SB264

197833-2

By Senator Orr

RFD: Transportation and Energy

First Read: 09-APR-19
SYNOPSIS: This bill would authorize the installation and deployment of qualifying antennas and poles on the public rights-of-way of the state to be used for wireless and broadband communications networks.

This bill would establish a permitting process for the installation of small wireless facilities and poles and would establish the rates and fees for their use.

This bill would also provide exemptions and would also provide indemnification, insurance, and bonding requirements.

A BILL TO BE ENTITLED
AN ACT Relating to telecommunications; to add Chapter 3A to Title 37, Code of Alabama 1975, to authorize the installation and deployment of small wireless facilities and poles on public rights-of-way; to establish a permitting process; to
provide exemptions; and to provide indemnification, insurance, and bonding requirements.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 3A is added to Title 37 of the Code of Alabama 1975, to read as follows:

§37-3A-1. Definitions.

When used in this chapter, the following words have the following meanings:

(1) ANTENNA. An apparatus designed for the purpose of emitting radio frequency radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. The term does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Chapter I, Subchapter A, Part 15.

(2) ANTENNA EQUIPMENT. Equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, mounted or installed at the same time as the antenna.

(3) ANTENNA FACILITY. An antenna and associated antenna equipment.

(4) APPLICABLE CODES. Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to
those codes that are of general application, that address
public safety and are consistent with this chapter.

(5) APPLICANT. A person who submits an application
as or on behalf of a wireless provider.

(6) APPLICATION. A request submitted by an applicant
to an authority for a permit to do any of the following:
   a. Collocate.
   b. Install or replace a pole on which a small
      wireless facility will be mounted or installed.
   c. Mount or install small wireless facilities on a
      new or replacement pole.
   d. Install associated antenna equipment adjacent to
      a structure on which a small wireless facility is or will be
      collocated, mounted, or installed.

(7) AUTHORITY. The state or any agency, county,
municipality, district, or subdivision thereof or any
instrumentality of the same, including, but not limited to,
public utility districts and irrigation districts. The term
does not include state courts having jurisdiction over an
authority.

(8) AUTHORITY POLE. A pole that is owned, managed,
or operated by or on behalf of an authority.

(9) COLLOCATE or COLLOCATION. Either or both of the
following:
   a. Mounting or installing an antenna facility on a
      pre-existing structure.
b. Modifying a structure for the purpose of mounting
or installing an antenna facility on that structure.

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

(11) COMMUNICATIONS SERVICE PROVIDER. Any of the
following:

b. A provider of information service, as defined in
c. A telecommunications carrier, as defined in 47
d. A wireless provider.

(12) DECORATIVE POLE. An authority pole that is
specially designed and placed for aesthetic purposes and on
which no appurtenances or attachments, other than a small
wireless facility, lighting, specially designed informational
or directional signage, or temporary holiday or special event
attachments, have been placed or are permitted to be placed
according to nondiscriminatory authority rules or codes.

(13) FACILITY. An antenna facility or a structure
that is used for the provision of personal wireless service,
whether such service is provided on a stand-alone basis or
commingled with other wireless communications services.

(14) FCC. The Federal Communications Commission of
the United States.
(15) FEE. A one-time, nonrecurring charge.

(16) HISTORIC DISTRICT. A group of buildings, properties, or sites that are either of the following:
   
a. Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with 47 C.F.R. Chapter I, Subchapter A, Part 1, Appendix C.

b. A historic district designated pursuant to Section 11-68-6, as of July 1, 2019.

(17) MICRO WIRELESS FACILITY. An antenna facility that meets both of the following qualifications:
   
a. It is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height.

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

(18) PERMIT. Any and all authorizations, written or otherwise, required by an authority to perform an action or initiate, continue, or complete a project for the deployment of wireless service at a specified location in the rights-of-way.

(19) PERSON. An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(20) PERSONAL WIRELESS SERVICE. The term includes all of the following: Commercial mobile service, unlicensed wireless services, and common carrier wireless exchange access services, as those terms are defined in 47 U.S.C. § 332, and
commercial mobile data service, as defined in 47 U.S.C. § 1401.

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

(22) RATE. A recurring charge.

(23) RIGHT-OF-WAY. The area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property, but not including a federal interstate highway. The term does not include an area in which an authority does not have the right to permit access.

