

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 38

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE WIRELESS CONSUMER  
ADVANCED INFRASTRUCTURE INVESTMENT ACT; ESTABLISHING PROVISIONS  
FOR THE DEPLOYMENT OF CELLULAR NETWORK NODES IN PUBLIC RIGHTS  
OF WAY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Wireless Consumer Advanced Infrastructure  
Investment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Wireless Consumer Advanced Infrastructure Investment Act:

A. "antenna" means communications equipment that  
transmits or receives electromagnetic radio frequency signals  
and that is used to provide wireless services;

B. "applicable codes" means uniform building, fire,

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1 electrical, plumbing or mechanical codes adopted by a  
2 recognized national code organization and enacted by the  
3 authority, including the local amendments to those codes  
4 enacted by the authority solely to address imminent threats of  
5 destruction of property or injury to persons, to the extent  
6 that those amendments are consistent with the Wireless Consumer  
7 Advanced Infrastructure Investment Act;

8 C. "applicant" means a wireless provider that  
9 submits an application;

10 D. "application" means a request submitted by an  
11 applicant to an authority for a permit to collocate one or more  
12 small wireless facilities or to approve the installation,  
13 modification or replacement of a utility pole or wireless  
14 support structure;

15 E. "authority" means a municipality or county;

16 F. "authority utility pole" means a utility pole,  
17 owned or operated by an authority, in a right of way;

18 G. "collocate" means to install, mount, maintain,  
19 modify, operate or replace one or more wireless facilities on,  
20 in or adjacent to a wireless support structure or utility pole;

21 H. "communications service" means cable service as  
22 defined in 47 U.S.C. Section 522(6), information service as  
23 defined in 47 U.S.C. Section 153(24), mobile service as defined  
24 in 47 U.S.C. Section 153(33), telecommunications service as  
25 defined in 47 U.S.C. Section 153(53) or wireless service other

.210261.2

1 than mobile service;

2 I. "fee" means a one-time charge;

3 J. "law" includes federal, state or local law;

4 K. "permit" means the written permission of an  
 5 authority for a wireless provider to install, mount, maintain,  
 6 modify, operate or replace a utility pole or to collocate a  
 7 small wireless facility on a utility pole or wireless support  
 8 structure;

9 L. "person":

10 (1) means an individual, corporation, limited  
 11 liability company, partnership, association, trust or other  
 12 entity or organization; and

13 (2) includes an authority;

14 M. "private easement" means an easement or other  
 15 real property right given for the benefit of the grantee of the  
 16 easement and the grantee's successors and assigns;

17 N. "rate" means a recurring charge;

18 O. "right of way":

19 (1) means the area on, below or above a public  
 20 roadway, highway, street, sidewalk, alley or utility easement;

21 and

22 (2) does not include the area on, below or  
 23 above:

24 (a) a federal interstate highway;

25 (b) a state highway or route under the

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1 jurisdiction of the department of transportation;

2 (c) a private easement; or

3 (d) a utility easement that does not  
4 authorize the deployment sought by a wireless provider;

5 P. "small wireless facility" means a wireless  
6 facility whose:

7 (1) antennas are, or could fit, inside an  
8 enclosure with a volume of six or fewer cubic feet; and

9 (2) other ground- or pole-mounted wireless  
10 equipment, not including the following, is twenty-eight or  
11 fewer cubic feet in volume:

12 (a) electric meter;

13 (b) concealment elements;

14 (c) telecommunications demarcation box;

15 (d) grounding equipment;

16 (e) power transfer switch;

17 (f) cutoff switch;

18 (g) vertical cable runs for the

19 connection of power and other services; and

20 (h) elements required by an authority in  
21 accordance with Subsection H of Section 3 of the Wireless  
22 Consumer Advanced Infrastructure Investment Act;

23 Q. "utility pole":

24 (1) means a pole or similar structure used in  
25 whole or in part for communications services, electricity

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1 distribution, lighting or traffic signals; and

