SB172
204753-1
By Senators Orr and Scofield
RFD: Fiscal Responsibility and Economic Development
First Read: 11-FEB-20
SYNOPSIS: This bill would establish a procedure by which wireless providers would be authorized to colocate, mount, or install small wireless facilities on existing poles, or install new poles on the right-of-way of the state or any agency, county, or municipality thereof.

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

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

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

A BILL TO BE ENTITLED AN ACT
Relating to wireless telecommunications; to establish a procedure to authorize wireless providers to colocate, mount, or install small wireless facilities on existing poles, or install new poles on the right-of-way of the state or any agency, county, or municipality thereof; to exempt small wireless facilities from certain zoning review and approval procedures; to establish a procedure for the permitting of the development of small wireless facilities and poles in the rights-of-way of the state; and to establish rates and fees for all permits for small wireless facilities.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

(3) COMMUNICATIONS FACILITY. The set of equipment and network components, including wires, cables, and associated facilities, used by a communications service provider.
(4) COMMUNICATIONS SERVICE. Any of the following:

Cable service, as defined in 47 U.S.C. § 522; information service, as defined in 47 U.S.C. § 153; telecommunications service, as defined in 47 U.S.C. § 153; and wireless service.

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

(6) MICRO WIRELESS FACILITY. A small wireless 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.

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

(8) 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 colocation of small wireless facilities. The term does not include a building; billboard; monopole; tower, either guyed or self-supporting; or an electric transmission structure.

(9) WIRELESS FACILITY. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including both of the following: Equipment associated with wireless communications; and radio
transceivers, antennas, coaxial, metallic or fiber-optic cable located on, in, or under a pole or wireless support structure, or otherwise adjacent to such structures, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term does not include any of the following:
The structure or improvements on, under, or within which the equipment is colocated; wireline backhaul facilities; or coaxial, metallic or fiber-optic cable that is between structures or that is otherwise not adjacent to a particular antenna or the structure supporting the antenna.

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

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

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

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

(14) WIRELINE BACKHAUL FACILITY. An above-ground or underground wireline facility used to transport communications data or other electronic communications from a wireless facility network interface device to a communications network.
(b) The definitions in Appendix A to the Federal Communications Commission's Declaratory Ruling and Third Report and Order in Accelerating Wireless Broadband Deployment and Removing Barriers to Infrastructure Investment, WC Docket 5 No. 17-79, WC Docket No. 17-84, FCC 18-133, 83 Fed. Reg. 51867 (Oct. 15, 2018) are incorporated by reference unless a term is otherwise defined in this act.

Section 2. (a) An authority may not deny a wireless provider the right, as a permitted use subject to Section 3 and the authority's requirements not in conflict with this act or a then-existing final order of the Federal Communications Commission (FCC), to do either of the following:

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

(2) Install, modify, 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, and under the right-of-way controlled by the authority.

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

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

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

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

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

(b) Within 10 days of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete. If the authority determines the application is incomplete, the authority shall specifically identify the missing information and specify the requirement creating the obligation to submit the missing documents or information in the written notice. If the written notice of incompleteness is provided within 10 days of
receiving the application, the processing deadlines in subsection (c) shall restart at zero on the date the applicant submits all the documents and information identified by the authority to render the application complete.

(c) Applications shall be processed on a nondiscriminatory basis. Applications not requiring a written notice of incompleteness shall be approved or denied within the following: 60 days of receipt of an application involving colocation of a small wireless facility using an existing structure; and 90 days of receipt of an application involving deployment of a small wireless facility using a new or replacement pole. For those applications requiring a resubmittal following the delivery of a written notice of incompleteness, the time limitations for approval or denial established in this subsection shall begin on the first date after receipt of all the documents and information identified by the authority. The processing deadline 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, by certified mail, a formal notice stating that unless the authority approves or denies the application within 20 days from receipt of the notice, the application and any associated permits will be deemed granted by operation of law on the twenty-first day from receipt of the notice.

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

(e) An applicant seeking to colocate, mount, or
install small wireless facilities or to install, modify, or
replace an associated pole within the jurisdiction of a single
authority may file a consolidated application for small
wireless facilities and associated poles, provided that the
consolidated application shall be for a geographic area no
more than two miles in diameter. The approval of the
consolidated application shall apply to the colocation,
mounting, or installation of the multiple small wireless
facilities or associated poles. The denial of one or more
single small wireless facilities or associated poles that are
part of a consolidated application may not constitute a reason
for denying the remaining small wireless facilities or
associated poles included in the consolidated application. A
consolidated application that includes a request to install,
modify, or replace a pole shall be processed in accordance
with the procedures and shall be subject to the 90-day review
period established in this act.

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

(1) Routine maintenance conducted on small wireless
facilities by the holder of an approved application for the
small wireless facilities, provided the right-of-way is restored to the pre-maintenance condition.

