To: Energy

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2019
By: Senator(s) Blackwell

SENATE BILL NO. 2003

AN ACT TO CREATE THE SMALL WIRELESS FACILITIES DEPLOYMENT ACT
TO ALLOW A WIRELESS PROVIDER TO DEPLOY A SMALL WIRELESS FACILITY
AND ANY ASSOCIATED UTILITY POLE WITHIN A RIGHT-OF-WAY UNDER
CERTAIN CONDITIONS; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO
PROVIDE FOR THE SCOPE OF THE ACT; TO PROVIDE THAT THE ACT ONLY
APPLIES TO A WIRELESS PROVIDER DEPLOYING, WITHIN A RIGHT-OF-WAY, A
SMALL WIRELESS FACILITY OR A UTILITY POLE ASSOCIATED WITH A SMALL
WIRELESS FACILITY; TO AUTHORIZE AN AUTHORITY TO CHARGE A RATE OR
FEE FOR THE USE OF A RIGHT-OF-WAY; TO PROVIDE WIRELESS PROVIDER
RIGHT OF ACCESS, SUBJECT TO CERTAIN CONDITIONS; TO PROVIDE HEIGHT
LIMITATIONS IN A RIGHT-OF-WAY; TO AUTHORIZE A WIRELESS PROVIDER TO
REPLACE A DECORATIVE POLE UNDER CERTAIN CONDITIONS; TO PROVIDE FOR
THE INSTALLATION OF STRUCTURES IN AN AREA DESIGNATED AS AN
UNDERGROUND DISTRICT; TO AUTHORIZE AN AUTHORITY TO REQUIRE A
TECHNOLOGICALLY NEUTRAL DESIGN OR CONCEALMENT MEASURE IN AN
HISTORIC DISTRICT; TO REQUIRE AUTHORITIES TO MANAGE A WIRELESS
PROVIDER'S USE OF A RIGHT-OF-WAY IN A NONDISCRIMINATORY MANNER
WITH REGARD TO ANY OTHER USER OF THE RIGHT-OF-WAY; TO REQUIRE
REPAIR OF THE RIGHT-OF-WAY IF A WIRELESS PROVIDER'S ACTIVITY
CAUSES DAMAGE; TO PROVIDE FOR THE PERMITTING PROCESS FOR SMALL
WIRELESS FACILITIES; TO PROVIDE EXCEPTIONS TO PERMITTING; TO
PROVIDE ACCESS TO AUTHORITY POLES WITHIN A RIGHT-OF-WAY; TO
PROVIDE FOR RIGHT-OF-WAY RATES AND APPLICATION FEES; TO AUTHORIZE
AUTHORITIES TO IMPLEMENT THIS ACT BY ORDINANCE, OR IF APPLICABLE,
BY EXECUTING AN AGREEMENT WITH A WIRELESS PROVIDER; TO PROVIDE FOR
NONCOMPLIANT AGREEMENTS AND ORDINANCES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

ARTICLE 1.

General Provisions
SECTION 1. This act shall be known and may be cited as the "Small Wireless Facilities Deployment Act."

SECTION 2. As used in this act:

(a) "Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of a wireless service.

(b) "Applicable codes" means the International Building Code, the International Fire Code, the National Electrical Code, the International Plumbing Code, and the International Mechanical Code, as adopted and amended under Section 17-2-1 et seq.

(c) "Applicable standards" means the structural standards for antenna-supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.

(d) "Applicant" means a wireless provider who submits an application.

(e) "Application" means a request submitted by a wireless provider to an authority for a permit to:

(i) Collocate a small wireless facility in a right-of-way; or

(ii) Install, modify, or replace a utility pole or a wireless support structure.

(f) (i) "Authority" means:

1. The state;

2. A state agency;
3. A county;
4. A municipality;
5. A town;
6. A metrotownship;
7. A subdivision of an entity described in this paragraph (f)(i)1. through 6.; or
8. A special district or entity established to provide a single public service within a specific geographic area, including:
   a. A public utility district; or
   b. An irrigation district.
(ii) "Authority" does not include a state court having jurisdiction over an authority.
(g) "Authority pole" means a utility pole owned, managed or operated by, or on behalf of, an authority.
(h) "Authority wireless support structure" means a wireless support structure owned, managed, or operated by, or on behalf of, an authority.
(i) "Category one authority" means a single authority with a population of sixty-five thousand (65,000) or greater.
(j) "Category two authority" means a single authority with a population of less than sixty-five thousand (65,000).
(k) "Collocate" means to install, mount, maintain, modify, operate or replace a small wireless facility:
(i) On a wireless support structure or utility pole; or

(ii) For ground-mounted equipment, adjacent to a wireless support structure or utility pole.