2 (2) does not include a wireless support  
3 structure or electric transmission structure;

4 R. "wireless facility":

5 (1) means equipment at a fixed location that  
6 enables wireless communications between user equipment and a  
7 communications network, including:

8 (a) equipment associated with wireless  
9 communications; and

10 (b) radio transceivers, antennas,  
11 coaxial or fiber-optic cables, regular and backup power  
12 supplies and comparable equipment, regardless of technological  
13 configuration;

14 (2) includes a small wireless facility; and

15 (3) does not include:

16 (a) the structure or improvements on,  
17 under or within which the equipment is collocated;

18 (b) a wireline backhaul facility,  
19 coaxial cable or fiber-optic cable between wireless support  
20 structures or utility poles; or

21 (c) coaxial or fiber-optic cable  
22 otherwise not immediately adjacent to, or directly associated  
23 with, an antenna;

24 S. "wireless infrastructure provider" means a  
25 person, other than a wireless services provider, that may

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1 provide telecommunications service in New Mexico and that  
2 builds or installs wireless communications transmission  
3 equipment, wireless facilities' utility poles or wireless  
4 support structures;

5 T. "wireless provider" means a wireless  
6 infrastructure provider or wireless services provider;

7 U. "wireless services" means services provided to  
8 the public that use licensed or unlicensed spectrum, either  
9 mobile or at a fixed location, through wireless facilities;

10 V. "wireless services provider" means a person that  
11 provides wireless services;

12 W. "wireless support structure" means a  
13 freestanding structure, including a monopole or guyed or  
14 self-supporting tower, but not including a utility pole; and

15 X. "wireline backhaul facility" means a facility  
16 used to transport services by wire from a wireless facility to  
17 a network.

18 SECTION 3. [NEW MATERIAL] WIRELESS PROVIDER--USE OF RIGHT  
19 OF WAY--RATES, FEES AND TERMS--RIGHT TO ACCESS--DAMAGE AND  
20 REPAIR.--

21 A. This section applies to the activities of a  
22 wireless provider within a right of way.

23 B. An authority shall not enter into an exclusive  
24 agreement with a wireless provider for the use of a right of  
25 way in:

.210261.2

1 (1) constructing, installing, maintaining,  
2 modifying, operating or replacing a utility pole; or

3 (2) collocating a small wireless facility on a  
4 utility pole or wireless support structure.

5 C. An authority may charge a wireless provider a  
6 rate or fee for the provider's use of a right of way in  
7 constructing, installing, maintaining, modifying, operating or  
8 replacing a utility pole, or in collocating a small wireless  
9 facility, in the right of way only if:

10 (1) the authority otherwise may, under law,  
11 charge the rate or fee;

12 (2) the authority charges other communications  
13 service providers for their use, if any, of the right of way;  
14 and

15 (3) the rate or fee:

16 (a) is competitively neutral as compared  
17 to other users, if any, of the right of way, unless the other  
18 users are exempt under law from paying a rate or fee for their  
19 use of the right of way;

20 (b) is not in the form of a franchise or  
21 other fee based on revenue or customer counts;

22 (c) is reasonable and nondiscriminatory;  
23 and

24 (d) annually, does not exceed an amount  
25 equal to two hundred fifty dollars (\$250) multiplied by the

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1 number of small wireless facilities placed by the wireless  
2 provider in the right of way and in the authority's  
3 jurisdiction.

4 D. An authority may adjust the rate it charges for  
5 the use of a right of way, but no more often than once a year  
6 and by no more than an amount equal to one-half the annual  
7 change, if any, in the most recent consumer price index for all  
8 urban consumers for New Mexico, as published by the United  
9 States department of labor. An authority that adjusts that  
10 rate shall notify all wireless providers charged the pre-  
11 adjusted rate of the prospective adjustment and shall make the  
12 adjustment effective sixty days or more following that notice.