(24) SMALL WIRELESS FACILITY. A facility that meets all of the following conditions:

a. The facility meets any of the following requirements:

1. Is mounted on structures 50 feet or less in height, including the antennas.

2. Is mounted on structures no more than 10 percent taller than other adjacent structures.

3. Does not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
b. Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

c. All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

d. The facilities do not require antenna structure registration under 47 C.F.R. Chapter I, Subchapter A, Part 17.

e. The facilities are not located on tribal lands, as defined under 36 C.F.R. § 800.16.

f. The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

(25) STRUCTURE. A pole; tower, as defined in 47 C.F.R. § 1.40001; base station, as defined in 47 C.F.R. § 1.40001; or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service, whether on its own or commingled with other types of services.

(26) TECHNICALLY FEASIBLE. By virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a material reduction in the functionality of the small wireless facility.

(27) WIRELESS INFRASTRUCTURE PROVIDER. A person, including a person authorized to provide telecommunications
service in the state, who builds or installs facilities for
the provision of wireless service, but who is not a wireless
services provider.

   (28) WIRELESS PROVIDER. A wireless infrastructure
provider or a wireless services provider.

   (29) WIRELESS SERVICES. Any services using licensed
or unlicensed spectrum, including the use of Wi-Fi, whether at
a fixed location or mobile, that is provided to the public.

   (30) WIRELESS SERVICES PROVIDER. A person who
provides wireless services.

§37-3A-2. Use of right-of-way for small wireless
facilities and poles.

   (a) This section applies to activities of a wireless
provider within the right-of-way to deploy small wireless
facilities and associated antenna equipment and poles.

   (b) An authority may not enter into an exclusive
arrangement with any person for any of the following:

       1. For the use of the right-of-way for collocation.

       2. For the mounting or installation of small
wireless facilities on new or replacement poles.

       3. For the installation of associated antenna
equipment adjacent to a structure on which a small wireless
facility is or will be collocated, mounted, or installed.

       4. For the installation, operation, marketing,
modification, maintenance, or replacement of associated poles.
(c)(1) Subject to this section, as a permitted use that is not subject to zoning review or approval, a wireless provider may do any of the following:

a. Collocate.

b. Mount or install small wireless facilities on new or replacement poles.

c. Install associated antenna equipment adjacent to a structure on which a small wireless facility is or will be collocated, mounted or installed.

d. Install or replace its own poles, or, with the permission of the owner, a third party's poles, associated with a small wireless facility, along, across, upon, or under the right-of-way.

(2) Small wireless facilities, antenna equipment, and poles mounted, installed, or replaced under subdivision (1) shall be installed and maintained as not to obstruct or hinder the usual travel or public safety on a right-of-way or obstruct the legal use of the right-of-way by utilities.

(d) Each new, replaced, or modified pole installed in the right-of-way for the purpose of collocating, mounting, or installing small wireless facilities may not exceed the greater of 50 feet in height above ground level or 10 percent taller than the tallest existing pole in place as of January 1, 2019, in the same right-of-way within 500 feet of the new, replaced, or modified pole. New small wireless facilities in the right-of-way may not extend more than 10 percent above the existing structure on which they are located or 50 feet above
ground level, whichever is greater. Notwithstanding the
foregoing, each new, replaced, or modified pole installed in
the right-of-way for the purpose of collocating, mounting, or
installing small wireless facilities, and each collocation,
may not exceed 50 feet in height above ground level within a
historic district or an area zoned primarily for residential
use. A wireless provider shall have the right to collocate,
mount, or install a small wireless facility and install,
maintain, modify, and replace a pole that exceeds these height
limits along, across, upon, or under the right-of-way, subject
to this section and any applicable zoning or other generally
applicable regulations.

(e) An authority may adopt aesthetics requirements
governing the deployment of small wireless facilities and
associated antenna equipment and poles in the right-of-way,
subject to all of the following conditions:

(1) The aesthetic requirements must be all of the
following:

a. Reasonable, in that they are technically feasible
and reasonably directed to avoiding or remedying unsightly or
out-of-character deployments.

b. No more burdensome than those applied to other
types of infrastructure deployments.

c. Objective and published in advance.

