

A RESOLUTION
BY COUNCIL MEMBER FELICIA MOORE



A RESOLUTION TO OPPOSE HOUSE BILL 176 AMENDING THE ADVANCED BROADBAND COLLOCATION ACT, O.C.G.A § 36-66B-1 ON THE BASIS THAT SUCH ACT USURPS THE CITY OF ATLANTA'S EXCLUSIVE CONSTITUTIONAL ZONING POWER TO REGULATE THE PLACEMENT, MODIFICATION AND COLLOCATION OF CELL TOWERS AND ANTENNA IN FURTHERANCE OF THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE; AND FOR OTHER PURPOSES.

WHEREAS, Article 9, Section 2, Paragraph IV of the Georgia Constitution gives exclusive zoning power to counties and municipalities within their respective political boundaries; and

WHEREAS, the State may only regulate the procedural exercise of this zoning power constitutionally reserved to counties and municipalities; and

WHEREAS, the General Assembly has enacted certain procedural limitation on such exercise, known as the Zoning Procedures Law (ZPL), O.C.G.A. § 36-66-1 *et seq.*

WHEREAS, in 2010 the Georgia General Assembly passed the Advanced Broadband Collocation Act ("Act"), codified at O.C.G.A. § 36-66B-1 *et seq.*, citing its purported "procedural" nature; and

WHEREAS, currently, the Act precludes additional zoning review of proposals to add additional antennas or base equipment to existing approved wireless support structures (hereafter "cell towers") so long as the proposal would not increase the overall height or width of the cell tower; and

WHEREAS, HB 176 would amend the Act to preclude additional zoning review, and would require approval, of applications to increase the height, width, or footprint of an existing cell tower; and

WHEREAS, the limitation of such zoning review by the City Council for some cell towers and by the Office of Planning and the Office of Buildings for other cell towers would in turn limit the review role that the NPU's play in the City of Atlanta; and

WHEREAS, HB 176, which purports to recognize the aforementioned constitutional zoning power, would in fact go well beyond procedure and would usurp a counties and municipalities exercise of their constitutionally granted zoning authority to regulate the 1) placement of new cell towers, 2) the modification (i.e. expansion) of existing cell towers; and 3) the collocation of new antenna onto existing cell towers in furtherance of the public health, safety and general welfare.

WHEREAS, HB 176 would amend the definition of cell towers to include electrical utility pole as a type of structure upon which cell tower antenna might be placed; and

WHEREAS, HB 176 provides that if a local governing authority fails to make a final decision to approve or disapprove an application for modification or collocation of an existing cell tower, then such application shall be deemed approved as submitted; and

WHEREAS, HB 176 would preclude a local governing authority from placing certain zoning conditions on the approval of a cell tower, a zoning practice long recognized in Georgia; and

WHEREAS, HB 176 would preclude a local governing authority from evaluating an application based on the availability of other potential locations for the placement of the proposed cell tower and/or antenna, a current criteria in the City's zoning ordinance; and

WHEREAS, HB 176 would preclude a local governing authority from requiring the removal of an existing cell tower and/or antenna as a condition to approval of an application for a new cell tower and/or antenna unless the existing cell tower is abandoned and owned by the applicant; said term "abandonment" not being defined for purposes of giving guidance to local zoning official as to its meaning; and

WHEREAS, HB 176 would preclude a local governing authority from imposing surety requirements, to ensure that abandoned or unused cell towers can be removed, unless the local government requires such sureties from other commercial developments or land uses; and

WHEREAS, HB 176 would preclude a local government from requiring placement of a cell tower on publicly owned land or on a publicly owned water tank, building or electrical tower as an alternative to the location desired by the applicant; and

WHEREAS, HB 176 would require a local governing authority to approve or disapprove, in writing, a new cell tower within 150 day of application, unless another date is mutually agreed upon

WHEREAS, HB 176 would require a local governing authority to notify an applicant within 30 days of application submittal of any application deficiencies, in which case the time it takes the applicant to complete the application shall not be counted in the 150 day review period; and

