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**SENATE BILL NO. 1282**  
**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
 (Proposed by Delegate Kilgore  
 on February 14, 2017)

(Patron Prior to Substitute—Senator McDougle)

A *BILL* to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, relating to wireless communications infrastructure.

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, as follows:**

*Article 7.2.*

*Zoning for Wireless Communications Infrastructure.*

**§ 15.2-2316.3. Definitions.**

*As used in this article, unless the context requires a different meaning:*

*"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.*

*"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.*

*"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.*

*"Department" means the Department of Transportation.*

*"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure.*

*"Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.*

*"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.*

*"Small cell 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 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 and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.*

*"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.*

*"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.*

*"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 services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.*

*"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.*

60 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);  
 61 (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial  
 62 mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices  
 63 through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or  
 64 unlicensed spectrum, provided using wireless facilities.

65 "Wireless services provider" means a provider of wireless services.

66 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed  
 67 or self-supporting, or suitable existing structure or alternative structure designed to support or capable  
 68 of supporting wireless facilities. "Wireless support structure" does not include any telephone or  
 69 electrical utility pole or any tower used for the distribution or transmission of electrical service.

70 **§ 15.2-2316.4. Zoning; small cell facilities.**

71 A. A locality shall not require that a special exception, special use permit, or variance be obtained  
 72 for any small cell facility installed by a wireless services provider or wireless infrastructure provider on  
 73 an existing structure, provided that the wireless services provider or wireless infrastructure provider (i)  
 74 has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies  
 75 the locality in which the permitting process occurs.

76 B. Localities may require administrative review for the issuance of any required zoning permits for  
 77 the installation of a small cell facility by a wireless services provider or wireless infrastructure provider  
 78 on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a  
 79 single application. In addition:

80 1. A locality shall approve or disapprove the application within 60 days of receipt of the complete  
 81 application. Within 10 days after receipt of an application and a valid electronic mail address for the  
 82 applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete  
 83 and specify any missing information; otherwise, the application shall be deemed complete. Any  
 84 disapproval of the application shall be in writing and accompanied by an explanation for the  
 85 disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an  
 86 additional 30 days. The application shall be deemed approved if the locality fails to act within the  
 87 initial 60 days or an extended 30-day period.

88 2. A locality may prescribe and charge a reasonable fee for processing the application not to  
 89 exceed:

90 a. \$100 each for up to five small cell facilities on a permit application; and

91 b. \$50 for each additional small cell facility on a permit application.

92 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

93 4. The locality may disapprove a proposed location or installation of a small cell facility only for the  
 94 following reasons:

95 a. Material potential interference with other pre-existing communications facilities or with future  
 96 communications facilities that have already been designed and planned for a specific location or that  
 97 have been reserved for future public safety communications facilities;

98 b. The public safety or other critical public service needs;

99 c. Only in the case of an installation on or in publicly owned or publicly controlled property,  
 100 excluding privately owned structures where the applicant has an agreement for attachment to the  
 101 structure, aesthetic impact or the absence of all required approvals from all departments, authorities,  
 102 and agencies with jurisdiction over such property; and

103 d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306 or pursuant to local  
 104 charter on a historic property that is not eligible for the review process established under 54 U.S.C.  
 105 § 306108.

106 5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting,  
 107 any conditions that otherwise address potential visual or aesthetic effects resulting from the placement  
 108 of small cell facilities.

109 6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the  
 110 removal of abandoned wireless support structures or wireless facilities.

111 C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance,  
 112 or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between  
 113 existing utility poles in compliance with national safety codes shall be exempt from locality-imposed  
 114 permitting requirements and fees.

115 **§ 15.2-2316.5. Moratorium prohibited.**

116 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless  
 117 services providers or wireless infrastructure providers.

#### 118 CHAPTER 15.1.

#### 119 WIRELESS COMMUNICATIONS INFRASTRUCTURE.

120 **§ 56-484.26. Definitions.**

121 As used in this chapter, unless the context requires a different meaning:

122 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals  
123 used in the provision of any type of wireless communications services.

124 "Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,  
125 under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support  
126 structure. "Co-location" has a corresponding meaning.

127 "Department" means the Department of Transportation.

128 "Districtwide permit" means a permit granted by the Department to a wireless services provider or  
129 wireless infrastructure provider that allows the permittee to use the rights-of-way under the  
130 Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the  
131 Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform  
132 multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited  
133 access right-of-way without obtaining a single use permit for each occurrence. The central office permit  
134 manager shall be responsible for the issuance of all districtwide permits. The Department may authorize  
135 districtwide permits covering multiple districts.

136 "Existing structure" means any structure that is installed or approved for installation at the time a  
137 wireless services provider or wireless infrastructure provider provides notice to a locality or the  
138 Department of an agreement with the owner of the structure to co-locate equipment on that structure.

139 "Existing structure" includes any structure that is currently supporting, designed to support, or capable  
140 of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,  
141 flag poles, signs, and water towers.

