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SENATE BILL NO. 1282

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 9, 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 appurtenances where the applicant has an agreement for attachment to the appurtenance,
101 aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies
102 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 does not qualify for the review process established under 16 U.S.C.
105 § 470(w)(5).

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 single use permit for the installation,
228 placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or
229 lines that are strung between existing utility poles in compliance with national safety codes.

230 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
231 **on existing structures.**

232 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality
233 may issue a permit granting access to the public rights-of-way it operates and maintains to install and
234 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way
235 in the locality for the purpose of installing small cell facilities on existing structures, provided that the
236 wireless services provider or wireless infrastructure provider (i) has permission from the owner of the
237 structure to co-locate equipment on that structure and (ii) provides notice of the agreement and
238 co-location to the locality. The locality shall approve or disapprove any such requested permit within 60
239 days of receipt of the complete application. Within 10 days after receipt of an application and a valid
240 electronic mail address for the applicant, the locality shall notify the applicant by electronic mail
241 whether the application is incomplete and specify any missing information; otherwise, the application
242 shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for
243 the disapproval. The 60-day period may be extended by the locality in writing for a period not to
244 exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act

within the initial 60 days or an extended 30-day period. No such permit shall be required for providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water, and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public rights-of-way under the locality's jurisdiction.

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

C. Localities shall not impose any fee or require any application or permit for the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes.

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

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

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

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

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

C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.

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

E. The government entity owning or controlling the utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television

306 *and electric services for similar work and shall not include consultants' fees or expenses.*

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

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