

1 State of Arkansas
2 91st General Assembly
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4

As Engrossed: H3/14/17

A Bill

HOUSE BILL 1926

5 By: Representative Davis
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE WIRELESS COMMUNICATIONS AND
9 BROADBAND INFRASTRUCTURE DEPLOYMENT ACT; AND FOR
10 OTHER PURPOSES.
11

Subtitle

14 TO CREATE THE WIRELESS COMMUNICATIONS AND
15 BROADBAND INFRASTRUCTURE DEPLOYMENT ACT.
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

21 *(a) The General Assembly finds that:*

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

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

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

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



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

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

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

10
11 SECTION 2. Arkansas Code Title 23, Chapter 17, is amended to add an
12 additional subchapter to read as follows:

13 Subchapter 5 – Wireless Communications and Broadband Infrastructure
14 Deployment Act

15
16 23-17-501. Title.

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

19
20 23-17-502. Definitions.

21 As used in this subchapter:

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

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

30 (3) "Applicant" means a person who submits an application and is
31 a wireless provider;

32 (4) "Application" means a request submitted by an applicant to
33 an authority:

34 (A) For a permit to collocate small wireless facilities;
35 or

36 (B) To approve the installation or modification of a

1 utility pole or wireless support structure;

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

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

8 (7) "Communications service provider" means:

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

11 (B) A telecommunications provider, as defined in § 23-17-
12 403;

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

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

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

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

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

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

25 (12) "Political subdivision pole" means:

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

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

33 (13) "Rate" means a recurring charge;

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

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

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

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

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

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

15 (i) Electric meter;

16 (ii) Concealment elements;

17 (iii) Telecommunications demarcation box;

18 (iv) Ground-based enclosures;

19 (v) Grounding equipment;

20 (vi) Power transfer switch;

21 (vii) Cutoff switch; and

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

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

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

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

34 (i) Equipment associated with wireless
35 communications;

36 (ii) Radio transceivers;

1 (iii) Antennas;

2 (iv) Wires;

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

4 (vi) Regular and backup power supplies, and
5 comparable equipment, regardless of technological configuration.

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

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

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

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

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

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

23 (i) A monopole;

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

25 (iii) A billboard; or

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

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

30
31 23-17-503. Use of public rights-of-way by wireless providers.

32 (a) A wireless provider shall have all of the rights, powers and
33 duties provided for telephone and telegraph companies pursuant to §§ 23-17-
34 101 through 23-17-105.

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

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

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

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

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

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

22
23 23-17-504. Wireless facilities – Deployment – Zoning requirements –
24 Permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) Routine maintenance; or

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

28
29 23-17-505. Access to political subdivision structures by wireless
30 facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

33
34 23-17-506. Applicability of other laws – No effect on jurisdiction of
35 the Arkansas Public Service Commission over pole attachments.

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

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

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

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11 /s/Davis
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