COMMITTEE REPORT

March 26, 2019

**H. 4262**

Introduced by Reps. Simrill, Rutherford, Sandifer, Forrester, West, Jefferson, R. Williams and Anderson

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Read the first time March 19, 2019.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4262) to amend the Code of Laws of South Carolina, 1976, by adding Article 5 to Chapter 11, Title 58 so as to enact the “South Carolina Small Wireless Facilities, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Chapter 11, Title 58 of the 1976 Code is amended by adding:

“Article 5

Small Wireless Facilities Deployment Act

Section 58‑11‑800. (A) This article must be known and may be cited as the ‘South Carolina Small Wireless Facilities Deployment Act’.

(B) The General Assembly finds that:

(1) the deployment of small wireless facilities and other next‑generation wireless and broadband network facilities is a matter of statewide concern and interest;

(2) wireless and broadband products and services are a significant and continually growing part of the state’s economy; accordingly, encouraging the development of strong and robust wireless and broadband communications networks throughout the state is integral to the state’s economic competitiveness;

(3) rapid deployment of small wireless facilities will serve numerous important statewide goals and public policy objectives including, without limitation, meeting growing consumer demand for wireless data, increasing competitive options for communications services available to the state’s residents; promoting the ability of the state’s citizens to communicate with other citizens and with their state and local governments; and promoting public safety;

(4) small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in the rights of way (ROW);

(5) to meet the key objectives of this article, wireless providers must have access to the ROW and the ability to attach to infrastructure in the ROW to densify their networks and provide next generation wireless services;

(6) uniform rates and fees for the permitting and deployment of small wireless facilities in the ROW and on authority infrastructure, including poles, throughout the State is reasonable and will encourage the development of robust next‑generation wireless and broadband networks for the benefit of citizens throughout the State;

(7) the procedures, rates and fees in this article are fair and reasonable when viewed from the perspective of the state’s citizens and the state’s interest in having robust, reliable, and technologically advanced wireless and broadband networks; and reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in recovering their costs of managing access to the ROW and the attachment space provided on authority infrastructure in such ROW; and

(8) this article fully occupies the entire field governing the placement and regulation of small wireless facilities and associated wireless support structures and poles in the ROW, and it supersedes and preempts any ordinance, resolution, rule, or similar matter adopted by an authority that purports to address or otherwise regulate the placement of such small wireless facilities, wireless support structures, and poles in the ROW.

Section 58‑11‑810. For purposes of this article:

(1) ‘Antenna’ means:

(a) communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services; or

(b) similar equipment used for the transmission or reception of surface waves.

(2) ‘Applicable codes’ means 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, address public safety, and are consistent with this article.

(3) ‘Applicant’ means any person that submits an application.

(4) ‘Application’ means a request submitted by an applicant to an authority:

(a) for a permit to collocate small wireless facilities; or

(b) to approve the installation, modification, or replacement of a pole or wireless support structure.

(5) ‘Authority’ means any county, municipality, or consolidated government or any agency, district, subdivision or instrumentality thereof.

(6) ‘Authority pole’ means a pole owned, managed, or operated by or on behalf of an authority, provided however, that such term shall not include poles, support structures, electric transmission structures, or equipment of any type that are part of a municipally owned or municipally controlled electric plant or system for furnishing of electricity to the public for compensation.

(7) ‘Collocate or collocation’ means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or pole.

(8) ‘Communications facility’ means the set of equipment and network components, including wires, cables, surface wave couplers, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a wireless services provider to provide communications services, including cable service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless service; surface wave communication, or other one‑way or two‑way communications service.

(9) ‘Communications network’ means a network used to provide communications service.

(10) ‘Communications service’ means cable service as defined in 47 U.S.C. 522(6), information service as defined in 47 U.S.C. 153(24), telecommunications service as defined in 47 U.S.C 153(53), or wireless service.

(11) ‘Communications service provider’ means a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless provider.

(12) ‘Compliant provision’ means an enactment addressing aesthetics, undergrounding, or historical districts that adopts regulations that are:

(a) no more burdensome than those applied to other types of infrastructure deployments in the rights of way;

(b) reasonable;

(c) objective;

(d) published within thirty days prior to becoming applicable with regard to any wireless provider; and

(e) not an effective prohibition of service that is prohibited by federal law.

(13) ‘Decorative pole’ means 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 or 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 municipal rules or codes.

(14) ‘Enactment’ means any ordinance, rule, policy, or equivalently binding measure adopted by an authority.

(15) ‘FCC’ means the Federal Communications Commission of the United States.

(16) ‘Fee’ means a one‑time, nonrecurring charge.

(17) ‘Historic district’ means a group of buildings, properties, or sites that are either:

(a) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i‑v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or

(b) a registered historic district pursuant to state law as of this article’s effective date.

(18) ‘Law’ means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(19) ‘Micro wireless facility’ means a small wireless facility that meets the following qualifications:

(a) is not larger in dimension than twenty‑four inches in length, fifteen inches in width, and twelve inches in height; and

(b) any exterior antenna that is no longer than eleven inches.

(20) ‘Network interface device’ means the telecommunications demarcation device and cross connect point pole demarcating the boundary with any wireline backhaul facility and which is on or adjacent to the pole or support structure supporting the small wireless facility.

(21) ‘Permit’ means a written authorization, in electronic or hard copy format, required to be issued by an authority to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

(22) ‘Person’ means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(23) ‘Pole’ means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way including, without limitation, a replacement pole and an authority pole. Such term shall not include a support structure or electric transmission structure.

(24) ‘Rate’ means a recurring charge.

(25) ‘Rights of way’ or ‘ROW’ means the area through, upon, over, or under a road, highway, street, sidewalk, alley, or similar property; provided, however, that such term shall apply only to property or any interest therein that is under the ownership or control of an authority and shall not include property or any interest therein acquired for or devoted to a federal interstate highway.

(26) ‘Small wireless facility’ means radio transceivers; surface wave couplers; antennas; coaxial or fiber optic cable located on a pole or support structure, immediately adjacent to a pole or support structure, or directly associated with equipment located on a pole or support structure and within a one hundred‑yard radius of the pole or support structure; regular and backup power supplies and rectifiers; and associated ancillary equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meets both of the following qualifications: (i) each wireless provider’s antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the small wireless facility, whether ground or pole mounted, is cumulatively no more than twenty‑eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters, concealment elements, network interface devices, grounding equipment, power transfer switches, cut‑off switches, and vertical cable runs for the connection of power and other services. The term ‘small wireless facility’ does not include: the pole, support structure, or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; wireline backhaul facilities; or coaxial or fiber optic cable that is between small wireless facilities, poles, or support structures or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(27) ‘Support structure’ means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

(28) ‘Technically feasible’ means that 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 reduction in the functionality of the small wireless facility.

