

1 SB172
2 204753-1
3 By Senators Orr and Scofield
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 11-FEB-20

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

14 This bill would exempt small wireless
15 facilities from certain zoning review and approval
16 procedures.

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

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

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

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

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

23 (3) COMMUNICATIONS FACILITY. The set of equipment
24 and network components, including wires, cables, and
25 associated facilities, used by a communications service
26 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 colocation of small wireless
21 facilities. The term does not include a building; billboard;
22 monopole; tower, either guyed or self-supporting; or an
23 electric transmission structure.

24 (9) WIRELESS FACILITY. Equipment at a fixed location
25 that enables wireless communications between user equipment
26 and a communications network, including both of the following:
27 Equipment associated with wireless communications; and radio

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

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

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

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

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

24 (14) WIRELINE BACKHAUL FACILITY. An above-ground or
25 underground wireline facility used to transport communications
26 data or other electronic communications from a wireless
27 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.
6 51867 (Oct. 15, 2018) are incorporated by reference unless a
7 term is otherwise defined in this act.

8 Section 2. (a) An authority may 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 then-existing final order of the Federal Communications
12 Commission (FCC), to do either of the following:

13 (1) Colocate, mount, or install small wireless
14 facilities on or adjacent to existing, new, or replacement
15 poles in the right-of-way.

16 (2) Install, modify, or replace its own poles, or,
17 with the permission of the owner, a third party's poles,
18 associated with a small wireless facility, along, across,
19 upon, and under the right-of-way controlled by the authority.

20 (b) For purposes of this section, any new or
21 modified pole may not exceed the greater of either of the
22 following:

23 (1) Ten feet in height above the tallest existing
24 pole in place as of the effective date of this act located
25 within 500 feet of the new pole in the same right-of-way
26 controlled by the authority.

27 (2) Fifty feet above ground level.

1 (c) The small wireless facilities and associated
2 poles shall be installed and maintained in accordance with the
3 authority's requirements not in conflict with this act or a
4 then-existing final order of the FCC and as not to obstruct or
5 hinder the usual travel and public safety on the right-of-way
6 and adjacent roads and bridges or obstruct the legal use of
7 the right-of-way by utilities.

8 (d) A wireless provider may collocate a small
9 wireless facility and install, maintain, modify, operate and
10 replace a pole that exceeds these height limits along, across,
11 upon, and under the right-of-way, subject to applicable zoning
12 regulations or other applicable requirements of the authority.

13 Section 3. (a) Subject to the limitations
14 established in this act, small wireless facilities and
15 associated poles are not subject to zoning review or approval
16 if they are located in the right-of-way under the control of
17 an authority and otherwise comply with this act and a
18 then-existing final order of the Federal Communications
19 Commission.

20 (b) Within 10 days of receiving an application, an
21 authority shall determine and notify the applicant in writing
22 whether the application is complete. If the authority
23 determines the application is incomplete, the authority shall
24 specifically identify the missing information and specify the
25 requirement creating the obligation to submit the missing
26 documents or information in the written notice. If the written
27 notice of incompleteness is provided within 10 days of

1 receiving the application, the processing deadlines in
2 subsection (c) shall restart at zero on the date the applicant
3 submits all the documents and information identified by the
4 authority to render the application complete.

5 (c) Applications shall be processed on a
6 nondiscriminatory basis. Applications not requiring a written
7 notice of incompleteness shall be approved or denied within
8 the following: 60 days of receipt of an application involving
9 colocation of a small wireless facility using an existing
10 structure; and 90 days of receipt of an application involving
11 deployment of a small wireless facility using a new or
12 replacement pole. For those applications requiring a
13 resubmittal following the delivery of a written notice of
14 incompleteness, the time limitations for approval or denial
15 established in this subsection shall begin on the first date
16 after receipt of all the documents and information identified
17 by the authority. The processing deadline may be tolled by
18 agreement of the applicant and the authority. If an authority
19 fails to act on an application within the review period
20 provided for in this subsection, the applicant may provide the
21 authority, by certified mail, a formal notice stating that
22 unless the authority approves or denies the application within
23 20 days from receipt of the notice, the application and any
24 associated permits will be deemed granted by operation of law
25 on the twenty-first day from receipt of the notice.

