

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 3

BY SENATORS BOSO, CLEMENTS, SWOPE, TAKUBO,

CLINE, AND TRUMP

[Introduced January 9, 2019; Referred

to the Committee on Government Organization]

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

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

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

34 (12) "Division" means the West Virginia Division of Highways;

35 (13) "FCC" means the Federal Communications Commission of the United States;

36 (14) "Fee" means a one-time, nonrecurring charge;

37 (15) "Historic District" means a group of buildings, properties, or sites that are either listed
38 in the National Register of Historic Places or formally determined eligible for listing by the Keeper
39 of the National Register, the individual who has been delegated the authority by the federal
40 agency to list properties and determine their eligibility for the National Register, in accordance
41 with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1,
42 Appendix C;

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

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

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

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

52 (20) "Rate" means a recurring charge;

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

55 (22) "Small wireless facility" means a wireless facility that meets both of the following
56 qualifications: (A) Each antenna could fit within an imaginary enclosure of no more than six cubic
57 feet; and (B) all other wireless equipment associated with the facility is cumulatively no more than
58 28 cubic feet in volume. The following types of associated ancillary equipment are not included in
59 the calculation of equipment volume: electric meter, concealment elements, telecommunications
60 demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off
61 switch, and vertical cable runs for the connection of power and communications services;

62 (23) "Utility pole" means a pole or similar structure that is or may be used, in whole or in
63 part, by a communication services provider or for electric distribution, lighting, traffic control,
64 signage (if the pole is 15 feet or taller), or a similar function, or for the collocation of small wireless
65 facilities. However, "utility pole" does not include wireless support structures or electric
66 transmission structures;

67 (24) "Wireless facility" means equipment at a fixed location that enables wireless
68 communications between user equipment and a communications network, including: (A)
69 Equipment associated with wireless communications; and (B) radio transceivers, antennas,
70 coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment,

71 regardless of technological configuration. “Wireless facility” includes small wireless facilities.
72 “Wireless facility” does not include: (A) The structure or improvements on, under, or within which
73 the equipment is collocated; or (B) wireline backhaul facilities, coaxial or fiber optic cable that is
74 between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise
75 not immediately adjacent to or directly associated with an antenna;

76 (25) “Wireless infrastructure provider” means any person, including a person authorized
77 to provide telecommunications service in the state, that builds or installs wireless communication
78 transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is
79 not a wireless provider;

80 (26) “Wireless provider” means a wireless infrastructure provider or a wireless provider;

81 (27) “Wireless services” means any services, using licensed or unlicensed spectrum,
82 including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public
83 using wireless facilities;

84 (28) “Wireless provider” means a person who provides wireless services; and

85 (29) “Wireless support structure” means a structure, such as a monopole; tower, either
86 guyed or self-supporting; billboard; or other existing or proposed structure designed to support or
87 capable of supporting wireless facilities. “Wireless support structure” does not include a utility
88 pole.

89 (30) “Wireline backhaul facility” is a facility used for the transport of communications
90 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 apply only to activities of a wireless provider within the
2 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.

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

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

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

22 (f) Each new or modified utility pole installed by a wireless provider in the right-of-way may
23 not exceed the greater of: (1) Ten feet in height above the tallest existing utility pole in place as
24 of the effective date of this chapter located within 500 feet of the new pole in the same right-of-
25 way; or (2) 50 feet above ground level. New small wireless facilities in the right-of-way may not
26 extend (1) more than 10 feet above an existing utility pole in place as of the effective date of this
27 chapter; or (2) for small wireless facilities on a new utility pole, above the height permitted for a
28 new utility pole pursuant to the provisions of this section. Subject to the provisions of this article,
29 a wireless provider has the right to collocate a small wireless facility and install, maintain, modify,

30 operate and replace its own utility pole that exceeds these height limits along, across, upon and
31 under the right-of-way, subject to applicable zoning regulations.

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

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

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

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

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

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

45 (h) A wireless provider may replace its own decorative poles when necessary to collocate
46 a small wireless facility, but any replacement pole shall reasonably conform to the design
47 aesthetics of the decorative poles being replaced.

48 (i) A wireless provider shall comply with reasonable and nondiscriminatory requirements
49 that prohibit communications service providers from installing structures in the right-of-way in an
50 area designated solely for underground or buried cable and utility facilities where: (1) The
51 authority has required all cable and utility facilities other than authority utility poles and
52 attachments to be placed underground by a date certain that is three months prior to the
53 submission of the application; (2) the authority does not prohibit the replacement of authority utility
54 poles in the designated area; and (3) the authority permits wireless providers to seek a waiver of
55 the undergrounding requirements for the placement of a new utility pole to support small wireless

56 facilities, which waivers shall be addressed in a nondiscriminatory manner.