(l) "Communications service" means:

(i) A cable service, as defined in 47 U.S.C. Section 522(6);

(ii) A telecommunications service, as defined in 47 U.S.C. Section 153(53);

(iii) An information service, as defined in 47 U.S.C. Section 153(24); or

(iv) A wireless service.

(m) "Communications service provider" means:

(i) A cable operator, as defined in 47 U.S.C. Section 522(5);

(ii) A provider of information service, as information service is defined in 47 U.S.C. Section 153(24);

(iii) A telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or

(iv) A wireless provider.

(n) "Decorative pole" means an authority pole:

(i) That is specially designed and placed for an aesthetic purpose; and

(ii) On which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than:
a. A small wireless facility;
b. A specialty designed informational or directional sign; or
c. A temporary holiday or special event attachment; or

2. On which no appurtenance or attachment has been placed, other than:

a. A small wireless facility;
b. A specialty designed informational or directional sign; or
c. A temporary holiday or special event attachment.

(o) "Design district" means an area:

(i) That is zoned or otherwise designated by municipal ordinance or code; and
(ii) For which the authority maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(p) "FCC" means the Federal Communications Commission of the United States.

(q) "Fee" means a one-time, nonrecurring charge.

(r) "Gross revenue" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(i) A tax, fee, or charge:
1. Imposed by a governmental entity;
2. Separately identified as a tax, fee or charge in the transaction with the customer for the telecommunications service; and
3. Imposed only on a telecommunications provider;

(ii) Sales and use taxes collected by the telecommunications provider from a customer under Chapter 65, Title 27, Mississippi Code of 1972; or
(iii) Interest, a fee or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

"Gross revenue" includes a charge necessary to complete a sale of a telecommunications service.

(s) "Historic district" means a group of buildings, properties or sites that are in accordance with 47 C.F.R. Part 1, Appendix C:
(i) Listed in the National Register of Historic Places; or
(ii) Formally determined eligible for listing in the National Register of Historic Places by the Keeper of the National Register.

(t) "Nondiscriminatory" means treating similarly situated entities the same absent a reasonable, and competitively neutral basis, for different treatment.
(u) "Micro wireless facility" means a type of small wireless facility:

(i) That, not including any antenna, is no larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height;

(ii) On which any exterior antenna is no longer than eleven (11) inches; and

(iii) That only provides Wi-Fi service.

(v) "Permit" means a written authorization an authority requires for a wireless provider to perform an action or initiate, continue or complete a project.

(w) "Rate" means a recurring charge.

(x) (i) "Right-of-way" means the area on, below, or above a public:

1. Roadway;

2. Highway;

3. Street;

4. Sidewalk;

5. Alley; or

6. Property similar to property listed in this paragraph (x)(i)1. through 5.

(ii) "Right-of-way" does not include:

1. The area on, below, or above a federal interstate highway; or
2. A fixed guideway, defined as a public transit facility that uses and occupies rail for the use of public transit or a separate right-of-way for the use of public transit.

(y) "Small wireless facility" means a type of wireless facility:

(i) On which each wireless provider's antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) For which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than twenty-eight (28) cubic feet in volume, not including any:

1. Electric meter;
2. Concealment element;
3. Telecommunications demarcation box;
4. Grounding equipment;
5. Power transfer switch;
6. Cut-off switch;
7. Vertical cable run for the connection of power or other service;
8. Wireless provider antenna; or
9. Coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

(z) "Substantial modification" means:
(i) A proposed modification or replacement to an existing wireless support structure that will substantially change the physical dimensions of the wireless support structure under the substantial change standard established in 47 C.F.R. Section 1.40001(7); or

(ii) A proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1, Appendix C, Section III.B.

(aa) "Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or the small wireless facility's design or site location, can be implemented without a significant reduction or impairment to the functionality of the small wireless facility.

