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SENATE BILL NO. 405

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend and reenact § 15.2-2316.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-2316.4:1, 15.2-2316.4:2, and 15.2-2316.4:3, relating to zoning for wireless communications infrastructure.*

Patrons—McDougle, Dance, Ruff and Stanley; Delegates: Byron, Heretick and Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2316.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-2316.4:1, 15.2-2316.4:2, and 15.2-2316.4:3 as follows:

§ 15.2-2316.3. Definitions.

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

"Administrative review-eligible project" means a project that provides for:

1. The installation or construction of a new structure that is not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within a radius of 500 feet of the new structure; (ii) not located within the boundaries of a local, state, or federal historic district; and (iii) designed to support small cell facilities; or

2. The co-location on any existing structure of a wireless facility that is not a small cell facility.

"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.

"New structure" means a wireless support structure that has not been installed or constructed, or approved for installation or construction, at the time a wireless services provider or wireless infrastructure provider applies to a locality for any required zoning approval.

"Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the co-location on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of § 15.2-2316.4 apply.

"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

59 switches, cut-off switches, and vertical cable runs for the connection of power and other services.

60 *"Standard process project" means any project other than an administrative review-eligible project.*

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

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

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

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

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

79 *"Wireless services provider" means a provider of wireless services.*

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

84 ***§ 15.2-2316.4:1. Zoning; other wireless facilities and wireless support structures.***

85 *A. A locality shall not require that a special exception, special use permit, or variance be obtained*
 86 *for the installation or construction of an administrative review-eligible project, but may require*
 87 *administrative review for the issuance of any zoning permit, or an acknowledgement that zoning*
 88 *approval is not required, for such a project.*

89 *B. A locality may charge a reasonable fee for each application submitted under subsection A or for*
 90 *any zoning approval required for a standard process project. The fee shall not include direct payment*
 91 *or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.*
 92 *Upon request, a locality shall provide the applicant with an accounting of the actual costs incurred. A*
 93 *locality shall not charge market-based or value-based fees for the processing of an application. If the*
 94 *application is for:*

95 *1. An administrative review-eligible project, the fee shall not exceed \$500; and*

96 *2. A standard process project, the fee shall not exceed the actual direct costs to process the*
 97 *application, including permits and inspection.*

98 *C. The processing of any application submitted under subsection A or for any zoning approval*
 99 *required for a standard process project shall be subject to the following:*

100 *1. Within 10 business days after receiving an incomplete application, the locality shall notify the*
 101 *applicant that the application is incomplete. The notice shall specify any additional information required*
 102 *to complete the application. The notice shall be sent by electronic mail to the applicant's email address*
 103 *provided in the application. If the locality fails to provide such notice within such 10-day period, the*
 104 *application shall be deemed complete.*

105 *2. Except as provided in subdivision 3, a locality shall approve or disapprove a complete*
 106 *application:*

107 *a. For a new structure within the lesser of 150 days of receipt of the application or the period*
 108 *required by federal law for such approval or disapproval; or*

109 *b. For the co-location of any wireless facility that is not a small cell facility within the lesser of 90*
 110 *days of receipt of the application or the period required by federal law for such approval or*
 111 *disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C.*
 112 *§ 1455(a).*

113 *3. Any period specified in subdivision 2 for a locality to approve or disapprove an application may*
 114 *be extended by mutual agreement between the applicant and the locality.*

115 *D. A complete application for a project shall be deemed approved if the locality fails to approve or*
 116 *disapprove the application within the applicable period specified in subdivision C 2 or any agreed*
 117 *extension thereof pursuant to subdivision C 3.*

118 *E. If a locality disapproves an application submitted under subsection A or for any zoning approval*
 119 *required for a standard process project:*

120 *1. The locality shall provide the applicant with a written statement of the reasons for such*

121 disapproval; and

122 2. If the locality is aware of any modifications to the project as described in the application that if
123 made would permit the locality to approve the proposed project, the locality shall identify them in the
124 written statement provided under subdivision 1. The locality's subsequent disapproval of an application
125 for a project that incorporates the modifications identified in such a statement may be used by the
126 applicant as evidence that the locality's subsequent disapproval was arbitrary or capricious in any
127 appeal of the locality's action.

128 F. A locality's action on disapproval of an application submitted under subsection A or for any
129 zoning approval required for a standard process project shall:

130 1. Not unreasonably discriminate between the applicant and other wireless services providers,
131 providers of telecommunications services, and nonpublic providers of cable television and electric
132 services; and

133 2. Be supported by substantial record evidence contained in a written record publicly released within
134 30 days following the disapproval.