26 (d) An authority shall approve an application if it
27 complies with the authority's requirements for deploying small

1 wireless facilities and associated poles in the right-of-way
2 that are written, generally applicable, and adopted in
3 advance.

4 (e) An applicant seeking to collocate, mount, or
5 install small wireless facilities or to install, modify, or
6 replace an associated pole within the jurisdiction of a single
7 authority may file a consolidated application for small
8 wireless facilities and associated poles, provided that the
9 consolidated application shall be for a geographic area no
10 more than two miles in diameter. The approval of the
11 consolidated application shall apply to the collocation,
12 mounting, or installation of the multiple small wireless
13 facilities or associated poles. The denial of one or more
14 single small wireless facilities or associated poles that are
15 part of a consolidated application may not constitute a reason
16 for denying the remaining small wireless facilities or
17 associated poles included in the consolidated application. A
18 consolidated application that includes a request to install,
19 modify, or replace a pole shall be processed in accordance
20 with the procedures and shall be subject to the 90-day review
21 period established in this act.

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

25 (1) Routine maintenance conducted on small wireless
26 facilities by the holder of an approved application for the

1 small wireless facilities, provided the right-of-way is
2 restored to the pre-maintenance condition.

3 (2) The replacement of small wireless facilities
4 that are operated by the holder of an approved application for
5 the small wireless facilities, are substantially similar or
6 the same size or smaller, and still qualify as a small
7 wireless facility.

8 (3) The deployment, installation, placement,
9 maintenance, operation, or replacement of micro wireless
10 facilities that are suspended on cables that are strung
11 between existing poles by an entity with a franchise agreement
12 or other valid authorization which allows the entity to deploy
13 communications facilities in the rights-of-way.

14 (g) Notwithstanding subdivision (f), the deployment
15 of a micro wireless facility that requires the installation,
16 placement, or replacement of any ground-mounted facilities in
17 the right-of-way shall be subject to any applicable authority
18 permitting processes.

19 (h) Notwithstanding subdivision (f), 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 the right-of-way
23 or adjacent roads and bridges or obstructs the legal use of
24 the right-of-way by utilities. The permit shall 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 (i) In the event of any action under subsection (f),
4 the roads, bridges, and rights-of-way, to the extent
5 practicable in the reasonable judgment of the authority, shall
6 be restored to the condition prior to the action conducted by
7 the wireless provider.

8 (j) (1) As part of the application process, an
9 authority may require a small wireless facility to be fully
10 operational within 360 days after the date the last or final
11 permit is issued, subject to the availability of wireline
12 backhaul, electric power, or other matters beyond the control
13 of the applicant. The authority and the applicant may agree to
14 extend the period.

15 (2) If a small wireless facility is not operational
16 in the time established under subdivision (1), the authority,
17 after providing 20-day prior written notice and reasonable
18 opportunity to cure, may do either or both of the following:

19 a. Cancel the authority's approval of the small
20 wireless facility or any associated new pole.

21 b. Cause the removal of the small wireless facility
22 or any associated new pole by the wireless provider at the
23 wireless provider's sole expense and in a time the authority
24 specifies after providing prior written notice to the wireless
25 provider.

26 Section 4. (a) Subject to Sections 2, 3, and 5, an
27 authority shall allow the colocation of small wireless

1 facilities on existing poles, other than electric distribution
2 poles, owned or controlled by an authority and the mounting or
3 installation of small wireless facilities on replacement
4 poles, other than electric distribution poles, owned or
5 controlled by an authority on nondiscriminatory terms and
6 conditions that comply with this act.

7 (b) For structures owned or controlled by an
8 authority, an authority may provide a wireless provider the
9 option of either having the wireless provider perform any
10 necessary make-ready work through the use of qualified
11 contractors or having the authority perform any necessary
12 make-ready work at the sole cost of the wireless provider. If
13 the authority performs the make-ready work, the authority
14 shall provide a good faith estimate of the make-ready work,
15 including any pole replacement costs. Make-ready work shall be
16 completed within 60 days after a written acceptance of the
17 good faith estimate by the applicant.

