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## Mobile Broadband Infrastructure Leads to Development HB 176

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## LOCAL GOVERNMENT

***Mobile Broadband Infrastructure Leads to Development: Amend Title 36 of the Official Code of Georgia Annotated, Relating to Local Government, so as to Change Certain Provisions Applicable to Counties and Municipal Corporations Related to Advanced Broadband Collocation; Provide for a Short Title; Provide for Definitions; Make Changes Related to Streamlined Processing; Standardize Certain Procedures Related to New Wireless Facilities; Place Limitations on the Time Allowed for the Review of New Wireless Facilities; Limit Fees Charged for Review of Wireless Facilities; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 36-66B-1, -2, -3, -4 (amended); -5, -6, -7 (new)
BILL NUMBER:	HB 176
ACT NUMBER:	569
GEORGIA LAWS:	2014 Ga. Laws 413
SUMMARY:	The Act provides for streamlined processing for wireless facility applications and limits the ways local government can condition approval of new wireless facilities and where they are sited. The Act also limits the fees that local governments may charge for reviewing wireless facility applications. Further, it limits license and rental fees a local government may charge for wireless facilities on the local government's property.
EFFECTIVE DATE:	July 1, 2014

*History*

Code section 36-66B of the Official Code of Georgia Annotated first became law on May 24, 2010.<sup>1</sup> Its original purpose was “to provide procedures for reviewing applications for the modification or collocation of wireless communication facilities.”<sup>2</sup> Put simply, the Act streamlined the application process for new cell towers and modifications to existing infrastructure. The Georgia legislature sought to create a procedure whereby wireless and broadband infrastructure could be integrated throughout the State of Georgia, ostensibly to make the process easier and cheaper for companies and their customers.<sup>3</sup>

The original statute provided that a company could submit their application with a local governing authority.<sup>4</sup> The statute attempted to provide for an efficient application process. For example, it required the local governing authority to inform the applicant whether any documents were still missing within thirty days of receipt of the application.<sup>5</sup> That local governing authority would then notify the applicant in writing of its decision within ninety days.<sup>6</sup>

Many difficulties resulted from these basic outlines of the application procedure, notably the uncertainties that arose if a municipal government failed to respond to an application within the timeline.<sup>7</sup> A company would not know, for example, whether the lack of response was an outright rejection of the application, or whether the lack of response indicated that the municipal government was missing some paperwork.<sup>8</sup> In addition, many questions remained about the internal workings of the application process: what the local governing authority could ask or require the applicant to do to receive approval of the application, and what other actions the local governing authority was and was not allowed to do in assessing and

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1. 2010 Ga. Laws 328 (codified at O.C.G.A. § 36-66B (2010)).

2. *Id.*

3. *Id.*

4. O.C.G.A. § 36-66B-4 (2010).

5. *Id.*

6. *Id.*

7. *See* Telephone Interview with Rep. Don Parsons (R-44th) (Mar. 26, 2014) [hereinafter Parsons Interview].

8. *Id.*

deciding upon the applications.<sup>9</sup> For example, it remained an open question whether the local authority could require an applicant to submit radio frequency analyses or require an applicant to show that a need existed for the tower.<sup>10</sup>

As a result, Representative Don Parsons (R-44th), among others, introduced House Bill (HB) 176.<sup>11</sup> Local government interests, primarily the Georgia Municipal Association (GMA) and the Association of County Commissioners of Georgia (ACCG), closely tracked the bill because of its proposed restrictions on local zoning authority.<sup>12</sup> At each step in the process the GMA and ACCG were deeply involved in negotiations with the bill's supporters and the telecommunications industry, which was crucial to the Act's passage.<sup>13</sup> These groups strongly opposed the legislation in its initial form due to perceived encroachments onto municipal authority, and negotiated zealously to ensure the Act's primary objectives could be achieved without interfering with local zoning decisions.<sup>14</sup>