(2) Any design or concealment measures are not
considered a part of the small wireless facility for purposes
of the size parameters in the definition of small wireless facility.

(3) An authority may deny an application for not complying with aesthetic requirements only if the denial does not prohibit or have the effect of prohibiting the provision of wireless service.

(4) Aesthetic requirements applicable to deployment on decorative poles and deployment in historic districts shall also comply with both of the following requirements:

a. A wireless provider shall be permitted to collocate on or replace decorative poles when necessary to deploy a small wireless facility. An authority may require the collocation or decorative pole replacement to reasonably conform to the design aesthetics of the original decorative pole or poles, provided the requirements are technically feasible.

b. An authority may adopt aesthetic requirements applicable in historic districts that comply with this subsection.

(f) A wireless provider shall comply with undergrounding requirements that are consistent with subdivisions (1) through (3) of subsection (e) under the following conditions:

(1) The authority has required all electric and communications lines to be placed underground by a date certain that is not less than three months prior to the submission of the application.
(2) Poles which the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the mounting or installation of small wireless facilities in compliance with this chapter.

(3) A wireless provider may install a new pole in the designated area that otherwise complies with this section when it is not able to provide wireless service by collocating on a remaining structure. For small wireless facilities installed before an authority adopts requirements that communications and electric lines be placed underground, an authority adopting the requirements shall do either of the following:

a. Permit a wireless provider to maintain the small wireless facilities in place on any pole not required to be removed, subject to any applicable pole attachment agreement with the pole owner.

b. Permit the wireless provider to replace an existing pole within 50 feet of the prior location.

(g) The applicant, or the person that owns or operates the small wireless facility collocated in the right-of-way, may remove its small wireless facilities at any time from the right-of-way upon not less that 30 days' prior written notice to the authority and may cease paying to the authority any applicable fees and rates for such use, as of the date of the actual removal of the small wireless facilities. In the event of such removal, the right-of-way
shall be, to the extent practicable in the reasonable judgment of the authority, restored to its condition prior to the removal. If the applicant fails to return the right-of-way, to the extent practicable in the reasonable judgment of the authority, to its condition prior to the removal within 90 days of the removal, the authority may restore the right-of-way to such condition and charge the applicant the authority's reasonable, documented cost of removal and restoration, plus a penalty not to exceed five hundred dollars ($500). The authority may suspend the ability of the applicant to receive any new permits from the authority until the applicant has paid the amount assessed for such removal and restoration and the penalty assessed, if any; provided, however, that the authority shall not suspend the ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(h) A wireless provider shall not be required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes. A wireless provider, with the permission of the pole owner, may replace or modify existing poles, but the replacement or modification shall be consistent with the design aesthetics of the pole or poles being modified or replaced.

(i) If, in the reasonable exercise of police powers, an authority requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles
or small wireless facilities is required as a result of a public project, a wireless provider shall relocate poles that the wireless provider has installed in the right-of-way for the collocation of small wireless facilities pursuant to this chapter at no cost to the authority in the event that such poles are found by the authority to unreasonably interfere with the widening, repair, reconstruction, or relocation project of the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a person other than an authority, the person shall bear the cost of relocating the poles and any communications facilities on the poles.

(1) The wireless provider shall relocate the poles within the sooner of either of the following:

   a. By the date designated in a written notice from the authority that contains a good faith estimate by the authority of the date by which the authority intends to commence work, whenever the authority has determined that the removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any authority improvement or operations in or upon the right-of-way, so long as the same time frames are applied to all utilities in the right-of-way; provided, however, that the date designated for relocation shall be at least 45 days after the authority provides the written notice to the wireless provider.
b. Within the time frame that the wireless provider estimates in good faith is reasonably needed to complete the relocation, so long as the wireless provider provides the authority written notice of its good faith estimate within 30 days following receipt of the written notice provided by the authority pursuant to paragraph a. and explains in detail why the wireless provider cannot reasonably complete the relocation by the date designated in the authority's written notice.

(2) If the wireless provider fails to relocate a pole or fails to provide a written good faith estimate of the time needed to relocate a pole within the time period prescribed in subdivision (1), the authority, ten days or more after the wireless provider receives written notice from the authority, may cut power to or move any pole located within the right-of-way in order to commence work on the public project.