(29) ‘Wireless communications’ means any communications using licensed or unlicensed spectrum, including the use of Wi‑Fi, whether at a fixed location or mobile, provided to the public.

(30) ‘Wireless infrastructure provider’ means any person, including a person authorized to provide telecommunications service in the State, acting to build or install wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

(31) ‘Wireless provider’ means a wireless infrastructure provider or a wireless services provider.

(32) ‘Wireless services’ means any services using licensed or unlicensed spectrum, including the use of Wi‑Fi, whether at a fixed location or mobile, provided to the public.

(33) ‘Wireless services provider’ means a person who provides wireless services.

(34) ‘Wireline backhaul facility’ means an above‑ground or underground wireline facility used to transport communications between a small wireless facility network interface device and a network or another small wireless network interface device.

Section 58‑11‑815. (A) An agreement or enactment that does not fully comply with this section applies only to small wireless facilities and associated poles and support structures that were installed before October 1, 2019, and must be deemed invalid and unenforceable beginning October 1, 2019, until amended to fully comply with this article. If an agreement or enactment is invalid and unenforceable in accordance with this section, small wireless facilities and associated utility poles that were installed before October 1, 2019, pursuant to such agreement or ordinance may remain installed at the option of the wireless provider and must be operated and maintained under the provisions of this article.

(B)(1) No later than October 1, 2019, an authority may adopt an enactment that:

(a) adopts compliant provisions in lieu of the provisions of Section 58‑11‑820(F)(2), (G), and (H);

(b) authorizes wireless providers to install and operate small wireless facilities and associated poles and support structures in strict compliance with all other provisions of this article; and

(c) if the authority is a municipality, grants any consent that has not previously been granted, either expressly or otherwise, for wireless providers to install and operate small wireless facilities and associated poles and support structures in compliance with subitems (a) and (b).

(C) In the absence of an enactment that strictly complies with subsection (B), and until such an enactment is adopted, if at all, a wireless provider may install and operate small wireless facilities and associated poles and support structures under the requirements of this article on and after October 1, 2019.

(D)(1) An authority must not require a wireless provider to enter into an agreement including, without limitation, a franchise agreement whether memorialized in an ordinance or in any other manner, to implement this article, but nothing in this article prohibits an authority and a wireless provider from voluntarily entering one or more such agreements after the effective date of this article, including such agreements with rates, fees, and other terms that differ from those in this article, provided however, that the authority must make each such agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

(2) Agreements entered into pursuant to item (1) are public‑private arrangements and are matters of legitimate and significant statewide concern.

Section 58‑11‑820. (A) The provisions of this section shall apply only to activities of a wireless provider within the ROW to deploy small wireless facilities and associated poles.

(B) An authority may not enter into an exclusive arrangement with any person for use of the ROW for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles.

(C) Subject to the exceptions pursuant to Section 58‑11‑830(E)(1), an authority only may charge a wireless provider a nondiscriminatory rate or fee for the use of the ROW with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a pole in the ROW, if the authority charges other entities for use of the ROW. Notwithstanding the foregoing, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate to a wireless provider for the use of the ROW. The rate for use of the ROW is provided in Section 58‑11‑850.

(D) Subject to the provisions of this section, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace poles in the ROW. These structures and facilities must be so installed and maintained as not to obstruct or hinder the usual travel or public safety in the ROW or obstruct the legal use of the ROW by utilities.

(E)(1) Each new or modified pole installed in the ROW may not exceed the greater of ten feet in height above the tallest existing pole in place as of the effective date of this article located within five hundred feet of the new pole in the same ROW, or fifty feet above ground level.

(2) New small wireless facilities in the ROW may not extend more than ten feet above an existing pole in place as of the effective date of this article; or for small wireless facilities on a new pole, above the height permitted for a new pole pursuant to this section.

(3) Subject to the provisions of this section and applicable zoning regulations, a wireless provider must have the right to collocate a small wireless facility and install, maintain, modify, operate, and replace a pole that exceeds the height limits set forth in item (1) in the ROW.

(F)(1) A wireless provider must be permitted to collocate on or replace decorative poles when necessary to deploy a small wireless facility.

(2) 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 these requirements are technically feasible.

(G)(1) A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit the installation of poles or wireless support structures in the ROW in an area designated solely for underground communications and electric lines, where:

(a) no less than three months prior to the submission of the application, the authority has required all such lines to be placed underground;

(b) poles the authority allows to remain are made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this article; or

(c) a wireless provider is allowed to install a new pole when it is not able to provide wireless service by collocating on a remaining pole or wireless support structure.

(2) For small wireless facilities installed before an authority adopts requirements that comply with item (1), an authority adopting such requirements shall:

(a) permit a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

(b) permit the wireless provider to replace the associated pole within fifty feet of the prior location, provided that the wireless provider shall allow communications service providers with attachments on the existing utility pole to place those attachments on the replacement utility pole under the same or reasonably similar rates, terms, and conditions as applied to those attachments on the existing pole.

(H) Subject to Section 58‑11‑830(D), an authority may require reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures in a historic district. These design or concealment measures may not have the effect of prohibiting any provider’s technology; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(I) The authority, in the exercise of its administration and regulation related to the management of the ROW, must be competitively neutral and nondiscriminatory with regard to all users of the ROW. The authority’s ROW may not be unreasonable or discriminatory and may not violate any applicable law.

(J) The authority may require a wireless provider to repair all damage to the ROW directly caused by the activities of the wireless provider in the ROW and to return the ROW to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may make those repairs and charge the applicable party the reasonable, documented cost of such repairs.

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

(L) New, modified, or replacement poles associated with a small wireless facility which meet the requirements of this section are permitted uses pursuant to the permit process in Section 58‑11‑830(D).

(M) A wireless provider shall notify the authority at least thirty days before its abandonment of a small wireless facility. Following receipt of such notice, the authority may direct the wireless provider to remove all or any portion of the small wireless facility if the authority determines that such removal is in the best interest of the public safety and public welfare. If the wireless provider fails to remove the abandoned facility within ninety days after such notice, the authority may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

(N) Nothing in this article relieves any person including, without limitation, any wireless provider, of any applicable obligation to pay business license taxes including, without limitation, those provided for in Section 58‑9‑2200, et. seq., or franchise fees. Any entity that uses the ROW, directly or indirectly, including through leased facilities, to provide services in a municipality is responsible for all applicable taxes and fees related to the services provided.

