

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 3

SENATORS BOSO, CLEMENTS, SWOPE, TAKUBO, CLINE,

AND TRUMP, *original sponsors*

[Passed March 5, 2019; in effect from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, and §11-6L-5; to amend said code
3 by adding thereto three new sections, designated §31G-4-4, §31G-4-5, and §31G-4-6;
4 and to amend said code by adding thereto a new chapter, designated §31H-1-1, §31H-1-
5 2, §31H-2-1, §31H-2-2, §31H-2-3, and §31H-2-4, all relating generally to wireless
6 telecommunication technology facilities; providing a special method for valuation of certain
7 wireless technology property for property taxes; defining terms; providing mandated
8 salvage valuation of certain wireless businesses' property; specifying method for valuation
9 of certain property; requiring initial determination and specifying procedure for protest and
10 appeal of determination; establishing and delineating Public Service Commission
11 jurisdiction over make-ready pole access within the state; determining the feasibility of
12 electric utilities constructing and operating middle-mile broadband Internet projects to
13 serve certain unserved and underserved areas; defining certain terms; delineating the
14 factors that must be contained in certain feasibility studies; requiring the Broadband
15 Enhancement Council and the Public Service Commission to assist electric utilities in the
16 determination of the feasibility of certain proposed middle-mile broadband development
17 projects; requiring that the Broadband Enhancement Council render a judgment as to the
18 feasibility of middle-mile broadband Internet projects within a certain period of time;
19 requiring certain reports be submitted to certain officials and committees; providing for
20 severability; establishing the West Virginia Small Wireless Facilities Deployment Act;
21 making legislative findings; defining terms; providing for access to public rights-of-way for
22 the collocation of small wireless facilities; providing for certain permit requirements;
23 authorizing and limiting access to collocation sites, structures, and equipment; requiring
24 permits to be issued on a nondiscriminatory basis; providing for the collection of fees and
25 setting the amount of fees; and providing for certain zoning, indemnification, insurance,
26 and bonding requirements.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION

ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF CERTAIN WIRELESS TECHNOLOGY PROPERTY.

§11-6L-1. Short title.

1 This article shall be known and cited as the Wireless Technology Business Property
2 Valuation Act.

§11-6L-2. Definitions.

1 For the purposes of this article:

2 (1) "Tower" means a structure which hosts an antenna or other equipment used for the
3 purposes of transmitting cellular or wireless signals for communications purposes, including
4 telephonically, or for computing purposes, including any antenna and all associated equipment,
5 and which is constructed or erected between July 1, 2019, and July 1, 2024; and

6 (2) "Salvage value" means five percent of original cost.

§11-6L-3. Limited-time valuation of certain specialized wireless technology property.

1 Notwithstanding any other provision of this code to the contrary, for five years immediately
2 following the date of its erection, the value of a tower is its salvage value, and the correlated value
3 determined under a unit valuation approach shall be reduced by the difference between the
4 original cost and the salvage value of a tower.

§11-6L-4. Initial determination; protest and appeal.

1 The valuation and assessment of any tower subject to this article, including the process
2 of protest and appeal from any such valuation, shall be conducted the manner set forth and more
3 fully described in §11-6-1 *et seq.* of this code and any applicable legislative rules.

§11-6L-5. Effective date.

1 This article is effective on and after July 1, 2019.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

1 (a) The Public Service Commission shall possess and exercise regulatory jurisdiction over
2 the provisions of this article. The commission shall administer and adjudicate disputes relating to
3 the issues and procedures provided for under this article.

4 (b) The commission shall adopt the rates, terms, and conditions of access to and use of
5 poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401
6 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those
7 regulations and any subsequent modifications or additions to the provisions of the United States
8 Code or Code of Federal Regulations provisions referenced herein.

9 (c) The commission shall certify to the Federal Communications Commission that this
10 state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the
11 regulation of pole attachments. The certification shall include notice that the State of West Virginia
12 hereby:

13 (1) Regulates the rates, terms, and conditions related to pole attachments; and

14 (2) In so regulating such rates, terms, and conditions, the state has the authority to
15 consider and does consider the interests of the subscribers of the services offered via such
16 attachments, as well as the interests of the consumers of the services.

§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed; report.

1 (a) For purposes of this section:

2 (1) “Commission” shall mean the West Virginia Public Service Commission.

3 (2) "Council" shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of
4 this code.

5 (3) "Electric utility" shall mean any electric utility operating within this state that is regulated
6 by the commission.

7 (4) "Project" shall mean a middle-mile broadband infrastructure expansion project
8 proposed by an electric utility.

9 (b) Each electric utility may investigate the feasibility of constructing and operating a
10 project within the electric utility distribution system and, if it so elects, may submit a feasibility
11 study of a proposed project to the council on or before December 1, 2019. Additional feasibility
12 studies may be submitted to the council after December 1, 2019, without penalty.