### *Bill Tracking of HB 176*

Representatives Parsons, Stacey Abrams (D-89th), Richard Smith (R-134th), Mike Dudgeon (R-25th), Chuck Martin (R-49th), and Mark Hamilton (R-24th) sponsored HB 176.<sup>15</sup> The House read the bill for the first time on February 1, 2013.<sup>16</sup> The House read the bill for the second time on February 4, 2013.<sup>17</sup> It was then assigned to the House Committee on Energy, Utilities & Telecommunications, which favorably reported it by substitute.<sup>18</sup> Other minor changes

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9. *Id.*

10. O.C.G.A. § 36-66B-4(c) (2010).

11. HB 176, as introduced, 2013 Ga. Gen. Assem.

12. *See* Telephone Interview with Marcia Rubensohn, Legislative Affairs Counsel at Georgia Municipal Association (Mar. 26, 2014) [hereinafter Rubensohn Interview].

13. *Id.*

14. *See* House Bill 176 Limitation on Municipal Zoning Authority for Cell Towers, Georgia Municipal Association, [hereinafter Talking Points] [https://www.gmanet.com/Assets/pdf/2013legsession/hb176\\_talkingpoints.pdf](https://www.gmanet.com/Assets/pdf/2013legsession/hb176_talkingpoints.pdf); Memorandum from the Association of County Commissioners of Georgia, Cell Tower Preemption Legislation (HB 176) May Come Before House on Crossover Day Thursday (March 6, 2013) (on file with Georgia State University Law Review).

15. HB 176, as introduced, 2013 Ga. Gen. Assem.

16. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

17. *Id.*

18. *Id.*

were made such as adding definitions for “state” and other words.<sup>19</sup> Other changes were stylistic.

The Committee substitute differed only slightly from the bill as introduced. However, some important changes were made. The substitute included limiting parts of the statute’s applicability to only an applicant’s first ten applications, seemingly a concession to industry to reduce administrative burden.<sup>20</sup>

On February 28, 2013, the bill was withdrawn from the general calendar and recommitted to the Energy, Utilities & Telecommunications Committee.<sup>21</sup> The Committee again favorably reported by substitute on March 1, 2013.<sup>22</sup> This new substitute excised some of the bill’s provisions, including when the application was to be considered complete to resolve ambiguities.<sup>23</sup> It also deleted some of its previous language and definitions.<sup>24</sup> The Committee made one substantive change to further streamline and simplify the application process: it excised provisions for charging wireless service and infrastructure providers’ rental, license, and other fees to locate a wireless facility or support structure on government property when those fees would exceed the current market rates.<sup>25</sup>

Again, the House withdrew the bill on March 28, 2013, and had it recommitted.<sup>26</sup> On January 23, 2014, the House Committee favorably reported by substitute for the third time.<sup>27</sup> The changes included adding definitions and making largely stylistic changes.<sup>28</sup>

The House postponed the bill on January 29, 2014 until January 30, 2014.<sup>29</sup> At that time, however, the House again postponed until

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19. “State” is defined as the “State of Georgia and any agency, department, or authority thereof;” the word “utility” is defined as “any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.” HB 176 (LC 36 2280S), 2013 Ga. Gen. Assem.

20. HB 176 (LC 36 2280S), 2013 Ga. Gen. Assem.

21. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

22. *Id.*

23. HB 176 (LC 36 2330S), 2013 Ga. Gen. Assem.

24. For example, the substitute deleted the previous addition of the definition for the word ‘State.’ *Id.*

25. *Id.*

26. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

27. *Id.*

28. HB 176 (LC 36 2428S), 2014 Ga. Gen. Assem.

29. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

January 31, 2014.<sup>30</sup> The House read the bill for the third time on January 31, 2014, on which date the House passed HB 176 by substitute by a vote of 154 to 4.<sup>31</sup>

*Consideration and Passage by the Senate*

Senator Butch Miller (R-49th) sponsored HB 176 in the Senate.<sup>32</sup> The Senate read and referred HB 176 on February 3, 2014.<sup>33</sup> The bill was then sent to the Senate Committee on Regulated Industries and Utilities, which favorably reported on February 20, 2014.<sup>34</sup> The Senate read HB 176 for the second time on February 21, 2014.<sup>35</sup> On March 4, 2014 the Senate read the bill for the third time and then passed it by a vote of 48 to 1.<sup>36</sup>