135 G. An applicant adversely affected by the disapproval of an application submitted under subsection A
136 or for any zoning approval required for a standard process project may file an appeal pursuant to
137 subsection F of § 15.2-2285, or to § 15.2-2314 if the requested zoning approval involves a variance,
138 within 30 days following delivery to the applicant of the written record described in subdivision F 2.

139 **§ 15.2-2316.4:2. Application reviews.**

140 A. In its receiving, consideration, and processing of a complete application submitted under
141 subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a
142 locality shall not:

143 1. Disapprove an application on the basis of:

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

146 b. The applicant's specific need for the project, including the applicant's desire to provide additional
147 wireless coverage or capacity; or

148 c. The wireless facility technology selected by the applicant for use at the project;

149 2. Require an applicant to provide proprietary, confidential, or other business information to justify
150 the need for the project, including propagation maps and telecommunications traffic studies, or
151 information reviewed by a federal agency as part of the approval process for the same structure and
152 wireless facility, provided that a locality may require an applicant to provide a copy of any approval
153 granted by a federal agency, including conditions imposed by that agency;

154 3. Require the removal of existing wireless support structures or wireless facilities, wherever located,
155 as a condition for approval of an application. A locality may adopt reasonable rules with respect to the
156 removal of abandoned wireless support structures or wireless facilities;

157 4. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other types
158 of financial surety, to ensure that abandoned or unused wireless facilities can be removed, unless the
159 locality imposes similar requirements on other permits for other types of similar commercial
160 development. Any such instrument shall not exceed a reasonable estimate of the direct cost of the
161 removal of the wireless facilities;

162 5. Discriminate or create a preference on the basis of the ownership, including ownership by the
163 locality, of any property, structure, base station, or wireless support structure, when promulgating rules
164 or procedures for siting wireless facilities or for evaluating applications;

165 6. Impose any unreasonable requirements or obligations regarding the presentation or appearance of
166 a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the
167 arranging, screening, or landscaping of wireless facilities or wireless structures;

168 7. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities,
169 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in
170 which a locality has a competitive, economic, financial, governance, or other interest;

171 8. Condition or require the approval of an application on the basis of the applicant's agreement to
172 allow any wireless facilities provided or operated, in whole or in part, by a locality or by any other
173 entity, to be placed at or co-located with the applicant's project;

174 9. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone
175 area that is imposed on other types of similar structures of a similar size, including utility poles;

176 10. Limit the duration of the approval of an application, except a locality may require that
177 construction of the approved project shall commence within two years of final approval and be
178 diligently pursued to completion; or

179 11. Require an applicant to perform services unrelated to the project described in the application,
180 including restoration work on any surface not disturbed by the applicant's project.

181 B. Nothing in this article shall prohibit a locality from disapproving an application submitted under

182 subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project:

183 1. On the basis of the fact that the proposed height of any wireless support structure, wireless
184 facility, or wireless support structure with attached wireless facilities exceeds 50 feet above ground
185 level, provided that the locality does not unreasonably discriminate between the applicant and other
186 wireless services providers, providers of telecommunications services, and nonpublic providers of cable
187 television and electric services; or

188 2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all
189 cable and public utility facilities are required to be placed underground by a date certain, if:

190 a. The undergrounding requirement existed at least three months prior to the submission of the
191 application;

192 b. The locality allows the co-location of wireless facilities on existing utility poles, government-owned
193 structures with the government's consent, existing wireless support structures, or a building within that
194 area;

195 c. The locality allows the replacement of existing utility poles and wireless support structures with
196 poles or support structures of the same size or smaller within that area; and

197 d. The disapproval of the application does not unreasonably discriminate between the applicant and
198 other wireless services providers, providers of telecommunications services, and nonpublic providers of
199 cable television and electric services.

200 C. Nothing in this article shall prohibit an applicant from voluntarily submitting, and the locality
201 from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from
202 the placement of a new structure or facility.

203 **§ 15.2-2316.4:3. Additional provisions.**

204 A. A locality shall not require zoning approval for (i) routine maintenance or (ii) the replacement of
205 wireless facilities or wireless support structures with wireless facilities or wireless support structures
206 that are substantially similar or the same size or smaller. However, a locality may require a permit to
207 work within the right-of-way for the activities described in clause (i) or (ii), if applicable.

208 B. Nothing in this article shall prohibit a locality from limiting the number of new structures or the
209 number of wireless facilities that can be installed in a specific location.