13 (c) The council and the commission shall assist each such electric utility in its preparation
14 of such a feasibility study.

15 (d) The feasibility study shall include an evaluation of the following:

16 (1) The scope of the proposed project for which the feasibility study is conducted, which
17 shall include, but not be limited to:

18 (A) The route of the middle-mile infrastructure proposed for the project, the number of fiber
19 strands that would be utilized in connection with the proposed project and dedicated to serve as
20 the middle mile, the location of the electric utility's distribution infrastructure that will be utilized in
21 connection with the proposed project, the capacity of the middle-mile broadband infrastructure
22 that will be available to lease to last-mile broadband Internet providers upon completion of the
23 proposed project;

24 (B) The estimated cost of the proposed project, including but not limited to engineering
25 costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a
26 reasonable rate of return to the electric utility;

27 (C) The proposed schedule of construction of the proposed project; and

28 (D) The method of attachment and connection of the middle-mile broadband fiber assets
29 to the electric utility's distribution infrastructure;

30 (2) The regulatory and legal barriers to an electric utility constructing a project and
31 operating middle-mile broadband infrastructure to provide access to unserved areas of the state,
32 as defined in §31G-1-2 of this code, and any underserved areas of the state, and proposed
33 legislation to address such regulatory barriers;

34 (3) Whether it is in the public interest and the interest of the electric utility to make
35 improvements to the distribution grid in furtherance of providing such middle-mile broadband
36 Internet services in conjunction with its program of electric distribution projects;

37 (4) Whether it is in the public interest and the interest of the electric utility to operate
38 middle-mile broadband Internet assets to provide access to unserved and underserved areas of
39 the state;

40 (5) Whether it is in the public interest and the interest of the electric utility to permit a third
41 party to lease such capacity to provide last-mile broadband Internet services to unserved and
42 underserved areas of the state;

43 (6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric
44 utility distribution systems is feasible with respect to the maturity of the relevant technology, the
45 compatibility of such services with existing electric services, and the financial requirements to
46 undertake such project;

47 (7) The anticipated level of rate adjustment necessary to allow the electric utility to recover
48 its costs associated with the proposed project, and a reasonable rate of return, on an expedited
49 basis, that will be recovered by the electric utility through a rate adjustment at the commission;
50 and

51 (8) Such other information that is pertinent to the project.

52 (e) Upon receipt of a feasibility study, the council shall post the same on the council
53 website for written public comment for a period of seven days and then shall render a
54 determination, by a majority vote of the council, as to the feasibility of the proposed project.

55 (f) In its consideration of the feasibility of a project, the council shall identify one or more
56 last-mile broadband Internet providers that may lease the middle-mile broadband Internet

57 capacity created by the proposed project pursuant to lease terms and conditions set by the
58 council.

59 (g) The council shall render such feasibility determination within 60 days from the date the
60 feasibility study is submitted to the council.

61 (h) Commencing January 1, 2020, and each year thereafter, the council shall give a report
62 of its consideration of feasibility studies submitted pursuant to this section to the Governor, the
63 President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on
64 Government and Finance.

§31G-4-6. Severability.

1 Pursuant to §2-2-10 of this code, if any provision of this article or the application thereof
2 to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or
3 invalidity shall not affect other provisions or applications of the article, and to this end the
4 provisions of this article are declared to be severable.

CHAPTER 31H. SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

ARTICLE 1. WEST VIRGINIA SMALL WIRELESS FACILITIES DEPLOYMENT ACT.

§31H-1-1. Legislative findings.

1 (a) The deployment of reliable small wireless facilities and other next generation wireless
2 and broadband network technology is a matter of statewide concern and critical to the continued
3 economic development and diversification in the state of West Virginia.

4 (b) Small wireless facilities are critical to delivering wireless access to advanced
5 technology, broadband, and 911 services to homes, businesses, and schools throughout the state
6 of West Virginia.

7 (c) Because of the integral role that the delivery of broadband and wireless technology
8 plays in the economic vitality of the state of West Virginia and in the lives of its citizens, the

9 Legislature has determined that a law addressing the further deployment of wireless technology
10 is of vital interest to the state.

11 (d) Small wireless facilities, including facilities commonly referred to as small cells and
12 distributed antenna systems, may often be deployed most effectively in public rights-of-way.

13 (e) To meet the key objectives of this chapter, wireless providers must have access to
14 certain public rights-of-way and the ability to attach or collocate on existing infrastructure that will
15 permit these providers to offer next generation wireless and broadband technology.

16 (f) To ensure that public and private West Virginia consumers may benefit from these
17 services as soon as possible and to ensure that providers of wireless access have a fair and
18 predictable process for the deployment of small wireless facilities in a manner consistent with the
19 character of the area in which the small wireless facilities are deployed, the Legislature is enacting
20 this chapter, which specifies the regulatory authority for the collocation of small wireless facilities.

