

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4357**

BY DELEGATES SHOTT, HANSHAW, BOGGS, CAPITO,

FOSTER, MOORE, QUEEN, BARRETT, BYRD,

HARSHBARGER AND NELSON

[Introduced January 30, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,  
 2 designated §31H-1-1, §31H-1-2, §31H-2-1, §31H-2-2, §31H-2-3, and §31H-2-4, all  
 3 relating to the establishment of the West Virginia Small Wireless Facilities Deployment  
 4 Act; making legislative findings; defining terms; providing for access to public rights-of-  
 5 way for the collocation of small wireless facilities; providing for certain permit  
 6 requirements; requiring permits to be issued on a nondiscriminatory basis; providing for  
 7 the collection of fees and setting the amount of fees; and providing for certain local zoning,  
 8 indemnification, insurance, and bonding requirements.

*Be it enacted by the Legislature of West Virginia:*

**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  
 6 State 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, often may be deployed most effectively in the public right-of-way.

13 (e) To meet the key objectives of this chapter, wireless providers must have access to

14 certain public right-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 “Antenna” means communications equipment that transmits or receives electromagnetic  
4 radio frequency signals used in the provision of wireless services.

5 “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes  
6 adopted by a recognized national code organization or local amendments to those codes,  
7 including the National Electric Safety Code.

8 “Applicant” means any person who submits an application and is a wireless provider.

9 “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 “Authority” means the State of West Virginia or a political subdivision that has jurisdiction  
13 and control for use of public right-of-way as provided by this code for placements within public  
14 right-of-way or has zoning or land use control for placements not within public right-of-way.

15 “Authority utility pole” means a utility pole owned or operated by an authority in public right-  
16 of-way.

17 “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace  
18 wireless facilities on or adjacent to a wireless support structure or utility pole.

19 “Commissioner” means the Commissioner of the West Virginia Division of Highways.

20 “Communications service” means cable service, as defined in 47 U.S.C. §522(6), as  
21 amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications  
22 service, as defined in 47 U.S.C. §153(53), as amended; mobile service, as defined in 47 U.S.C.  
23 §153(33), as amended; or wireless service other than mobile service.

24 “Communications service provider” means a cable operator, as defined in 47 U.S.C.  
25 §522(5), as amended; a provider of information service, as defined in 47 U.S.C. §153(24), as  
26 amended; a telecommunications carrier, as defined in 47 U.S.C. §153(51), as amended; or a  
27 wireless provider.

28 “Division” means the West Virginia Division of Highways.

29 “FCC” means the Federal Communications Commission of the United States.

30 “Fee” means a one-time, nonrecurring charge.

31 “Law” means a federal or state statute, common law, code, rule, regulation, order, or local  
32 ordinance or resolution.

33 “Micro wireless facility” means a small wireless facility that is not larger in dimension than  
34 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna,  
35 if any, no longer than 11 inches.

36 “Permit” means a written authorization required by an authority to perform an action or  
37 initiate, continue, or complete a project.

38 “Person” means an individual, corporation, limited liability company, partnership,  
39 association, trust, or other entity or organization, including an authority.

40 “Rate” means a recurring charge.

41 “Right-of-way” means the area on, below, or above a public roadway, highway, street,  
42 public sidewalk, alley, utility easement, or similar property, but not including a federal interstate  
43 highway.

44 “Small wireless facility” means a wireless facility that meets both of the following

45 qualifications: (A) Each antenna could fit within an imaginary enclosure of no more than 6 cubic  
46 feet; and (B) all other wireless equipment associated with the facility is cumulatively no more than  
47 28 cubic feet in volume. The following types of associated ancillary equipment are not included in  
48 the calculation of equipment volume: electric meter, concealment elements, telecommunications  
49 demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off  
50 switch, and vertical cable runs for the connection of power and other services.

51 “Utility pole” means a pole or similar structure that is or may be used, in whole or in part,  
52 by a communication services provider or for electric distribution, lighting, traffic control, signage,  
53 or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does  
54 not include Wireless Support Structures or electric transmission structures.