Section 58‑11‑830. (A) The provisions of this section shall apply to the permitting of the collocation of small wireless facilities by a wireless provider in the ROW and to the permitting of the installation, modification, and replacement of associated poles by a wireless provider inside the ROW.

(B) Except as provided in this article, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities and associated poles described in subsection (A).

(C) Small wireless facilities must be classified as permitted uses and not subject to zoning review or approval if they are collocated in the ROW in any zone.

(D) An authority may require an applicant to obtain one or more permits to collocate a small wireless facility or install a new, modified, or replacement pole associated with a small wireless facility as provided in Section 58‑11‑820(D), provided the permits are of general applicability and do not apply exclusively to wireless facilities. An authority shall receive applications for, process, and issue such permits subject to the following requirements:

(1) 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.

(2) An applicant must 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 delineated in item (9).

(3) An authority may not require:

(a) the collocation of small wireless facilities on a specific pole or category of poles or require multiple antenna systems on a single pole;

(b) the use of specific pole types or configurations when installing new or replacement poles; or

(c) subject to Section 58‑11‑820(G)(1), the underground placements of small wireless facilities that are or are designated in an application to be pole‑mounted or ground‑mounted.

(4) An authority may not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements from existing small wireless facilities, poles, or other structures.

(5) The authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or by the lack of communications transport facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant.

(6) The authority may require an applicant that is not a wireless services provider to include an attestation that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the utility pole at the requested location.

(7) Within ten 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 shall specifically identify the missing information in writing. The processing deadline in item (8) is tolled from the time the authority sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the authority, confirmed in writing.

(8) An application must be processed on a nondiscriminatory basis and is deemed approved if the authority fails to approve or deny the application within sixty days of receipt of the application.

(9) An authority may deny a proposed collocation of a small wireless facility or a proposed installation, modification, or replacement of a pole that meets the requirements in Section 58‑11‑820(E) only if the proposed application:

(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 reasonable and nondiscriminatory horizontal spacing requirements of general application adopted by ordinance that concern the location of ground‑mounted equipment and new poles. These spacing requirements may not prevent a wireless provider from serving any location;

(e) designates the location of a new pole for the purpose of collocating a small wireless facility within seven feet in any direction of an electrical conductor, unless the wireless provider obtains the written consent of the power supplier that owns or manages the electrical conductor;

(f) fails to comply with applicable codes; or

(g) fails to comply with Section 58‑11‑820(F), (G), or (H) or any compliant provisions adopted in lieu thereof in accordance with Section 58‑11‑815(B).

(10) The authority shall document the basis for a denial, including the specific provisions of this article 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 thirty days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within thirty days of resubmission and limit its review to the deficiencies cited in the denial. Any application not acted upon within thirty days of resubmission is deemed approved.

(11) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority must be allowed at the applicant’s discretion to file a consolidated application for up to thirty small wireless facilities and receive a single permit for the collocation of multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application must not delay processing of any other small wireless facilities in the same consolidated application. Solely for purposes of calculating the number of small wireless facilities in a consolidated application, a small wireless facility includes any pole on which such small wireless facility will be collocated.

(12) Installation or collocation for which a permit is granted pursuant to this section must be completed within one year of 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 by the lack of communications facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant. Approval of an application authorizes the applicant to:

(a) undertake the installation or collocation; and

(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 pole covered by the permit for a period of no less than ten years, which must be renewed for equivalent durations so long as the installation or collocation is in compliance with the criteria set forth in item (9).

(13) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications, or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of poles to support small wireless facilities.

(14) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this section neither constitutes an authorization nor affects any authorization a provider may have to provide a communication service or to install, place, maintain, or operate any other communications facility, including a wireline backhaul facility, in a ROW.

(E)(1) An authority may not require a permit or any other approval or charge fees or rates for:

(a) routine maintenance;

(b) the replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller; or

(c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are suspended between poles or wireless support structures in compliance with applicable codes.

(2) An authority may require a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for the activities described in item (1). Such a permit must be issued to the applicant on a nondiscriminatory basis upon terms and conditions that apply to the activities of any other person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

Section 58‑11‑840. (A) The provisions of this section apply to activities of any wireless provider in the ROW.

(B) A person owning, managing, or controlling authority poles in the ROW 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 authority poles on nondiscriminatory terms and conditions pursuant to Section 58‑11‑830.

(D)(1) The rates to collocate on authority poles must be nondiscriminatory regardless of the services provided by the collocating wireless provider.

(2) The rate to collocate on authority poles must be as set forth in Section 58‑11‑850.

(E)(1) The rates, fees, terms, and conditions for make‑ready work to collocate on an authority pole must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this article.

(2) The authority shall provide a good faith estimate for any make‑ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty days after receipt of a complete application. Make‑ready work, including any pole replacement, must be completed within sixty days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it demonstrates that the collocation would make the authority pole structurally unsound.

(3) The person owning, managing, or controlling the authority pole must not require more make‑ready work than required to meet applicable codes or industry standards. Fees assessed by or on behalf of an authority for make‑ready work, including any pole replacement, must not:

(a) include costs related to preexisting or prior damage or noncompliance;

(b) exceed either actual costs or the amount charged to other communications service providers for similar work; or

(c) include any revenue or contingency‑based consultant’s fees or expenses of any kind.

(4) A wireless provider collocating on an authority pole pursuant to this article is responsible for reimbursing third parties for their actual and reasonable costs of any make‑ready work reasonably required by the third party to accommodate the collocation. If the authority includes such costs of a third party in the good faith estimate provided pursuant to item (2) of this section, payment of that estimate to the authority constitutes reimbursement of the third party by the wireless provider. Otherwise, the third party may bill the wireless provider for such reimbursement within six months of the completion of the third party’s make‑ready work.

Section 58‑11‑850. (A) This section governs an authority’s rates and fees for the collocation of a wireless facility or installation of an associated pole.

(B) Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant to this article or otherwise specifically authorized by state or federal law including, without limitation, Article 20 of Chapter 9, Title 58, an authority may not:

(1) adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by federal, state, or local law to operate in a ROW;

(2) regulate any communications services; or

(3) impose or collect any tax, fee, or charge for the provision of any communications service over the communications service provider’s communications facilities in a ROW.

(C) Without limiting the foregoing, a wireless provider is authorized to deploy small wireless facilities and associated poles in a ROW in compliance with this article regardless of whether the provider has sought or obtained any certificate or other authority from the Public Service Commission of South Carolina.

(D)(1) A municipality may not charge an application fee to a wireless provider that is subject to a business license tax that is or could be imposed on it pursuant to Section 58‑9‑2220 and a franchise, consent, or administrative fee that is or could be imposed on it pursuant to Section 58‑9‑2230.

