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

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

§11-6L-2. Definitions.

For the purposes of this article:

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

(2) “Salvage value” means five percent of original cost.

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

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

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

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

§11-6L-5. Effective date.

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.

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

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

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

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

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such 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.

(a) For purposes of this section:

(1) “Commission” shall mean the West Virginia Public Service Commission.
(2) “Council” shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this code.

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

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

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

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

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

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

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

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

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

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility’s distribution infrastructure;
(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this code, and any underserved areas of the state, and proposed legislation to address such regulatory barriers;

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

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

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

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

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

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

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

(f) In its consideration of the feasibility of a project, the council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband Internet
capacity created by the proposed project pursuant to lease terms and conditions set by the
council.

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

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

§31G-4-6. Severability.

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

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

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

(c) Because of the integral role that the delivery of broadband and wireless technology
plays in the economic vitality of the state of West Virginia and in the lives of its citizens, the
Legislature has determined that a law addressing the further deployment of wireless technology is of vital interest to the state.

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

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

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


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

1. “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;
2. “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code;
3. “Applicant” means any person who submits an application and is a wireless provider;
4. “Application” means a request submitted by an applicant to an authority for a permit to collocate small wireless facilities or to approve the installation, modification, or replacement of a utility pole or wireless support structure;
5. “Authority” means the State of West Virginia or a political subdivision that has jurisdiction and control for use of public rights-of-way as provided by this code for placements
within public rights-of-way or has zoning or land use control for placements not within public rights-
of-way;

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

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

(8) “Commissioner” means the Commissioner of the West Virginia Division of Highways;

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

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

(11) “Communications service provider” means any entity that provides communications
service;

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

(13) “Division” means the West Virginia Division of Highways;

(14) “FCC” means the Federal Communications Commission of the United States;

(15) “Fee” means a one-time, nonrecurring charge;

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

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

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

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

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

(21) “Rate” means a recurring charge;

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

(23) “Small wireless facility” means a wireless facility that meets both of the following qualifications:

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

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

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

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

(A) Equipment associated with wireless communications; and

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

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

or

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

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

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

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

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

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

(31) “Wireline backhaul facility” is a facility used for the transport of communications 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.

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

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

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

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

(e) Subject to the provisions of this section, a wireless provider has the right, as a permitted use not subject to zoning review or approval, to collocate small wireless facilities and install, maintain, modify, and replace its own utility poles or, with the permission of the owner, a third
party’s utility pole, along, across, upon, and under the right-of-way. Such structures and facilities
shall be so installed and maintained as not to obstruct or hinder the usual travel or public safety
on such right-of-way or to obstruct the legal use of such right-of-way by utilities or authorities.
(f) Each new or modified utility pole installed by a wireless provider in the right-of-way may
not exceed the greater of:
   (1) Ten feet in height above the tallest existing utility pole in place as of the effective date
       of this chapter located within 500 feet of the new pole in the same right-of-way; or
   (2) Fifty feet above ground level. New small wireless facilities in the right-of-way may not
extend:
   (A) More than 10 feet above an existing utility pole in place as of the effective date of this
chapter; or
   (B) For small wireless facilities on a new utility pole, above the height permitted for a new
utility pole pursuant to the provisions of this section. Subject to the provisions of this article, a
wireless provider has the right to collocate a small wireless facility and install, maintain, modify,
operate, and replace its own utility pole or, with the permission of the owner, a third party’s utility
pole that exceeds these height limits along, across, upon, and under the right-of-way, subject to
applicable zoning regulations.
(g) An authority may adopt reasonable written design guidelines with objective, technically
feasible criteria that reasonably match the aesthetics and character of an immediate area
regarding all of the following:
   (1) The location of any ground-mounted small wireless facilities;
   (2) The location of a small wireless facility on a utility pole or wireless support structure;
   (3) The appearance and concealment of small wireless facilities, including those relating
to materials used for arranging, screening, or landscaping; and
   (4) The design and appearance of a utility pole or wireless support structure.
Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small wireless facility for purposes of facility size restrictions in this chapter.

Each new or modified small wireless facility or utility pole installed in the right-of-way shall comply with an authority’s current design guidelines.