WHEREAS, HB 176 provides that if the local governing authority does not make a decision within the 150 review period, then the application is deemed approved; and

WHEREAS, HB 176 would limit the review fees a local government may assess in its review for zoning, permitting and other code compliance; and

WHEREAS, HB 176 would place limitations on the ability of local government to charge the applicant for fees incurred in retention of a consultant to review the accuracy of applicant's application for a new cell tower, including but not limited, radio frequency claims; and

WHEREAS, HB 176 would set limits on the ability of the local government to charge a rental, license, or other fee to locate a cell tower on the local government's property in excess of the current market rate for rental or use of similarly situated property and in the event the local government and the applicant do not agree on the applicable market rate, that rate shall be determined by mediation and such mediation must be concluded within 150 days from the date the applicant first tenders its proposed lease rate to the government; and

WHEREAS, if passed, HB 176 would afford cell tower applicants certain rights in excess of federal law and regulations with respect to a local governments review of cell tower location, modification, and collocation applications; and

WHEREAS, existing federal law and regulations already severely limits a local government's zoning power to review cell tower location, modification, and collocation applications in the best interest of the public health, safety and welfare; and

WHEREAS, if passed, HB 176 would preclude the City of Atlanta from moving forward with many important aspects of a proposed re-write of the Zoning Ordinance's regulation of cell towers.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES TO OPPOSE HOUSE BILL 176 IN ITS ENTIRETY AS VIOLATIVE OF THE GEORGIA CONSTITUTION'S EXCLUSIVE GRANT OF ZONING AUTHORITY TO MUNICIPALITIES AND COUNTIES.

BE IT FURTHER RESOLVED, that the Municipal Clerk immediately send this Resolution to each member of the Georgia General Assembly, the Georgia Municipal Association, and the Association County Commissioners of Georgia.

BE IT FINALLY RESOLVED, that all resolutions or parts thereof are hereby waived to the extent to the conflict.

House Bill 176

By: Representatives Parsons of the 44th, Abrams of the 89th, Smith of the 134th, Dudgeon of the 25th, Martin of the 49th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as change certain provisions applicable to counties and municipal corporations related to
3 advanced broadband collocation; to provide for a short title; to provide for definitions; to
4 make changes related to streamlined processing; to standardize certain procedures related to
5 new wireless facilities; to place limitations on the time allowed for the review of new
6 wireless facilities; to limit fees charged for review of wireless facilities; to provide for related
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**
10 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
11 by revising Chapter 66B, relating to advanced broadband collocation, as follows:

12 ***CHAPTER 66B**

13 36-66B-1.

14 This chapter shall be known and may be cited as the '~~Advanced Broadband Collocation~~
15 ~~Act.~~ 'Mobile Broadband Infrastructure Leads to Development (BILD) Act.'

16 36-66B-2.

17 (a) The General Assembly finds that the enactment of this chapter is necessary to:

- 18 (1) Ensure the safe and efficient integration of facilities necessary for the provision of
19 broadband and other advanced wireless communication services throughout this state;
20 (2) Ensure the ready availability of reliable wireless communication services to the
21 public to support personal communications, economic development, and the general
22 welfare; and

23 (3) Encourage where feasible the modification or collocation of wireless facilities on
24 existing wireless support structures over the construction of new wireless support
25 structures in the deployment or expansion of commercial wireless networks.

26 (b) While recognizing and confirming the purview of local governments to exercise
27 zoning, land use, and permitting authority within their territorial boundaries with regard to
28 the location, construction, and modification of wireless communication facilities, it is the
29 intent of this chapter to establish procedural standards for the exercise of such authority so
30 as to streamline and facilitate the construction or modification of such facilities, including
31 the placement of new or additional wireless facilities on existing wireless support
32 structures. It is not the intent of this chapter to limit or preempt the scope of a local
33 government's review of zoning, land use, or permitting applications for the siting of
34 wireless facilities or wireless support structures or to require a local government to exercise
35 its zoning power.