18 (c) On completion of the make-ready work performed
19 by an authority at the request of a wireless provider, the
20 wireless provider, within 60 days of invoicing, shall
21 reimburse the authority for the authority's actual and
22 documented cost of the make-ready work, including labor and
23 materials. The cost invoiced to the wireless provider may not
24 exceed the good faith estimate by more than 10 percent.

25 Section 5. (a) Application fees for permits for
26 small wireless facilities shall be nondiscriminatory and may
27 not exceed the following:

1 (1) A five hundred dollar (\$500) non-recurring fee
2 for a single up-front application for colocation that includes
3 up to five small wireless facilities, with an additional one
4 hundred dollars (\$100) for each small wireless facility beyond
5 five in a consolidated application.

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

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

14 (b) If an authority elects to charge for access to
15 the right-of-way or colocation on poles owned or controlled by
16 the authority in the right-of-way for small wireless
17 facilities, the rates shall be nondiscriminatory and may not
18 exceed one hundred dollars (\$100) per small wireless facility
19 per year for access to and use of the right-of-way and one
20 hundred seventy dollars (\$170) per year per small wireless
21 facility collocated, mounted, or installed on or adjacent to
22 poles owned or controlled by an authority.

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

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

3 (2) Any board or public corporation incorporated or
4 organized for the acquisition or operation of a system under
5 Chapter 50, Title 11, Code of Alabama 1975, including
6 specifically, but not without limitation, Sections 11-50-490
7 through 11-50-506, Code of Alabama 1975.

8 (3) An electric cooperative under Chapter 6 of Title
9 37, Code of Alabama 1975.

10 (4) An electric membership corporation under Chapter
11 7 of Title 37, Code of Alabama 1975.

12 (b) Notwithstanding subsection (a), this act applies
13 to small wireless facilities colocated, installed, or mounted
14 on electric distribution poles pursuant to a pole attachment
15 agreement and where the wireless provider requires access to
16 the public right-of-way for the colocation, installation, or
17 mounting. Nothing in this act shall affect or be construed to
18 affect the terms of the pole attachment agreement between a
19 wireless provider and an investor-owned utility.

20 Section 7. (a) An authority exercising its authority
21 established by this act may not be subject to suit or
22 otherwise responsible for the alleged negligence, wantonness,
23 willfulness, recklessness, or any other claims for alleged
24 wrongful acts or omissions of wireless providers or their
25 officers, agents, contractors, subcontractors, employees, or
26 other representatives relative to the design, location,
27 placement, construction, maintenance, and operation of small

1 wireless facilities in an authority's right-of-way or on an
2 authority's infrastructure.

3 (b) Wireless providers shall indemnify authorities,
4 their elected and appointed officials, employees, or
5 authorized agents, or their insurers, and hold them harmless
6 from and against any and all claims, demands, actions, suits,
7 or proceedings in equity or law asserted by third parties for
8 damages, losses, liabilities, or costs of any kind, including,
9 without limitation, reasonable attorney's fees, as and when
10 incurred that arise from a material breach by a wireless
11 provider or any of its officers, employees, volunteers, or
12 authorized agents of any obligations set forth in this act; or
13 for any claims for the alleged negligence, wantonness,
14 willfulness, recklessness, or claims of any other alleged
15 wrongful acts or omissions of wireless providers or their
16 officers, agents, contractors, sub-contractors, 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 rights-of-way or on an
20 authority's infrastructure. A wireless provider has no
21 obligation to indemnify or hold harmless against any
22 liabilities and losses due to or caused by the sole negligence
23 or willful misconduct of an authority or its employees or
24 agents.

25 Section 8. (a) Except as authorized under subsection
26 (b), during the period in which the small wireless facilities
27 of a wireless provider are located on or attached to the

1 authority's assets, including its poles, or rights-of-way, the
2 authority may require a wireless provider to do both of the
3 following:

4 (1) Carry, at the wireless provider's sole cost and
5 expense, the following types of third-party insurance:

6 a. Property insurance for the replacement cost of
7 all small wireless facilities.

8 b. Workers' compensation insurance, as required by
9 law.