(j)(1) If a wireless provider decides to abandon any small wireless facility or structure, the wireless provider shall notify the authority in writing as soon as practicable, but no later than 30 days prior to the abandonment. Following receipt of the notice, the authority shall instruct the wireless provider in writing to remove all or any portion of the small wireless facility or structure if the authority determines that the removal is in the best interest of public safety and welfare. If the wireless provider fails to remove the abandoned small wireless facility or structure within 90
days after such notice, the authority may remove the abandoned
facility or structure and recover the actual and reasonable
expenses of the removal from the wireless provider, its
successors, or its assigns, plus a penalty not to exceed five
hundred dollars ($500). The authority may suspend the ability
of the wireless provider, its successors, or its assigns, as
applicable, to receive any new permits from the authority
until the wireless providers, its successors, or its assigns,
as applicable, have paid the amount assessed for the removal
costs and the penalty assessed, if any; provided, however,
that the authority shall not suspend such ability of any
applicant that has deposited the amount in controversy in
escrow pending an adjudication of the merits of the dispute by
a court of competent jurisdiction. Nothing in this chapter
precludes an authority from adopting reasonable and
nondiscriminatory requirements that are not inconsistent with
this subsection with respect to the removal of abandoned small
wireless facilities or structures.

(2) A small wireless facility that is not operated
or a structure that is not utilized for a continuous period of
12 months shall be considered abandoned, and the owner of the
small wireless facility or structure shall remove such within
90 days after receipt of written notice from the authority
notifying the owner of the small wireless facility or
structure of the abandonment. The authority shall send the
notice by certified or registered mail, return receipt
requested, to the last known address of the owner. If the
owner does not provide written notice that the small wireless
city has not been out of operation or the structure has in
fact been utilized for a continuous period of 12 months or
does not remove the small wireless facility or structure
within the 90 day period, the authority may remove or cause
the removal of the small wireless facility or structure
pursuant to the terms of any applicable agreement or through
an abatement of nuisance action or by other law providing for
removal and cost recovery.

(k) If an authority determines that a wireless
provider's activity in the right-of-way pursuant to this
chapter creates an imminent risk to public safety, the
authority may provide written notice to the wireless provider
and demand that the wireless provider address the risk. If the
wireless provider fails to reasonably address the risk within
24 hours of the written notice, the authority may take or
cause to be taken action to reasonably address the risk and
charge the wireless provider the reasonable documented cost of
the actions.

(l) A wireless provider shall comply with any
nondiscriminatory breakaway pole requirements.


(a) This section applies to all permits required for
collocation; for the mounting and installation of small
wireless facilities on new or replacement poles; for the
installation of associated antenna equipment adjacent to a
structure on which a small wireless facility is or will be
collocated, mounted, or installed; and for the installation and replacement of associated poles by a wireless provider.

(b) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for collocation, the mounting and installation of small wireless facilities on new or replacement poles, or the installation or replacement of associated poles or antenna equipment that may be permitted in this section.

(c) An authority may require an applicant to obtain a permit for a collocation for the mounting or installation of a small wireless facility on a new or replacement pole or for the installation or replacement of associated poles or antenna equipment as provided in Section 37-3A-3. Permits required under this subsection must be of general applicability and may not apply exclusively to small wireless facilities. Only one application shall be required for all activities associated with a permit. An authority shall receive and process applications subject to all of the following requirements:

(1) Small wireless facilities and associated antenna equipment and poles shall be classified as permitted uses and not subject to zoning review or approval if they are located in the right-of-way in any zone.

(2) An authority may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority.
(3) An applicant shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria in subdivision (9).

(4) An authority may not require any of the following:

a. The collocation of small wireless facilities on a specific pole or category of poles or require multiple antenna facilities on a single pole.

b. Except as provided in Section 37-3A-2, the use of specific pole types or configurations when installing new or replacement poles.

c. The underground placements of small wireless facilities or antenna equipment that are or are designated in an application to be pole-mounted or ground-mounted.

(5) An authority may not limit the collocation of small wireless facilities or the mounting or installation of small wireless facilities on new or replacement poles by minimum horizontal separation distance requirements from existing small wireless facilities or structures.

(6) The authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless service provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is

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caused by lack of commercial power, communications transport facilities to the site, or any other factors outside of the applicant's control.