(2) A municipality may not charge any application fee to any communications service provider that is subject to a franchise fee that is or could be imposed on it pursuant to Section 58‑12‑330.

(3) Except as provided in item (1) and (2), an authority may charge an application fee, so long as the fee is reasonable, nondiscriminatory, and recovers no more than an authority’s direct costs for processing an application; provided however, the fee may not exceed:

(a) one hundred dollars each for the first five small wireless facilities on the same application and fifty dollars for each additional small wireless facility on the same application; or

(b) two hundred fifty dollars for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility that are permitted uses in accordance with the specifications in Section 58‑11‑820(D).

(E)(1) A municipality may not charge any fee for the occupancy and use of the ROW to a wireless provider that is subject to a business license tax that is or could be imposed on it pursuant to Section 58‑9‑2220 and a franchise, consent, or administrative fee that is or could be impose on it pursuant to Section 58‑9‑2230.

(2) A municipality may not charge any fee for the occupancy and use of the ROW to a communications service provider that is subject to a franchise fee that is or could be imposed on it pursuant to Section 58‑12‑330.

(3) Except as provided in item (1) and (2), an authority may charge a wireless provider for the occupancy and use of the ROW, so long as such rate is reasonable, nondiscriminatory, and does not exceed twenty dollars per year per small wireless facility.

(F)(1) An authority may charge for collocation of a small wireless facility on an authority pole, but any such rate must be reasonable, nondiscriminatory, and recover no more than the authority’s direct costs associated with such collocation, not to exceed twenty dollars per authority pole per year.

(2) Other than requiring a wireless provider to pay attachment fees as permitted by item (1), an authority may not require any person or entity with facilities installed on a pole or support structure to pay any additional attachment fees as a result of the granting of an application for a permit under this article.

Section 58‑11‑853. The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the right of way are not addressed by this article, and any such activity shall comply with the applicable provisions of the 1976 Code including, without limitation, Section 58‑9‑280(A) and (B) and Chapter 12, Title 58.

Section 58‑11‑857. An applicant in the right of way must not install, maintain, modify, operate, repair, or replace any small wireless facilities, wireless support structures, poles, or decorative poles in a manner that will interfere with any existing infrastructure, equipment, or service including, without limitation, infrastructure, equipment, or service used to provide communications, electric, gas, water, or sewer services.

Section 58‑11‑860. The provisions of this section apply only to activities in the ROW. Nothing in this article must be interpreted to:

(1) allow an entity to provide services regulated pursuant to 47 U.S.C. Sections 521 to 573, without compliance with all laws applicable to such providers; or

(2) impose any new requirements on cable providers for the provision of such service in this State.

Section 58‑11‑870. Pursuant to the provisions of this article and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries with respect to wireless support structures and poles, including the enforcement of applicable codes. 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 article authorizes the State or a political subdivision, including an authority, to require any wireless facility deployment or to regulate wireless services.

Section 58‑11‑880. This article does not apply to poles owned by an investor‑owned utility, except as it concerns a wireless provider’s access to the ROW and permits for the collocation of small wireless facilities on such poles.

Section 58‑11‑900. The Administrative Law Court has jurisdiction to determine all disputes arising under this article between an applicant and an authority or any person or entity acting on behalf of an authority. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles, the person owning or controlling the pole must allow the collocating person to collocate on its poles at annual rates of no more than twenty dollars with the actual rate to be settled upon final resolution of the dispute. Disputes subject to this section must be adjudicated pursuant to accelerated docket or complaint procedures, if available.

Section 58‑11‑910. (A) An authority may adopt reasonable indemnification, insurance and bonding requirements related to small wireless facility and associated pole permits subject to the requirements of this section.

(B) An authority may not require a wireless provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, except when a court of competent jurisdiction has found that the negligence of the wireless provider while installing, repairing, or maintaining facilities, poles, or support structures pursuant to this article caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

(C) An authority may require a wireless provider to have in effect insurance coverage consistent with this section, so long as the authority imposes similar requirements on other ROW users and such requirements are reasonable and nondiscriminatory.

(1) An authority may not require a wireless provider to obtain insurance naming the authority or its officers and employees as additional insureds.

(2) An authority may require a wireless provider to furnish proof of insurance, if required, prior to the effective date of a permit issued for a small wireless facility.

(D) An authority may adopt bonding requirements for small wireless facilities if the authority imposes similar requirements in connection with permits issued for other ROW users.

(1) The purpose of such bonds must be to provide for the:

(a) removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines must be removed to protect public health, safety, or welfare;

(b) restoration of the ROW as provided in Section 58‑11‑820(J); and

(c) recoupment of rates or fees that have not been paid by a wireless provider in over twelve months, so long as the wireless provider has received reasonable notice from the authority of any of the noncompliance listed above and an opportunity to cure.

(2) Bonding requirements may not exceed two hundred dollars per small wireless facility. For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed ten thousand dollars, and that amount may be combined into one bond instrument.

Section 58‑11‑920. Neither the State nor any agency, department, or instrumentality thereof may condition a wireless provider’s access to any ROW or a wireless provider’s deployment of small wireless facilities and associated poles in any ROW on the wireless provider’s seeking or obtaining any certificate or other authority from the Public Service Commission of South Carolina; provided however, that for any wireless provider that is not also a wireless services provider, such access and deployment may be conditioned on an attestation that a wireless services provider has requested in writing that the wireless provider deploy small wireless facilities or associated poles at the requested location.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 11, TITLE 58 SO AS TO ENACT THE “SOUTH CAROLINA SMALL WIRELESS FACILITIES DEPLOYMENT ACT”; TO MAKE LEGISLATIVE FINDINGS; TO DEFINE RELEVANT TERMS; TO PROVIDE, AMONG OTHER THINGS, THAT CERTAIN AGREEMENTS OR ENACTMENTS PERTAINING TO THE DEPLOYMENT OF SMALL WIRELESS FACILITIES THAT DO NOT COMPLY WITH CERTAIN PROVISIONS OF THIS ACT MUST BE DEEMED INVALID AND UNENFORCEABLE BEGINNING OCTOBER 1, 2019; TO PROVIDE THAT CERTAIN UNITS OF LOCAL GOVERNMENT “AUTHORITIES” WITH CONTROL OVER RIGHTS OF WAY MAY NOT PROHIBIT, REGULATE, OR CHARGE FOR THE COLLOCATION OF CERTAIN SMALL WIRELESS FACILITIES; TO PROVIDE THAT SMALL WIRELESS FACILITIES MUST BE CLASSIFIED AS PERMITTED USES AND NOT SUBJECT TO ZONING REVIEW AND APPROVAL UNDER SPECIFIED CIRCUMSTANCES; TO PROVIDE REQUIREMENTS FOR APPLICATIONS, FEES, APPLICATION REVIEW, AND ISSUANCE OF PERMITS FOR COLLOCATION OF SMALL WIRELESS FACILITIES; TO REQUIRE AUTHORITIES TO ALLOW THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES UNDER SPECIFIED CIRCUMSTANCES; TO PROHIBIT AUTHORITIES FROM REGULATING THE DESIGN, ENGINEERING, CONSTRUCTION, INSTALLATION, OR OPERATION OF ANY SMALL WIRELESS FACILITY IN SPECIFIED CIRCUMSTANCES; TO PROVIDE THAT THE ADMINISTRATIVE LAW COURT HAS JURISDICTION TO RESOLVE ALL DISPUTES ARISING UNDER THE ACT; AND TO PROHIBIT AN AUTHORITY FROM REQUIRING A WIRELESS PROVIDER TO INDEMNIFY THE AUTHORITY OR ITS OFFICERS OR EMPLOYEES AND FROM NAMING THE AUTHORITY AS AN ADDITIONAL INSURED ON A WIRELESS PROVIDER’S INSURANCE POLICY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 11, Title 58 of the 1976 Code is amended by adding:

“Article 5

Small Wireless Facilities Deployment Act

Section 58‑11‑800. (A) This article must be known and may be cited as the ‘South Carolina Small Wireless Facilities Deployment Act’.

(B) The General Assembly finds that:

(1) the deployment of small wireless facilities and other next‑generation wireless and broadband network facilities is a matter of statewide concern and interest;

(2) wireless and broadband products and services are a significant and continually growing part of the state’s economy; accordingly, encouraging the development of strong and robust wireless and broadband communications networks throughout the state is integral to the state’s economic competitiveness;

(3) rapid deployment of small wireless facilities will serve numerous important statewide goals and public policy objectives including, without limitation, meeting growing consumer demand for wireless data, increasing competitive options for communications services available to the state’s residents; promoting the ability of the state’s citizens to communicate with other citizens and with their state and local governments; and promoting public safety;

(4) small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in the rights of way (ROW);

(5) to meet the key objectives of this article, wireless providers must have access to the ROW and the ability to attach to infrastructure in the ROW to densify their networks and provide next generation wireless services;

(6) uniform rates and fees for the permitting and deployment of small wireless facilities in the ROW and on authority infrastructure, including poles, throughout the State is reasonable and will encourage the development of robust next‑generation wireless and broadband networks for the benefit of citizens throughout the State;

(7) the procedures, rates and fees in this article are fair and reasonable when viewed from the perspective of the state’s citizens and the state’s interest in having robust, reliable, and technologically advanced wireless and broadband networks; and reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in recovering their costs of managing access to the ROW and the attachment space provided on authority infrastructure in such ROW; and

(8) this article fully occupies the entire field governing the placement and regulation of small wireless facilities and associated wireless support structures and poles in the ROW, and it supersedes and preempts any ordinance, resolution, rule, or similar matter adopted by an authority that purports to address or otherwise regulate the placement of such small wireless facilities, wireless support structures, and poles in the ROW.

Section 58‑11‑810. For purposes of this article:

(1) ‘Antenna’ means:

(a) communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services; or

(b) similar equipment used for the transmission or reception of surface waves.

(2) ‘Applicable codes’ means 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, address public safety, and are consistent with this article.

(3) ‘Applicant’ means any wireless provider who submits an application and is a wireless provider.

(4) ‘Application’ means a request submitted by an applicant to an authority:

(a) for a permit to collocate small wireless facilities; or

(b) to approve the installation, modification, or replacement of a pole or wireless support structure.

(5) ‘Authority’ means any county, municipality, or consolidated government or any agency, district, subdivision or instrumentality thereof.

(6) ‘Authority pole’ means a pole owned, managed, or operated by or on behalf of an authority, provided however, that such term shall not include poles, support structures, electric transmission structures, or equipment of any type that are part of a municipally owned or municipally controlled electric plant or system for furnishing of electricity to the public for compensation.

(7) ‘Collocate or collocation’ means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a wireless support structure or pole.

(8) ‘Communications facility’ means the set of equipment and network components, including wires, cables, surface wave couplers, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a wireless services provider to provide communications services, including cable service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless service; surface wave communication, or other one‑way or two‑way communications service.

(9) ‘Communications network’ means a network used to provide communications service.

(10) ‘Communications service’ means cable service as defined in 47 U.S.C. 522(6), information service as defined in 47 U.S.C. 153(24), telecommunications service as defined in 47 U.S.C 153(53), or wireless service.

(11) ‘Communications service provider’ means a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless provider.

(12) ‘Compliant provision’ means an enactment addressing aesthetics, undergrounding, or historical districts that adopts regulations that are:

(a) no more burdensome than those applied to other types of infrastructure deployments in the rights of way;

(b) reasonable;

(c) objective;

(d) published within thirty days prior to becoming applicable with regard to any wireless provider; and

(e) not an effective prohibition of service that is prohibited by federal law.

(13) ‘Decorative pole’ means 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 or 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 municipal rules or codes.

(14) ‘Enactment’ means any ordinance, rule, policy, or equivalently binding measure adopted by an authority.

(15) ‘FCC’ means the Federal Communications Commission of the United States.

(16) ‘Fee’ means a one‑time, nonrecurring charge.

(17) ‘Historic district’ means a group of buildings, properties, or sites that are either:

(a) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i‑v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or

(b) a registered historic district pursuant to state law as of this article’s effective date.

(18) ‘Law’ means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.

(19) ‘Micro wireless facility’ means a small wireless facility that meets the following qualifications:

(a) is not larger in dimension than twenty‑four inches in length, fifteen inches in width, and twelve inches in height; and

(b) any exterior antenna that is no longer than eleven inches.

(20) ‘Network interface device’ means the telecommunications demarcation device and cross connect point pole demarcating the boundary with any wireline backhaul facility and which is on or adjacent to the pole or support structure supporting the small wireless facility.

(21) ‘Permit’ means a written authorization required by an authority to perform an action or initiate, continue, or complete a project.

(22) ‘Person’ means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(23) ‘Pole’ means a pole or similar structure 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; provided, however, such term does not include wireless support structures or electric transmission structures.

(24) ‘Rate’ means a recurring charge.

(25) ‘Rights of way’ or ‘ROW’ means the area through, upon, over, or under a road, highway, street, sidewalk, alley, or similar property; provided, however, that such term shall apply only to property or any interest therein that is under the ownership or control of an authority and shall not include property or any interest therein acquired for or devoted to a federal interstate highway.