(bb) (i) "Utility pole" means a pole or similar structure that:

1. Is in a right-of-way; and

2. Is or may be used, in whole or in part, for:

   a. Wireline communications;
   b. Electric distribution;
   c. Lighting;
   d. Traffic control;
   e. Signage;
   f. A similar function to a function described in this paragraph (bb)(i)2.a. through e.; or
g. The collocation of a small wireless facility.

(ii) "Utility pole" does not include:

1. A wireless support structure;
2. A structure that supports electric transmission lines; or
3. A municipally owned structure that supports electric lines used for the provision of municipal electric service.

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

1. Equipment associated with wireless communications; and
2. Regardless of the technological configuration, a radio transceiver, an antenna, a coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

(ii) "Wireless facility" does not include:

1. The structure or an improvement on, under, or within which the equipment is collocated; or
2. A coaxial or fiber-optic cable that is:
   a. Between wireless structures or utility poles;
b. Not immediately adjacent to or directly associated with a particular antenna; or
c. A wireline backhaul facility.

(dd) (i) "Wireless infrastructure provider" means a person who builds or installs wireless communication transmission equipment, a wireless facility, or a wireless support structure.

(ii) "Wireless infrastructure provider" includes a person authorized to provide a telecommunications service in the state.

(iii) "Wireless infrastructure provider" does not include a wireless service provider.

(ee) "Wireless provider" means a wireless infrastructure provider or a wireless service provider.

(ff) (i) "Wireless service" means any service using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public using a wireless facility.

(ii) "Wireless service" includes the use of Wi-Fi.

(gg) "Wireless service provider" means a person who provides a wireless service.

(hh) (i) "Wireless support structure" means an existing or proposed structure that is:

1. In a right-of-way; and

2. Designed to support or capable of supporting a wireless facility, including a:

   a. Monopole;
b. Tower, either guyed or self-supporting;
c. Billboard; or
d. Building.
(ii) "Wireless support structure" does not include a:
1. Structure designed solely for the collocation of a small wireless facility;
2. Utility pole;
3. Municipally owned structure that supports electric lines used for the provision of municipal electric service; or
4. Structure owned by an energy services interlocal entity that uses electric lines that are used for the provision of electrical service.
(ii) "Wireline backhaul facility" means a facility used to transport communications by wire from a wireless facility to a communications network.
(jj) (i) "Written" or "in writing" means a tangible or electronic record of a communication or representation.
(ii) "Written" or "in writing" includes a communication or representation that is handwritten, typewritten, printed, photostated, photographed, or electronic.

SECTION 3. Nothing in this act:
(a) Permits an entity to provide a service regulated under 47 U.S.C. Sections 521 through 573 in a right-of-way without compliance with all applicable legal obligations;

(b) Imposes a new requirement on the activity of a cable provider in a right-of-way for a cable service provided in this state;

(c) Governs:

   (i) A pole that an electrical corporation owns or a wireless support structure that an electrical corporation owns; or
   (ii) The attachment of a small wireless facility to a pole that an electrical corporation owns or to a wireless support structure that an electrical corporation owns; or

(d) Confers on an authority any new jurisdiction over an electrical corporation.

SECTION 4. (1) Subject to subsection (2) of this section, the provisions of this act, and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within the authority's territorial boundaries, including with respect to wireless support structures and utility poles.

(2) An authority may exercise the authority's police-power-based regulations for the management of a public right-of-way:

   (a) On a nondiscriminatory basis to all users of the right-of-way;
To the extent of the authority's jurisdiction; and

(c) Consistent with state and federal law.

(3) An authority may impose a regulation based on the authority's police power in the management of an activity of a wireless provider in a public right-of-way, if:

(a) To the extent the authority enforces the regulation, the authority enforces the regulation on a nondiscriminatory basis; and

(b) The purpose of the regulation is to protect the health, safety and welfare of the public.

(4) An authority may adopt design standards for the installation and construction of a small wireless facility or utility pole in a public right-of-way that:

(a) Are reasonable and nondiscriminatory; and

(b) Include additional installation and construction details that do not conflict with this act, including a requirement that:

(i) An industry standard pole load analysis be completed and submitted to an authority, indicating that the utility pole, to which the small wireless facility is to be attached, will safely support the load; or

(ii) Small wireless facility equipment, on new and existing utility poles, be placed higher than eight (8) feet above ground level.
(5) (a) A wireless provider shall comply with an authority's design standards described in subsection (4) of this section, if any, in place on the day on which the wireless provider files a permit application in relation to work for which the authority approves the permit application.