142 "Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in  
143 length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer  
144 than 11 inches.

145 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each  
146 antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an  
147 antenna that has exposed elements, the antenna and all of its exposed elements could fit within an  
148 imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with  
149 the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is  
150 established by the Federal Communications Commission. The following types of associated equipment  
151 are not included in the calculation of equipment volume: electric meter, concealment,  
152 telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding  
153 equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power  
154 and other services.

155 "Utility pole" means a structure owned, operated, or owned and operated by a public utility, local  
156 government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or  
157 wires for communications, cable television, or electricity.

158 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support  
159 structure, originally constructed for use as a reservoir or facility to store or deliver water.

160 "Wireless facility" means equipment at a fixed location that enables wireless services between user  
161 equipment and a communications network, including (i) equipment associated with wireless services,  
162 such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed  
163 wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or  
164 fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of  
165 technological configuration.

166 "Wireless infrastructure provider" means any person, including a person authorized to provide  
167 telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,  
168 or wireless support structures, but that is not a wireless services provider.

169 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);  
170 (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial  
171 mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices  
172 through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or  
173 unlicensed spectrum, provided using wireless facilities.

174 "Wireless services provider" means a provider of wireless services.

175 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed  
176 or self-supporting, or suitable existing structure or alternative structure designed to support or capable  
177 of supporting wireless facilities. "Wireless support structure" does not include any telephone or  
178 electrical utility pole or any tower used for the distribution or transmission of electrical service.

179 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**  
180 **infrastructure providers; generally.**

181 A. No locality or the Department shall impose on wireless services providers or wireless  
182 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,

183 including the permitting process, the zoning process, notice, time and location of excavations and repair  
184 work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or  
185 discriminatory.

186 B. No locality or the Department shall require a wireless services provider or wireless infrastructure  
187 provider to provide in-kind services or physical assets as a condition of consent to use public  
188 rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions  
189 that provide utility services, or the Department to enter into voluntary pole attachment, tower  
190 occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or  
191 wireless infrastructure providers.

192 C. No locality or the Department shall adopt a moratorium on considering requests for access to the  
193 public rights-of-way from wireless services providers or wireless infrastructure providers.

194 **§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the**  
195 **installation and maintenance of small cell facilities on existing structures.**

196 A. Upon application by a wireless services provider or wireless infrastructure provider, the  
197 Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict  
198 with this chapter, granting access to public rights-of-way that it operates and maintains to install and  
199 maintain small cell facilities on existing structures in the rights-of-way. The application shall include a  
200 copy of the agreement under which the applicant has permission from the owner of the structure to the  
201 co-location of equipment on that structure. If the application is received on or after September 1, 2017,  
202 (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and  
203 (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the  
204 complete application. Within 10 days after receipt of an application and a valid electronic mail address  
205 for the applicant, the Department shall notify the applicant by electronic mail whether the application is  
206 incomplete and specify any missing information; otherwise, the application shall be deemed complete. A  
207 districtwide permit issued for the original installation shall allow the permittee to repair, replace, or  
208 perform routine maintenance operations to small cell facilities once installed.

209 B. The Department may require a separate single use permit to allow a wireless services provider or  
210 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when  
211 such activity requires (i) working within the highway travel lane or requiring closure of a highway  
212 travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited  
213 access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the  
214 protection of public infrastructure or the operation thereof. Upon application by a wireless services  
215 provider or wireless infrastructure provider, the Department may issue a single use permit granting  
216 access to install and maintain small cell facilities in such circumstances. If the application is received  
217 on or after September 1, 2017, (a) the Department shall approve or disapprove the application within  
218 60 days after receipt of the application, which 60-day period may be extended by the Department in  
219 writing for a period not to exceed an additional 30 days and (b) the application shall be deemed  
220 approved if the Department fails to approve or disapprove the application within the initial 60 days and  
221 any extension thereof. Any disapproval of an application for a single use permit shall be in writing and  
222 accompanied by an explanation of the reasons for the disapproval.

223 C. The Department shall not impose any fee for the use of the right-of-way on a wireless services  
224 provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing  
225 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not  
226 to exceed \$250 for processing an application for a districtwide or single use permit.

227 D. The Department shall not impose any fee or require a permit for the installation, placement,  
228 maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are  
229 strung between existing utility poles in compliance with national safety codes. However, the Department  
230 may require a single use permit if such activities (i) involve working within the highway travel lane or  
231 require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line;  
232 (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure  
233 the safety of the traveling public or the protection of public infrastructure or the operation thereof, and  
234 either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with  
235 terms of the existing permit for that facility or the structure upon which it is attached.