HB 176 was sent to Governor Nathan Deal on March 24, 2014.<sup>37</sup> It was signed on April 21, 2014 and became Act 569.<sup>38</sup> Act 569 became effective on July 1, 2014.<sup>39</sup> The long process from introduction to passage highlights the conflicting interests of industry and municipal government with respect to siting. The Act as passed reflects the hard work and compromise necessary to produce legislation suitable to both sides.<sup>40</sup>

*The Act*

The Act amends Title 36 of the Official Code of Georgia Annotated, relating to local government, counties, and municipal corporations, “to advance[] broadband collocation.”<sup>41</sup> In addition, the Act adds Sections 5, 6, and 7. Section One of the Act provides for the

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30. *Id.*

31. Georgia General Assembly, HB 176, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/176>.

32. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

33. *Id.*

34. *Id.*

35. *Id.*

36. Georgia General Assembly, HB 176, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20132014/HB/176>.

37. State of Georgia Final Composite Status Sheet, HB 176, May 1, 2014.

38. *Id.*

39. *Id.*

40. See Rubensohn Interview, *supra* note 12.

41. HB 176 (LC 36 2428S), 2014 Ga. Gen. Assem.

renaming of the chapter, which is now titled “Mobile Broadband Infrastructure Leads to Development (BILD) Act.”<sup>42</sup> This change not only allows for a better ‘sale’ of the act—specifically, that it leads to development—but it also allows for a better acronym from ABC to BILD.<sup>43</sup>

The Act also revises Code section 36-66B-2, relating to both the necessity and policy behind its creation. The Act also seeks to make the development of much needed wireless infrastructure for the benefit of health and safety first responders.<sup>44</sup> In addition, as with many parts of the Act, the chapter modifies language from past versions of the Code.<sup>45</sup> Here, the Act amends the goal to be “the construction [and] collocation” of wireless communication facilities, instead of just the “modification of such facilities.”<sup>46</sup>

Furthermore, the Act revises Code section 36-66B-3, relating to definitions specific to that chapter.<sup>47</sup> The Act adds three new definitions.<sup>48</sup> The definition for “application” is revised by moving part of that definition—relating to when an application is complete—to a new definition for the term “complete application.”<sup>49</sup> The two other new definitions relate to the terms “registry” and the definition of “utility.”<sup>50</sup> All other revisions are either stylistic or reordering changes.

Section One provides primarily stylistic revisions to Code section 36-66B-4, mainly through the addition of the word “modification” in order to couple it with the word “collocation.”<sup>51</sup> There is one exception: an addition regarding the duties of the local governing

42. O.C.G.A. § 36-66B-1 (Supp. 2014). The chapter’s former title was “Advanced Broadband Collocation Act.” *Id.*

43. *Id.* BILD sounds like “build,” which is another helpful selling point for the bill.

44. O.C.G.A. § 36-66B-2 (Supp. 2014) (“Allow the deployment of critical wireless infrastructure to ensure that first responders can provide for the health and safety of all residents of Georgia.”).

45. *Id.* For example, the Act deleted “and” from the end of paragraph (a)(2), and inserted the words “construction, collocation,” in the first sentence of subsection (b). *Id.*

46. *Id.*

47. O.C.G.A. § 36-66B-3 (Supp. 2014).

48. *Id.*

49. O.C.G.A. § 36-66B-3(3) (Supp. 2014); O.C.G.A. § 36-66B-3(5) (Supp. 2014).

50. “‘Registry’ means any official list, record, or register maintained by a local governing authority of wireless facilities, equipment compounds, or wireless support structures,” and “‘Utility’ means any person, corporation, municipality, county, or other entity, or department thereof or entity related or subordinate thereto, providing retail or wholesale electric, data, cable, or telecommunications services.” O.C.G.A. § 36-66B-3(9) (Supp. 2014); O.C.G.A. § 36-66B-3(10) (Supp. 2014).