(b) An authority's obligations under this act may not be tolled or extended pending the adoption or modification of design standards.

(6) A wireless provider may not install a new utility pole in a public right-of-way without the authority's discretionary, nondiscriminatory, and written consent, if the public right-of-way is adjacent to a street or thoroughfare that is:

(a) Not more than sixty (60) feet wide, as depicted in the official plat records; and

(b) Adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.

(7) Nothing in this act authorizes the state or any political subdivision, including an authority, to:

(a) Require the deployment of a wireless facility; or

(b) Regulate a wireless service.

(8) Except as provided in this act or otherwise specifically authorized by state law, an authority may not impose or collect a tax, fee or charge on a communications service provider authorized to operate in a right-of-way for the provision of communications services.
service over the communications service provider's communications facilities in the right-of-way.

ARTICLE 2.

Use of Right-of-Way for Small Wireless Facilities and Utility Poles

SECTION 5. This article only applies to a wireless provider deploying, within a right-of-way:

(a) A small wireless facility; or

(b) A utility pole associated with a small wireless facility.

SECTION 6. An authority may not enter into an exclusive arrangement with any person for:

(a) Use of a right-of-way for the collocation of a small wireless facility; or

(b) The installation, operation, marketing, modification, maintenance or replacement of a utility pole.

SECTION 7. (1) An authority may charge a wireless provider a rate or fee for the use of a right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain or replace a utility pole associated with the wireless provider's collocation of a small wireless facility, if the authority:

(a) Charges all other similarly situated wireless providers for use of the right-of-way; and

(b) Charges only the rate or fee in accordance with Article 5 of this act, Rates and Fees.
(2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee to a wireless provider for the use of a right-of-way.

Section 8. (1) Subject to the provisions of this article, along, across, upon, or under a right-of-way, a wireless provider may, as a permitted use under the authority's zoning regulation and subject only to administrative review:

(a) Collocate a small wireless facility; or

(b) Install, operate, modify, maintain or replace:

(i) A utility pole associated with the wireless provider's collocation of a small wireless facility; or

(ii) Equipment described in paragraph (y)(ii)1. through 9. of Section 2 of this act required for a wireless provider's collocation of a small wireless facility.

(2) A small wireless facility or utility pole under subsection (1) of this section may not:

(a) Obstruct or hinder the usual travel or public safety on a right-of-way; or

(b) Obstruct, damage, or interfere with:

(i) Another utility facility in a right-of-way; or

(ii) A utility's use of the utility's facility in a right-of-way.

(3) Construction and maintenance by the wireless provider shall comply with all applicable legal obligations for the protection of underground and overhead utility facilities.
SECTION 9.  (1) A new or modified utility pole that has a collocated small wireless facility, and that is installed in a right-of-way, may not exceed fifty (50) feet above ground level.

(2) An antenna of a small wireless facility may not extend more than ten (10) feet above the top of a utility pole existing on or before July 1, 2019.

SECTION 10. If necessary to collocate a small wireless facility, a wireless provider may replace a decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced decorative pole.

SECTION 11. A wireless provider shall comply with an authority's prohibition on a communications service provider installing a structure in the right-of-way in an area designated solely for underground or buried cable and utility facilities, if:

(a) The prohibition is reasonable and nondiscriminatory; and

(b) The authority:

   (i) 1. Requires that all cable and utility facilities, other than an authority pole and attachment, be placed underground; and

   2. Establishes the requirement in this paragraph (b)(i)1. more than ninety (90) days before the day on which the applicant submits the application;

   (ii) Does not prohibit the replacement of an authority pole in the designated area; and
(iii) Permits a wireless provider to seek a waiver, that is administered in a nondiscriminatory manner, of the undergrounding requirement for the placement of a new utility pole to support a small wireless facility.

SECTION 12. (1) Subject to the permit process described in Section 15 of this act, an authority may require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design or concealment measure in an historic district, unless the facility is excluded from evaluation for effects on historic properties under 47 C.F.R. Section 1.1307(a)(4).

(2) A design or concealment measure described in subsection (1) of this section may not:
   (a) Have the effect of prohibiting a provider's technology; or
   (b) Be considered a part of the small wireless facility for purposes of the size parameters in the definition of a small wireless facility.