(7) Within 10 days of receiving an application, an authority must determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority must specifically identify the missing information in writing. The processing deadline in subdivision (8) shall restart at zero on the date the applicant provides the missing information to complete the application.

(8)a. Applications shall be processed on a nondiscriminatory basis and shall be approved or denied within the following days:

1. Sixty days of receipt of an application for a permit involving collocation of a small wireless facilities using an existing structure.

2. Ninety days of receipt of an application for a permit involving deployment of a small wireless facility using a new or replacement pole.

b. The processing deadline under paragraph a. may be tolled by agreement of the applicant and the authority. If an authority fails to act on an application within the review period provided for in this subsection, the applicant may provide the authority written notice that the time period for acting has lapsed, and the authority shall then have 20 days after receipt of the notice to render its written decision.
The application shall be deemed approved by passage of time and operation of law if the authority does not render its written decision within the 20 day period.

(9) An authority may deny a proposed collocation, mounting, and installation of small wireless facilities on new or replacement poles, or installation or replacement of associated poles or antenna equipment that meets the height requirements of subsection (d) of Section 37-3A-2 only if the proposed application does any of the following:

  a. Materially interferes with the safe operation of traffic control equipment.

  b. Materially interferes with sight lines or clear zones for transportation or pedestrians.

  c. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

  d. Fails to comply with written, reasonable and nondiscriminatory horizontal spacing requirements of general application that are made publicly available before an application is filed and concern the location of ground-mounted antenna equipment and new poles. The spacing requirements shall not prevent a wireless provider from serving any location.

  e. Materially obstructs the legal use of the right-of-way by utilities, or materially interferes with the widening, repair, reconstruction, or relocation of a public road or highway by an authority that has been advertised for
bid and scheduled for completion within six months after the
application is filed.

f. Fails to comply with applicable codes.
g. Fails to comply with subsection (c), (d), (e), or
(f) of Section 37-3A-2.

(10) The authority shall document the basis for a
denial, including the specific rule or statutory provisions on
which the denial was based, and send the documentation to the
applicant on or before the day the authority denies an
application. The applicant may cure the deficiencies
identified by the authority and resubmit the application
within 30 days of the denial without paying an additional
application fee. The authority shall approve or deny the
revised application within 30 days of resubmission and limit
its review to the deficiencies cited in the denial. If an
applicant proposes a location more than five feet from the
original location to cure a deficiency identified in the
initial application, the authority may require a new
application triggering a new processing deadline under
subdivision (8) of subsection (a) of Section 37-3A-3.

(11) An applicant seeking to collocate, mount, or
install small wireless facilities within the jurisdiction of a
single authority may file a consolidated application for small
wireless facilities and associated poles and antenna equipment
and receive a single permit for the collocation, mounting, or
installation of multiple small wireless facilities and the
placement of associated poles and antenna equipment; provided,
the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities, poles, or antenna equipment in the same consolidated application. Batch applications shall be collectively processed in accordance with the procedures in this section. A batch application that includes new or replacement pole deployments shall be subject to a 90-day timeframe for approval.

(12) Installations, modifications, replacements, and collocations for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the authority and the applicant agree to extend this period, or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to do both of the following:

a. Undertake the installation, modification, replacement, or collocation.

b. Subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated poles and antenna equipment covered by the permit for a period of not less than 10 years, which must be renewed for equivalent durations so long as the facilities comply with the criteria set forth in subdivision (9).

(13) An authority may not institute, either expressly or de facto, a moratorium on the collocation,
mounting, or installation of small wireless facilities or the
installation, modification, or replacement of associated
antenna equipment or poles for either of the following:

a. The filing, receiving, or processing of
applications.

b. The issuing of permits or other required
approvals.

(d)(1) An authority may not require an application
for any of the following that are in compliance with any
applicable codes:

a. Routine maintenance.

b. The replacement of small wireless facilities or
antenna equipment with small wireless facilities or antenna
equipment that are substantially similar or the same size or
smaller.

c. The installation, placement, maintenance,
operation, or replacement of micro wireless facilities that
are suspended on cables that are strung between existing
poles.