236 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**  
237 **on existing structures.**

238 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality  
239 may issue a permit granting access to the public rights-of-way it operates and maintains to install and  
240 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way  
241 in the locality for the purpose of installing small cell facilities on existing structures, provided that the  
242 wireless services provider or wireless infrastructure provider (i) has permission from the owner of the  
243 structure to co-locate equipment on that structure and (ii) provides notice of the agreement and  
244 co-location to the locality. The locality shall approve or disapprove any such requested permit within 60

245 days of receipt of the complete application. Within 10 days after receipt of an application and a valid  
 246 electronic mail address for the applicant, the locality shall notify the applicant by electronic mail  
 247 whether the application is incomplete and specify any missing information; otherwise, the application  
 248 shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for  
 249 the disapproval. The 60-day period may be extended by the locality in writing for a period not to  
 250 exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act  
 251 within the initial 60 days or an extended 30-day period. No such permit shall be required for providers  
 252 of telecommunications services and nonpublic providers of cable television, electric, natural gas, water,  
 253 and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public  
 254 rights-of-way under the locality's jurisdiction.

255 *B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,  
 256 site plan, and comprehensive plan fees of general application, on a wireless services provider or  
 257 wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the  
 258 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for  
 259 processing a permit application under subsection A.*

260 *C. Localities shall not impose any fee or require any application or permit for the installation,  
 261 placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or  
 262 lines that are strung between existing utility poles in compliance with national safety codes. However,  
 263 the locality may require a single use permit if such activities (i) involve working within the highway  
 264 travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or  
 265 ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific  
 266 precautions to ensure the safety of the traveling public or the protection of public infrastructure or the  
 267 operation thereof, and either were not authorized in or will be conducted in a time, place, or manner  
 268 that is inconsistent with terms of the existing permit for that facility or the structure upon which it is  
 269 attached.*

270 **§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support**  
 271 **structures; relocation of wireless support structures.**

272 *Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia,  
 273 public right-of-way permits or agreements for the construction of wireless support structures issued on  
 274 or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for  
 275 renewal for terms of five years, subject to terms providing for earlier termination for cause or by  
 276 mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring  
 277 permittees to relocate wireless support structures when relocation is necessary due to a transportation  
 278 project or material change to the right-of-way, so long as other users of the right-of-way are required  
 279 to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth  
 280 in any written request by the Department or a locality for such relocation, as long as the Department or  
 281 a locality provides the permittee with a minimum of 180 days' advance written notice to comply with  
 282 such relocation, unless circumstances beyond the control of the Department or the locality require a  
 283 shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation  
 284 that is caused by the transportation project and shall not bear any cost related to private benefit or  
 285 where the permittee was on private right-of-way. If the locality or the Department bears any of the cost  
 286 of the relocation, the permittee shall not be obligated to commence the relocation until it receives the  
 287 funds for such relocation. The permittee shall have no liability for any delays caused by a failure to  
 288 receive funds for the cost of such relocation, and the Department or a locality shall have no obligation  
 289 to collect such funds. If relocation is deemed necessary, the Department or locality shall work  
 290 cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the  
 291 relocation. There may be emergencies when relocation is required to commence in an expedited manner,  
 292 and in such situations the permittee and the locality or Department shall work diligently to accomplish  
 293 such emergency relocation.*

294 **§ 56-484.31. Attachment of small cell facilities on government-owned structures.**

295 *A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless  
 296 infrastructure provider to attach small cell facilities to government-owned structures, both the  
 297 government entity and the wireless services or wireless infrastructure provider shall negotiate in good  
 298 faith to arrive at a mutually agreeable contract terms and conditions.*

299 *B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based,  
 300 nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal  
 301 laws. However, rates for attachments to government-owned buildings may be based on fair market  
 302 value.*

303 *C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for  
 304 video, communications, or electric service, the parties shall comply with the process for make-ready  
 305 work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government*

306 *entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole*  
307 *to support the requested co-location shall include pole replacement if necessary.*

308 *D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used*  
309 *for video, communications, or electric service, the government entity owning or controlling the utility*  
310 *pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to*  
311 *support the requested co-location, including pole replacement, if necessary, within 60 days after receipt*  
312 *of a complete application. Make-ready work, including any pole replacement, shall be completed within*  
313 *60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless*  
314 *infrastructure provider.*

315 *E. The government entity owning or controlling the utility pole shall not require more make-ready*  
316 *work than required to meet applicable codes or industry standards. Charges for make-ready work,*  
317 *including any pole replacement, shall not exceed actual costs or the amount charged to other wireless*  
318 *services providers, providers of telecommunications services, and nonpublic providers of cable television*  
319 *and electric services for similar work and shall not include consultants' fees or expenses.*

320 *F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole*  
321 *shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or*  
322 *wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the*  
323 *appropriateness of the rate, the government entity owning or controlling the utility pole shall have the*  
324 *burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs*  
325 *incurred for use of space on the utility pole for such period.*

326 *G. This section shall not apply to utility poles, structures, or property of an electric utility owned or*  
327 *operated by a municipality or other political subdivision.*