13 E. Except as otherwise provided in the Wireless  
14 Consumer Advanced Infrastructure Investment Act, and subject to  
15 the approval of an application as provided in Section 4 of that  
16 act, a wireless provider may collocate small wireless  
17 facilities and construct, install, modify, mount, maintain,  
18 operate and replace utility poles associated with the  
19 collocation of a small wireless facility along, across, on or  
20 under the right of way.

21 F. If a wireless provider or the provider's  
22 contractor causes damage to the authority's property or right  
23 of way while the provider or contractor occupies, installs,  
24 repairs or maintains a small wireless facility, wireless  
25 support structure or utility pole in the right of way, the

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1 authority may require the provider to return the property to  
2 its pre-damage condition according to the authority's  
3 requirements and specifications if the requirements and  
4 specifications are competitively neutral and reasonable and  
5 upon written notice of the requirement to the provider. If the  
6 provider does not, within a reasonable period after receiving  
7 the notice, repair the property as required by the authority,  
8 the authority may make the repairs and charge the provider the  
9 reasonable, documented cost of the repairs.

10 G. A wireless provider that deploys a utility pole  
11 or small wireless facility in a right of way shall construct,  
12 maintain and locate it so as not to obstruct or hinder the  
13 usual travel on, or endanger the public in, the right of way,  
14 damage or interfere with another utility facility in the right  
15 of way or interfere with another utility's use of its facility  
16 in the right of way. In constructing and maintaining its  
17 utility pole or small wireless facility, the wireless provider  
18 shall comply with the national electrical safety code and all  
19 applicable laws for the protection of underground and overhead  
20 utility facilities. An authority shall treat a wireless  
21 provider's utility poles and small wireless facilities in a  
22 right of way as it does the facilities, if any, of other  
23 utilities in the right of way; however, the authority may adopt  
24 reasonable regulations concerning the separation of the  
25 wireless provider's utility poles and small wireless facilities

.210261.2

1 from other utility facilities in the right of way to prevent  
2 damage to, or interference with, the facilities or to prevent  
3 interference with a utility's use of its facility or facilities  
4 in, or to be placed in, the right of way.

5 H. Subject to Subsection E of Section 4 of the  
6 Wireless Consumer Advanced Infrastructure Investment Act, an  
7 authority may require, as they pertain to small wireless  
8 facilities located in design districts or historic districts,  
9 reasonable, technically feasible, non-discriminatory and  
10 technologically neutral design or concealment measures and  
11 reasonable measures for conforming to the design aesthetics of  
12 design districts or historic districts, as long as the measures  
13 do not have the effect of prohibiting a wireless provider's  
14 technology. As used in this subsection:

15 (1) "design district" means an area zoned or  
16 otherwise designated by municipal ordinance and for which a  
17 municipality maintains and uniformly enforces unique design and  
18 aesthetic standards; and

19 (2) "historic district" means a group of  
20 buildings, properties or sites that fall within the category  
21 defined in 47 C.F.R. 1.1307(a)(4) and are:

22 (a) listed in the national register of  
23 historic places or formally determined eligible for listing in  
24 that register by the keeper of the register in accordance with  
25 the nationwide programmatic agreement found in 47 C.F.R. Part

.210261.2

1 1, Appendix C; or

2 (b) designated as a historic district in  
3 accordance with the Historic District and Landmark Act.

4 I. Without the authority's discretionary and  
5 written consent, which the authority shall give in a  
6 nondiscriminatory way, a wireless provider shall not install a  
7 new utility pole in a right of way adjacent to a street or  
8 thoroughfare that is:

9 (1) fifty feet wide or less; and

10 (2) adjacent to single-family residential lots  
11 or other multifamily residences or to undeveloped land  
12 designated for residential use by zoning or deed restrictions.

13 J. A wireless provider that installs a new utility  
14 pole or small wireless facility in a right of way as described  
15 in Subsection H of this section shall comply with applicable  
16 private deed restrictions and other private restrictions  
17 affecting the area.