55 “Wireless facility” means equipment at a fixed location that enables wireless  
56 communications between user equipment and a communications network, including: (A)  
57 Equipment associated with wireless communications; and (B) radio transceivers, antennas,  
58 coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment,  
59 regardless of technological configuration. “Wireless facility” includes small wireless facilities.  
60 “Wireless facility” does not include: (A) The structure or improvements on, under, or within which  
61 the equipment is collocated; or (B) wireline backhaul facilities, coaxial or fiber optic cable that is  
62 between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise  
63 not immediately adjacent to or directly associated with an antenna.

64 “Wireless infrastructure provider” means any person, including a person authorized to  
65 provide telecommunications service in the state, that builds or installs wireless communication  
66 transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is  
67 not a wireless services provider.

68 “Wireless provider” means a wireless infrastructure provider or a wireless services  
69 provider.

70 “Wireless services” means any services, whether at a fixed location or mobile location,

71 provided to the public using wireless facilities.

72 “Wireless services provider” means a person who provides wireless services.

73 “Wireless support structure” means a freestanding structure, such as a monopole; tower,  
74 either guyed or self-supporting; billboard; or other existing or proposed structure designed to  
75 support or capable of supporting wireless facilities. “Wireless support structure” does not include  
76 a utility pole.

## **ARTICLE 2. ACCESS TO PUBLIC RIGHT-OF-WAY.**

### **§31H-2-1. Use of right-of-way for small wireless facilities and utility poles.**

1 (a) Except as provided for in this article, an authority may not prohibit, regulate, or charge  
2 fees for the collocation of small wireless facilities.

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

6 (c) An authority may only charge a wireless provider a rate or fee for the use of the right-  
7 of-way with respect to the collocation of small wireless facilities or the installation, maintenance,  
8 modification, operation, or replacement of a utility pole in the right-of-way, if the authority charges  
9 other entities for use of the right-of-way. Notwithstanding any provision of this article to the  
10 contrary, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate  
11 to a wireless provider for the use of the right-of-way.

12 (d) Subject to the provisions of this section, a wireless provider has the right, as a permitted  
13 use not subject to zoning review or approval, to collocate small wireless facilities and install,  
14 maintain, modify, operate and replace utility poles along, across, upon, and under the right-of-  
15 way. Such structures and facilities shall be so installed and maintained as not to obstruct or hinder  
16 the usual travel or public safety on such right-of-way or obstruct the legal use of such right-of-way  
17 by utilities.

18 (e) Each new or modified utility pole installed in the right-of-way may not exceed the

19 greater of (1) Ten feet in height above the tallest existing utility pole in place as of the effective  
20 date of this chapter located within 500 feet of the new pole in the same right-of-way; or (2) 50 feet  
21 above ground level. New small wireless facilities in the right-of-way may not extend (1) more than  
22 ten feet above an existing utility pole in place as of the effective date of this chapter; or (2) for  
23 small wireless facilities on a new utility pole, above the height permitted for a new utility pole  
24 pursuant to the provisions of this section. Subject to the provisions of this article, a wireless  
25 provider has the right to collocate a small wireless facility and install, maintain, modify, operate  
26 and replace a utility pole that exceeds these height limits along, across, upon and under the right-  
27 of-way, subject to applicable zoning regulations.

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

31 (g) A wireless provider shall comply with reasonable and nondiscriminatory requirements  
32 that prohibit communications service providers from installing structures in the right-of-way in an  
33 area designated solely for underground or buried cable and utility facilities where: (1) The  
34 authority has required all cable and utility facilities other than authority poles and attachments to  
35 be placed underground by a date certain that is three months prior to the submission of the  
36 application; (2) the authority does not prohibit the replacement of authority poles in the designated  
37 area; and (3) the authority permits wireless providers to seek a waiver of the undergrounding  
38 requirements for the placement of a new utility pole to support small wireless facilities, which  
39 waivers shall be addressed in a nondiscriminatory manner.