36 36-66B-3.

37 As used in this chapter, the term:

38 (1) 'Accessory equipment' means any equipment serving or being used in conjunction
39 with a wireless facility or wireless support structure and includes, but is not limited to,
40 utility or transmission equipment, power supplies, generators, batteries, cables, equipment
41 buildings, cabinets, and storage sheds, shelters, or similar structures.

42 (2) 'Antenna' means communications equipment that transmits, receives, or transmits
43 and receives electromagnetic radio signals used in the provision of all types of wireless
44 communication services.

45 (3) 'Application' means a formal request submitted to the local governing authority to
46 construct, ~~collate~~ collocate, or modify a wireless support structure or a wireless facility.
47 An application ~~shall be deemed complete when~~ may include all documents, information,
48 and fees specifically enumerated in the local governing authority's regulations,
49 ordinances, and forms pertaining to the location, construction, collocation, modification,
50 or operation of wireless facilities ~~are~~ submitted by the applicant to the local governing
51 authority.

52 (4) ~~'Collocation'~~ 'Collocate' or 'collocation' means the placement or installation of new
53 wireless facilities on previously approved and constructed wireless support structures,
54 including monopoles and towers, both self-supporting and guyed, in a manner that
55 negates the need to construct a new freestanding wireless support structure. Such term
56 includes the placement of accessory equipment within an existing equipment compound.

57 (5) 'Equipment compound' means an area surrounding or adjacent to the base of a
58 wireless support structure within which accessory equipment is located.

59 (6) 'Local governing authority' means a municipality or county that has adopted land use
60 or zoning regulations for all or the majority of land uses within its jurisdiction or has
61 adopted separate regulations pertaining to the location, construction, collocation,
62 modification, or operation of wireless facilities.

63 (7) 'Modification' or 'modify' means the improvement, upgrade, expansion, or
64 replacement of existing wireless facilities on an existing wireless support structure or
65 within an existing equipment compound; ~~provided such improvement, upgrade,~~
66 ~~expansion, or replacement does not increase the height of the wireless support structure~~
67 ~~or increase the dimensions of the equipment compound.~~

68 (8) 'Registry' means any official list, record, or register of wireless facilities, equipment
69 compounds, or wireless support structures maintained by a local governing authority.

70 (9) 'Substantially change the size' means:

71 (A) The mounting or installation of proposed antennas on an existing wireless support
72 structure that would increase the height of such existing wireless support structure by
73 more than 10 percent, or by the height of one additional antenna array with separation
74 from the nearest existing antenna exceeding 20 feet, whichever is greater;

75 (B) The mounting or installation of proposed antennas on an existing wireless support
76 structure involving the addition of an appurtenance to the body of such existing wireless
77 support structure that would protrude from the edge of such existing wireless support
78 structure by more than 20 feet, or more than the width of such existing wireless support
79 structure at the level of such appurtenance, whichever is greater;

80 (C) The expansion of the boundaries of the existing equipment compound surrounding
81 the existing wireless support structure by more than 30 linear feet in any direction or
82 excavation outside such expanded boundaries or outside any existing access or utility
83 easement related to the existing wireless support structure; or

84 (D) The addition of more than the standard number of new equipment cabinets for the
85 technology involved, not to exceed four, or the addition of more than one new
86 equipment compound in association with the mounting of a proposed antenna.

87 ~~(8)~~(10) 'Wireless facility' means the set of equipment and network components, exclusive
88 of the underlying wireless support structure, including antennas, transmitters, receivers,
89 base stations, power supplies, cabling, and accessory equipment, used to provide wireless
90 data and telecommunication services.

91 ~~(9)~~(11) 'Wireless support structure' means a freestanding structure, such as a monopole,
92 tower, either guyed or self-supporting, or suitable existing building or alternative
93 structure designed to support or capable of supporting wireless facilities. ~~Such term shall~~
94 ~~not include any electrical utility pole or tower used for the distribution or transmission~~
95 ~~of electrical service.~~

96 36-66B-4.

