

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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As Engrossed: H3/14/17

A Bill

HOUSE BILL 1926

By: Representative Davis

For An Act To Be Entitled

AN ACT TO CREATE THE WIRELESS COMMUNICATIONS AND
BROADBAND INFRASTRUCTURE DEPLOYMENT ACT; AND FOR
OTHER PURPOSES.

Subtitle

TO CREATE THE WIRELESS COMMUNICATIONS AND
BROADBAND INFRASTRUCTURE DEPLOYMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and increasing access to broadband services and advanced technology and information for the citizens of Arkansas;

(2) Municipalities play a key role in facilitating the use of public rights-of-way;

(3) Wireless services providers and wireless infrastructure providers must have access to public rights-of-way and the ability to attach to poles and structures located in public rights-of-way to densify the wireless services provider's and wireless infrastructure provider's networks and provide next generation services;

(4) Small wireless facilities, including facilities commonly referred to as "small cells", and distributed antenna systems often are deployed most effectively in a public right-of-way;



(5) Accordingly, expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities; and

(6) Wireless facilities help ensure this state remains competitive in the global economy.

(b) It is the intent of the General Assembly that the timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2. Arkansas Code Title 23, Chapter 17, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Wireless Communications and Broadband Infrastructure
Deployment Act

23-17-501. Title.

This subchapter shall be known and may be cited as the "Wireless Communications and Broadband Infrastructure Deployment Act".

23-17-502. Definitions.

As used in this subchapter:

(1) "Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal in the provision of wireless services;

(2) "Applicable codes" means any uniform building, fire, electrical, plumbing, or mechanical codes, as adopted by a recognized national code organization, or local amendments to the codes, that are enacted solely to address imminent threats of destruction of property or injury to a person, not inconsistent with this subchapter;

(3) "Applicant" means a person 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 or modification of a

utility pole or wireless support structure;

(5) "Authority" means a state, county, or municipal government department, agency, or entity that has jurisdiction and control over a public right-of-way;

(6) "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or replace wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole;

(7) "Communications service provider" means:

(A) A provider of information service, as defined in 47 U.S.C. § 153(24);

(B) A telecommunications provider, as defined in § 23-17-403;

(C) A video service provider, as defined in § 23-19-202;

or

(D) A wireless provider as defined in this subchapter;

(8) "Fee" means a one-time charge;

(9) "Permit" means a written authorization required by an authority to perform an action or initiate, continue, or complete a project;

(10) "Person" means an individual, corporation, limited liability company, partnership, association, trust, authority, or other entity or organization;

(11) "Political subdivision" means a city, county, or other governmental entity of this state that has maintenance and operation responsibility over a public right-of-way;

(12) "Political subdivision pole" means:

(A) A utility pole, owned or operated by a political subdivision in a right-of-way, including a utility pole that provides lighting or traffic control functions, street light poles, traffic signals, and structures for signage; and

(B) A pole or similar structure owned or operated by a political subdivision in a right-of-way that supports only wireless facilities;

(13) "Rate" means a recurring charge;

(14)(A) "Right-of-way" means an area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, utility easement, or similar property.

(B) "Right-of-way" does not include a federal interstate highway;

(15)(A) "Small wireless facility" means a wireless facility that meets both of the following qualifications:

(i) Each antenna is located inside an enclosure of no more than six cubic feet (6 c.f.) in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet (6 c.f.); and

(ii) All other wireless equipment associated with the facility is cumulatively no more than twenty-eight cubic feet (28 c.f.) in volume.

(B) The following types of associated ancillary equipment are not included in the calculation of equipment volume:

(i) Electric meter;

(ii) Concealment elements;

(iii) Telecommunications demarcation box;

(iv) Ground-based enclosures;

(v) Grounding equipment;

(vi) Power transfer switch;

(vii) Cutoff switch; and

(viii) Vertical cable runs for the connection of power and other services;

(16)(A) "Utility pole" means a pole or similar structure that is used in whole or in part by a communications service provider for electric distribution, lighting, traffic control, signage, or a similar function.

(B) "Utility pole" does not include a pole owned and operated by a municipal electric utility that is used for the delivery of electric power to customers;

(17)(A) "Wireless facility", including a small wireless facility, means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

(i) Equipment associated with wireless communications;

(ii) Radio transceivers;

(iii) Antennas;

(iv) Wires;

(v) Coaxial, fiber-optic, or other cables;

(vi) Regular and backup power supplies, and

comparable equipment, regardless of technological configuration.