18 K. A wireless provider shall notify an authority in  
19 writing of its intention to discontinue its use of a small  
20 wireless facility or utility pole. The notice shall inform the  
21 authority of the time and the way in which the wireless  
22 provider intends to remove the small wireless facility or  
23 utility pole. The wireless provider is responsible for the  
24 costs of the removal. The authority may require the wireless  
25 provider to return the property to its pre-installation

.210261.2

1 condition according to the authority's reasonable and  
2 nondiscriminatory requirements and specifications. If the  
3 wireless provider does not complete the removal within forty-  
4 five days after the notice, the authority may complete the  
5 removal and assess the costs of removal against the wireless  
6 provider. The permit for the small wireless facility or  
7 utility pole expires upon removal.

8 SECTION 4. [NEW MATERIAL] COLLOCATION OF A SMALL WIRELESS  
9 FACILITY--PERMITS--APPLICATION--FEE.--

10 A. This section applies to a wireless provider's  
11 collocation activities within a right of way.

12 B. An authority may prohibit, regulate or charge  
13 for the collocation of a small wireless facility only as  
14 provided in this section and Sections 3, 6 and 7 of the  
15 Wireless Consumer Advanced Infrastructure Investment Act.

16 C. A small wireless facility collocated on a  
17 utility pole or wireless support structure that extends ten or  
18 fewer feet above the pole or structure in a right of way in any  
19 zone is classified as a permitted use and is not subject to  
20 zoning review or approval.

21 D. An authority may require an applicant to obtain  
22 one or more permits to collocate a small wireless facility in a  
23 right of way if the requirement is of general applicability to  
24 users of the right of way. An applicant seeking to collocate,  
25 within an authority's jurisdiction, up to twenty-five small

1 wireless facilities, all of which are substantially the same  
2 type, on substantially the same types of structures may file a  
3 consolidated application for the collocation of the facilities.  
4 An applicant shall not file with an authority more than one  
5 consolidated application in any five-business-day period. The  
6 applicant shall include in a consolidated application an  
7 attestation that, unless a delay in collocation is caused by  
8 the lack of commercial power or fiber at the site, the  
9 collocation will begin within one hundred eighty days after the  
10 permit issuance date. The authority and the provider may  
11 subsequently agree to extend that period.

12 E. An authority shall:

13 (1) without bias, accept and process  
14 applications and issue permits to collocate small wireless  
15 facilities;

16 (2) within thirty days after receiving an  
17 application, determine and notify the applicant of whether the  
18 application is complete and:

19 (a) for an incomplete application,  
20 specifically identify the information missing from it; and

21 (b) deem the application complete if the  
22 applicant is not notified within the thirty-day period;

23 (3) within ninety days after receiving a  
24 completed application, approve or deny it and deem the  
25 application approved if that approval or denial is not given

.210261.2

1 within the ninety-day period. The authority may request an  
2 extension of the ninety-day period, and the authority and  
3 applicant may agree to extend that period. An applicant shall  
4 not unreasonably deny an authority's request to extend the  
5 period;

6 (4) approve a completed application unless the  
7 application does not conform with:

8 (a) applicable codes or local laws  
9 concerning: 1) public safety; 2) design for utility poles, but  
10 only to the extent that the standards the codes or laws impose  
11 are objective; 3) stealth and concealment, but only to the  
12 extent that the restrictions the codes or laws impose are  
13 reasonable; and 4) the spacing of ground-mounted equipment in a  
14 right of way; and

15 (b) requirements imposed by the  
16 authority in accordance with Subsection H of Section 3 of the  
17 Wireless Consumer Advanced Infrastructure Investment Act; and

18 (5) if it denies an application, document the  
19 basis for the denial, including the specific code or law on  
20 which the denial was based, and send that documentation to the  
21 applicant on or before the date the application is denied.

22 F. In the ninety-day period after an authority  
23 receives an application to collocate a small wireless facility,  
24 the authority may:

25 (1) provide public notice of the application

1 and an opportunity for written public comment on the  
2 application; and

3 (2) submit the written public comment to the  
4 applicant and request that the applicant respond to it.

