval procedures.

This bill would establish a procedure for the permitting of the development of small wireless facilities and poles in the rights-of-way of the state.

This bill would establish rates and fees for all permits for small wireless facilities.

A BILL
TO BE ENTITLED
AN ACT

1 Relating to wireless telecommunications; to
2 establish a procedure by which wireless providers would be
3 authorized to collocate, mount, or install small wireless
4 facilities on existing poles, or install new poles on the
5 right-of-way of the state or any agency, county, or
6 municipality thereof; to exempt small wireless facilities from
7 certain zoning review and approval procedures; to establish a
8 procedure for the permitting of the development of small
9 wireless facilities and poles in the rights-of-way of the
10 state; and to establish rates and fees for all permits for
11 small wireless facilities.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. (a) When used in this act, the following
14 words shall have the following meanings:

15 (1) APPLICATION. A request by a wireless provider to
16 collocate, mount, or install small wireless facilities on or
17 adjacent to an existing, new, or replacement pole; or to
18 install, modify, or replace a pole associated with a small
19 wireless facility.

20 (2) AUTHORITY. The state or any agency, county,
21 municipality, district, or instrumentality thereof. The term
22 does not include state courts having jurisdiction over an
23 authority.

24 (3) COMMUNICATIONS FACILITY. The set of equipment
25 and network components, including wires, cables, and
26 associated facilities, used by a communications service
27 provider.

1 (4) COMMUNICATIONS SERVICE. Any of the following:
2 Cable service as defined in 47 U.S.C. § 522; information
3 service, as defined in 47 U.S.C. § 153; telecommunications
4 service, as defined in 47 U.S.C. § 153; and wireless service.

5 (5) COMMUNICATIONS SERVICE PROVIDER. A provider of
6 communications services.

7 (6) MICRO WIRELESS FACILITY. A small wireless
8 facility that meets both of the following qualifications:

9 a. It is not larger in dimension than 24 inches in
10 length, 15 inches in width, and 12 inches in height.

11 b. Any exterior antenna is no longer than 11 inches.

12 (7) NETWORK INTERFACE DEVICE. The telecommunications
13 demarcation device and cross-connect point adjacent to the
14 wireless facility or the structure supporting the wireless
15 facility and demarcating the boundary with any wireline
16 backhaul facility.

17 (8) POLE. A pole in the right-of-way that is or may
18 be used in whole or in part by or for wireline communications,
19 electric distribution, lighting, traffic control, signage, or
20 a similar function, or for the collocation of small wireless
21 facilities; provided, however, the term does not include a
22 building or electric transmission structure.

23 (9) WIRELESS FACILITY. Equipment at a fixed location
24 that enables wireless communications between user equipment
25 and a communications network, including both of the following:
26 Equipment associated with wireless communications; and radio
27 transceivers, antennas, coaxial, metallic or fiber-optic cable

1 located on, in, or under a pole or wireless support structure,
2 or otherwise adjacent to such structures, regular and backup
3 power supplies, and comparable equipment, regardless of
4 technological configuration. The term includes small wireless
5 facilities. The term does not include any of the following:
6 The structure or improvements on, under, or within which the
7 equipment is collocated; wireline backhaul facilities; or
8 coaxial, metallic or fiber-optic cable that is between
9 structures or that is otherwise not adjacent to a particular
10 antenna or the structure supporting the antenna.

11 (10) WIRELESS INFRASTRUCTURE PROVIDER. Any person,
12 including a person authorized to provide telecommunications
13 service in the state, that builds or installs facilities for
14 the provision of wireless service, but that is not a wireless
15 service provider.

16 (11) WIRELESS PROVIDER. A wireless infrastructure
17 provider or a wireless service provider.

18 (12) WIRELESS SERVICE. Any services using licensed
19 or unlicensed spectrum, including the use of Wi-Fi, whether at
20 a fixed location or mobile, provided to the public.

21 (13) WIRELESS SERVICE PROVIDER. A person who
22 provides wireless service.

23 (14) WIRELINE BACKHAUL FACILITY. An above-ground or
24 underground wireline facility used to transport communications
25 data or other electronic communications from a wireless
26 facility network interface device to a communications network.

1 (b) The definitions in Appendix A to the Federal
2 Communications Commission's Declaratory Ruling and Third
3 Report and Order in Accelerating Wireless Broadband Deployment
4 and Removing Barriers to Infrastructure Investment, WC Docket
5 No. 17-79, WC Docket No. 17-84, FCC 18-133, 83 Fed. Reg. 51867
6 (Oct. 15, 2018) are incorporated by reference unless a term is
7 otherwise defined in this act.

8 Section 2. An authority shall not deny a wireless
9 provider the right, as a permitted use subject to Section 3
10 and the authority's requirements not in conflict with this act
11 or a final order of the Federal Communications Commission
12 (FCC), to collocate, mount, or install small wireless
13 facilities on or adjacent to existing, new, or replacement
14 poles in the right-of-way; or to install, modify, or replace
15 its own poles, or, with the permission of the owner, a third
16 party's poles, associated with a small wireless facility,
17 along, across, upon, and under the right-of-way controlled by
18 the authority. The small wireless facilities and poles shall
19 be installed and maintained in accordance with the authority's
20 requirements not in conflict with this act or a then-existing
21 final order of the FCC and as not to obstruct or hinder the
22 usual travel and public safety on the right-of-way and
23 adjacent roads and bridges or obstruct the legal use of the
24 right-of-way by utilities.