10 c. Commercial general liability insurance of at
11 least two million dollars (\$2,000,000) per occurrence, with
12 respect to the wireless providers activities in, on, or around
13 the authority improvements or rights-of-way, including
14 coverage for bodily injury and property damage.

15 d. Environmental insurance.

16 (2) Include the authority and its officers,
17 officials, agents, contractors, and employees as an additional
18 insured on the commercial general liability policy and provide
19 certification and documentation of inclusion of the authority
20 in a commercial general liability policy as reasonably
21 required by the authority.

22 (b) In lieu of the requirements of subdivisions (1)
23 and (2) of subsection (a), during the period in which the
24 small wireless facilities of a wireless provider are located
25 on or attached to the authority's assets, including its poles,
26 or rights-of-way, the authority may allow the wireless
27 provider to provide a certificate of self-insurance,

1 acceptable to the authority, that demonstrates that the
2 wireless carrier has adequate resources to self-insure in the
3 amounts set forth in subdivision (1) of subsection (a).

4 Section 9. (a) An authority may order a wireless
5 provider to remove, relocate, change, or otherwise alter the
6 wireless provider's small wireless facility or pole for any of
7 the following reasons, so long as all other occupiers of the
8 same right-of-way remove, relocate, change, or otherwise alter
9 their facilities under the same conditions as the wireless
10 provider:

11 (1) To perform construction, repair, maintenance, or
12 installation of an authority improvement in or upon the
13 right-of-way or the operations of the authority in or upon the
14 right-of-way.

15 (2) When the small wireless facility or pole is
16 interfering with or adversely affecting the proper operation
17 of an authority pole, traffic signal, or other equipment in
18 the right-of-way.

19 (3) To comply with traffic and public safety codes.

20 (b) Within 90 days of the issuance of a written
21 order from an authority, a wireless provider, at its own
22 expense, shall temporarily or permanently protect, support,
23 disconnect, remove, relocate, change, or otherwise alter the
24 position of a small wireless facility or pole within the
25 right-of-way.

26 (c) When an authority orders a wireless provider to
27 remove, relocate, change, or alter the position of a small

1 wireless facility or pole within the right-of-way, the
2 authority shall use its best efforts to give the wireless
3 provider a reasonably equivalent alternative location.

4 (d) If a wireless provider has not complied with an
5 order under subsection (a) within 90 days of the issuance of a
6 written order, the authority, without further notice to the
7 wireless provider and at sole cost and expense to the wireless
8 provider, may relocate any small wireless facility or pole as
9 ordered by the authority.

10 (e) Notwithstanding any other provision of this
11 section, an authority may remove a small wireless facility or
12 pole if the authority determines that the removal is necessary
13 to address an imminent risk to public safety. If circumstances
14 permit, the authority shall provide notice to the wireless
15 provider and an opportunity for the wireless provider to move
16 its own small wireless facility or pole to address the risk.
17 An authority that removes a facility or pole under this
18 subsection shall promptly notify the wireless provider of the
19 removal.

20 Section 10. (a) Nothing in this act shall be
21 interpreted to allow any entity to provide communications
22 services without compliance with all laws applicable to
23 communications service providers. Nor shall this act be
24 interpreted to authorize the collocation, installation,
25 placement, maintenance, or operation of any communications
26 facility, including a wireline backhaul facility, in the

1 rights-of-way, other than a small wireless facility or
2 associated pole.

3 (b) Except as it relates to small wireless
4 facilities subject to the permit and fee requirements
5 established pursuant to this act, and except as it relates to
6 regulations or requirements on communications service
7 specifically established by the constitution or by state,
8 local, or federal law, an authority may not otherwise adopt or
9 enforce regulations or requirements on the placement,
10 operation, or maintenance of communications service facilities
11 authorized to be in the rights-of-way; or otherwise impose or
12 collect any additional or separate tax, fee, or charge for the
13 provision of additional communications services provided over
14 the communications service provider's communication facilities
15 otherwise authorized to be in the rights-of-way.

16 Section 11. This act shall be effective July 1,
17 2020, following its passage and approval by the Governor, or
18 its otherwise becoming law.