(26) ‘Small wireless facility’ means radio transceivers; surface wave couplers; antennas; coaxial or fiber optic cable located on a pole or support structure, immediately adjacent to a pole or support structure, or directly associated with equipment located on a pole or support structure and within a one hundred‑yard radius of the pole or support structure; regular and backup power supplies and rectifiers; and associated ancillary equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meets both of the following qualifications: (i) each wireless provider’s antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the small wireless facility, whether ground or pole mounted, is cumulatively no more than twenty‑eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters, concealment elements, network interface devices, grounding equipment, power transfer switches, cut‑off switches, and vertical cable runs for the connection of power and other services. The term ‘small wireless facility’ does not include: the pole, support structure, or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; wireline backhaul facilities; or coaxial or fiber optic cable that is between small wireless facilities, poles, or support structures or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(27) ‘Support structure’ means a structure, such as a monopole; tower, either guyed or self‑supporting; billboard; building; or other existing or proposed structure designed to support or capable of supporting wireless facilities, other than a structure designed solely for the collocation of small wireless facilities. Such term does not include a pole.

(28) ‘Technically feasible’ means that 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 reduction in the functionality of the small wireless facility.

(29) ‘Wireless communications’ means any communications using licensed or unlicensed spectrum, including the use of Wi‑Fi, whether at a fixed location or mobile, provided to the public.

(30) ‘Wireless infrastructure provider’ means any person, including a person authorized to provide telecommunications service in the State, acting to build or install wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

(31) ‘Wireless provider’ means a wireless infrastructure provider or a wireless services provider.

(32) ‘Wireless services’ means any services using licensed or unlicensed spectrum, including the use of Wi‑Fi, whether at a fixed location or mobile, provided to the public.

(33) ‘Wireless services provider’ means a person who provides wireless services.

(34) ‘Wireline backhaul facility’ means an above‑ground or underground wireline facility used to transport communications from a wireless facility network interface device to a network or another small wireless network interface device.

Section 58‑11‑815. (A) An agreement or enactment that does not fully comply with this section applies only to small wireless facilities and associated poles and support structures that were installed before October 1, 2019, and must be deemed invalid and unenforceable beginning October 1, 2019, until amended to fully comply with this article. If an agreement or enactment is invalid and unenforceable in accordance with this section, small wireless facilities and associated utility poles that were installed before October 1, 2019, pursuant to such agreement or ordinance may remain installed at the option of the wireless provider and must be operated and maintained under the provisions of this article.

(B)(1) No later than October 1, 2019, an authority may adopt an enactment that:

(a) adopts compliant provisions in lieu of the provisions of Section 58‑11‑820(F)(2), (G), and (H);

(b) authorizes wireless providers to install and operate small wireless facilities and associated poles and support structures in strict compliance with all other provisions of this article; and

(c) if the authority is a municipality, grants any consent that has not previously been granted, either expressly or otherwise, for wireless providers to install and operate small wireless facilities and associated poles and support structures in compliance with subitems (a) and (b).

(C) In the absence of an enactment that strictly complies with subsection (B), and until such an enactment is adopted, if at all, a wireless provider may install and operate small wireless facilities and associated poles and support structures under the requirements of this article on and after October 1, 2019.

(D)(1) An authority must not require a wireless provider to enter into an agreement including, without limitation, a franchise agreement whether memorialized in an ordinance or in any other manner, to implement this article, but nothing in this article prohibits an authority and a wireless provider from voluntarily entering one or more such agreements after the effective date of this article, including such agreements with rates, fees, and other terms that differ from those in this article, provided however, that the authority must make each such agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

(2) Agreements entered into pursuant to item (1) are public‑private arrangements and are matters of legitimate and significant statewide concern.

Section 58‑11‑820. (A) The provisions of this section shall apply only to activities of a wireless provider within the ROW to deploy small wireless facilities and associated poles.

(B) An authority may not enter into an exclusive arrangement with any person for use of the ROW for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles.

(C) Subject to the exceptions pursuant to Section 58‑11‑830(E)(1), an authority only may charge a wireless provider a nondiscriminatory rate or fee for the use of the ROW with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a pole in the ROW, if the authority charges other entities for use of the ROW. Notwithstanding the foregoing, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate to a wireless provider for the use of the ROW. The rate for use of the ROW is provided in Section 58‑11‑850.

(D) Subject to the provisions of this section, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, operate, and replace poles in the ROW. These structures and facilities must be so installed and maintained as not to obstruct or hinder the usual travel or public safety in the ROW or obstruct the legal use of the ROW by utilities.

(E)(1) Each new or modified pole installed in the ROW may not exceed the greater of ten feet in height above the tallest existing pole in place as of the effective date of this article located within five hundred feet of the new pole in the same ROW, or fifty feet above ground level.

(2) New small wireless facilities in the ROW may not extend more than ten feet above an existing pole in place as of the effective date of this article; or for small wireless facilities on a new pole, above the height permitted for a new pole pursuant to this section.

(3) Subject to the provisions of this section and applicable zoning regulations, a wireless provider must have the right to collocate a small wireless facility and install, maintain, modify, operate, and replace a pole that exceeds the height limits set forth in item (1) in the ROW.

(F)(1) A wireless provider must be permitted to collocate on or replace decorative poles when necessary to deploy a small wireless facility.

(2) 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 these requirements are technically feasible.

(G)(1) A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit the installation of poles or wireless support structures in the ROW in an area designated solely for underground communications and electric lines, where:

(a) no less than three months prior to the submission of the application, the authority has required all such lines to be placed underground;

(b) poles the authority allows to remain are made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this article; or

(c) a wireless provider is allowed to install a new pole when it is not able to provide wireless service by collocating on a remaining pole or wireless support structure.

(2) For small wireless facilities installed before an authority adopts requirements that comply with item (1), an authority adopting such requirements shall:

(a) permit a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

(b) permit the wireless provider to replace the associated pole within fifty feet of the prior location, provided that the wireless provider shall allow communications service providers with attachments on the existing utility pole to place those attachments on the replacement utility pole under the same or reasonably similar rates, terms, and conditions as applied to those attachments on the existing pole.

(H) Subject to Section 58‑11‑830(D), an authority may require reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures in a historic district. These design or concealment measures may not have the effect of prohibiting a provider’s technology; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(I) The authority, in the exercise of its administration and regulation related to the management of the ROW, must be competitively neutral and nondiscriminatory with regard to all users of the ROW. The authority’s ROW may not be unreasonable or discriminatory and may not violate any applicable law.

(J) The authority may require a wireless provider to repair all damage to the ROW directly caused by the activities of the wireless provider in the ROW and to return the ROW to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may make those repairs and charge the applicable party the reasonable, documented cost of such repairs.

