

2018 SESSION

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HB1597

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HOUSE BILL NO. 1597

Offered January 19, 2018

A *BILL* to amend the Code of Virginia by adding sections numbered 15.2-2316.5, 15.2-2316.6, 15.2-2316.7, and 15.2-2316.8, relating to zoning for wireless communications infrastructure.

Patron—Gooditis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 15.2-2316.5, 15.2-2316.6, 15.2-2316.7, 15.2-2316.8 as follows:

§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure

A. A locality shall not require that a special exception, special use permit, or variance be obtained for the installation of any new wireless support structure inside the right-of-way that is 50 feet or less above ground level, provided that the structure (i) is not more than ten feet above the tallest existing utility pole located within 500 linear feet in the same right-of-way, (ii) is not located within the boundaries of a local, state, or federal historic district, and (iii) is designed to support small cell equipment.

B. A locality may charge a reasonable fee for each application for any zoning approval required. The fee shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based agreement.

C. Nothing in this section shall be construed to prohibit a locality from limiting the number of new wireless support structures that can be installed in a specific location.

D. A locality shall approve or disapprove a complete zoning application for the construction of any new wireless support structure outside the right-of-way within 150 days of receipt of the application, unless a shorter timeframe is required by federal law. A locality shall approve or disapprove a complete zoning application for the co-location of any wireless facility that is not a small cell facility or eligible facilities request as defined by 47 U.S.C. §1455(a) on any existing tower, building or structure within 90 days of receipt of the application, unless a shorter timeframe is required by federal law. The time periods for approval of an application under this section may be extended by mutual agreement between the applicant and the locality.

E. An applicant adversely affected by the denial may file an appeal pursuant to § 15.2-2285(F) within 30 days following the denial.

F. Nothing herein shall preclude a wireless provider and locality from entering into a franchise agreement.

G. As used in this section, "right-of-way" means primary and secondary highways including improved roadways and adjoining unpaved areas therein, as these terms are defined in § 33.2-100.

§ 15.2-2316.6. Zoning approval process.

A. When considering a zoning permit application under § 15.2-2316.5, a locality shall receive and process applications subject to the following requirements:

1. A locality shall not deny an application for a new wireless support structure for the following reasons:

a. On the basis of the applicant's business decision with respect to its designed service, customer demand for service or quality of its service to or from a particular site; or

b. On the basis of the applicant's specific need for the wireless support structure, including the applicant's desire to provide additional wireless coverage or capacity; or

c. On the basis of the choice of technology to be used by the applicant.

d. This section shall not prohibit a locality from rejecting a zoning application in an area in which all cable and public utility facilities are placed or are planned to be placed underground by a date certain provided that (i) the undergrounding already existed or the plan to underground existed at least 6 months prior to the submission of the zoning application; (ii) the locality allows the collocation of small cell facilities on existing utility poles, government-owned structures with the government's consent, existing wireless support structures, or a building within that area, (iii) the locality allows the replacement of existing utility poles and wireless support structures with poles or support structures of the same size or smaller within that area, and (iv) such denial does not unreasonably discriminate between the applicant and other wireless service providers, providers of telecommunications services and nonpublic providers of cable television and electric services.

3. A locality may limit the number of new wireless support structures that can be installed in a

59 *specific location.*

60 *4. A locality may require an applicant to provide proprietary, confidential or other business*
61 *information for public safety purposes including propagation maps and telecommunications traffic*
62 *studies which shall be exempt from the Freedom of Information Act (VA Code Sec. 2.2-3705.2).*

63 *5. A locality may require an applicant to provide a copy of any approval granted by a federal*
64 *agency, including conditions imposed by that agency.*

65 *6. A locality may impose surety requirements, including bonds, escrow deposits, letters of credit, or*
66 *any other type of financial surety, to ensure that abandoned or unused facilities can be removed*
67 *provided that the locality imposes similar requirements on other permits for other types of similar*
68 *commercial development. Any such instrument cannot exceed a reasonable estimate of the direct cost of*
69 *the removal of the facility;*

70 *7. A locality may impose any reasonable requirements regarding the presentation or appearance of*
71 *facilities, including, but not limited to, requirements relating to (i) any kinds of materials used and those*
72 *relating to (ii) arranging, screening, or landscaping of facilities;*

73 *8. A locality may impose a setback or fall zone requirement for a wireless support structure that is*
74 *equivalent to a setback or fall zone area that is imposed on other types of similar structures of a similar*
75 *size, including utility poles;*

76 *9. A locality shall not require the removal of existing wireless support structures or wireless*
77 *facilities, wherever located, as a condition for approval of an application except in compliance with*
78 *local ordinances or rules requiring the removal of abandoned equipment, facilities or structures.*

79 *10. A locality shall not require a zoning application or use permit or special exception for routine*
80 *maintenance or the replacement of equipment with equipment that is substantially similar and is the*
81 *same size or smaller.*

82 *11. A locality shall not impose any requirements that an applicant purchase, subscribe to, use, or*
83 *employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in part,*
84 *or by any entity in which a locality has a competitive, economic, financial, governance, or other*
85 *interest;*

86 *12. A locality shall not condition or require the approval of an application based on the applicant's*
87 *agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by*
88 *any other entity, to be placed at or co-located with the applicant's wireless support structure;*

89 *13. A locality shall not limit the duration of the approval of an application, except that construction*
90 *of the approved structure or facilities shall commence within two years of final approval and be*
91 *diligently pursued to completion;*

92 *14. Nothing herein shall be construed to prohibit, limit, or otherwise supersede existing authority to*
93 *regulate wireless infrastructure through general land use and zoning authority.*

94 *B. Nothing in this section shall be construed to prohibit an applicant from voluntarily submitting,*
95 *and the locality from accepting, any conditions that otherwise address potential visual or aesthetic*
96 *effects resulting from the placement of wireless facilities.*

97 *C. As necessary, a locality may require an applicant to provide information to ensure that the*
98 *locality's decision on the application complies with federal or state law.*

99 ***§ 15.2-2316.7 Outside of Right-of-Way Considerations; Collocation***

100 *A. When considering a zoning permit application for the installation of a new wireless support*
101 *structure outside of the right-of-way, a locality is not prohibited from evaluating the availability of*
102 *nearby existing structures for collocation of such small cell facility in lieu of installation or construction*
103 *of a new support structure for such wireless facilities.*

104 ***§ 15.2-2316.8. Moratorium prohibited.***

105 *A locality shall not adopt a moratorium on considering zoning applications submitted by wireless*
106 *services providers or wireless infrastructure providers.*