25 Section 3. (a) Subject to the limitations
26 established in this act, small wireless facilities and
27 associated poles are not subject to zoning review or approval

1 if they are located in the right-of-way under the control of
2 an authority and otherwise comply with this act and a final
3 order of the Federal Communications Commission.

4 (b) All applications for small wireless facilities
5 shall be delivered to the authority by certified mail. Within
6 10 days of receiving the application, an authority shall
7 determine and notify the applicant in writing whether the
8 application is complete. If the authority determines an
9 application is incomplete, the authority shall specifically
10 identify the missing information in the written notice. The
11 processing deadlines in subsection (c) shall restart at zero
12 on the date the authority notifies the applicant the
13 application is complete.

14 (c) Applications shall be processed on a
15 nondiscriminatory basis and shall be approved or denied
16 within: 60 days of receipt of a complete application that
17 complies with subsection (b) involving collocation of a small
18 wireless facility using an existing structure; and 90 days of
19 receipt of a complete application that complies with
20 subsection (b) involving deployment of a small wireless
21 facility using a new or replacement pole. The processing
22 deadline may be tolled by agreement of the applicant and the
23 authority. If an authority fails to act on an application
24 within the review period provided for in this subsection, the
25 applicant may provide the authority, by certified mail, a
26 formal request for the authority to act on the application
27 within 45 days. The authority shall then have 45 days after

1 receipt of the notice to take affirmative action to approve or
2 deny the application. The application shall be deemed approved
3 by passage of time and operation of law if the authority does
4 not approve or deny the application within the time limits
5 established following the receipt of the formal request. In no
6 case shall this time period exceed 45 days from receipt of the
7 formal request, and a small wireless facility permit and any
8 associated permits shall be deemed approved on the forty-sixth
9 day from the receipt of the formal request.

10 (d) An authority shall approve an application if it
11 complies with the authority's requirements for deploying small
12 wireless facilities and poles in the right-of-way that are
13 written, generally applicable, and adopted in advance.

14 (e) An applicant seeking to collocate, mount, or
15 install small wireless facilities within the jurisdiction of a
16 single county commission may file a consolidated application
17 for small wireless facilities, poles, or antenna equipment and
18 associated poles and antenna equipment along the right-of-way
19 of the same road and in an area constituting no more than one
20 mile in length. The approval of the consolidated application
21 will apply to the collocation, mounting, or installation of
22 the multiple small wireless facilities, poles, or antenna
23 equipment and the placement included in such consolidated
24 application. The denial of one or more single small wireless
25 facilities, poles, or antenna equipment that are part of a
26 consolidated application shall not constitute a reason for
27 denying the remaining small wireless facilities, poles, or

1 antenna equipment included in the consolidated application. A
2 consolidated application shall be processed in accordance with
3 the procedures and shall be subject to the 90-day review
4 established in this act.

5 (f)(1) An authority may not require an application
6 or any other approval or charge fees or rates for any of the
7 following that are in compliance with any applicable codes:

8 a. Routine maintenance conducted on wireless
9 facilities by the holder of an approved application, provided
10 the right-of-way is restored to the pre-maintenance condition.

11 b. The replacement of small wireless facilities or
12 antenna equipment with small wireless facilities or antenna
13 equipment that are at the same location and are substantially
14 similar or the same size or smaller.

15 c. The installation, placement, maintenance,
16 operation, or replacement of micro wireless facilities that
17 are suspended on cables that are strung between existing
18 poles. This paragraph does not apply to authority poles.

19 (2) Notwithstanding subdivision (1), an authority
20 may require a permit for work that requires excavation, the
21 closure of sidewalks or vehicular lanes or that otherwise
22 hinders the usual travel or public safety on such right-of-way
23 or adjacent roads and bridges or obstructs the legal use of
24 such right-of-way by utilities. The permit must be issued to
25 the applicant on a non-discriminatory basis upon terms and
26 conditions applied to any other person's activities in the

1 right-of-way that require excavation or the closure of
2 sidewalks or vehicular lanes.

3 (3) In the event of any action under subsection (f),
4 the roads, bridges, and rights-of way shall be, to the extent
5 practicable in the reasonable judgment of the authority,
6 restored to the condition prior to the action conducted by the
7 wireless provider.

8 Section 4. Subject to Sections 2 and 3, an authority
9 shall allow the collocation of small wireless facilities on
10 existing poles, other than electric distribution poles, owned
11 or controlled by an authority and the mounting or installation
12 of small wireless facilities on replacement poles, other than
13 electric distribution poles, owned or controlled by an
14 authority on nondiscriminatory terms and conditions that
15 comply with this act.