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

(L) New, modified, or replacement poles associated with a small wireless facility which meet the requirements of this section are permitted uses pursuant to the permit process in Section 58‑11‑830(D).

(M) A wireless provider shall notify the authority at least thirty days before its abandonment of a small wireless facility. Following receipt of such notice, the authority may direct the wireless provider to remove all or any portion of the small wireless facility if the authority determines that such removal is in the best interest of the public safety and public welfare. If the wireless provider fails to remove the abandoned facility within ninety days after such notice, the authority may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns.

(N) Nothing in this article relieves any person including, without limitation, any wireless provider, of any applicable obligation to pay business license taxes including, without limitation, those provided for in Section 58‑9‑2200, et. seq., or franchise fees. Any entity that uses the ROW, directly or indirectly, including through leased facilities, to provide services in a municipality is responsible for all applicable taxes and fees related to the services provided.

Section 58‑11‑830. (A) The provisions of this section shall apply to the permitting of the collocation of small wireless facilities by a wireless provider in the ROW and to the permitting of the installation, modification, and replacement of associated poles by a wireless provider inside the ROW.

(B) Except as provided in this article, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities and associated poles described in subsection (A).

(C) Small wireless facilities must be classified as permitted uses and not subject to zoning review or approval if they are collocated in the ROW in any zone.

(D) An authority may require an applicant to obtain one or more permits to collocate a small wireless facility or install a new, modified, or replacement pole associated with a small wireless facility as provided in Section 58‑11‑820(D), provided the permits are of general applicability and do not apply exclusively to wireless facilities. An authority shall receive applications for, process, and issue such permits subject to the following requirements:

(1) 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.

(2) An applicant must 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 delineated in item (8).

(3) An authority may not require:

(a) the collocation of small wireless facilities on a specific pole or category of poles or require multiple antenna systems on a single pole;

(b) the use of specific pole types or configurations when installing new or replacement poles; or

(c) subject to Section 58‑11‑820(G)(1), the underground placements of small wireless facilities that are or are designated in an application to be pole‑mounted or ground‑mounted.

(4) An authority may not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements from existing small wireless facilities, poles, or other structures.

(5) The authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power or by the lack of communications transport facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant.

(6) The authority may require an applicant that is not a wireless services provider to include an attestation that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the utility pole at the requested location.

(7) Within ten 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 shall specifically identify the missing information in writing. The processing deadline in item (8) is tolled from the time the authority sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the authority, confirmed in writing.

(8) An application must be processed on a nondiscriminatory basis and is deemed approved if the authority fails to approve or deny the application within sixty days of receipt of the application.

(9) An authority may deny a proposed collocation of a small wireless facility or a proposed installation, modification, or replacement of a pole that meets the requirements in Section 58‑11‑820(E) only if the proposed application:

(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 reasonable and nondiscriminatory horizontal spacing requirements of general application adopted by ordinance that concern the location of ground‑mounted equipment and new poles. These spacing requirements may not prevent a wireless provider from serving any location;

(e) designates the location of a new pole for the purpose of collocating a small wireless facility within seven feet in any direction of an electrical conductor, unless the wireless provider obtains the written consent of the power supplier that owns or manages the electrical conductor;

(f) fails to comply with applicable codes; or

(g) fails to comply with Section 58‑11‑820(F), (G), or (H) or any compliant provisions adopted in lieu thereof in accordance with Section 58‑11‑815(B).

(10) The authority shall document the basis for a denial, including the specific provisions of this article 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 thirty days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within thirty days of resubmission and limit its review to the deficiencies cited in the denial. Any application not acted upon within thirty days of resubmission is deemed approved.

(11) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority must be allowed at the applicant’s discretion to file a consolidated application for up to thirty small wireless facilities and receive a single permit for the collocation of multiple small wireless facilities; provided, however, the denial of one or more small wireless facilities in a consolidated application must not delay processing of any other small wireless facilities in the same consolidated application. Solely for purposes of calculating the number of small wireless facilities in a consolidated application, a small wireless facility includes any pole on which such small wireless facility will be collocated.

(12) Installation or collocation for which a permit is granted pursuant to this section must be completed within one year of 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 by the lack of communications facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant. Approval of an application authorizes the applicant to:

(a) undertake the installation or collocation; and

(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 pole covered by the permit for a period of no less than ten years, which must be renewed for equivalent durations so long as the installation or collocation is in compliance with the criteria set forth in item (9).

(13) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications, or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of poles to support small wireless facilities.

(14) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this section neither constitutes an authorization nor affects any authorization a provider may have to provide a communication service or to install, place, maintain, or operate any other communications facility, including a wireline backhaul facility, in a ROW.

(E)(1) An authority may not require a permit or any other approval or charge fees or rates for:

(a) routine maintenance;

(b) the replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller; or

(c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are suspended between poles or wireless support structures in compliance with applicable codes.

(2) An authority may require a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for the activities described in item (1). Such a permit must be issued to the applicant on a nondiscriminatory basis upon terms and conditions that apply to the activities of any other person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

Section 58‑11‑840. (A) The provisions of this section apply to activities of any wireless provider in the ROW.

(B) A person owning, managing, or controlling authority poles in the ROW 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 authority poles on nondiscriminatory terms and conditions pursuant to Section 58‑11‑830.

(D)(1) The rates to collocate on authority poles must be nondiscriminatory regardless of the services provided by the collocating wireless provider.

(2) The rate to collocate on authority poles must be as set forth in Section 58‑11‑850.

(E)(1) The rates, fees, terms, and conditions for make‑ready work to collocate on an authority pole must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this article.

(2) The authority shall provide a good faith estimate for any make‑ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty days after receipt of a complete application. Make‑ready work, including any pole replacement, must be completed within sixty days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it demonstrates that the collocation would make the authority pole structurally unsound.

(3) The person owning, managing, or controlling the authority pole must not require more make‑ready work than required to meet applicable codes or industry standards. Fees assessed by or on behalf of an authority for make‑ready work, including any pole replacement, must not:

(a) include costs related to preexisting or prior damage or noncompliance;

(b) exceed either actual costs or the amount charged to other communications service providers for similar work; or

(c) include any revenue or contingency‑based consultant’s fees or expenses of any kind.

(4) A wireless provider collocating on an authority pole pursuant to this article is responsible for reimbursing third parties for their actual and reasonable costs of any make‑ready work reasonably required by the third party to accommodate the collocation. If the authority includes such costs of a third party in the good faith estimate provided pursuant to item (2) of this section, payment of that estimate to the authority constitutes reimbursement of the third party by the wireless provider. Otherwise, the third party may bill the wireless provider for such reimbursement within six months of the completion of the third party’s make‑ready work.