40 (h) Subject to the provisions of this section, and except for facilities excluded from  
41 evaluation for effects on historic properties under 47 C.F.R. §1.1307(a)(4) of the FCC rules, an  
42 authority may require reasonable, technically feasible, nondiscriminatory and technologically  
43 neutral design or concealment measures in a historic district. Any such design or concealment  
44 measures may not have the effect of prohibiting any provider's technology; nor may any such

45 measures be considered a part of the small wireless facility for purposes of the size restrictions  
46 in the definition of small wireless facility.

47 (i) The authority, in the exercise of its administration and regulation related to the  
48 management of the right-of-way, must be competitively neutral with regard to other users of the  
49 right-of-way, including that terms may not be unreasonable or discriminatory and may not violate  
50 any applicable law.

51 (j) The authority may require a wireless provider to repair all damage to the right-of-way  
52 directly caused by the activities of the wireless provider in the right-of-way and to return the right-  
53 of-way to its functional equivalence before the damage pursuant to the competitively neutral,  
54 reasonable requirements and specifications of the authority. If the wireless provider fails to make  
55 the repairs required by the authority within a reasonable time after written notice, the authority  
56 may affect those repairs and charge the applicable party the reasonable, documented cost of  
57 such repairs.

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

1 (a) Small wireless facilities shall be classified as permitted uses and not subject to zoning  
2 review or approval.

3 (b) An authority may require an applicant to obtain one or more permits to collocate a  
4 small wireless facility, provided that the permits are of general applicability. An authority shall  
5 receive applications for, process, and issue permits subject to the following requirements:

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

10 (2) An applicant may not be required to provide more information to obtain a permit than  
11 communications service providers that are not wireless providers, provided that an applicant may  
12 be required to include construction and engineering drawings and information demonstrating

13 compliance with the criteria set forth in this subsection.

14 (3) An authority may not require the placement of small wireless facilities on any specific  
15 utility pole or category of poles or require multiple antenna systems on a single utility pole.

16 (4) An authority may not limit the placement of small wireless facilities by minimum  
17 separation distances.

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

22 (6) Within 10 days of receiving an application, an authority must determine and notify the  
23 applicant in writing whether the application is complete. If an application is incomplete, an  
24 authority must specifically identify the missing information in writing. The processing deadlines in  
25 this subsection are tolled from the time the authority sends the notice of incompleteness to the  
26 time the applicant provides the missing information. That processing deadline also may be tolled  
27 by agreement of the applicant and the authority.

28 (7) An application shall be processed on a nondiscriminatory basis and deemed approved  
29 if the authority fails to approve or deny the application within 60 days of receipt of the application.

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

33 (A) Materially interferes with the safe operation of traffic control equipment.

34 (B) Materially interferes with sight lines or clear zones for transportation or pedestrians.

35 (C) Materially interferes with compliance with the Americans with Disabilities Act or similar  
36 federal or state standards regarding pedestrian access or movement.

37 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of  
38 general application adopted by ordinance that concern the location of ground-mounted equipment

39 and new utility poles. Such spacing requirements may not prevent a wireless provider from  
40 servicing any location.

41 (E) Fails to comply with applicable codes.

42 (9) The authority must document the basis for a denial, including the specific code  
43 provisions on which the denial was based, and send the documentation to the applicant on or  
44 before the day the authority denies an application. The applicant may cure the deficiencies  
45 identified by the authority and resubmit the application within 30 days of the denial without paying  
46 an additional application fee. The authority shall approve or deny the revised application within  
47 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial.

48 (10) An applicant seeking to collocate small wireless facilities within the jurisdiction of a  
49 single authority shall be allowed at the applicant's discretion to file a consolidated application and  
50 receive a single permit for the collocation of multiple small wireless facilities; *Provided, That,* the  
51 denial of one or more small wireless facilities in a consolidated application may not delay  
52 processing of any other small wireless facilities in the same batch.