(2) An authority may require a permit for work that
requires excavation or closure of sidewalks or vehicular lanes
within the right-of-way for those activities. The permit must
be issued to the applicant on a non-discriminatory basis upon
terms and conditions applied to any other person's activities
in the right-of-way that require excavation or the closure of
sidewalks or vehicular lanes.
§37-3A-4. Access to authority poles within the right-of-way.

(a) This section applies to activities of a wireless provider accessing authority poles to collocate, mount, or install small wireless facilities or antenna equipment.

(b) A person owning, managing, or controlling authority poles in the right-of-way may not enter into an exclusive arrangement with any person for the right to attach to such poles. A person who purchases or otherwise acquires an authority pole is subject to the requirements of this section.

(c) An authority shall allow the collocation of small wireless facilities on existing authority poles, the mounting or installation of small wireless facilities on replacement authority poles, and the installation of associated antenna equipment on nondiscriminatory terms and conditions using the standards set forth in subsection (e) of Section 37-3A-2 and Section 37-3A-3.

(d) The rate to collocate, mount, or install small wireless facilities on authority poles is provided in Section 37-3A-6.

(e)(1) The rates, fees, and terms and conditions for any make-ready work to collocate, mount, or install small wireless facilities on authority poles and install associated antenna equipment must be nondiscriminatory, competitively neutral, commercially reasonable, and in compliance with this chapter.
(2) The authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, mounting, or installation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application. An authority may require replacement of the authority pole only if it demonstrates that the collocation would make the authority pole structurally unsound, and it shall not require more make-ready work than required to meet applicable codes or industry standards. Fees for make-ready work, including any authority pole replacement, shall not exceed either actual costs or the amount charged to other communications service providers for similar work and shall not include any revenue or contingency-based consultant's fees.

(3) The authority may require a wireless provider to perform the make-ready work and notify the wireless provider of such within the same 60-day period specified in subdivision (2). If the wireless provider or its contractor performs the make-ready work, the wireless provider shall indemnify the authority for any negligence by the wireless provider or its contractor in the performance of such make-ready work, and the work shall comply with applicable codes. If the authority opts to perform the make-ready work itself, the authority shall complete the work, including any pole replacement, within 90 days of receipt of written acceptance of the good faith estimate by the wireless provider. The acceptance shall be
signified by payment via check or other commercially reasonable and customary means specified by the authority. The authority may require that a replacement authority pole have the same functionality as the authority pole being replaced. If the authority pole is replaced, the authority shall operate authority fixtures on the pole, and, absent an agreement to the contrary between the authority and the wireless provider that is confirmed in writing, the authority shall take ownership of the new pole.

§37-3A-5. Rates and fees.

(a) This section governs an authority's rates and fees for a wireless provider's use and occupation of the right-of-way under this chapter and for collocation on existing authority poles and mounting and installation of small wireless facilities on replacement authority poles.

(b) All rates and fees under this section must be a reasonable approximation of the authority's objectionably reasonable costs and must be applied by the authority in a nondiscriminatory manner. An authority may not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by this chapter for the right to use or occupy a right-of-way; for the collocation, mounting, and installation of small wireless facilities on poles in the right-of-way; or for the installation, maintenance, modification, and replacement of associated antenna equipment or poles in the right-of-way.
(c) Application fees for any and all permits shall not exceed the following:

(1) Five hundred dollars ($500) for a single up-front application for collocation that includes up to five small wireless facilities, with an additional one hundred dollars ($100) for each small wireless facility beyond five in the same application.

(2) Two hundred fifty dollars ($250) for the modification or replacement of an existing pole, together with the mounting or installation of an associated small wireless facility in the right-of-way.

(3) One thousand dollars ($1,000) for the installation of a new pole, together with the mounting or installation of an associated small wireless facility in the right-of-way.

(d) Subject to subsection (b), if an authority elects to charge for the use of the right-of-way or collocation on authority poles in the right-of-way, the rate shall not exceed one hundred dollars ($100) per small wireless facility per year for right-of-way access and forty dollars ($40) per year for small wireless facilities that are collocated, mounted, or installed on authority poles. These rates, together with the one-time application fee, shall be the total compensation that the wireless provider is required to pay the authority for the deployment of each small wireless facility in the right-of-way and any associated antenna equipment or pole.
§37-3A-6. Cable services.