§31H-1-2. Definitions.

1 As used in this chapter, the following words and phrases have the meanings given to them
2 in this section unless the context clearly indicates otherwise:

3 (1) "Antenna" means communications equipment that transmits or receives
4 electromagnetic radio frequency signals used in the provision of wireless services;

5 (2) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical
6 codes adopted by a recognized national code organization or local amendments to those codes,
7 including the National Electric Safety Code;

8 (3) "Applicant" means any person who submits an application and is a wireless provider;

9 (4) "Application" means a request submitted by an applicant to an authority for a permit to
10 collocate small wireless facilities or to approve the installation, modification, or replacement of a
11 utility pole or wireless support structure;

12 (5) "Authority" means the State of West Virginia or a political subdivision that has
13 jurisdiction and control for use of public rights-of-way as provided by this code for placements

14 within public rights-of-way or has zoning or land use control for placements not within public rights-
15 of-way;

16 (6) "Authority utility pole" means a utility pole owned or operated by an authority in a public
17 right-of-way;

18 (7) "Collocate" or "collocation" means to install, mount, maintain, modify, operate, or
19 replace wireless facilities on or adjacent to a wireless support structure or utility pole;

20 (8) "Commissioner" means the Commissioner of the West Virginia Division of Highways;

21 (9) "Communications facilities" means the set of equipment and network components,
22 including wires, cables, antennas, and associated facilities, used by a communications service
23 provider to provide communications service;

24 (10) "Communications service" means cable service, as defined in 47 U.S.C. 522(6), as
25 amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications
26 service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C.
27 153(33), as amended; or wireless service other than mobile service;

28 (11) "Communications service provider" means any entity that provides communications
29 service;

30 (12) "Decorative pole" means an authority utility pole that is specially designed and placed
31 for aesthetic purposes and on which no appurtenances or attachments, other than a small
32 wireless facility, or specially designed informational, or directional signage, or temporary holiday
33 or special event attachments have been placed, or are permitted to be placed, according to
34 nondiscriminatory municipal rules or codes;

35 (13) "Division" means the West Virginia Division of Highways;

36 (14) "FCC" means the Federal Communications Commission of the United States;

37 (15) "Fee" means a one-time, nonrecurring charge;

38 (16) "Historic district" means a group of buildings, properties, or sites that are either listed
39 in the National Register of Historic Places or formally determined eligible for listing by the Keeper

40 of the National Register, the individual who has been delegated the authority by the federal
41 agency to list properties and determine their eligibility for the National Register, in accordance
42 with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1,
43 Appendix C;

44 (17) "Law" means a federal or state statute, common law, code, rule, regulation, order, or
45 a local ordinance or resolution;

46 (18) "Micro wireless facility" means a small wireless facility that is not larger in dimension
47 than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior
48 antenna, if any, that is no longer than 11 inches;

49 (19) "Permit" means a written authorization required by an authority to perform an action
50 or initiate, continue, or complete a project;

51 (20) "Person" means an individual, corporation, limited liability company, partnership,
52 association, trust, or other entity or organization, including an authority;

53 (21) "Rate" means a recurring charge;

54 (22) "Right-of-way" means the area on, below, or above a public roadway, highway, street,
55 sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway;

56 (23) "Small wireless facility" means a wireless facility that meets both of the following
57 qualifications:

58 (A) Each antenna could fit within an imaginary enclosure of no more than 6 cubic feet; and

59 (B) All other wireless equipment associated with the facility is cumulatively no more than
60 28 cubic feet in volume. The following types of associated ancillary equipment are not included in
61 the calculation of equipment volume: Electric meter, concealment elements, telecommunications
62 demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off
63 switch, and vertical cable runs for the connection of power and communications services;

64 (24) "Utility pole" means a pole or similar structure that is or may be used, in whole or in
65 part, by a communication services provider or for electric distribution, lighting, traffic control,

66 signage (if the pole is 15 feet or taller), or a similar function, or for the collocation of small wireless
67 facilities. However, “utility pole” does not include wireless support structures or electric
68 transmission structures;

69 (25) “Wireless facility” means equipment at a fixed location that enables wireless
70 communications between user equipment and a communications network, including:

71 (A) Equipment associated with wireless communications; and

72 (B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power
73 supplies, and comparable equipment, regardless of technological configuration. “Wireless facility”
74 includes small wireless facilities. “Wireless facility” does not include:

75 (i) The structure or improvements on, under, or within which the equipment is collocated;
76 or

77 (ii) Wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support
78 structures or utility poles, or coaxial or fiber-optic cable that is otherwise not immediately adjacent
79 to, or directly associated with, an antenna;