97 (a) Applications for collocation or modification of a wireless facility entitled to
98 streamlined processing under this Code section shall be reviewed for conformance with
99 applicable site plan and building permit requirements, including zoning and land use
100 conformity, but shall not otherwise be subject to the issuance of additional zoning, land
101 use, or special use permit approvals beyond the initial zoning, land use, or special permit
102 approvals issued for such wireless support structure or wireless facility. The intent of this
103 Code section is to allow previously approved wireless support structures and wireless
104 facilities to be modified or ~~accept~~ collocations ~~thereto to be accepted~~ without additional
105 zoning or land use review beyond that which is typically required by the local governing
106 authority for the issuance of building or electrical permits.

107 (b) The streamlined process set forth in subsection (a) of this Code section shall apply to
108 applications for ~~all~~ proposed modifications and to applications for ~~all~~ proposed collocations
109 that meet the following requirements:

110 (1) The proposed modification or collocation shall not ~~increase the overall height or~~
111 ~~width~~ substantially change the size of the wireless support structure to which the wireless
112 facilities are to be attached;

113 (2) The proposed modification or collocation shall not ~~increase the dimensions~~
114 substantially change the size of the equipment compound initially approved by the local
115 governing authority;

116 (3) The proposed collocation shall comply with applicable conditions of approval, if any,
117 applied to the initial wireless facilities and wireless support structure, as well as any
118 subsequently adopted amendments to such conditions of approval; and

119 (4) The proposed collocation shall not exceed the applicable weight limits for the
120 wireless support structure, as demonstrated by a letter from a structural engineer licensed
121 to practice in this state.

122 A modification or collocation, once approved, shall not differ from the modification or
123 collocation proposed in the application without filing a subsequent application.

124 (c) A local governing authority's review of an application to modify or collocate wireless
125 facilities on an existing wireless support structure shall not include an evaluation of the
126 technical, business, or service characteristics of such proposed wireless facilities. A local
127 governing authority shall not require an applicant to submit radio frequency analyses or any
128 other documentation intended to demonstrate the proposed service characteristics of the
129 proposed wireless facilities, to illustrate the need for such wireless facilities, or to justify
130 the business decision to collocate such wireless facilities; provided, however, that the local
131 governing authority may require the applicant to provide a letter from a radio frequency

132 engineer certifying the applicant's proposed wireless facilities will not interfere with
133 emergency communications.

134 (d) Within 90 calendar days of the date an application for modification or collocation of
135 wireless facilities is filed with the local governing authority, unless another date is
136 specified in a written agreement between the local governing authority and the applicant,
137 the local governing authority shall:

138 (1) Make its final decision to approve or disapprove the application; and

139 (2) Advise the applicant in writing of its final decision.

140 (e) Within 30 calendar days of the date an application for modification or collocation is
141 filed with the local governing authority, the local governing authority shall notify the
142 applicant in writing of any information required to complete ~~the~~ such application. To the
143 extent additional information is required to complete the application, the time required by
144 the applicant to provide such information shall not be counted toward the 90 calendar day
145 review period set forth in subsection (d) of this Code section.

146 (f) If a local governing authority fails to make a final decision to approve or disapprove
147 an application for modification or collocation of wireless facilities pursuant to the
148 provisions of subsection (d) of this Code section, then such application shall be deemed
149 approved as submitted.

150 (g) Notwithstanding anything to the contrary in this chapter, pole attachments of wireless
151 facilities to a pole owned or operated by a utility are solely governed by the requirement
152 of 47 U.S.C. Section 224.

153 36-66B-5.