51. O.C.G.A. § 36-66B-4(b) (Supp. 2014).

authority in informing parties whether or not an application is complete.<sup>52</sup> The Act adds a provision that any information requested in order to complete an application must be limited to those “documents, information, and fees” which are specifically listed in the same local governing authority’s policies.<sup>53</sup>

Additionally, Section One appends new subparagraphs to the statute itself.<sup>54</sup> The addition of Code section 36-66B-5 provides for deadlines by which a local governing authority must make its decision regarding a new wireless support structure,<sup>55</sup> as well as a requirement that it inform the applicant via writing of its final decision.<sup>56</sup> In addition, the Act applies the same thirty day requirements for request of further information to that of applications for new wireless support structures.

A further addition to the Code by Section One is the addition of Code section 36-66B-6. This addition places limits on local governing authorities. Local governing authorities may not condition approval of new wireless facilities in contradiction to Code section 36-66B-4.<sup>57</sup> In addition, a local governing authority may not require the removal of an existing wireless support structure, “unless such existing wireless support structure or wireless facility is abandoned and owned by the applicant.”<sup>58</sup> Further, a local governing authority may not require an applicant to place antennas in locations alternative to that proposed by the applicant.<sup>59</sup>

Finally, Section One creates Code section 36-66B-7, relating to other limitations on a local governing authority regarding charges, as well as regarding review and inspection fees, reimbursement.<sup>60</sup>

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52. “Within 30 calendar days of the date an application for modification or collocation is filed with the local governing authority, the local governing authority shall determine if it is a complete application and, if it determines the application is not a complete application, notify the applicant in writing of any information required to complete such application.” O.C.G.A. § 36-66B-4(e) (Supp. 2014).

53. O.C.G.A. § 36-66B-3(5) (Supp. 2014).

54. O.C.G.A. § 36-66B-5 (Supp. 2014).

55. O.C.G.A. § 36-66B-5(a) (Supp. 2014).

56. O.C.G.A. § 36-66B-5(b) (Supp. 2014).

57. O.C.G.A. § 36-66B-6 (Supp. 2014).

58. O.C.G.A. § 36-66B-6(2) (Supp. 2014).

59. O.C.G.A. § 36-66B-6(3) (Supp. 2014).

60. O.C.G.A. § 36-66B-7 (Supp. 2014).

*Analysis**Streamlining the Approval Process*

The Act reflects a compromise between local governments and the telecommunications industry. It codifies timelines for approving new cell tower siting and allows local governments to retain substantive zoning authority.<sup>61</sup> Industry demands—driven by growing consumer usage of smartphones and tablets, along with bandwidth intensive applications like photo and video sharing—created a need for faster cell tower siting approvals.<sup>62</sup> According to Representative Parsons, Georgia is one of the most active states in the country for cellular use, yet lags behind others in timelines for approving infrastructure.<sup>63</sup> Representative Parsons also cites public safety concerns, like the ability to make emergency calls and for children to be able to call home to their parents, as reasons to promote cellular development.<sup>64</sup> The Act's supporters hope that the compromises reflected in the Act's final version will speed approvals for additions and modifications to existing towers, as well as for citing new towers to supply this demand.<sup>65</sup>

By implementing a “shot clock,” municipalities now have a timeframe in which they must decide whether to approve a new tower or an existing tower's modification.<sup>66</sup> Further, the Act brings certainty to wireless companies wishing to site a new tower, as previous approval timelines were uncertain and there were concerns that cities would hold up the process to raise money.<sup>67</sup> The Act's

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61. See Rubensohn Interview, *supra* note 12.

62. See Kristi E. Swartz, *Cell Tower Bill Moves Forward*, ATLANTA J.-CONST. (Feb. 20, 2013), <http://www.ajc.com/news/news/state-regional-govt-politics/cell-tower-bill-moves-forward/nWTkQ/>. The problem is not readily apparent to many cell users who see “four bars” of reception and assume that coverage is adequate when in fact true system capacity is independent of signal strength and invisible to most users. See *Ga. Representative Won't Give Up as Cell Tower Bill Stalls in Committee*, ABOVE GROUND LEVEL MEDIA GROUP, <http://www.aglmediagroup.com/ga-senator-wont-give-up-as-cell-tower-bill-stalls-in-committee/> (last visited Sept. 1, 2014).