(3) (a) A wireless provider shall obtain advance approval from an authority before collocating a new small wireless facility or installing a new utility pole in an area that is zoned or otherwise designated as an historic district or a design district.

   (b) As a condition for approval of a new small wireless facility or a new utility pole in an historic district or a design district, an authority may require reasonable design or
concealment measures for the new small wireless facility or the 
new utility pole.

(4) A wireless provider shall comply with an authority's 
reasonable and nondiscriminatory design and aesthetic standards 
requiring the use of certain camouflage measures in connection 
with a new small wireless facility in an historic district or a 
design district, if the camouflage measures are technically and 
economically feasible consistent with this act.

(5) This section does not limit an authority's ability to 
enforce historic preservation zoning regulations consistent with:

(a) The preservation of local zoning authority under 47 
U.S.C. Section 332(c)(7);

(b) The requirements for facility modifications under:

   (i) 47 U.S.C. Section 1455(a); or

   (ii) The National Historic Preservation Act of 
1966, 16 U.S.C. Section 470 et seq.;

(c) The regulations adopted to implement the laws 
described in this subsection (5)(a) and (b); and

(d) Section 39-13-3.

SECTION 13.  (1) An authority shall manage a wireless 
provider's use of a right-of-way in a nondiscriminatory manner 
with regard to any other user of the right-of-way.

(2) Any term or condition an authority imposes on a 
right-of-way user may not:

(a) Be unreasonable or discriminatory; or
(b) Violate an applicable legal obligation or law.

SECTION 14. (1) If a wireless provider's activity causes damage to a right-of-way, the wireless provider shall repair the right-of-way to substantially the same condition as before the damage.

(2) If a wireless provider fails to make a repair required by an authority under subsection (1) of this section within a reasonable time after written notice, the authority may:

(a) Make the required repair; and

(b) Charge the wireless provider the reasonable, documented, actual cost for the repair.

(3) If the damage described in subsection (1) of this section causes an urgent safety hazard, an authority may:

(a) Immediately make the necessary repair; and

(b) Charge the wireless provider the reasonable, documented, actual cost for the repair.

ARTICLE 3.

Permitting Process for Small Wireless Facilities

SECTION 15. (1) This article applies to:

(a) The collocation of a small wireless facility in a right-of-way;

(b) The collocation of a small wireless facility on a wireless support structure in a right-of-way; and
(c) The installation, modification or replacement of a utility pole associated with a small wireless facility in a right-of-way.

(2) Except as provided in this act, an authority may not prohibit, regulate or charge for the collocation of a small wireless facility.

**SECTION 16.** (1) An authority may require an applicant to obtain a permit to:

(a) Collocate a small wireless facility in a right-of-way; or

(b) Install a new, modified or replacement utility pole associated with a small wireless facility in a right-of-way, as provided in Section 8 of this act.

(2) If an authority establishes a permitting process under subsection (1) of this section, the authority:

(a) Shall ensure that a required permit is of general applicability;

(b) May not require:

(i) Directly or indirectly, that an applicant perform a service or provide a good unrelated to the permit, including reserving fiber, conduit or pole space for the authority;

(ii) An applicant to provide more information to obtain a permit than a communications service provider that is not a wireless provider or a utility, except to the extent the
applicant is required to include construction or engineering
drawings or other information to demonstrate the applicant's
application should not be denied under subsection (7) of this
section;

(iii) The placement of a small wireless facility
on a specific utility pole or category of poles;

(iv) Multiple antenna systems on a single utility
pole; or

(v) A minimum separation distance, limiting the
placement of a small wireless facility; and

(c) May require an applicant to attest that the small
wireless facility will be operational for use by a wireless
service provider within two hundred seventy (270) days after the
day on which the authority issues the permit, except in the case
that:

(i) The authority and the applicant agree to
extend the two hundred seventy-day period; or

(ii) Lack of commercial power or communications
transport infrastructure to the site delays completion.

(3) Within thirty (30) days after the day on which an
authority receives an application for the collocation of a small
wireless facility or for a new, modified or replacement utility
pole, the authority shall:

(a) Determine whether the application is complete; and
(b) Notify the applicant in writing of the authority's determination of whether the application is complete.