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

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

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

(h) Notwithstanding subdivision (f), an authority may require a permit for work that requires excavation, the closure of sidewalks or vehicular lanes, or that otherwise hinders the usual travel or public safety on the right-of-way or adjacent roads and bridges or obstructs the legal use of the right-of-way by utilities. The permit shall 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.

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

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

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

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

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

Section 4. (a) Subject to Sections 2, 3, and 5, an authority shall allow the colocation of small wireless
facilities on existing poles, other than electric distribution poles, owned or controlled by an authority and the mounting or installation of small wireless facilities on replacement poles, other than electric distribution poles, owned or controlled by an authority on nondiscriminatory terms and conditions that comply with this act.

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

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

Section 5. (a) Application fees for permits for small wireless facilities shall be nondiscriminatory and may not exceed the following:
(1) A five hundred dollar ($500) non-recurring fee for a single up-front application for colocation that includes up to five small wireless facilities, with an additional one hundred dollars ($100) for each small wireless facility beyond five in a consolidated application.

(2) A two hundred fifty dollar ($250) non-recurring fee 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) A one thousand dollar ($1,000) non-recurring fee for the installation of a new pole together with the mounting or installation of an associated small wireless facility in the right-of-way.

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

Section 6. (a) Except as provided in subsection (b), this act does not apply to electric power poles, whether distribution, transmission, or otherwise, or the equipment, easements, or business activities of any of the following:
An investor-owned utility, as defined under Section 37-4-1, Code of Alabama 1975.

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, Code of Alabama 1975.

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

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

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

An authority exercising its authority established by this act may not be subject to suit or otherwise responsible for the alleged negligence, wantonness, willfulness, recklessness, or any other claims for alleged wrongful acts or omissions of wireless providers or their officers, agents, contractors, subcontractors, employees, or other representatives relative to the design, location, placement, construction, maintenance, and operation of small
wireless facilities in an authority's right-of-way or on an
authority's infrastructure.

(b) Wireless providers shall indemnify authorities,
their elected and appointed officials, employees, or
authorized agents, or their insurers, and hold them harmless
from and against any and all claims, demands, actions, suits,
or proceedings in equity or law asserted by third parties for
damages, losses, liabilities, or costs of any kind, including,
without limitation, reasonable attorney's fees, as and when
incurred that arise from a material breach by a wireless
provider or any of its officers, employees, volunteers, or
authorized agents of any obligations set forth in this act; or
for any claims for the alleged negligence, wantonness,
willfulness, recklessness, or claims of any other alleged
wrongful acts or omissions of wireless providers or their
officers, agents, contractors, sub-contractors, employees, or
other representatives relative to the design, location,
placement, construction, maintenance, and operation of small
wireless facilities in an authority's rights-of-way or on an
authority's infrastructure. A wireless provider has no
obligation to indemnify or hold harmless against any
liabilities and losses due to or caused by the sole negligence
or willful misconduct of an authority or its employees or
agents.

Section 8. (a) Except as authorized under subsection
(b), during the period in which the small wireless facilities
of a wireless provider are located on or attached to the
authority's assets, including its poles, or rights-of-way, the
authority may require a wireless provider to do both of the
following:

(1) Carry, at the wireless provider's sole cost and
expense, the following types of third-party insurance:
   a. Property insurance for the replacement cost of
      all small wireless facilities.
   b. Workers' compensation insurance, as required by
      law.
   c. Commercial general liability insurance of at
      least two million dollars ($2,000,000) per occurrence, with
      respect to the wireless providers activities in, on, or around
      the authority improvements or rights-of-way, including
      coverage for bodily injury and property damage.
   d. Environmental insurance.

(2) Include the authority and its officers,
officials, agents, contractors, and employees 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.

(b) In lieu of the requirements of subdivisions (1)
and (2) of subsection (a), during the period in which the
small wireless facilities of a wireless provider are located
on or attached to the authority's assets, including its poles,
or rights-of-way, the authority may allow the wireless
provider to provide a certificate of self-insurance,
acceptable to the authority, that demonstrates that the wireless carrier has adequate resources to self-insure in the amounts set forth in subdivision (1) of subsection (a).

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

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

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

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

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

(c) When an authority orders a wireless provider to remove, relocate, change, or alter the position of a small
wireless facility or pole within the right-of-way, the
authority shall use its best efforts to give the wireless
provider a reasonably equivalent alternative location.

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

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

Section 10. (a) Nothing in this act shall be
interpreted to allow any entity to provide communications
services without compliance with all laws applicable to
communications service providers. Nor shall this act be
interpreted to authorize the colocation, installation,
placement, maintenance, or operation of any communications
facility, including a wireline backhaul facility, in the
rights-of-way, other than a small wireless facility or associated pole.

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

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