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

57 (a) Undertake the installation or collocation; and

58 (b) Subject to applicable relocation requirements and the applicant's right to terminate at  
59 any time, operate and maintain the small wireless facilities and any associated utility pole covered  
60 by the permit for a period of not less than 10 years, which must be renewed for equivalent  
61 durations so long as they are in compliance with the criteria set forth in this subsection.

62 (12) An authority may not institute, either expressly or de facto, a moratorium on filing,  
63 receiving, or processing applications or issuing permits or other approvals, if any, for the  
64 collocation of small wireless facilities or the installation, modification, or replacement of utility

65 poles to support small wireless facilities.

66 (c) An authority may not require an application, approval, or permit, or require any fees or  
67 other charges, from a communications service provider authorized to occupy the right-of-way, for:

68 (1) Routine maintenance; (2) the replacement of wireless facilities with wireless facilities that are  
69 substantially similar, the same size, or smaller; or (3) the installation, placement, maintenance,  
70 operation, or replacement of micro wireless facilities that are suspended on cables that are strung  
71 between existing utility poles in compliance with applicable safety codes. However, an authority  
72 may require a permit to work within a right-of-way for activities, if applicable.

**§31H-2-3. Access to authority poles within the right-of-way; application and permit fees**  
**for small wireless facilities.**

1 (a) An authority shall allow the collocation of small wireless facilities on authority utility  
2 poles subject to 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 a small wireless facility  
8 on an authority utility pole that equals the lesser of (A) \$20 per year or (B) the actual direct, and  
9 reasonable costs related to the wireless provider's use of space on the authority utility pole. In  
10 any controversy concerning the appropriateness of a cost-based rate for an authority utility pole,  
11 the authority has the burden of proving that the rate does not exceed the actual, direct, and  
12 reasonable costs for the applicant's proposed use of the pole. Nothing in this paragraph, and (3)  
13 prohibits a wireless provider and an authority from mutually agreeing to an annual recurring rate  
14 of less than \$20 to collocate a small wireless facility on an authority utility pole.

15 (4) The rate for occupancy of the right-of-way may not exceed \$20 per year per small  
16 wireless facility.

17           (5) The rates, fees, and terms must be nondiscriminatory, competitively neutral, and  
18 commercially reasonable and must comply with this section.

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

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

31           (b) For the purposes of a state-owned right-of-way maintained by the division, the  
32 commissioner shall propose rules for legislative approval, in accordance with the provisions of  
33 §29A-3-1 et seq. of this code, to implement the provisions of this article.

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

35           (1) An authority may not require a wireless provider to pay any rates, fees, or  
36 compensation to the authority or other person other than what is expressly authorized by this  
37 chapter for the right to use or occupy a right of way, for collocation of small wireless facilities on  
38 utility poles in the right-of-way, or for the installation, maintenance, modification, operation and  
39 replacement of utility poles in the right-of-way.

40           (2) An authority may charge an application fee only if the fee is required for similar types  
41 of commercial development within the authority's jurisdiction.

42           (3) Where costs to be recovered by an application fee are already recovered by existing

43 fees, rates, licenses or taxes paid by a wireless provider, no application fee shall be assessed.

44 (4) An application fee may not include: (A) Travel expenses incurred by a third party in its  
45 review of an application; or (B) direct payment or reimbursement of third party rates or fees  
46 charged on a contingency basis or a result-based arrangement.

47 (5) An application fee for a collocation shall be limited to the cost of granting a building  
48 permit for similar types of commercial development or construction within the authority's  
49 jurisdiction. The fees for collocation of small wireless facilities on an existing or replacement  
50 authority pole may not exceed \$100 each for the first five small wireless facilities on the same  
51 application and \$50 for each additional small wireless facility on the same application.

52 (6) The fees for the installation, modification or replacement of a utility pole and the  
53 collocation of an associated small wireless facility that are permitted uses in accordance with the  
54 specifications in this chapter may not exceed \$250 per pole for access to the right-of-way.