(4) If an authority determines, within the applicable time period described in subsection (3) of this section, that an application is incomplete:

(a) The authority shall specifically identify the missing information in the written notification sent to the applicant under subsection (3)(b) of this section; and

(b) The processing deadline in subsection (6) of this section is tolled:

(i) From the day on which the authority sends the applicant the written notice to the day on which the authority receives the applicant's missing information; or

(ii) As the applicant and the authority agree.

(5) An application for a small wireless facility expires if:

(a) The authority notifies the wireless provider that the wireless provider's application is incomplete, in accordance with subsection (4) of this section; and

(b) The wireless provider fails to respond within ninety (90) days after the day on which the authority notifies the wireless provider under this subsection (5)(a).

(6) (a) An authority shall:

(i) Process an application on a nondiscriminatory basis; and

(ii) Approve or deny an application:
1. For the collocation of a small wireless facility, within sixty (60) days after the day on which the authority receives the complete application; and

2. For a new, modified or replacement utility pole, within one hundred five (105) days after the day on which the authority receives the complete application.

(b) If an authority fails to approve or deny an application within the applicable time period described in this subsection (6)(a)(ii), the application is approved.

(c) Notwithstanding this subsection (6)(a) and (b), an authority may extend the applicable period described in this subsection (6)(a)(ii) for a single additional period of ten (10) business days, if the authority notifies the applicant before the day on which approval or denial is originally due.

(7) An authority may deny an application to collocate a small wireless facility or to install, modify or replace a utility pole that meets the height limitations under Section 9 of this act, only if the action requested in the application:

(a) Materially interferes with the safe operation of traffic control equipment;

(b) Materially interferes with a sight line or a clear zone for transportation or pedestrians;

(c) Materially interferes with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101
et seq., or a similar federal or state standard regarding pedestrian access or movement;

(d) Fails to comply with applicable laws or legal obligations;

(e) Creates a public health or safety hazard; or

(f) Obstructs or hinders the usual travel or public safety of the right-of-way.

(8) (a) If an authority denies an application under subsection (7) of this section, the authority shall:

(i) Document the basis for the denial, including any specific law on which the denial is based; and

(ii) Send the documentation described in this subsection (8)(a)(i) to the applicant on or before the day on which the authority denies the application.

(b) Within thirty (30) days after the day on which an authority denies an application, the applicant may, without paying an additional application fee:

(i) Cure any deficiency the authority identifies in the applicant's application; and

(ii) Resubmit the application.

(c) (i) An authority shall approve or deny an application revised in accordance with this subsection (8)(b) within thirty (30) days after the day on which the authority receives the revised application.
(ii) A review of an application revised in accordance with this subsection (8)(b) is limited to the deficiencies documented as the basis for denial unless the applicant has changed another portion of the application.

(9) (a) Subject to this subsection (9)(b) and (c), if an applicant seeks to:

(i) Collocate multiple small wireless facilities within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the collocation of up to twenty-five (25) small wireless facilities, if all of the small wireless facilities in the consolidated application are:

1. Substantially the same type; and
2. Proposed for collocation on substantially the same types of structures; or

(ii) Install, modify or replace multiple utility poles within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the installation, modification or replacement of up to twenty-five (25) utility poles.

(b) An applicant may not file within a thirty-day period:

(i) With a category one (1) authority, more than:

1. Three (3) consolidated applications; or
2. Multiple applications that collectively seek permits for a combined total of more than seventy-five (75) small wireless facilities and utility poles; or

(ii) With a category two (2) authority, more than:

1. One (1) consolidated application; or

2. Multiple applications that collectively seek permits for a combined total of more than twenty-five (25) small wireless facilities and utility poles.

(c) A consolidated application described in this subsection (9)(a) may not combine applications solely for collocation of small wireless facilities on existing utility poles with applications for the installation, modification or replacement of a utility pole.

(d) If an authority denies the application for one or more utility poles, or one or more small wireless facilities, in a consolidated application, the authority may not use the denial as a basis to delay the application process of any other utility pole or small wireless facility in the same consolidated application.

(10) A wireless provider shall complete the installation or collocation for which a permit is granted under this article within two hundred seventy (270) days after the day on which the authority issues the permit, unless:

(a) The authority and the applicant agree to extend the one-year period; or
(b) Lack of commercial power or communications facilities at the site delays completion.