57 (j) Subject to the provisions of this section, and except for facilities excluded from
58 evaluation for effects on historic properties under 47 C.F.R. §1.1307(a)(4) of the FCC rules, an
59 authority may require reasonable, technically feasible, nondiscriminatory and technologically
60 neutral design or concealment measures in a historic district. Any such design or concealment
61 measures may not have the effect of prohibiting any provider's technology; nor may any such
62 measures be considered a part of the small wireless facility for purposes of the size restrictions
63 in the definition of small wireless facility.

64 (k) The authority, in the exercise of its administration and regulation related to the
65 management of the right-of-way, shall be competitively neutral with regard to other wireless
66 service providers who are users of the right-of-way, including that terms may not be unreasonable
67 or discriminatory and may not violate any applicable law.

68 (l) The authority may require a wireless provider to repair all damage to the right-of-way
69 directly caused by the activities of the wireless provider in the right-of-way and to return the right-
70 of-way to its functional equivalence before the damage, as determined by the authority, pursuant
71 to the competitively neutral, reasonable requirements and specifications of the authority. If the
72 wireless provider fails to make the repairs required by the authority within a reasonable time after
73 written notice, the authority may effect those repairs and charge the applicable party the
74 reasonable, documented cost of such repairs.

75 (m) Nothing in this chapter imposes or otherwise affects any rights, controls, tariffs, or
76 contractual obligations that may be established with regard to the utility poles, similar structures,
77 or equipment of any type that are owned or controlled by an investor-owned electric utility whose
78 rates are regulated by the public service commission of West Virginia or any such utility's affiliates,
79 or by an independent transmission company.

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

1 (a) The provisions of this section apply to the permitting of small wireless facilities by a

2 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 (j) shall be
6 classified as permitted uses and not subject to zoning review or approval if they are collocated:

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

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

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

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

22 (3) An authority, other than the Division of Highways, may not require the placement of
23 small wireless facilities on any specific utility pole or category of poles or require multiple antenna
24 systems on a single utility pole;

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

27 (5) An authority may require an applicant to include an attestation that the small wireless

28 facilities will be operational for use by a wireless provider within one year after the permit issuance
29 date, unless the authority and the applicant agree to extend this period or delay is caused by lack
30 of commercial power or communications transport facilities to the site;

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

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

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

44 (A) Materially interferes with the safe operation of traffic control equipment;

45 (B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

46 (C) Materially interferes with compliance with the Americans with Disabilities Act or similar
47 federal or state standards regarding pedestrian access or movement;

48 (D) Fails to comply with reasonable and nondiscriminatory spacing requirements of
49 general application adopted by legislative rule or ordinance that concern the location of ground-
50 mounted equipment and new utility poles. Such spacing requirements may not prevent a wireless
51 provider from serving any location;

52 (E) Fails to comply with applicable codes, legislative rule, and generally applicable
53 standards that are consistent with this chapter and adopted by an authority for construction and

54 public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling
55 requirements, grounding requirements, and abandonment and removal provisions;

56 (F) Fails to comply with applicable design guidelines adopted under §31H-2-1(f) of this
57 code; or

58 (G) Fails to attest that a small wireless facility will comply with relevant Federal
59 Communications Commission regulations concerning; (i) Radiofrequency emissions from radio
60 transmitters; and (ii) unacceptable interference with public safety spectrum, including compliance
61 with the abatement and resolution procedures for interference with public safety spectrum
62 established by the FCC set forth in 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672
63 through 47 CFR 90.675.

64 (9) The authority shall document the basis for a denial, including the specific code
65 provisions on which the denial was based, and send the documentation to the applicant on or
66 before the day the authority denies an application. The applicant may cure the deficiencies
67 identified by the authority and resubmit the application within 30 days of the denial without paying
68 an additional application fee. The authority shall approve or deny the revised application within
69 30 days. Any subsequent review shall be limited to the deficiencies cited in the denial;

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

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

79 (A) Undertake the installation or collocation; and

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

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

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

91 (1) Routine maintenance; (2) the replacement of wireless facilities with wireless facilities that are
 92 substantially similar, the same size, or smaller; or (3) the installation, placement, maintenance,
 93 operation, or replacement of micro wireless facilities that are suspended on cables that are strung
 94 between existing utility poles in compliance with applicable safety codes and the pole owner's
 95 construction standards and engineering practices: *Provided*, That an authority may prohibit
 96 access when a road is closed or it's access is limited to the public. However, an authority may
 97 require a permit to work within a right-of-way for activities, if applicable.