154 In the regulation of the placement or construction of any new wireless facility or wireless
155 support structure, a local governing authority shall not:

156 (1) Place conditions on the approval of any application beyond those specified in Code
157 Section 36-66B-4 for any subsequent application for collocation or modification;

158 (2) Evaluate an application based on the availability of other potential locations for the
159 placement of wireless support structures or wireless facilities;

160 (3) Require the removal of existing wireless support structures or wireless facilities as
161 a condition to approval of an application for a new wireless facility or wireless support
162 structure unless such existing wireless support structure or wireless facility is abandoned
163 and owned by the applicant;

164 (4) Impose any requirements or restrictions with respect to objects in navigable airspace
165 that are greater than or in conflict with the requirements or restrictions imposed by the
166 Federal Aviation Administration; or

167 (5) Impose surety requirements, including bonds, escrow deposits, letters of credit, or
168 any other type of financial surety, to ensure that abandoned or unused wireless facilities
169 or wireless support structures can be removed, unless the local governing authority
170 imposes similar requirements on other permits for other types of commercial
171 development or land uses.

172 36-66B-6.

173 (a) In reviewing an application or request for a new wireless facility or wireless support
174 structure, a local governing authority shall not require the applicant to place an antenna or
175 other wireless communications equipment on publicly owned land or on a publicly or
176 privately owned water tank, building, or electric transmission tower as an alternative to the
177 location proposed by the applicant.

178 (b) Within 150 calendar days of the date an application for a new wireless facility or
179 wireless support structure is filed with the local governing authority, unless another date
180 is specified in a written agreement between the local governing authority and the applicant,
181 the local governing authority shall:

182 (1) Make its final decision to approve or disapprove the application; and

183 (2) Advise the applicant in writing of its final decision.

184 (c) Within 30 calendar days of the date an application for a new wireless facility or
185 wireless support structure is filed with the local governing authority, the local governing
186 authority shall notify the applicant in writing of any information required to complete such
187 application. To the extent additional information is required to complete the application,
188 the time required by the applicant to provide such information shall not be counted toward
189 the 150 calendar day review period set forth in subsection (b) of this Code section.

190 (d) If a local governing authority fails to make its final decision to approve or disapprove
191 an application for a new wireless facility or wireless support structure pursuant to the
192 provisions of subsection (b) of this Code section, then such application shall be deemed
193 approved as submitted.

194 36-66B-7.

195 A local governing authority shall not charge an applicant:

196 (1) A zoning, permitting, or other fee for review or inspection of a new or existing
197 wireless facility or wireless support structure in an amount greater than the reasonably
198 approximate cost incurred by the local governing authority in connection with such
199 review or inspection; or

200 (2) Any fee in excess of the zoning, permitting, or other fees charged for similar
201 activities involving other land uses.

202 36-66B-8.

203 In the event a local governing authority engages a consultant to assist in reviewing any
204 application, permit, or registry for a wireless facility or wireless support structure, the local
205 government authority shall not seek reimbursement or payment from the applicant for any
206 consulting fees in excess of the reasonably approximate costs incurred, and in no event
207 shall an applicant be required to pay or reimburse consulting fees that are based on a
208 contingency or similar fee.

209 36-66B-9.

210 No state or local governing authority shall charge a wireless service provider or wireless
211 infrastructure provider any rental, license, or other fees to locate a wireless facility or
212 wireless support structure on such government entity's property in excess of the current
213 market rates for rental or use of similarly situated property. If a state or local governing
214 authority and the applicant do not agree on the applicable market rate on any such
215 government property, the market rate shall be determined by mediation in which the
216 applicant and the government entity shall submit their respective positions regarding the
217 appropriate market rate for the property in question to a mediator mutually agreed upon by
218 the parties who will determine the appropriate market rate. If the parties cannot mutually
219 agree on a mediator, one shall be chosen in accordance with the procedures of the
220 American Arbitration Association. Any such mediation shall be concluded within 150
221 calendar days from the date the applicant first tenders its proposed lease rate to the
222 government entity."

223 **SECTION 2.**

224 All laws and parts of laws in conflict with this Act are repealed.