(11) Approval of an application authorizes the applicant to:

(a) Collocate or install a small wireless facility or utility pole, as requested in the application; and

(b) Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain for a period of at least ten (10) years:

(i) Any small wireless facility covered by the permit; and

(ii) Any utility pole covered by the permit.

(12) If there is no basis for denial under subsection (7) of this section, an authority shall grant the renewal of an application under this section for an equivalent duration.

(13) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving or processing an application, or issuing a permit or another approval, if any, for:

(a) The collocation of a small wireless facility; or

(b) The installation, modification or replacement of a utility pole to support a small wireless facility.

(14) The approval of the installation, placement, maintenance or operation of a small wireless facility, in accordance with this act, does not authorize:

(a) The provision of a communications service in the right-of-way; or
(b) The installation, placement or operation of a facility, other than the approved small wireless facility, in the right-of-way.

SECTION 17. (1) Except as provided in subsection (2) of this section, an authority may not require a wireless provider to submit an application, obtain a permit, or pay a rate for:

(a) Routine maintenance;

(b) The replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size; or

(c) The installation, placement, maintenance, operation or replacement of a micro wireless facility that is strung on a cable between existing utility poles, in compliance with the National Electrical Safety Code.

(2) (a) An authority may require a wireless provider to obtain a permit for work that requires excavation or closing of sidewalks or vehicular lanes in a public right-of-way.

(b) If an authority requires a permit under this subsection (2)(a), the authority shall process and approve the permit within the same time period the authority processes and approves a permit for all other types of entities.

(3) (a) An authority may require advance notice of an activity described in subsection (1) of this section.

(b) A wireless provider may replace or upgrade a utility pole only with the approval of the utility pole's owner.
ARTICLE 4.

Access to authority Poles Within a Right-of-Way

SECTION 18. This article applies to activities of a wireless provider within a right-of-way.

SECTION 19. (1) A person owning, managing or controlling an authority pole in a right-of-way may not enter into an exclusive arrangement with a person for the right to collocate a small wireless facility to the authority pole.

(2) A person who purchases or otherwise acquires an authority pole is subject to the requirements of this Article 4.

(3) An authority shall allow the collocation of a small wireless facility on an authority pole in a right-of-way:

(a) As provided in this act; and

(b) Subject to the permitting process in Article 3, Permitting Process for Small Wireless Facilities.

SECTION 20. The rate to collocate a small wireless facility on an authority pole:

(a) Shall be nondiscriminatory, regardless of the service provided by the collocating person; and

(b) Is provided in Article 5, Rates and Fees.

ARTICLE 5.

Rates and Fees

SECTION 21. This article governs an authority's rates and fees for the placement in a right-of-way of:

(a) A small wireless facility; or
(b) A utility pole associated with a small wireless facility.

SECTION 22. (1) Except as described in subsection (2) of this section, an authority may not require a wireless provider to pay any rate, fee or compensation to the authority, or to any other person, beyond what is expressly authorized in this act, for the right to use or occupy a right-of-way:

(a) For the collocation of a small wireless facility on a utility pole in the right-of-way; or

(b) For the installation, operation, modification, maintenance or replacement of a utility pole in the right-of-way.

(2) (a) An authority may charge a wireless provider a rate for the right to use or occupy a right-of-way as described in subsection (1) of this section, if, except as provided in Section 25(6) of this act, the rate is:

(i) Fair and reasonable;

(ii) Competitively neutral;

(iii) Nondiscriminatory;

(iv) Directly related to the wireless provider's actual use of the right-of-way; and

(v) Not more than the greater of:

1. Three and one-half percent (3.5%) of all gross revenue related to the wireless provider's use of the right-of-way for small wireless facilities; or
2. Two Hundred Fifty Dollars ($250.00) annually for each small wireless facility.

(b) A wireless provider subject to a rate under this subsection (2) shall remit payments to the authority on a monthly basis.

(c) A rate charged in accordance with this subsection (2)(a)(v) is presumed to be fair and reasonable.

(3) Notwithstanding subsection (2) of this section, an authority may not require a wireless provider to pay an additional rate, fee or compensation for the right to use or occupy a right-of-way as described in subsection (1) of this section, if the wireless provider is subject to a municipal telecommunications license tax.