5 G. If an authority determines that applicable codes  
6 or laws require that a utility pole or wireless support  
7 structure be replaced before an application for collocation is  
8 approved, the authority may condition approval of the  
9 application on that replacement. That replacement is subject  
10 to Section 3 of the Wireless Consumer Advanced Infrastructure  
11 Investment Act.

12 H. An applicant whose application is denied may  
13 cure the deficiencies identified by the authority and submit a  
14 revised application within thirty days after the denial for no  
15 additional fee. The authority shall base its review of the  
16 revised application only on the deficiencies cited in the  
17 denial and shall approve or deny the revised application within  
18 thirty days after receiving it.

19 I. If an application is for the collocation of  
20 multiple small wireless facilities, the authority may:

21 (1) treat as separate those for which  
22 incomplete information has been provided, that do not qualify  
23 for consolidated treatment or that are denied; and

24 (2) issue separate permits for the  
25 collocations that it approves.

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1 J. An authority shall not:

2 (1) directly or indirectly require an  
3 applicant to perform services unrelated to the collocation for  
4 which approval is sought, such as the making of in-kind  
5 contributions to the authority of reserving fiber, conduit or  
6 pole space on the wireless provider's utility pole;

7 (2) require an applicant to provide more  
8 information to obtain a permit than the authority requires of a  
9 communications service provider that is not a wireless provider  
10 and that requests a permit to attach facilities to a structure;  
11 however, the authority may require the applicant to certify  
12 that the small wireless facilities to be collocated conform  
13 with the federal communications commission's regulations  
14 concerning radio frequency emissions;

15 (3) institute, either expressly or de facto, a  
16 moratorium on the acceptance or processing of applications or  
17 on the issuance of permits or other approvals, if any, for the  
18 collocation of small wireless facilities; or

19 (4) except as otherwise provided in Subsection  
20 K of this section, require an application, approval or permit  
21 or impose a fee, rate or other charge for:

22 (a) the routine maintenance of a small  
23 wireless facility;

24 (b) the replacement of a small wireless  
25 facility with one that is substantially similar in size to, the

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1 same size as or smaller than it, as long as the wireless  
2 provider that owns the wireless facility notifies the authority  
3 of the replacement at least ten days before the replacement; or

4 (c) the installation, maintenance,  
5 operation, placement or replacement of a micro wireless  
6 facility that is, in accordance with applicable codes,  
7 suspended on cables strung between utility poles or wireless  
8 structures. As used in this subparagraph, "micro wireless  
9 facility" means a small wireless facility less than twenty-four  
10 inches long, fifteen inches wide and twelve inches high whose  
11 exterior antenna, if any, is less than eleven inches long.

12 K. An authority may require a permit to engage,  
13 within rights of way, in activities that are identified in  
14 Paragraph (4) of Subsection J of this section and that affect  
15 traffic patterns or require lane closures.

16 L. The collocation for which a permit is issued  
17 shall begin within one hundred eighty days after the permit  
18 issuance date, unless the authority and the wireless provider  
19 agree to extend that period or a delay in collocation is caused  
20 by the lack of commercial power or fiber at the site. The  
21 permit gives the wireless provider the right to:

22 (1) collocate the small wireless facility; and  
23 (2) subject to applicable relocation  
24 requirements, the requirements imposed on the authority by  
25 Section 3 of the Wireless Consumer Advanced Infrastructure

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1 Investment Act and to the wireless provider's right to  
2 terminate collocation at any time:

3 (a) operate and maintain the small  
4 wireless facility for at least ten years; and

5 (b) renew the permit for the same  
6 period, unless the authority finds that the small wireless  
7 facility does not conform with the applicable codes and local  
8 laws set forth in Paragraph (4) of Subsection E of this  
9 section.