Section 58‑11‑850. (A) This section governs an authority’s rates and fees for the collocation of a wireless facility or installation of an associated pole.

(B) Except as it relates to small wireless facilities subject to the permit and fee requirements established pursuant to this article or otherwise specifically authorized by state or federal law, an authority may not:

(1) adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by federal, state, or local law to operate in a ROW;

(2) regulate any communications services; or

(3) impose or collect any tax, fee, or charge for the provision of any communications service over the communications service provider’s communications facilities in a ROW.

(C) Without limiting the foregoing, a wireless provider is authorized to deploy small wireless facilities and associated poles in a ROW in compliance with this article regardless of whether the provider has sought or obtained any certificate or other authority from the Public Service Commission of South Carolina.

(D)(1) A municipality may not charge an application fee to a wireless provider that is subject to a business license tax that is or could be imposed on it pursuant to Section 58‑9‑2220 and a franchise, consent, or administrative fee that is or could be imposed on it pursuant to Section 58‑9‑2230.

(2) A municipality may not charge any application fee to any communications service provider that is subject to a franchise fee that is or could be imposed on it pursuant to Section 58‑12‑330.

(3) Except as provided in item (1) and (2), an authority may charge an application fee, so long as the fee is reasonable, nondiscriminatory, and recovers no more than an authority’s direct costs for processing an application; provided however, the fee may not exceed:

(a) one hundred dollars each for the first five small wireless facilities on the same application and fifty dollars for each additional small wireless facility on the same application; or

(b) two hundred fifty dollars for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility that are permitted uses in accordance with the specifications in Section 58‑11‑820(D).

(E)(1) A municipality may not charge any fee for the occupancy and use of the ROW to a wireless provider that is subject to a business license tax that is or could be imposed on it pursuant to Section 58‑9‑2220 and a franchise, consent, or administrative fee that is or could be impose on it pursuant to Section 58‑9‑2230.

(2) A municipality may not charge any fee for the occupancy and use of the ROW to a communications service provider that is subject to a franchise fee that is or could be imposed on it pursuant to Section 58‑12‑330.

(3) Except as provided in item (1) and (2), an authority may charge a wireless provider for the occupancy and use of the ROW, so long as such rate is reasonable, nondiscriminatory, and does not exceed twenty dollars per year per small wireless facility.

(F)(1) An authority may charge for collocation of a small wireless facility on an authority pole, but any such rate must be reasonable, nondiscriminatory, and recover no more than the authority’s direct costs associated with such collocation, not to exceed twenty dollars per authority pole per year.

(2) Other than requiring a wireless provider to pay attachment fees as permitted by item (1), an authority may not require any person or entity with facilities installed on a pole or support structure to pay any additional attachment fees as a result of the granting of an application for a permit under this article.

Section 58‑11‑853. The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the right of way are not addressed by this article, and any such activity shall comply with the applicable provisions of the 1976 Code including, without limitation, Section 58‑9‑280(A) and (B) and Chapter 12, Title 58.

Section 58‑11‑857. An applicant in the right of way must not install, maintain, modify, operate, repair, or replace any small wireless facilities, wireless support structures, poles, or decorative poles in a manner that will interfere with any existing infrastructure, equipment, or service including, without limitation, infrastructure, equipment, or service used to provide communications, electric, gas, water, or sewer services.

Section 58‑11‑860. The provisions of this section apply only to activities in the ROW. Nothing in this article must be interpreted to:

(1) allow an entity to provide services regulated pursuant to 47 U.S.C. Sections 521 to 573, without compliance with all laws applicable to such providers; or

(2) impose any new requirements on cable providers for the provision of such service in this State.

Section 58‑11‑870. Pursuant to the provisions of this article and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries with respect to wireless support structures and poles, including the enforcement of applicable codes. 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 article authorizes the State or a political subdivision, including an authority, to require any wireless facility deployment or to regulate wireless services.

Section 58‑11‑880. This article does not apply to poles owned by an investor‑owned utility, except as it concerns a wireless provider’s access to the ROW and permits for the collocation of small wireless facilities on such poles.

Section 58‑11‑900. The Administrative Law Court has jurisdiction to determine all disputes arising under this article between an applicant and an authority or any person or entity acting on behalf of an authority. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles, the person owning or controlling the pole must allow the collocating person to collocate on its poles at annual rates of no more than twenty dollars with the actual rate to be settled upon final resolution of the dispute. Disputes subject to this section must be adjudicated pursuant to accelerated docket or complaint procedures, if available.

Section 58‑11‑910. (A) An authority may adopt reasonable indemnification, insurance and bonding requirements related to small wireless facility and associated pole permits subject to the requirements of this section.

(B) An authority may not require a wireless provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, except when a court of competent jurisdiction has found that the negligence of the wireless provider while installing, repairing, or maintaining facilities, poles, or support structures pursuant to this article caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

(C) An authority may require a wireless provider to have in effect insurance coverage consistent with this section, so long as the authority imposes similar requirements on other ROW users and such requirements are reasonable and nondiscriminatory.

(1) An authority may not require a wireless provider to obtain insurance naming the authority or its officers and employees as additional insureds.

(2) An authority may require a wireless provider to furnish proof of insurance, if required, prior to the effective date of a permit issued for a small wireless facility.

(D) An authority may adopt bonding requirements for small wireless facilities if the authority imposes similar requirements in connection with permits issued for other ROW users.

(1) The purpose of such bonds must be to provide for the:

(a) removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines must be removed to protect public health, safety, or welfare;

(b) restoration of the ROW as provided in Section 58‑11‑820(J); and

(c) recoupment of rates or fees that have not been paid by a wireless provider in over twelve months, so long as the wireless provider has received reasonable notice from the authority of any of the noncompliance listed above and an opportunity to cure.

(2) Bonding requirements may not exceed two hundred dollars per small wireless facility. For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed ten thousand dollars, and that amount may be combined into one bond instrument.

Section 58‑11‑920. Neither the State nor any agency, department, or instrumentality thereof may condition a wireless provider’s access to any ROW or a wireless provider’s deployment of small wireless facilities and associated poles in any ROW on the wireless provider’s seeking or obtaining any certificate or other authority from the Public Service Commission of South Carolina; provided however, that for any wireless provider that is not also a wireless services provider, such access and deployment may be conditioned on an attestation that a wireless services provider has requested in writing that the wireless provider deploy small wireless facilities or associated poles at the requested location.”

SECTION 2. This act takes effect upon approval by the Governor.

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