98 (e) An authority may revoke a permit at any time if the conditions of the permit required
 99 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 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 \$30 per year. An authority may adjust this rate 10 percent
9 every five years, rounded to the nearest \$5. Nothing in this subdivision prohibits a wireless
10 provider and an authority from mutually agreeing to an annual recurring rate of less than \$30 to
11 collocate a small wireless facility on an authority utility pole;

12 (4) The rates, fees, and terms shall be nondiscriminatory, competitively neutral, and
13 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, the
28 commissioner shall propose rules for legislative approval, in accordance with the provisions of
29 §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 \$5;

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 may not exceed \$250 per
41 pole for access to the right-of-way. An authority may adjust this fee 10 percent every five years,
42 rounded to the nearest \$5; and

43 (4) An authority may charge an application fee for the installation, modification or
44 replacement of a utility pole and the collocation of an associated small wireless facility that is not
45 a permitted use in accordance with the specifications in this chapter not to exceed \$1,000. An
46 authority may adjust this fee 10 percent every five years, rounded to the nearest \$5.

§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. The permitting procedures and
5 authorizations set forth in this chapter apply only to the placement of small wireless facilities and
6 utility poles, and do not authorize the installation or operation of a wireline backhaul facility.

7 (b) Subject to the provisions of this chapter and applicable federal law, an authority may
8 continue to exercise zoning, land use, planning and permitting authority within its territorial
9 boundaries with respect to wireless support structures and utility poles; no authority shall have or

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

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

24 (d) An agreement or ordinance that does not fully comply with this chapter may apply only
25 to small wireless facilities and utility poles that became operational or were installed before the
26 effective date of this chapter. Such an agreement or ordinance may not be renewed, or extended,
27 unless it is modified to fully comply with this chapter. An agreement or ordinance that applies to
28 small wireless facilities and utility poles that became operational or were constructed before the
29 effective date of this chapter is invalid and unenforceable beginning on the 181st day after the
30 effective date of this chapter unless it fully complies with this chapter. If an agreement or ordinance
31 is invalid in accordance with this subsection (d), in the absence of an agreement or ordinance that
32 fully complies with this chapter and until such a compliant agreement or ordinance is entered or
33 adopted, small wireless facilities and utility poles that become operational or were constructed
34 before the effective date of this chapter may remain installed and be operated under the
35 requirements of this chapter.

36 (e) An agreement or ordinance that applies to small wireless facilities and utility poles that
37 become operational on or after the effective date of this chapter is invalid and unenforceable
38 beginning on the effective date of this chapter unless it fully complies with this chapter. If an
39 agreement or ordinance is invalid in accordance with this subsection (e), in the absence of an
40 agreement or ordinance that fully complies with this chapter and until such a compliant agreement
41 or ordinance is entered or adopted, small wireless facilities and utility poles may be installed and
42 operated in the right-of-way or become operational under the requirements of this chapter.

43 (f) Any wireless provider who owns or operates small wireless facilities or utility poles in
44 the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials,
45 officers, employees, agents, and volunteers harmless against any and all claims, lawsuits,
46 judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of
47 defense, proceedings, actions, demands, causes of action, liability and suits of any kind and
48 nature, including personal or bodily injury or death, property damage or other harm for which
49 recovery of damages is sought, to the extent that it is caused by the negligence of the wireless
50 provider who owns or operates small wireless facilities or utility poles in the right-of-way, any
51 agent, officer, director, representative, employee, affiliate, or subcontractor of the wireless
52 provider, or their respective officers, agents, employees, directors, or representatives while
53 installing, repairing, or maintaining facilities in right-of-way.

54 (g) Except for a wireless provider with an existing franchise to occupy and operate in the
55 rights-of-way, during the period in which the wireless provider's facilities are located on the
56 authority improvements or rights-of-way, the authority may require the wireless provider to carry,
57 at the wireless provider's own cost and expense, the following insurance: (i) Property insurance
58 for its property's replacement cost against all risks; (ii) workers' compensation insurance, as
59 required by law; or (iii) commercial general liability insurance with respect to its activities on the
60 authority improvements or rights-of-way to afford minimum protection limits consistent with its
61 requirements of other users of authority improvements or rights-of-way, including coverage for

62 bodily injury and property damage. An authority may require a wireless provider to include the
63 authority as an additional insured on the commercial general liability policy and provide
64 certification and documentation of inclusion of the authority in a commercial general liability policy
65 as reasonably required by the authority. A wireless provider may self-insure all or a portion of the
66 insurance coverage and limit requirements required by an authority. A wireless provider that self-
67 insures is not required, to the extent of the self-insurance, to comply with the requirement for the
68 naming of additional insureds under this section. A wireless provider that elects to self-insure shall
69 provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the
70 insurance coverage and limits required by the authority.

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

NOTE: The purpose of this bill is to establish the West Virginia Small Wireless Facilities Deployment Act. The bill makes legislative findings and defines terms. The bill provides for access to public rights-of-way for the collocation of small wireless facilities. The bill provides for certain permit requirements and 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.