10 M. An authority may charge an applicant an  
11 application fee in the amount of one hundred dollars (\$100) or  
12 less for each of up to five small wireless facilities and fifty  
13 dollars (\$50.00) or less for each additional small wireless  
14 facility whose collocation is requested in a single  
15 application.

16 N. The approval of an application under the  
17 Wireless Consumer Advanced Infrastructure Investment Act does  
18 not authorize the provision of a service or authorize the  
19 installation, placement, maintenance or operation of a wireline  
20 backhaul facility in a right of way.

21 O. The Wireless Consumer Advanced Infrastructure  
22 Investment Act shall not be deemed to allow a person, without  
23 the consent of the property owner, to collocate a small  
24 wireless facility on a privately owned utility pole, a  
25 privately owned wireless support structure or private property.

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1           SECTION 5.   ~~[NEW MATERIAL]~~ INSTALLATION, REPLACEMENT OR  
2   MODIFICATION OF A UTILITY POLE--PERMITS--APPLICATION--FEE.--

3           A.   This section applies to the activities of a  
4   wireless provider in installing a new, replacement or modified  
5   utility pole associated with the collocation of a small  
6   wireless facility in a right of way.

7           B.   A new, replacement or modified utility pole  
8   associated with the collocation of a small wireless facility  
9   and installed in a right of way is not subject to zoning review  
10   and approval, except for that which pertains to the under-  
11   grounding prohibitions described in Subparagraph (c) of  
12   Paragraph (1) of Subsection C of this section, unless the  
13   utility pole, as measured from the ground level, is higher than  
14   whichever of the following is greater:

15                   (1)   ten feet plus the height in feet of the  
16   tallest existing utility pole, other than a utility pole  
17   supporting only one or more wireless facilities, that is:

18                               (a)   in place on the effective date of  
19   the Wireless Consumer Advanced Infrastructure Investment Act;

20                               (b)   located within five hundred feet of  
21   the new, replacement or modified utility pole;

22                               (c)   in the same right of way and within  
23   the jurisdictional boundary of the authority; and

24                               (d)   fifty or fewer feet above ground  
25   level; or

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1 (2) fifty feet.

2 C. An authority may require an application for the  
3 installation of a new, replacement or modified utility pole  
4 associated with the collocation of a small wireless facility in  
5 a right of way. An authority shall approve such an application  
6 unless the authority finds that the installation of the utility  
7 pole does not conform with:

8 (1) applicable codes or local laws concerning:

9 (a) public safety;

10 (b) design for utility poles, but only  
11 to the extent that the standards the codes or laws impose are  
12 objective; and

13 (c) under-grounding prohibitions on the  
14 installation of new, or the modification of existing, utility  
15 poles in a right of way without prior approval, if those  
16 regulations: 1) require that all cable and public utility  
17 facilities be placed underground by a date certain within one  
18 year after the application; 2) include a waiver, zoning or  
19 other process that addresses requests to install such new  
20 utility poles or modify such existing utility poles; and 3)  
21 allow the replacement of utility poles;

22 (2) the federal Americans with Disabilities  
23 Act of 1990 or similar federal or state standards for  
24 pedestrian access or movement;

25 (3) requirements imposed by the authority in

1 accordance with Subsection H of Section 3 of the Wireless  
2 Consumer Advanced Infrastructure Investment Act;

3 (4) requirements imposed by contract between  
4 an authority and a private property owner concerning the design  
5 of utility poles in the right of way; or

6 (5) the authority's laws concerning public  
7 safety and imposing minimum spacing requirements, if  
8 reasonable, for new utility poles in rights of way.

9 D. An authority shall process an application for a  
10 permit to install a new, replacement or modified utility pole  
11 associated with the collocation of a small wireless facility  
12 within one hundred fifty days after receiving the application.  
13 If the authority fails to approve or deny the application  
14 within that period, the authority shall deem the application  
15 approved. The application fee, if any, imposed by the  
16 authority for such an application shall conform with the  
17 requirements of Subsection M of Section 4 of the Wireless  
18 Consumer Advanced Infrastructure Investment Act and shall not  
19 exceed seven hundred fifty dollars (\$750).