80 (26) “Wireless infrastructure provider” means any person, including a person authorized
81 to provide telecommunications service in the state, that builds or installs wireless communication
82 transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is
83 not a wireless provider;

84 (27) “Wireless provider” means a wireless infrastructure provider or a wireless provider;

85 (28) “Wireless services” means any services, using licensed or unlicensed spectrum,
86 including the use of WiFi, whether at a fixed location or mobile location, provided to the public
87 using wireless facilities;

88 (29) “Wireless service provider” means a person who provides wireless services;

89 (30) “Wireless support structure” means a structure, such as a monopole; tower, either
90 guyed or self-supporting; billboard; or other existing or proposed structure designed to support or

91 capable of supporting wireless facilities. “Wireless support structure” does not include a utility
92 pole; and

93 (31) “Wireline backhaul facility” is a facility used for the transport of communications
94 service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

ARTICLE 2. ACCESS TO PUBLIC RIGHTS-OF-WAY.

§31H-2-1. Use of rights-of-way for small wireless facilities and utility poles; other structures.

1 (a) The provisions of this section shall only apply to activities of a wireless provider within
2 the right-of-way.

3 (b) Except as provided in this chapter, an authority may not prohibit, regulate, or charge
4 for the collocation of small wireless facilities or the installation of utility poles and associated small
5 wireless facilities.

6 (c) An authority may not enter into an exclusive arrangement with any person for use of
7 the right-of-way for the collocation of small wireless facilities or the installation, operation,
8 marketing, modification, maintenance, or replacement of utility poles.

9 (d) An authority may only charge a wireless provider a rate or fee for the use of the right-
10 of-way with respect to the collocation of small wireless facilities or the installation, maintenance,
11 modification, operation, or replacement of a utility pole in the right-of-way if the authority charges
12 other entities for similar use of the right-of-way. Notwithstanding any provision of this article to the
13 contrary, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate
14 to a wireless provider for the use of the right-of-way. The rate for occupancy and use of the right-
15 of-way may not initially exceed \$25 per year per small wireless facility. An authority may adjust
16 this rate up to 10 percent every five years.

17 (e) Subject to the provisions of this section, a wireless provider has the right, as a permitted
18 use not subject to zoning review or approval, to collocate small wireless facilities and install,
19 maintain, modify, and replace its own utility poles or, with the permission of the owner, a third

20 party's utility pole, along, across, upon, and under the right-of-way. Such structures and facilities
21 shall be so installed and maintained as not to obstruct or hinder the usual travel or public safety
22 on such right-of-way or to obstruct the legal use of such right-of-way by utilities or authorities.

23 (f) Each new or modified utility pole installed by a wireless provider in the right-of-way may
24 not exceed the greater of:

25 (1) Ten feet in height above the tallest existing utility pole in place as of the effective date
26 of this chapter located within 500 feet of the new pole in the same right-of-way; or

27 (2) Fifty feet above ground level. New small wireless facilities in the right-of-way may not
28 extend:

29 (A) More than 10 feet above an existing utility pole in place as of the effective date of this
30 chapter; or

31 (B) For small wireless facilities on a new utility pole, above the height permitted for a new
32 utility pole pursuant to the provisions of this section. Subject to the provisions of this article, a
33 wireless provider has the right to collocate a small wireless facility and install, maintain, modify,
34 operate, and replace its own utility pole or, with the permission of the owner, a third party's utility
35 pole that exceeds these height limits along, across, upon, and under the right-of-way, subject to
36 applicable zoning regulations.

37 (g) An authority may adopt reasonable written design guidelines with objective, technically
38 feasible criteria that reasonably match the aesthetics and character of an immediate area
39 regarding all of the following:

40 (1) The location of any ground-mounted small wireless facilities;

41 (2) The location of a small wireless facility on a utility pole or wireless support structure;

42 (3) The appearance and concealment of small wireless facilities, including those relating
43 to materials used for arranging, screening, or landscaping; and

44 (4) The design and appearance of a utility pole or wireless support structure.

45 Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to
46 comply with the appearance and concealment criteria established in the guidelines shall not be
47 considered part of the small wireless facility for purposes of facility size restrictions in this chapter.
48 Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply
49 with an authority's current design guidelines.

50 (h) A wireless provider is permitted to replace decorative poles when necessary to
51 collocate a small wireless facility, but any replacement pole shall reasonably conform to the
52 design aesthetics of the decorative poles being replaced.