(B) "Wireless facility" does not include the structure or improvements on, under, within, or adjacent to which the equipment is collocated;

(18) "Wireless infrastructure provider" means a person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider;

(19) "Wireless provider" means a wireless infrastructure provider or a wireless services provider;

(20) "Wireless services" means any services using licensed spectrum, whether at a fixed location or mobile, provided using wireless facilities;

(21) "Wireless services provider" means a person who provides wireless services; and

(22)(A) "Wireless support structure" means a freestanding structure including:

(i) A monopole;

(ii) A tower, either guyed or self-supporting;

(iii) A billboard; or

(iv) Any other existing or proposed structure designed to support or that is capable of supporting wireless facilities.

(B) "Wireless support structure" does not include a utility pole.

23-17-503. Use of public rights-of-way by wireless providers.

(a) A wireless provider shall have all of the rights, powers and duties provided for telephone and telegraph companies pursuant to §§ 23-17-101 through 23-17-105.

(b) A political subdivision shall allow a wireless provider to install, construct, and maintain facilities within a public right-of-way,

over which the political subdivision has jurisdiction, to enable the provision of wireless services to subscribers of those services.

(c) A political subdivision shall provide a wireless provider with open, comparable, nondiscriminatory, and competitively neutral access to public rights-of-way that are within the jurisdiction of the political subdivision.

(d) Except as provided in this subchapter, this subchapter does not exempt a wireless provider from compliance with all lawful political subdivision land use regulations, including without limitation zoning laws, building permit requirements, pole attachment agreements, street cut permits, and other permits required for the use of a political subdivision's right-of-way.

(e)(1) A political subdivision may charge a right-of-way access fee on a nondiscriminatory basis through an ordinance of general applicability to all wireless providers at an annual rate of up to twenty dollars (\$20.00) for each wireless facility located in the right-of-way.

(2) No other rate or fee may be assessed by a political subdivision on a wireless provider for the use of the right-of-way or for authority to operate in the political subdivision, including without limitation any franchise fee under § 14-200-101 or any other rate or fee based on revenue or customer counts.

23-17-504. Wireless facilities – Deployment – Zoning requirements – Permits.

(a) A wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate wireless facilities and construct, modify, maintain, and operate utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities along, across, upon, and under a right-of-way.

(b) The structures and facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of the right-of-way by other utilities.

(c) Each new or modified utility pole and wireless support structure installed in the right-of-way shall not exceed the greater of:

(1) Ten feet (10') in height above the tallest existing utility

pole in place as of the effective date of this subchapter located within five hundred feet (500') of the new pole in the same right-of-way; or

(2) Fifty feet (50') above ground level.

(d) New small wireless facilities installed in the right-of-way shall not extend:

(1) More than ten feet (10') above an existing utility pole or wireless support structure in place as of the effective date of this subchapter; or

(2) Above the height permitted for a new utility pole or wireless support structure under this section.

(e) Subject to all applicable zoning regulations and permitting processes, a wireless provider shall have the right to construct, modify, and maintain a utility pole, wireless support structure, or wireless facility that exceeds the size limits established in § 23-17-503 and in this section, along, across, upon, and under the right-of-way.

(f) An applicant shall comply with nondiscriminatory undergrounding requirements that prohibit the installation of new utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning, or other process that addresses requests to install the new utility poles and do not prohibit the replacement of existing utility poles.

(g) A political subdivision may establish reasonable, nondiscriminatory requirements that a wireless facility be fitted with decorative elements to match the aesthetics of other utility poles located in a historic district designated under the Historic Districts Act, § 14-172-201 et seq., and are located within five hundred feet (500') of the wireless facility.

(h) A political subdivision may require an applicant to obtain one (1) or more permits to collocate small wireless facilities or to place wireless support structures in the right-of-way, provided the permits are of general applicability and do not apply exclusively to small wireless facilities or to wireless support structures, subject to the following requirements:

(1) A political subdivision shall not directly or indirectly require an applicant to perform services unrelated to the application for which approval is sought, such as in-kind contributions to the political subdivision including reserving fiber, conduit, or pole space for the political subdivision;

(2) An applicant shall not be required to provide more information to obtain a permit than a communications service provider that is not a wireless provider;

(3)(A) Within ten (10) business days of receiving an application, a political subdivision shall determine and notify the applicant whether the application is complete.