20 E. The installation, modification or replacement  
21 for which a permit is issued under this section shall begin  
22 within one hundred eighty days after the permit issuance date,  
23 unless the authority and wireless provider agree to extend that  
24 period or a delay in the installation, modification or  
25 replacement is caused by the lack of commercial power or fiber

.210261.2

1 at the site. The permit gives the wireless provider the right  
2 to:

- 3 (1) undertake the requested deployment; and
  - 4 (2) subject to applicable relocation
- 5 requirements, to the requirements imposed on the authority by  
6 this section and to the provider's right to terminate the  
7 installation at any time:

8 (a) operate and maintain the new,  
9 modified or replacement utility pole for a period of at least  
10 ten years; and

11 (b) renew the permit for that same  
12 period, unless the authority finds that the new or modified  
13 utility pole does not conform with the restrictions set forth  
14 in Subsection C of this section.

15 SECTION 6. [NEW MATERIAL] ACCESS TO AUTHORITY UTILITY  
16 POLES--RATES AND FEES--COLLOCATIONS FOR OTHER COMMERCIAL  
17 PROJECTS OR USES.--

18 A. An authority shall not enter into an exclusive  
19 agreement with a person for the right to attach a small  
20 wireless facility to an authority utility pole.

21 B. The rates and fees an authority imposes for the  
22 collocation of a small wireless facility on an authority  
23 utility pole shall not vary according to the services provided  
24 by the collocating person.

25 C. The rate to collocate a small wireless facility

1 on an authority utility pole shall not exceed twenty dollars  
2 (\$20.00) per utility pole per year.

3 D. An authority shall process an application for a  
4 permit to collocate a small wireless facility on an authority  
5 utility pole in accordance with Section 4 of the Wireless  
6 Consumer Advanced Infrastructure Investment Act. The authority  
7 may condition the issuance of the permit on the wireless  
8 provider's replacement of the authority utility pole if the  
9 authority determines that applicable codes or local laws  
10 concerning public safety require that replacement. The  
11 authority shall process an application for a permit to install  
12 a replacement authority utility pole in accordance with Section  
13 5 of the Wireless Consumer Advanced Infrastructure Investment  
14 Act. The authority shall retain ownership of the replacement  
15 utility pole.

16 E. An authority may prohibit, regulate and charge  
17 for the collocation of a small wireless facility on a wireless  
18 support structure owned by the authority.

19 SECTION 7. [NEW MATERIAL] ESTABLISHMENT OF RATES, FEES  
20 AND TERMS--EXTENSION OF TERM TO FULFILL DUTIES.--

21 A. An authority may adopt an ordinance setting  
22 forth the rates, fees and terms for implementing the Wireless  
23 Consumer Advanced Infrastructure Investment Act. In the  
24 absence of such an ordinance, an authority and a wireless  
25 provider may enter into an agreement setting forth those rates,

.210261.2

1 fees and terms. Documents showing the rates, fees and terms  
2 agreed to by an authority and a wireless provider are public  
3 records.

4 B. The rates, fees and terms for a wireless  
5 provider's use of a right of way as set forth in Section 3 of  
6 the Wireless Consumer Advanced Infrastructure Investment Act  
7 and for access to authority utility poles as set forth in  
8 Section 6 of that act shall accord with that act, and the  
9 terms:

10 (1) shall be reasonable and nondiscriminatory;

11 (2) may include requirements that the  
12 authority has previously applied to other users of the right of  
13 way;

14 (3) may require that the wireless provider's  
15 operation of a small wireless facility in the right of way not  
16 interfere with the authority's public safety communications;

17 (4) except as otherwise provided in Subsection  
18 C of Section 5 of that act, shall not:

19 (a) require the placement of a small  
20 wireless facility on a specific utility pole or category of  
21 poles or require multiple antenna systems on a single utility  
22 pole; or

23 (b) restrict the placement of small  
24 wireless facilities by imposing minimum horizontal spacing  
25 requirements; and

.210261.2

1 (5) subject to Section 9 of that act, shall  
 2 provide for the reasonable accommodation of a power supply to,  
 3 and electric metering of, the small wireless facility.