53 (i) A wireless provider shall comply with written, objective, reasonable, and
54 nondiscriminatory requirements that prohibit the installation of structures in the right-of-way in an
55 area designated solely for underground communications and electric lines where:

56 (1) The authority has required all such lines to be placed underground by a date certain
57 that is three months prior to the submission of the application;

58 (2) Those utility poles which the authority allows to remain shall be made available to
59 wireless providers for the collocation of small wireless facilities and may be replaced by a wireless
60 provider to accommodate the collocation of small wireless facilities, in compliance with this act;
61 and

62 (3) A wireless provider may install a new utility pole in the designated area that otherwise
63 complies with the other subsections of this section when it is not able to provide wireless service
64 by collocating on a remaining structure. For small wireless facilities installed before an authority
65 adopts requirements that communications and electric lines be placed underground, an authority
66 adopting such requirements shall:

67 (A) Permit a wireless provider to maintain the small wireless facilities in place subject to
68 any applicable pole attachment agreement with the utility pole owner; or

69 (B) Permit the wireless provider to replace the associated utility pole within 50 feet of the
70 prior location, subject to the permission of the utility pole owner.

71 (j) Subject to the provisions of this section, an authority may require reasonable,
72 technically feasible, nondiscriminatory, and technologically neutral design or concealment
73 measures in a historic district. Any such design or concealment measures may not have the effect
74 of prohibiting any provider's technology; nor may any such measures be considered a part of the
75 small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

76 (k) Any requirements an authority adopts under subsections (g) through (j), inclusive, of
77 this section must be:

78 (1) Reasonable, in that they are technically feasible and reasonably directed to avoiding
79 or remedying the intangible public harm of unsightly or out-of-character deployments;

80 (2) No more burdensome than those applied to other types of infrastructure deployments;
81 and

82 (3) Objective and published in advance. The authority, in the exercise of its administration
83 and regulation related to the management of the right-of-way, must be competitively neutral with
84 regard to other wireless service providers who are users of the right-of-way, including that terms
85 may not be unreasonable or discriminatory and may not violate any applicable law or effectively
86 prohibit the provision of wireless services.

87 (l) The authority may require a wireless provider to repair all damage to the right-of-way
88 directly caused by the activities of the wireless provider in the right-of-way and to return the right-
89 of-way to its functional equivalence before the damage, as determined by the authority, pursuant
90 to the competitively neutral, reasonable requirements and specifications of the authority. If the
91 wireless provider fails to make the repairs required by the authority within a reasonable time after
92 written notice, the authority may complete those repairs and charge the applicable party the
93 reasonable, documented cost of such repairs. Regardless of whether the authority or the wireless
94 provider ultimately makes the repairs, the authority may assess an additional fine of \$100 per day
95 that the wireless provider failed to make the required repairs after the wireless provider received
96 written notice until the repairs were completed.

97 (m) Nothing in this chapter shall be deemed to impose or otherwise affect any rights,
98 controls, tariffs, or contractual obligations that may be established with regard to the utility poles,
99 similar structures, or equipment of any type that are owned or controlled by an investor-owned
100 electric utility whose rates are regulated by the Public Service Commission of West Virginia or
101 any such utility's affiliates, or by an independent transmission company.

§31H-2-2. Permitting process for small wireless facilities.

1 (a) The provisions of this section shall apply to the permitting of small wireless facilities by
2 a wireless provider in or outside the right-of-way as specified in subsection (b) of this section and
3 to the permitting of the installation, modification, and replacement of utility poles by a wireless
4 provider inside the right-of-way.

5 (b) Small wireless facilities that meet the requirements of §31H-2-1(f) through §31H-2-1(j)
6 of this code shall be classified as permitted uses and not subject to zoning review or approval if
7 they are collocated:

- 8 (1) In the right-of-way in any zone; or
9 (2) Outside the right-of-way in property not zoned exclusively for single-family residential
10 use.

11 (c) An authority may require an applicant to obtain one or more permits to collocate a small
12 wireless facility that meets the requirements of §31H-2-1(f) through §31H-2-1(j) of this code or to
13 install, modify, or replace a utility pole and associated small wireless facilities that meet the
14 requirements of §31H-2-1(f) through §31H-2-1(j) of this code, provided that the permits are of
15 general applicability. An authority shall receive applications for, process, and issue permits
16 subject to the following requirements:

- 17 (1) An authority may not directly or indirectly require an applicant to perform services
18 unrelated to the collocation for which approval is sought, such as in-kind contributions to the
19 authority, including reserving fiber, conduit, or pole space for the authority on the wireless
20 provider's utility pole;

21 (2) An applicant may not be required to provide more information to obtain a permit than
22 communications service providers that are not wireless providers, provided that an applicant may
23 be required to include construction and engineering drawings and information demonstrating
24 compliance with the criteria set forth in this subsection;

25 (3) An authority, other than the Division of Highways, may not require the placement of
26 small wireless facilities on any specific utility pole or category of poles or require multiple antenna
27 systems on a single utility pole nor the underground placement of small wireless facilities;