55 (7) An application fee for the installation, modification or replacement of a new wireless  
56 support structure, a substantial modification, or a new utility pole associated with a small wireless  
57 facility that is not a permitted use in accordance with the specifications in this chapter may not  
58 exceed \$1,000.

**§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, or (2) to  
3 obtain any required permission to install, place, maintain, or operate communications facilities,  
4 other than small wireless facilities subject to this chapter.

5 (b) Subject to the provisions of this chapter and applicable federal law, an authority may  
6 continue to exercise zoning, land use, planning and permitting authority within its territorial  
7 boundaries, including with respect to wireless support structures and utility poles; except that no  
8 authority shall have or exercise any jurisdiction or authority over the design, engineering,  
9 construction, installation, or operation of any small wireless facility located in an interior structure

10 or upon the site of any campus, stadium, or athletic facility not owned or controlled by the  
11 authority, other than to comply with applicable codes, and an authority shall evaluate the structure  
12 classification for wireless support structures under the latest version of ANSI/TIA-222. Nothing in  
13 this chapter authorizes the state or any political subdivision, including an authority, to require  
14 wireless facility deployment or to regulate wireless services.

15 (c) An authority may adopt an ordinance that makes available to wireless providers rates,  
16 fees, and other terms that comply with the provisions of this chapter. Subject to the provisions of  
17 this section, in the absence of an ordinance that fully complies with this chapter and until such a  
18 compliant ordinance is adopted, if at all, wireless providers may install and operate small wireless  
19 facilities and utility poles under the requirements of this chapter. An authority and a wireless  
20 provider may enter into an agreement implementing the provisions of this chapter, but an authority  
21 may not require a wireless provider to enter into such an agreement.

22 (d) An authority may not require a wireless provider to indemnify and hold the authority  
23 and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens,  
24 losses, expenses or fees, except when a court of competent jurisdiction has found that the  
25 negligence of the wireless provider while installing, repairing, or maintaining caused the harm that  
26 created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees.

27 (e) An authority may require a wireless provider to have in effect insurance coverage  
28 consistent with the provisions of this section; *Provided*, That the authority imposes similar  
29 requirements on other users of the right of way and such requirements are reasonable and  
30 nondiscriminatory.

31 An authority may not require a wireless provider to obtain insurance naming the authority  
32 or its officers and employees an additional insured. An authority may require a wireless provider  
33 to furnish proof of insurance, if required, prior to the effective date of any permit issued for a small  
34 wireless facility.

35 (f) An authority may adopt bonding requirements for small wireless facilities; *Provided*,

36 That the authority imposes similar requirements on other users of the right-of-way and such  
37 bonding requirements are reasonable and nondiscriminatory. The purpose of such bonds shall  
38 be to provide for the removal of abandoned or improperly maintained small wireless facilities,  
39 including those that an authority determines need to be removed to protect public health, safety,  
40 or welfare, restoration of the right-of-way, or to recoup rates or fees that have not been paid by a  
41 wireless provider in over 12 months, so long as the wireless provider has received reasonable  
42 notice from the authority of any of the noncompliance listed above and an opportunity to cure.  
43 Bonding requirements may not exceed \$200 per small wireless facility. For wireless providers  
44 with multiple small wireless facilities within the jurisdiction of a single authority, the total bond  
45 amount across all facilities may not exceed \$10,000, which amount may be combined into one  
46 bond instrument.

NOTE: The purpose of this to establish the West Virginia Small Wireless Facilities Deployment Act. The bill makes legislative findings. The bill defines terms. The bill provides for access to public right-of-way for the collocation of small wireless facilities. The bill provides for certain permit requirements. The bill requires permits to be issued on a nondiscriminatory basis. The bill provides for the collection of fees and setting the amount of fees. The bill provides for certain local zoning, indemnification, insurance, and bonding requirements.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.