16 Section 5. (a) Application fees for permits for
17 small wireless facilities shall be nondiscriminatory and shall
18 not exceed the following:

19 (1) A five hundred dollar (\$500) non-recurring fee
20 for a single up-front application for collocation that
21 includes up to five small wireless facilities, with an
22 additional one hundred dollars (\$100) for each small wireless
23 facility beyond five in the same application.

24 (2) A two hundred fifty dollar (\$250) non-recurring
25 fee for the modification or replacement of an existing pole
26 together with the mounting or installation of an associated
27 small wireless facility in the right-of-way.

1 (3) A one thousand dollar (\$1,000) non-recurring fee
2 for the installation of a new pole together with the mounting
3 or installation of an associated small wireless facility in
4 the right-of-way.

5 (b) If an authority elects to charge for access to
6 the right-of-way or collocation on authority owned poles in
7 the right-of-way for small wireless facilities, the rates
8 shall be nondiscriminatory and shall not exceed one hundred
9 dollars (\$100) per small wireless facility per year for access
10 to and use of the right-of-way and one hundred seventy dollars
11 (\$170) per year per small wireless facility collocated,
12 mounted, or installed on or adjacent to poles owned or
13 controlled by an authority.

14 Section 6. (a) Except as provided in subsection (b),
15 this act does not apply to electric power poles, whether
16 distribution, transmission, or otherwise, or the equipment,
17 easements, or business activities of any of the following:

18 (1) An investor-owned utility, as defined under
19 Section 37-4-1, Code of Alabama 1975.

20 (2) Any board or public corporation incorporated or
21 organized for the acquisition or operation of a system under
22 Chapter 50, Title 11, Code of Alabama 1975, including
23 specifically, but not without limitation, Sections 11-50-490
24 through 11-50-506, Code of Alabama 1975.

25 (3) An electric cooperative under Chapter 6 of Title
26 37, Code of Alabama 1975.

1 (4) An electric membership corporation under Chapter
2 7 of Title 37, Code of Alabama 1975.

3 (b) Notwithstanding subsection (a), this act applies
4 to small wireless facilities collocated, installed, or mounted
5 on electric distribution poles pursuant to a pole attachment
6 agreement and where the wireless provider requires access to
7 the public right-of-way for the collocation, installation, or
8 mounting. Nothing in this act shall affect or be construed to
9 affect the terms of the pole attachment agreement between a
10 wireless provider and an investor-owned utility.

11 Section 7. (a) An authority exercising its authority
12 established by this act shall not be subject to suit or
13 otherwise responsible for the alleged negligence, wantonness,
14 willfulness, recklessness, or any other claims for alleged
15 wrongful acts or omissions of wireless providers or their
16 officers, agents, contractors, subcontractors, employees, or
17 other representatives relative to the design, location,
18 placement, construction, maintenance, and operation of small
19 wireless facilities in an authority's right-of-way or on an
20 authority's infrastructure.

21 (b) Wireless providers shall indemnify authorities,
22 their elected and appointed officials, employees, or
23 authorized agents, or their insurers, and hold them harmless
24 from and against any and all claims, demands, actions, suits,
25 or proceedings in equity or law asserted by third parties for
26 damages, losses, liabilities, or costs of any kind, including,
27 without limitation, reasonable attorney's fees as and when

1 incurred that arise from a material breach by a wireless
2 provider or any of its officers, employees, volunteers, or
3 authorized agents of any obligations set forth in this act; or
4 for any claims for the alleged negligence, wantonness,
5 willfulness, recklessness, or claims of any other alleged
6 wrongful acts or omissions of wireless providers or their
7 officers, agents, contractors, sub-contractors, employees, or
8 other representatives relative to the design, location,
9 placement, construction, maintenance, and operation of small
10 wireless facilities in an authority's rights-of-way or on an
11 authority's infrastructure. A wireless provider has no
12 obligation to indemnify or hold harmless against any
13 liabilities and losses due to or caused by the sole negligence
14 or willful misconduct of an authority or its employees or
15 agents.

16 Section 8. (a) Nothing in this act shall be
17 interpreted to allow any entity to provide communications
18 services without compliance with all laws applicable to such
19 providers. Nor shall this act be interpreted to authorize the
20 collocation, installation, placement, maintenance, or
21 operation of any communications facility, including a wireline
22 backhaul facility, in the rights-of-way, other than a small
23 wireless facility or associated pole.

24 (b) Except as it relates to small wireless
25 facilities subject to the permit and fee requirements
26 established pursuant to this act or otherwise specifically
27 authorized by state or federal law, an authority shall not

1 adopt or enforce any regulations or requirements on the
2 placement or operation of communications facilities in the
3 rights-of-way by a communications service provider authorized
4 by federal, state, or local law to operate in the
5 rights-of-way; regulate any communications services; or impose
6 or collect any tax, fee, or charge for the provision of
7 additional communications service over the communications
8 service provider's communications facilities in the
9 rights-of-way.

10 Section 9. This act shall be effective July 1, 2019,
11 following its passage and approval by the Governor or its
12 otherwise becoming law.