28 (4) An authority, other than the Division of Highways, may not limit the placement of small
29 wireless facilities by minimum separation distances;

30 (5) An authority may require an applicant to include an attestation that the small wireless
31 facilities will be operational for use by a wireless provider within one year after the permit issuance
32 date, unless the authority and the applicant agree to extend this period or delay is caused by lack
33 of commercial power or communications transport facilities to the site;

34 (6) Within 10 days of receiving an application, an authority must determine and notify the
35 applicant in writing whether the application is complete. If an application is incomplete, an
36 authority must specifically identify the missing information in writing. The processing deadlines in
37 this subsection are tolled from the time the authority sends the notice of incompleteness to the
38 time the applicant provides the missing information. That processing deadline also may be tolled
39 by agreement of the applicant and the authority;

40 (7) An application shall be processed on a nondiscriminatory basis and deemed approved
41 if the authority fails to approve or deny the application within 60 days of receipt of the application
42 for a collocation of a small wireless facility and 90 days for an application for the installation,
43 modification, or replacement of a utility pole in the right-of-way;

44 (8) An authority may deny a proposed collocation of a small wireless facility or installation,
45 modification, or replacement of a utility pole that meets the requirements of this section only if the
46 proposed application:

- 47 (A) Materially interferes with the safe operation of traffic control equipment;
- 48 (B) Materially interferes with sight lines or clear zones for transportation or pedestrians;
- 49 (C) Materially interferes with compliance with the Americans with Disabilities Act or similar
50 federal or state standards regarding pedestrian access or movement;
- 51 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
52 general application adopted by legislative rule or ordinance that concern the location of ground-
53 mounted equipment and new utility poles. Such spacing requirements may not prevent a wireless
54 provider from serving any location;
- 55 (E) Fails to comply with applicable codes, legislative rule, and generally applicable
56 standards that are consistent with this chapter and adopted by an authority for construction and
57 public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling
58 requirements, grounding requirements, and abandonment and removal provisions;
- 59 (F) Fails to comply with applicable design guidelines adopted under §31H-2-1(g) of this
60 code; or
- 61 (G) Fails to attest that a small wireless facility will comply with relevant Federal
62 Communications Commission (FCC) regulations concerning:
- 63 (1) Radiofrequency emissions from radio transmitters; and
- 64 (2) Unacceptable interference with the public safety spectrum and CII spectrum, including
65 compliance with the abatement and resolution procedures for interference with the public safety
66 spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. 22.970 through 47
67 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;
- 68 (9) The authority must document the basis for a denial, including the specific code
69 provisions on which the denial was based, and send the documentation to the applicant on or
70 before the day the authority denies an application. The applicant may cure the deficiencies
71 identified by the authority and resubmit the application within 30 days of the denial without paying

72 an additional application fee. The authority shall approve or deny the revised application within
73 30 days. Any subsequent review shall be limited to the changes made in the resubmission;

74 (10) An applicant seeking to collocate small wireless facilities within the jurisdiction of a
75 single authority shall be allowed at the applicant's discretion to file a consolidated application and
76 receive a single permit for the collocation of multiple small wireless facilities; the denial of one or
77 more small wireless facilities in a consolidated application may not delay processing of any other
78 small wireless facilities in the same batch;

79 (11) Installation or collocation for which a permit is granted pursuant to this section shall
80 be completed within one year after the permit issuance date unless the authority and the applicant
81 agree to extend this period or a delay is caused by the lack of commercial power or
82 communications facilities at the site. Approval of an application authorizes the applicant to:

83 (A) Undertake the installation or collocation; and

84 (B) Subject to applicable relocation requirements and the applicant's right to terminate at
85 any time, operate and maintain the small wireless facilities and any associated utility pole installed
86 by the wireless provider or authority utility that is covered by the permit for a period of not less
87 than 10 years, which must be renewed for equivalent durations so long as the small wireless
88 facilities and utility pole are in compliance with the criteria set forth in this subsection;

89 (12) An authority may not institute, either expressly or de facto, a moratorium on filing,
90 receiving, or processing applications or issuing permits or other approvals, if any, for the
91 collocation of small wireless facilities or the installation, modification, or replacement of utility
92 poles to support small wireless facilities.

93 (d) An authority may require a permit to work within a right-of-way for any activities under
94 this chapter, if applicable, and may prohibit access when a road is closed or its access is limited
95 to the public: *Provided*, That except for this permit, and the other actions explicitly authorized by
96 this chapter, an authority may not require an additional application, approval, or permit, or require

97 any fees or other charges from a communications service provider authorized to occupy the right-
98 of-way, for:

99 (1) Routine maintenance;

100 (2) The replacement of wireless facilities with wireless facilities that are substantially
101 similar, the same size, or smaller; or

102 (3) The installation, placement, maintenance, operation, or replacement of micro wireless
103 facilities that are suspended on existing cables that are strung between existing utility poles in
104 compliance with applicable safety codes and the pole owner's construction standards and
105 engineering practices.

