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SENATE BILL NO. 405

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 27, 2018)

(Patron Prior to Substitute—Senator McDougle)

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.

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 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) 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

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

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

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

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

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

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

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

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

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

85 ***§ 15.2-2316.4:1. Zoning; other wireless facilities and wireless support structures.***

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

90 *B. A locality may charge a reasonable fee for each application submitted under subsection A or for*
91 *any zoning approval required for a standard process project. The fee shall not include direct payment*
92 *or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement.*
93 *Upon request, a locality shall provide the applicant with the cost basis for the fee. A locality shall not*
94 *charge market-based or value-based fees for the processing of an application. If the 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 completed application or the*
108 *period 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 completed 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 wireless infrastructure providers, providers of telecommunications services, and nonpublic providers of
132 cable television and electric 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 or notice to the applicant of the record described in
139 subdivision F 2.

140 **§ 15.2-2316.4:2. Application reviews.**

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

144 1. Disapprove an application on the basis of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190 2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all
191 cable and public utility facilities are required to be placed underground by a date certain or
192 encouraged to be undergrounded as part of a transportation improvement project or rezoning
193 proceeding as set forth in objectives contained in a comprehensive plan, if:

194 a. The undergrounding requirement or comprehensive plan objective existed at least three months
195 prior to the submission of the application;

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

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

201 d. The disapproval of the application does not unreasonably discriminate between the applicant and
202 other wireless services providers, wireless infrastructure providers, providers of telecommunications
203 services, and nonpublic providers of cable television and electric services.

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

207 D. Nothing in this article shall prohibit a locality from disapproving an application submitted under
208 a standard process project on the basis of the availability of existing wireless support structures within
209 a reasonable distance that could be used for co-location at reasonable terms and conditions without
210 imposing technical limitations on the applicant.

211 **§ 15.2-2316.4:3. Additional provisions.**

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

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

219 **2. That any publicly-owned or privately-owned wireless service provider operating within the**
220 **Commonwealth or serving residents of the Commonwealth shall, by January 1, 2019, and annually**
221 **thereafter until January 1, 2025, provide to the Department of Housing and Community**
222 **Development a report detailing by county, city, and town enhanced service capacity in previously**
223 **served areas and expansion of service in previously unserved geographic areas that are provided**
224 **access to wireless services. Notwithstanding any other provision of law, the Department shall**
225 **maintain the confidentiality of company-specific data but may publicly release aggregate data.**