4 C. An agreement between an authority and a wireless  
 5 provider in effect on the effective date of the Wireless  
 6 Consumer Advanced Infrastructure Investment Act and that  
 7 concerns the collocation of one or more small wireless  
 8 facilities in a right of way, including that collocation on  
 9 authority utility poles, remains in effect subject to  
 10 applicable termination provisions. A wireless provider in such  
 11 an agreement may, after they become effective, accept the  
 12 rates, fees and terms established in accordance with Subsection  
 13 B of this section for the small wireless facilities and utility  
 14 poles that are the subject of an application.

15 D. If the federal government, the state or an  
 16 authority declares a disaster and that disaster impedes an  
 17 authority's or wireless provider's ability to fulfill the  
 18 duties imposed on it by the Wireless Consumer Advanced  
 19 Infrastructure Investment Act or by an ordinance adopted in  
 20 accordance with this section, the term under which those duties  
 21 must be fulfilled is extended for a reasonable period.

22 **SECTION 8. [NEW MATERIAL] SCOPE OF LOCAL AUTHORITY.--**

23 A. Except as otherwise provided in the Wireless  
 24 Consumer Advanced Infrastructure Investment Act, an authority  
 25 may exercise its zoning, land use, planning and permitting

.210261.2

1 authority and its police power for the installation,  
2 modification and replacement of wireless support structures and  
3 utility poles.

4 B. An authority's power to control the design,  
5 engineering, construction, installation or operation of a small  
6 wireless facility in an interior structure or on the site of a  
7 campus, stadium or athletic facility not owned or controlled by  
8 the authority is limited to its authority to enforce compliance  
9 with applicable codes.

10 C. The Wireless Consumer Advanced Infrastructure  
11 Investment Act does not authorize the state or a political  
12 subdivision of the state to require small wireless facility  
13 deployment or to regulate wireless services.

14 D. If an authority determines that a utility pole  
15 or the wireless support structure of a wireless provider must  
16 be relocated to accommodate a public project, the provider  
17 shall assume the costs of relocating the wireless facilities  
18 deployed on the pole or structure.

19 SECTION 9. [NEW MATERIAL] APPLICABILITY.--The Wireless  
20 Consumer Advanced Infrastructure Investment Act does not:

21 A. affect the authority, under state or federal  
22 law, of an investor-owned electric utility or electric  
23 cooperative that owns, controls or operates utility poles or  
24 wireless support structures to deny, limit, restrict or  
25 determine the rates, fees, terms and conditions for the use of,

.210261.2

1 or attachment to, those poles or structures by a wireless  
 2 provider;

3 B. confer on an authority any zoning, land use,  
 4 planning, permitting or other regulatory authority over the  
 5 utility poles, wireless support structures or small wireless  
 6 facilities owned, controlled or operated by an investor-owned  
 7 electric utility or electric cooperative or the installation of  
 8 those poles, structures or facilities by an investor-owned  
 9 electric utility or electric cooperative;

10 C. impose a duty, liability or restriction on any  
 11 investor-owned electric utility or electric cooperative;

12 D. amend, modify or otherwise affect the provisions  
 13 affecting a private easement; or

14 E. authorize an authority to:

15 (1) require of a public telecommunications  
 16 company that provides telecommunications services under a  
 17 certificate of public convenience and necessity issued by the  
 18 state an additional grant of authority to provide those  
 19 services; or

20 (2) discriminate against such a company in its  
 21 use of rights of way.

22 SECTION 10. EFFECTIVE DATE.--The effective date of the  
 23 provisions of this act is September 1, 2018.