106 (e) An authority may revoke a permit at any time if the conditions of the permit required
107 pursuant to this article are no longer being satisfied.

**§31H-2-3. Access to authority utility poles; application and permit fees and rates for small
wireless facilities.**

1 (a) An authority shall allow the collocation of small wireless facilities on authority utility
2 poles within the right-of-way subject to the provisions of this chapter and the following:

3 (1) An authority may not enter into an exclusive arrangement with any person for the right
4 to attach small wireless facilities to authority utility poles;

5 (2) The rates and fees for collocations on authority utility poles shall be nondiscriminatory
6 regardless of the services provided by the collocating person;

7 (3) An authority may charge an annual recurring rate to collocate small wireless facilities
8 on an authority utility pole that equals \$65 per year per pole. An authority may adjust this rate 10
9 percent every five years, rounded to the nearest five dollars. Nothing in this subdivision prohibits
10 a wireless provider and an authority from mutually agreeing to an annual recurring rate of less
11 than \$65 to collocate a small wireless facility on an authority utility pole;

12 (4) The rates, fees, and terms for make-ready work must be nondiscriminatory,
13 competitively neutral, and commercially reasonable and must comply with this section;

14 (5) An authority shall provide a good faith estimate for any make-ready work necessary to
15 enable the pole to support the requested collocation by a wireless provider, including pole
16 replacement if necessary, within 60 days after receipt of a complete application. Make-ready work
17 including any pole replacement shall be completed within 60 days of written acceptance of the
18 good faith estimate by the applicant. An authority may require replacement of the authority utility
19 pole only if it demonstrates that the collocation would make the authority utility pole structurally
20 unsound; and

21 (6) The person owning, managing, or controlling the authority utility pole may not require
22 more make-ready work than is required to meet applicable codes or industry standards. Fees for
23 make-ready work may not include costs related to preexisting or prior damage or noncompliance.
24 Fees for make-ready work including any pole replacement may not exceed the actual costs or the
25 amount charged to other communications service providers for similar work and may not include
26 any consultant fee or expense.

27 (b) For the purposes of a state-owned right-of-way maintained by the Division of
28 Highways, the commissioner shall propose rules for legislative approval, in accordance with the
29 provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article.

30 (c) Application fees are subject to the following requirements:

31 (1) An authority may not require a wireless provider to pay any rates, fees, or
32 compensation to the authority or other person other than what is expressly authorized by this
33 chapter;

34 (2) An authority may charge an application fee for collocation of small wireless facilities on
35 an existing utility pole not to exceed \$200 each for the first five small wireless facilities in the same
36 application and \$100 for each additional small wireless facility in the same application. An
37 authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars;

38 (3) An authority may charge an application fee for the installation, modification, or
39 replacement of a utility pole and the collocation of an associated small wireless facility that are

40 permitted uses in accordance with the specifications in this chapter not to exceed \$250. An
41 authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars; and

42 (4) An authority may charge an application fee for the installation, modification, or
43 replacement of a utility pole and the collocation of an associated small wireless facility that is not
44 a permitted use in accordance with the specifications in this chapter not to exceed \$1,000. An
45 authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars.

§31H-2-4. Local authority; miscellaneous provisions.

1 (a) Nothing in this chapter may be construed to relieve any person from any requirement:

2 (1) To obtain a franchise or a state-issued authorization to offer cable television service;

3 or

4 (2) To obtain any required permission to install, place, maintain, or operate
5 communications facilities, other than small wireless facilities subject to this chapter. The
6 permitting procedures and authorizations set forth in this chapter apply only to the placement of
7 small wireless facilities and associated utility poles, and do not authorize the installation or
8 operation of a wireline backhaul facility.

9 (b) Except as provided in this chapter or otherwise specifically authorized by state or
10 federal law, an authority shall not adopt or enforce any regulations or requirements on the
11 placement or operation of communications facilities in a right-of-way by a communications service
12 provider authorized by state or local law to operate in a right-of-way.

13 (c) Except as authorized by federal law, this chapter, and municipal taxation ordinances
14 authorizing collection of business and occupation taxes since at least November 1, 1998, an
15 authority shall not regulate any communications services or impose or collect any tax, fee, or
16 charge for the provision of communications service over the communications service provider's
17 communications facilities in a right-of-way, to the extent the communications service provider is
18 already paying the authority a fee for access to the right-of-way.