(B) If an application is incomplete, a political subdivision shall specifically identify the missing information;

(4) An application to collocate small wireless facilities shall be processed on a nondiscriminatory basis and shall be deemed approved if the political subdivision fails to approve or deny the application within sixty (60) days;

(5) An application to place a utility pole in the right-of-way shall be processed on a nondiscriminatory basis and shall be deemed approved if the political subdivision fails to approve or deny the application within sixty (60) days;

(6) A political subdivision shall approve an application unless it does not meet the political subdivision's codes; and

(7)(A) A political subdivision shall document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the political subdivision denies an application.

(B) The applicant may cure the deficiencies identified by the political subdivision and resubmit the application within thirty (30) days of the denial without paying an additional application fee.

(C) The political subdivision shall approve or deny the revised application within thirty (30) days.

(D) Any subsequent review shall be limited to the deficiencies cited in the denial.

(i) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single political subdivision shall be allowed at the applicant's discretion to file a consolidated application and receive a single permit for the collocation of up to thirty (30) small wireless facilities.

(j)(1) Collocation for which a permit is granted shall commence within one (1) year of approval and shall be pursued to completion.

(2) Any time limitation placed on permits shall be void unless the applicant subsequently and voluntarily requests that the permit be terminated.

(k) An authority shall not institute, either expressly or de facto, a moratorium on:

(1) Filing, receiving, or processing applications; or

(2) Issuing permits or other approvals, if any, for the collocation of small wireless facilities or for any permits related to the placement, repair, maintenance, or modification of wireless support structures.

(1) A political subdivision may charge an application fee only if the fee is required for similar types of commercial development within the political subdivision's jurisdiction, and shall not exceed the lesser of the amount charged by the authority for:

(1) A building permit for any similar commercial construction, activity, or land use development;

(2) One hundred dollars (\$100) each for up to five (5) small wireless facilities addressed in an application and fifty dollars (\$50.00) for each additional small wireless facility addressed in the application; or

(3) One thousand dollars (\$1,000) for a new wireless support structure.

(m) A political subdivision shall not require an application for:

(1) Routine maintenance; or

(2) The replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller, if a political subdivision may require a permit to work within the right-of-way for the activities, if applicable.

23-17-505. Access to political subdivision structures by wireless facilities.

(a) A political subdivision shall allow collocation of small wireless facilities on a utility pole owned by a political subdivision that is located in a right-of-way.

(b) A political subdivision shall not enter into an exclusive arrangement with a person for the right to attach to a utility pole.

(c) A political subdivision may charge, on a nondiscriminatory basis

through an ordinance of general applicability to all wireless providers, an annual rate of up to twenty dollars (\$20.00) per utility pole owned by the political subdivision that the wireless provider has collocated.

(d)(1) If any make-ready or other work is required to enable the political subdivision's utility pole to support the requested collocation, including utility pole replacement if necessary, the political subdivision shall provide a good faith estimate of the cost of the work required to be performed to support the requested collocation within sixty (60) days after receipt of a complete application.

(2)(A) For purposes of subdivision (d)(1) of this section, make-ready work includes any utility pole replacement that is completed within ninety (90) days of written acceptance of the good faith estimate by the applicant.

(B) The make-ready work shall be reasonable and not require more make-ready work than is required to meet applicable codes or industry standards.

(C) Fees for make-ready work, including any utility pole replacement, shall not:

(i) Include costs related to preexisting or prior damage or noncompliance;

(ii) Exceed actual costs or the amount charged to other communications service providers for similar work; or

(iii) Include any consultant's fees or expenses.

(e)(1) An authority shall authorize the collocation of small wireless facilities on wireless support structures and utility poles owned or controlled by a political subdivision that are not located within the right-of-way to the same extent the authority permits access to those structures for other commercial projects or uses.

(2) The collocations described in subdivision (e)(1) of this section are subject to reasonable and nondiscriminatory rates, fees, and terms as provided in an agreement between the political subdivision and the wireless provider.

23-17-506. Applicability of other laws – No effect on jurisdiction of the Arkansas Public Service Commission over pole attachments.

(a) Except as provided in this subchapter, a political subdivision

shall not prohibit, regulate, or require any authorization, permit, franchise, license, or bond for the placement or operation of wireless facilities or the provision of wireless services within the boundaries of a political subdivision.

(b) This subchapter does not limit, abrogate, or supersede the jurisdiction of the Arkansas Public Service Commission, or any rule or order of the commission concerning pole attachments under § 23-4-1001 et seq., or any agreement of a utility pole owner and attacher related to the rates, terms, and conditions for a pole attachment.

/s/Davis