63. See Parsons Interview, *supra* note 7.

64. *Id.*

65. *Id.*

66. *Id.*

67. Brian Heaton, *Georgia Cracks Down on Cell Tower Siting Delays*, GOVERNMENT TECHNOLOGY (Mar. 11, 2014), <http://govtech.com/budget-finance/Georgia-Cracks-Down-on-Cell-Tower-Siting-Delays.html>.

proponents believed it would encourage private investment in Georgia, improve service, and improve performance of cellular networks.<sup>68</sup> According to Virginia Galloway, “the hundreds of millions of dollars at stake here fuels more jobs, greater economic activity which means more revenue for cities and the state.”<sup>69</sup>

### *Preserving Local Control*

Early versions of the Act met fierce opposition from GMA, which was concerned that the Act “would detrimentally affect neighborhoods and Georgia public spaces by eroding the ability of local officials to maintain local decision making authority over local issues.”<sup>70</sup> Initial resistance concerned the inability of municipal governments to control size limits and expansions to existing infrastructure.<sup>71</sup> Further, local governments would be unable to impose height limitations on new towers.<sup>72</sup> GMA worried that HB 176 would prevent cities from imposing surety requirements, which would ensure abandoned and unused towers were removed.<sup>73</sup>

Local control over these decisions was important to GMA for a number of reasons. First, as a steward of public safety, municipalities have a responsibility to ensure that wireless facilities are constructed and maintained properly.<sup>74</sup> Second, local government is traditionally responsible for aesthetics, a concern that is elevated in downtown areas and historic districts and is more properly overseen by local authorities directly accountable to their constituents.<sup>75</sup> Third, cities

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68. Virginia Galloway, “YES” TO HB 176 TO BOOST WIRELESS INFRASTRUCTURE, AMERICANS FOR PROSPERITY GEORGIA (Feb. 8, 2014) <http://americansforprosperity.org/georgia/legislativealerts/yes-to-hb-176-to-boost-wireless-infrastructure-by-virginia-galloway/>.

69. *Id.*

70. See Talking Points, *supra* note 14.

71. See Rubensohn Interview, *supra* note 12. Ms. Rubensohn explained that under the legislation, as introduced, wireless companies could increase tower size without local approval, even when initial sizing decisions made by local authorities were conscious decisions based on a number of factors including historical districting, tree lines, and safety. *Id.*

72. Talking Points, *supra* note 14. A city could not, for example, ask an applicant to build two lower towers than one higher tower. *Id.*

73. *Id.* GMA notes that these abandoned sites become eyesores and safety hazards.

74. See Rubensohn Interview, *supra* note 12.

75. *Id.*

have a responsibility to protect property values, and areas around cell towers are seen as undesirable places to live.<sup>76</sup>

GMA was neutral on the Act as passed, and feels that it was narrow enough to address industry concern while still allowing municipalities to retain substantive zoning authority.<sup>77</sup> The Act allows a city to require surety for a new tower—ensuring that cities have money to deal with towers that may become abandoned—which was prohibited in the legislation as introduced.<sup>78</sup> Concessions were made by the telecommunications industry that prevent a significant increase in height or footprint of a tower without city approval.<sup>79</sup> Additionally, cities may continue to regulate wireless infrastructure attached to utility poles in the right of way.<sup>80</sup>

Local control of tower siting, however, is not absolute. Local governments may not, for example, condition approval of a new tower on a review that is more extensive than the current collocation approval process.<sup>81</sup> Further, approval of an application for a new tower may not be conditioned on the removal of existing infrastructure, unless it is abandoned and owned by the applicant.<sup>82</sup> Local government must also abide by the Federal Communications Commission's "shot clock" provisions, and make a formal decision to approve or deny an application for a new tower or modification within set timelines.<sup>83</sup> Cumulatively, the provisions bring predictability to the application process for telecommunications companies, while allowing local government to retain the zoning control necessary for the preservation of public welfare and safety.

*Brett Adams & Carson Olsheski*

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76. *Id.*

77. *See id.*

78. *See id.*

79. Talking Points, *supra* note 14.

80. *Id.*

81. *Id.* *See also* Parsons Interview, *supra* note 7.

82. O.C.G.A. § 36-66B-6 (2014).

83. *Id.*