SECTION 23. (1) An authority may charge an application fee, if:

(a) A similar fee is required for similar types of commercial development or construction within the authority's jurisdiction;

(b) The costs to be recovered by an application fee are not already recovered by existing fees, rates, licenses or taxes paid by the wireless provider; and

(c) The fee does not include:

(i) Travel expenses incurred by a third party in review of an application; or
(ii) Payment or reimbursement of a third-party rate or fee charged on a contingency basis or a result-based arrangement.

(2) Subject to subsection (3) of this section, an application fee for collocation of a small wireless facility is limited to the cost of granting a building permit for similar types of commercial development or construction within the authority's jurisdiction.

(3) An application fee for the collocation of a small wireless facility on an existing or replacement utility pole may not exceed One Hundred Dollars ($100.00) for each small wireless facility on the same application.

(4) If the activity is a permitted use described in Section 8 of this act, an application fee may not exceed Two Hundred Fifty Dollars ($250.00) per application to install, modify or replace a utility pole associated with a small wireless facility.

(5) If the activity is not a permitted use described in Section 8 of this act, an application fee may not exceed One Thousand Dollars ($1,000.00) per application to:

   (a) Install, modify or replace a utility pole; or
   (b) Install, modify or replace a new utility pole associated with a small wireless facility.

SECTION 24. The rate to collocate a small wireless facility on an authority pole is Fifty Dollars ($50.00) per year, per authority pole.
ARTICLE 6.

Implementation

SECTION 25. (1) An authority may, to the extent allowed by law and consistent with this act, establish rates, fees and other terms that comply with this act by:

(a) Implementing an ordinance; or

(b) If applicable, executing an agreement with a wireless provider.

(2) In the absence of an ordinance or agreement that fully complies with this act, a wireless provider may install and operate a small wireless facility or a utility pole associated with a small wireless facility:

(a) Subject to Section 26 of this act; and

(b) Under the requirements of this act.

(3) An authority may establish an ordinance or require an agreement to implement this act.

(4) (a) Subject to this subsection (4)(b), an authority may require a wireless provider to agree to reasonable and nondiscriminatory indemnification, insurance or bonding requirements before a wireless provider collocates a small wireless facility in a right-of-way.

(b) An authority may not impose on a wireless provider an indemnification requirement described in this subsection (4)(a) that requires the wireless provider to indemnify the authority for the authority's negligence.
(5) An authority's obligations under this act may not be tolled or extended pending the implementation of an ordinance or negotiation of an agreement to implement this act.

(6) (a) Nothing in this section prohibits an authority from entering into a written, nondiscriminatory agreement with one or more wireless providers to jointly test certain traffic-related functions, or other technology related to research, using specified assets of the authority or the wireless providers.

(b) An agreement described in subsection (6)(a) of this section may:

(i) Waive certain fees the participating wireless provider would otherwise be required to pay to the authority; or

(ii) Allow the participating wireless provider to pay certain fees in cash, in-kind compensation, or in a combination of cash and in-kind compensation.

SECTION 26. (1) An agreement or ordinance that does not fully comply with this act and applies to a small wireless facility or a utility pole that is operational or installed before July 1, 2019:

(a) May not be renewed or extended unless the agreement is modified to fully comply with this act; and

(b) Is invalid and unenforceable beginning July 1, 2019, unless the agreement or ordinance is modified before July 1, 2019, to fully comply with this act.
(2) An agreement or ordinance entered into or passed before July 1, 2019, that does not fully comply with this act and applies to a small wireless facility or a utility pole that was not operational or installed before July 1, 2019, is invalid and unenforceable:

(a) Beginning July 1, 2019; and

(b) Until the agreement or ordinance is modified to fully comply with this act.

(3) If an agreement or ordinance is invalid in accordance with this section, until an agreement or ordinance that fully complies with this act is entered or adopted:

(a) A small wireless facility or a utility pole that is operational or installed before July 1, 2019, may remain installed and operate under the requirements of this act; and

(b) A small wireless facility or utility pole may become operational or be installed in the right-of-way on or after July 1, 2019, under the requirements of this act.

SECTION 27. Notwithstanding any provision to the contrary, an authority may require a wireless provider to relocate or adjust a small wireless facility in a public right-of-way:

(a) In a timely manner; and

(b) Without cost to the authority owning the public right-of-way.

SECTION 28. This act shall take effect and be in force from and after July 1, 2019.