This chapter applies to activities in the right-of-way only. Nothing in this chapter shall be interpreted to allow any entity to provide services regulated under 47 U.S.C. §§ 521 to 573, without compliance with all laws applicable to such providers. Nor shall this chapter be interpreted to impose any new requirements on cable providers for the provision of cable service in this state.

§37-3A-7. Local authority.

An authority may not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable codes. Nothing in this chapter authorizes the state or any political subdivision thereof, including an authority, to require wireless facility deployment or to regulate small wireless services.


(a) Except as provided in subsection (b), this chapter does not apply to electric power distribution poles owned by any of the following:

(1) An authority.
(2) An investor-owned utility.
(3) Any board or public corporation incorporated or organized for the acquisition or operation of a system under
Chapter 50, Title 11, Code of Alabama 1975, including specifically, but not without limitation, Sections 11-50-490 through 11-50-506.

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

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

(b) Notwithstanding subsection (a), this chapter applies to electric power distribution poles that affect a wireless provider's access to the right-of-way or permits for the collocation, mounting, or installation of small wireless facilities on such poles pursuant to a pole attachment agreement between the wireless provider and the investor-owned utility.


(a) An authority may adopt an ordinance or resolution that makes available to wireless providers the rates, fees, and other terms that comply with this chapter. Subject to this section, in the absence of an ordinance, resolution, or agreement that fully complies with this chapter and until such a compliant ordinance or resolution is adopted, a wireless provider may install and operate small wireless facilities and associated poles and antenna equipment under the requirements of this chapter. An authority may not require a wireless provider to enter into an agreement to implement this chapter, but such agreements are permissible if voluntary and nondiscriminatory.
(b) Ordinances, resolutions, and agreements implementing this chapter are public-private arrangements and are matters of legitimate and significant statewide concern.

(c) An agreement, resolution, or ordinance that does not fully comply with this chapter shall apply only to small wireless facilities and associated poles and antenna equipment that were operational before the effective date of this chapter and shall be deemed invalid and unenforceable beginning six months after the effective date of this chapter unless amended to fully comply with this chapter. If an agreement, resolution, or ordinance is invalid in accordance with this subsection, small wireless facilities and associated poles and antenna equipment that became operational before the effective date of this chapter, pursuant to such agreement, resolution, or ordinance, may remain installed and be operated under the requirements of this chapter.

(d) An agreement, resolution, or ordinance that applies to small wireless facilities and associated poles and antenna equipment that become operational on or after the effective date of this chapter is invalid and unenforceable unless it fully complies with this chapter. In the absence of an ordinance, resolution, or agreement that fully complies with this chapter, a wireless provider may install and operate small wireless facilities and associated poles and antenna equipment in the right-of-way under the requirements of this chapter.

§37-3A-10. Dispute Resolution.
Pending resolution of a dispute concerning rates for collocation, mounting, or installation of small wireless facilities on authority poles in the right-of-way or the installation of associated antenna equipment, the authority owning or controlling the pole shall allow the collocating person to collocate at annual rates set forth in Section 37-3A-6, with rates to be finalized upon final resolution of the dispute.

§37-3A-11. Indemnification, insurance, and bonding.

(a) An authority may adopt reasonable indemnification, insurance, and bonding requirements related to small wireless facility and associated pole permits and antenna equipment subject to the requirements of this section and subsection (f) of Section 37-3A-2.

(b) Any wireless provider who owns or operates small wireless facilities or poles in the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage, or other harm for which recovery of damage is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or poles in the right-of-way or any agent, officer,
director, representative, employee, affiliate, or subcontractor of the wireless provider, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in right-of-way.

(c)(1) Except for a wireless provider with an existing franchise to occupy and operate in the rights-of-way, during the period in which the wireless provider's facilities are located on the authority's improvements or rights-of-way, the authority may require the wireless provider to carry, at the wireless provider's own cost and expense, the following insurance:

a. Property insurance for its property's replacement cost against all risks.

b. Worker's compensation insurance, as required by law.

c. Commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage.

(2) An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a
commercial general liability policy as reasonably required by the authority.

(3) A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

(d) An authority may impose reasonable and nondiscriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused antenna facilities or damage to the right-of-way or authority property caused by the wireless provider or its agent.

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.