19 (d) Subject to the provisions of this chapter and applicable federal law, an authority may
20 continue to exercise zoning, land use, planning, and permitting authority within its territorial
21 boundaries with respect to wireless support structures and utility poles; no authority shall have or
22 exercise any jurisdiction or authority over the design, engineering, construction, installation, or
23 operation of any small wireless facility located in an interior structure or upon the site of any
24 campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply
25 with applicable codes; and an authority shall evaluate the structure classification for wireless
26 support structures under the latest version of ANSI/TIA-222. Nothing in this chapter authorizes
27 the state or any political subdivision, including an authority, to require wireless facility deployment
28 or to regulate wireless services.

29 (e) An authority may adopt an ordinance that makes available to wireless providers rates,
30 fees, and other terms that comply with the provisions of this chapter. Subject to the provisions of
31 this section, in the absence of an ordinance that fully complies with this chapter and until such a
32 compliant ordinance is adopted, if at all, wireless providers may install and operate small wireless
33 facilities and utility poles under the requirements of this chapter. An authority and a wireless
34 provider may enter into a voluntary and nondiscriminatory agreement implementing the provisions
35 of this chapter, but an authority may not require a wireless provider to enter into such an
36 agreement.

37 (f) An agreement or ordinance that does not fully comply with this chapter may apply only
38 to small wireless facilities and associated utility poles that became operational or were installed
39 before the effective date of this chapter. Such an agreement or ordinance may not be renewed,
40 or extended, unless it is modified to fully comply with this chapter. An agreement or ordinance
41 that applies to small wireless facilities and associated utility poles that became operational or
42 were constructed before the effective date of this chapter is invalid and unenforceable beginning
43 on the 181st day after the effective date of this chapter unless it fully complies with this chapter.
44 If an agreement or ordinance is invalid in accordance with this subsection, in the absence of an

45 agreement or ordinance that fully complies with this chapter and until such a compliant agreement
46 or ordinance is entered or adopted, small wireless facilities and associated utility poles that
47 become operational or were constructed before the effective date of this chapter may remain
48 installed and be operated under the requirements of this chapter.

49 (g) An agreement or ordinance that applies to small wireless facilities and utility poles that
50 become operational on or after the effective date of this chapter is invalid and unenforceable
51 beginning on the effective date of this chapter unless it fully complies with this chapter. If an
52 agreement or ordinance is invalid in accordance with this subsection, in the absence of an
53 agreement or ordinance that fully complies with this chapter and until such a compliant agreement
54 or ordinance is entered or adopted, small wireless facilities and utility poles may be installed and
55 operated in the right-of-way or become operational under the requirements of this chapter.

56 (h) Any wireless provider who owns or operates small wireless facilities or utility poles in
57 the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials,
58 officers, employees, agents, and volunteers harmless against any and all claims, lawsuits,
59 judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of
60 defense, proceedings, actions, demands, causes of action, liability and suits of any kind and
61 nature, including personal or bodily injury or death, property damage or other harm for which
62 recovery of damages is sought, to the extent that it is caused by the negligence of the wireless
63 provider who owns or operates small wireless facilities or utility poles in the right-of-way, any
64 agent, officer, director, representative, employee, affiliate, or subcontractor of the wireless
65 provider, or their respective officers, agents, employees, directors, or representatives while
66 installing, repairing, or maintaining facilities in rights-of-way.

67 (i) Except for a wireless provider with an existing franchise to occupy and operate in the
68 rights-of-way, during the period in which the wireless provider's facilities are located on the
69 authority improvements or rights-of-way, the authority may require the wireless provider to carry,
70 at the wireless provider's own cost and expense, the following insurance:

71 (1) Property insurance for its property's replacement cost against all risks;
72 (2) Workers' compensation insurance, as required by law; or
73 (3) Commercial general liability insurance with respect to its activities on the authority
74 improvements or rights-of-way to afford minimum protection limits consistent with its requirements
75 of other users of authority improvements or rights-of-way, including coverage for bodily injury and
76 property damage. An authority may require a wireless provider to include the authority as an
77 additional insured on the commercial general liability policy and provide certification and
78 documentation of inclusion of the authority in a commercial general liability policy as reasonably
79 required by the authority.

80 A wireless provider may self-insure all or a portion of the insurance coverage and limit
81 requirements required by an authority. A wireless provider that self-insures is not required, to the
82 extent of the self-insurance, to comply with the requirement for the naming of additional insureds
83 under this section. A wireless provider that elects to self-insure shall provide to the authority
84 evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and
85 limits required by the authority.

86 (j) An authority may impose reasonable and nondiscriminatory requirements for bonds,
87 escrow deposits, letters of credit, or any other type of financial surety to ensure removal of
88 abandoned or unused wireless facilities or damage to the right-of-way or authority property
89 caused by the wireless provider or its agent.

90 (k) On or before December 31, 2026, all Class I and Class II municipalities shall report to
91 the Joint Committee on Government and Finance of the effects of the implementation of this
92 article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor