

By: Senator(s) Blackwell

To: Energy

SENATE BILL NO. 2003

1 AN ACT TO CREATE THE SMALL WIRELESS FACILITIES DEPLOYMENT ACT  
2 TO ALLOW A WIRELESS PROVIDER TO DEPLOY A SMALL WIRELESS FACILITY  
3 AND ANY ASSOCIATED UTILITY POLE WITHIN A RIGHT-OF-WAY UNDER  
4 CERTAIN CONDITIONS; TO DEFINE CERTAIN TERMS USED IN THE ACT; TO  
5 PROVIDE FOR THE SCOPE OF THE ACT; TO PROVIDE THAT THE ACT ONLY  
6 APPLIES TO A WIRELESS PROVIDER DEPLOYING, WITHIN A RIGHT-OF-WAY, A  
7 SMALL WIRELESS FACILITY OR A UTILITY POLE ASSOCIATED WITH A SMALL  
8 WIRELESS FACILITY; TO AUTHORIZE AN AUTHORITY TO CHARGE A RATE OR  
9 FEE FOR THE USE OF A RIGHT-OF-WAY; TO PROVIDE WIRELESS PROVIDER  
10 RIGHT OF ACCESS, SUBJECT TO CERTAIN CONDITIONS; TO PROVIDE HEIGHT  
11 LIMITATIONS IN A RIGHT-OF-WAY; TO AUTHORIZE A WIRELESS PROVIDER TO  
12 REPLACE A DECORATIVE POLE UNDER CERTAIN CONDITIONS; TO PROVIDE FOR  
13 THE INSTALLATION OF STRUCTURES IN AN AREA DESIGNATED AS AN  
14 UNDERGROUND DISTRICT; TO AUTHORIZE AN AUTHORITY TO REQUIRE A  
15 TECHNOLOGICALLY NEUTRAL DESIGN OR CONCEALMENT MEASURE IN AN  
16 HISTORIC DISTRICT; TO REQUIRE AUTHORITIES TO MANAGE A WIRELESS  
17 PROVIDER'S USE OF A RIGHT-OF-WAY IN A NONDISCRIMINATORY MANNER  
18 WITH REGARD TO ANY OTHER USER OF THE RIGHT-OF-WAY; TO REQUIRE  
19 REPAIR OF THE RIGHT-OF-WAY IF A WIRELESS PROVIDER'S ACTIVITY  
20 CAUSES DAMAGE; TO PROVIDE FOR THE PERMITTING PROCESS FOR SMALL  
21 WIRELESS FACILITIES; TO PROVIDE EXCEPTIONS TO PERMITTING; TO  
22 PROVIDE ACCESS TO AUTHORITY POLES WITHIN A RIGHT-OF-WAY; TO  
23 PROVIDE FOR RIGHT-OF-WAY RATES AND APPLICATION FEES; TO AUTHORIZE  
24 AUTHORITIES TO IMPLEMENT THIS ACT BY ORDINANCE, OR IF APPLICABLE,  
25 BY EXECUTING AN AGREEMENT WITH A WIRELESS PROVIDER; TO PROVIDE FOR  
26 NONCOMPLIANT AGREEMENTS AND ORDINANCES; AND FOR RELATED PURPOSES.

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

28 **ARTICLE 1.**

29 **General Provisions**



30           **SECTION 1.** This act shall be known and may be cited as the  
31 "Small Wireless Facilities Deployment Act."

32           **SECTION 2.** As used in this act:

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

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

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

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

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

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

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

52                   (f) (i) "Authority" means:

53                                   1. The state;

54                                   2. A state agency;



55                   3. A county;

56                   4. A municipality;

57                   5. A town;

58                   6. A metrotownship;

59                   7. A subdivision of an entity described in

60 this paragraph (f)(i)1. through 6.; or

61                   8. A special district or entity established

62 to provide a single public service within a specific geographic

63 area, including:

64                           a. A public utility district; or

65                           b. An irrigation district.

66                   (ii) "Authority" does not include a state court

67 having jurisdiction over an authority.

68                   (g) "Authority pole" means a utility pole owned,

69 managed or operated by, or on behalf of, an authority.

70                   (h) "Authority wireless support structure" means a

71 wireless support structure owned, managed, or operated by, or on

72 behalf of, an authority.

73                   (i) "Category one authority" means a single authority

74 with a population of sixty-five thousand (65,000) or greater.

75                   (j) "Category two authority" means a single authority

76 with a population of less than sixty-five thousand (65,000).

77                   (k) "Collocate" means to install, mount, maintain,

78 modify, operate or replace a small wireless facility:



79 (i) On a wireless support structure or utility  
80 pole; or

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

83 (l) "Communications service" means:

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

86 (ii) A telecommunications service, as defined in  
87 47 U.S.C. Section 153(53);

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

90 (iv) A wireless service.

91 (m) "Communications service provider" means:

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

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

96 (iii) A telecommunications carrier, as defined in  
97 47 U.S.C. Section 153(51); or

98 (iv) A wireless provider.

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

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

102 (ii) 1. On which a nondiscriminatory rule or code  
103 prohibits an appurtenance or attachment, other than:



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

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

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

116                   (o) "Design district" means an area:

117                                   (i) That is zoned or otherwise designated by  
118 municipal ordinance or code; and

119                                   (ii) For which the authority maintains and  
120 enforces unique design and aesthetic standards on a uniform and  
121 nondiscriminatory basis.

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

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

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

128                                   (i) A tax, fee, or charge:



129                   1. Imposed by a governmental entity;  
130                   2. Separately identified as a tax, fee or  
131 charge in the transaction with the customer for the  
132 telecommunications service; and

133                   3. Imposed only on a telecommunications  
134 provider;

135                   (ii) Sales and use taxes collected by the  
136 telecommunications provider from a customer under Chapter 65,  
137 Title 27, Mississippi Code of 1972; or

138                   (iii) Interest, a fee or a charge that is charged  
139 by a telecommunications provider on a customer for failure to pay  
140 for telecommunications service when payment is due.

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

143           (s) "Historic district" means a group of buildings,  
144 properties or sites that are in accordance with 47 C.F.R. Part 1,  
145 Appendix C:

146                   (i) Listed in the National Register of Historic  
147 Places; or

148                   (ii) Formally determined eligible for listing in  
149 the National Register of Historic Places by the Keeper of the  
150 National Register.

151           (t) "Nondiscriminatory" means treating similarly  
152 situated entities the same absent a reasonable, and competitively  
153 neutral basis, for different treatment.



154 (u) "Micro wireless facility" means a type of small  
155 wireless facility:

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

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

161 (iii) That only provides Wi-Fi service.

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

165 (w) "Rate" means a recurring charge.

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

- 168 1. Roadway;
- 169 2. Highway;
- 170 3. Street;
- 171 4. Sidewalk;
- 172 5. Alley; or
- 173 6. Property similar to property listed in

174 this paragraph (x) (i) 1. through 5.

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

- 176 1. The area on, below, or above a federal  
177 interstate highway; or



178                   2. A fixed guideway, defined as a public  
179 transit facility that uses and occupies rail for the use of public  
180 transit or a separate right-of-way for the use of public transit.

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

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

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

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

202                   (z) "Substantial modification" means:





203 (i) A proposed modification or replacement to an  
204 existing wireless support structure that will substantially change  
205 the physical dimensions of the wireless support structure under  
206 the substantial change standard established in 47 C.F.R. Section  
207 1.40001(7); or

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

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

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

- 218 1. Is in a right-of-way; and  
219 2. Is or may be used, in whole or in part,

220 for:

- 221 a. Wireline communications;  
222 b. Electric distribution;  
223 c. Lighting;  
224 d. Traffic control;  
225 e. Signage;  
226 f. A similar function to a function

227 described in this paragraph (bb) (i) 2.a. through e.; or



228 g. The collocation of a small wireless  
229 facility.

230 (ii) "Utility pole" does not include:

- 231 1. A wireless support structure;
- 232 2. A structure that supports electric  
233 transmission lines; or
- 234 3. A municipally owned structure that  
235 supports electric lines used for the provision of municipal  
236 electric service.

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

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

246 (ii) "Wireless facility" does not include:

- 247 1. The structure or an improvement on, under,  
248 or within which the equipment is collocated; or
- 249 2. A coaxial or fiber-optic cable that is:  
250 a. Between wireless structures or  
251 utility poles;



252                                   b. Not immediately adjacent to or  
253 directly associated with a particular antenna; or

254                                   c. A wireline backhaul facility.

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

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

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

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

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

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

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

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

273                                   1. In a right-of-way; and

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

276                                   a. Monopole;



277                                   b. Tower, either guyed or  
278 self-supporting;

279                                   c. Billboard; or

280                                   d. Building.

281                   (ii) "Wireless support structure" does not include

282 a:

283                                   1. Structure designed solely for the  
284 collocation of a small wireless facility;

285                                   2. Utility pole;

286                                   3. Municipally owned structure that supports  
287 electric lines used for the provision of municipal electric  
288 service; or

289                                   4. Structure owned by an energy services  
290 interlocal entity that uses electric lines that are used for the  
291 provision of electrical service.

292                   (ii) "Wireline backhaul facility" means a facility used  
293 to transport communications by wire from a wireless facility to a  
294 communications network.

295                   (jj) (i) "Written" or "in writing" means a tangible or  
296 electronic record of a communication or representation.

297                                   (ii) "Written" or "in writing" includes a  
298 communication or representation that is handwritten, typewritten,  
299 printed, photostated, photographed, or electronic.

300                   **SECTION 3.** Nothing in this act:



301 (a) Permits an entity to provide a service regulated  
302 under 47 U.S.C. Sections 521 through 573 in a right-of-way without  
303 compliance with all applicable legal obligations;

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

307 (c) Governs:

308 (i) A pole that an electrical corporation owns or  
309 a wireless support structure that an electrical corporation owns;

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

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

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

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

324 (a) On a nondiscriminatory basis to all users of the  
325 right-of-way;



326 (b) To the extent of the authority's jurisdiction; and

327 (c) Consistent with state and federal law.

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

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

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

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

339 (a) Are reasonable and nondiscriminatory; and

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

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

347 (ii) Small wireless facility equipment, on new and  
348 existing utility poles, be placed higher than eight (8) feet above  
349 ground level.



350 (5) (a) A wireless provider shall comply with an  
351 authority's design standards described in subsection (4) of this  
352 section, if any, in place on the day on which the wireless  
353 provider files a permit application in relation to work for which  
354 the authority approves the permit application.

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

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

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

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

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

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

370 (b) Regulate a wireless service.

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



375 service over the communications service provider's communications  
376 facilities in the right-of-way.

377 **ARTICLE 2.**

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

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

- 382 (a) A small wireless facility; or  
383 (b) A utility pole associated with a small wireless  
384 facility.

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

- 387 (a) Use of a right-of-way for the collocation of a  
388 small wireless facility; or  
389 (b) The installation, operation, marketing,  
390 modification, maintenance or replacement of a utility pole.

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

- 396 (a) Charges all other similarly situated wireless  
397 providers for use of the right-of-way; and  
398 (b) Charges only the rate or fee in accordance with  
399 Article 5 of this act, Rates and Fees.





400 (2) An authority may, on a nondiscriminatory basis, refrain  
401 from charging a rate or fee to a wireless provider for the use of  
402 a right-of-way.

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

407 (a) Collocate a small wireless facility; or

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

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

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

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

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

418 (b) Obstruct, damage, or interfere with:

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

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

422 (3) Construction and maintenance by the wireless provider  
423 shall comply with all applicable legal obligations for the  
424 protection of underground and overhead utility facilities.



425           **SECTION 9.** (1) A new or modified utility pole that has a  
426 collocated small wireless facility, and that is installed in a  
427 right-of-way, may not exceed fifty (50) feet above ground level.

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

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

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

439                   (a) The prohibition is reasonable and  
440 nondiscriminatory; and

441                   (b) The authority:

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

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

448                           (ii) Does not prohibit the replacement of an  
449 authority pole in the designated area; and



450 (iii) Permits a wireless provider to seek a  
451 waiver, that is administered in a nondiscriminatory manner, of the  
452 undergrounding requirement for the placement of a new utility pole  
453 to support a small wireless facility.

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

460 (2) A design or concealment measure described in subsection  
461 (1) of this section may not:

462 (a) Have the effect of prohibiting a provider's  
463 technology; or

464 (b) Be considered a part of the small wireless facility  
465 for purposes of the size parameters in the definition of a small  
466 wireless facility.

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

471 (b) As a condition for approval of a new small wireless  
472 facility or a new utility pole in an historic district or a design  
473 district, an authority may require reasonable design or



474 concealment measures for the new small wireless facility or the  
475 new utility pole.

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

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

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

486 (b) The requirements for facility modifications under:

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

488 (ii) The National Historic Preservation Act of  
489 1966, 16 U.S.C. Section 470 et seq.;

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

492 (d) Section 39-13-3.

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

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

498 (a) Be unreasonable or discriminatory; or



499 (b) Violate an applicable legal obligation or law.

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

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

507 (a) Make the required repair; and

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

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

512 (a) Immediately make the necessary repair; and

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

515 **ARTICLE 3.**

516 **Permitting Process for Small Wireless Facilities**

517 **SECTION 15.** (1) This article applies to:

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

520 (b) The collocation of a small wireless facility on a  
521 wireless support structure in a right-of-way; and



522 (c) The installation, modification or replacement of a  
523 utility pole associated with a small wireless facility in a  
524 right-of-way.

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

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

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

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

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

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

539 (b) May not require:

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

544 (ii) An applicant to provide more information to  
545 obtain a permit than a communications service provider that is not  
546 a wireless provider or a utility, except to the extent the



547 applicant is required to include construction or engineering  
548 drawings or other information to demonstrate the applicant's  
549 application should not be denied under subsection (7) of this  
550 section;

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

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

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

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

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

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

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

570 (a) Determine whether the application is complete; and



571 (b) Notify the applicant in writing of the authority's  
572 determination of whether the application is complete.

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

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

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

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

584 (ii) As the applicant and the authority agree.

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

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

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

592 (6) (a) An authority shall:

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

595 (ii) Approve or deny an application:





596                   1. For the collocation of a small wireless  
597 facility, within sixty (60) days after the day on which the  
598 authority receives the complete application; and

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

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

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

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

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

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

618                   (c) Materially interferes with compliance with the  
619 Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101



620 et seq., or a similar federal or state standard regarding  
621 pedestrian access or movement;

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

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

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

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

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

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

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

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

639 (ii) Resubmit the application.

640 (c) (i) An authority shall approve or deny an  
641 application revised in accordance with this subsection (8) (b)  
642 within thirty (30) days after the day on which the authority  
643 receives the revised application.



644 (ii) A review of an application revised in  
645 accordance with this subsection (8)(b) is limited to the  
646 deficiencies documented as the basis for denial unless the  
647 applicant has changed another portion of the application.

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

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

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

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

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

- 666 (i) With a category one (1) authority, more than:  
667 1. Three (3) consolidated applications; or



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

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

672                   1. One (1) consolidated application; or

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

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

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

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

690                   (a) The authority and the applicant agree to extend the  
691 one-year period; or



692 (b) Lack of commercial power or communications  
693 facilities at the site delays completion.

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

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

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

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

702 (ii) Any utility pole covered by the permit.

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

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

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

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

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

715 (a) The provision of a communications service in the  
716 right-of-way; or



717 (b) The installation, placement or operation of a  
718 facility, other than the approved small wireless facility, in the  
719 right-of-way.

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

723 (a) Routine maintenance;

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

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

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

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

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

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



742 **ARTICLE 4.**

743 **Access to authority Poles Within a Right-of-Way**

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

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

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

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

754 (a) As provided in this act; and

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

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

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

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

762 **ARTICLE 5.**

763 **Rates and Fees**

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

766 (a) A small wireless facility; or



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

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

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

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

778 (2) (a) An authority may charge a wireless provider a rate  
779 for the right to use or occupy a right-of-way as described in  
780 subsection (1) of this section, if, except as provided in Section  
781 25(6) of this act, the rate is:

782 (i) Fair and reasonable;

783 (ii) Competitively neutral;

784 (iii) Nondiscriminatory;

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

787 (v) Not more than the greater of:

788 1. Three and one-half percent (3.5%) of all  
789 gross revenue related to the wireless provider's use of the  
790 right-of-way for small wireless facilities; or





791                                   2. Two Hundred Fifty Dollars (\$250.00)  
792 annually for each small wireless facility.

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

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

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

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

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

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

812                   (c) The fee does not include:

813                                   (i) Travel expenses incurred by a third party in  
814 review of an application; or



815 (ii) Payment or reimbursement of a third-party  
816 rate or fee charged on a contingency basis or a result-based  
817 arrangement.

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

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

827 (4) If the activity is a permitted use described in Section  
828 8 of this act, an application fee may not exceed Two Hundred Fifty  
829 Dollars (\$250.00) per application to install, modify or replace a  
830 utility pole associated with a small wireless facility.

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

834 (a) Install, modify or replace a utility pole; or

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

837 **SECTION 24.** The rate to collocate a small wireless facility  
838 on an authority pole is Fifty Dollars (\$50.00) per year, per  
839 authority pole.



840 **ARTICLE 6.**

841 **Implementation**

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

845 (a) Implementing an ordinance; or

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

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

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

853 (b) Under the requirements of this act.

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

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

861 (b) An authority may not impose on a wireless provider  
862 an indemnification requirement described in this subsection (4) (a)  
863 that requires the wireless provider to indemnify the authority for  
864 the authority's negligence.



865 (5) An authority's obligations under this act may not be  
866 tolled or extended pending the implementation of an ordinance or  
867 negotiation of an agreement to implement this act.

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

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

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

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

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

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

886 (b) Is invalid and unenforceable beginning July 1,  
887 2019, unless the agreement or ordinance is modified before July 1,  
888 2019, to fully comply with this act.



889 (2) An agreement or ordinance entered into or passed before  
890 July 1, 2019, that does not fully comply with this act and applies  
891 to a small wireless facility or a utility pole that was not  
892 operational or installed before July 1, 2019, is invalid and  
893 unenforceable:

894 (a) Beginning July 1, 2019; and

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

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

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

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

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

909 (a) In a timely manner; and

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

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