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

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

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

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

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

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

(B) Permit the wireless provider to replace the associated utility pole within 50 feet of the prior location, subject to the permission of the utility pole owner.
Subject to the provisions of this section, an authority may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures in a historic district. Any such design or concealment measures may not have the effect of prohibiting any provider’s technology; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

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

1. Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments;
2. No more burdensome than those applied to other types of infrastructure deployments;
3. Objective and published in advance. The authority, in the exercise of its administration and regulation related to the management of the right-of-way, must be competitively neutral with regard to other wireless service providers who are users of the right-of-way, including that terms may not be unreasonable or discriminatory and may not violate any applicable law or effectively prohibit the provision of wireless services.

The authority may require a wireless provider to repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and to return the right-of-way to its functional equivalence before the damage, as determined by the authority, pursuant to the competitively neutral, reasonable requirements and specifications of the authority. If the wireless provider fails to make the repairs required by the authority within a reasonable time after written notice, the authority may complete those repairs and charge the applicable party the reasonable, documented cost of such repairs. Regardless of whether the authority or the wireless provider ultimately makes the repairs, the authority may assess an additional fine of $100 per day that the wireless provider failed to make the required repairs after the wireless provider received written notice until the repairs were completed.
Nothing in this chapter shall be deemed to impose or otherwise affect any rights, controls, tariffs, or contractual obligations that may be established with regard to the utility poles, similar structures, or equipment of any type that are owned or controlled by an investor-owned electric utility whose rates are regulated by the Public Service Commission of West Virginia or any such utility’s affiliates, or by an independent transmission company.


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

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

(1) In the right-of-way in any zone; or

(2) Outside the right-of-way in property not zoned exclusively for single-family residential use.

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

(1) An authority may not directly or indirectly require an applicant to perform services unrelated to the collocation for which approval is sought, such as in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority on the wireless provider’s utility pole;
(2) An applicant may not be required to provide more information to obtain a permit than communications service providers that are not wireless providers, provided that an applicant may be required to include construction and engineering drawings and information demonstrating compliance with the criteria set forth in this subsection;

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

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

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

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

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

(8) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of this section only if the proposed application:
(A) Materially interferes with the safe operation of traffic control equipment;

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

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

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

(E) Fails to comply with applicable codes, legislative rule, and generally applicable standards that are consistent with this chapter and adopted by an authority for construction and public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, and abandonment and removal provisions;

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

(G) Fails to attest that a small wireless facility will comply with relevant Federal Communications Commission (FCC) regulations concerning:

   (1) Radiofrequency emissions from radio transmitters; and

   (2) Unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. 22.970 through 47 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

   (9) The authority must document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within 30 days of the denial without paying
an additional application fee. The authority shall approve or deny the revised application within 30 days. Any subsequent review shall be limited to the changes made in the resubmission; (10) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority shall be allowed at the applicant’s discretion to file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities; the denial of one or more small wireless facilities in a consolidated application may not delay processing of any other small wireless facilities in the same batch; (11) Installation or collocation for which a permit is granted pursuant to this section shall be completed within one year after the permit issuance date unless the authority and the applicant agree to extend this period or a delay is caused by the lack of commercial power or communications facilities at the site. Approval of an application authorizes the applicant to: (A) Undertake the installation or collocation; and (B) Subject to applicable relocation requirements and the applicant’s right to terminate at any time, operate and maintain the small wireless facilities and any associated utility pole installed by the wireless provider or authority utility that is covered by the permit for a period of not less than 10 years, which must be renewed for equivalent durations so long as the small wireless facilities and utility pole are in compliance with the criteria set forth in this subsection; (12) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of utility poles to support small wireless facilities. (d) An authority may require a permit to work within a right-of-way for any activities under this chapter, if applicable, and may prohibit access when a road is closed or its access is limited to the public: Provided, That except for this permit, and the other actions explicitly authorized by this chapter, an authority may not require an additional application, approval, or permit, or require
any fees or other charges from a communications service provider authorized to occupy the right-of-way, for:

1. Routine maintenance;
2. The replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller; or
3. The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on existing cables that are strung between existing utility poles in compliance with applicable safety codes and the pole owner’s construction standards and engineering practices.

(e) An authority may revoke a permit at any time if the conditions of the permit required 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.

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

1. An authority may not enter into an exclusive arrangement with any person for the right to attach small wireless facilities to authority utility poles;
2. The rates and fees for collocations on authority utility poles shall be nondiscriminatory regardless of the services provided by the collocating person;
3. An authority may charge an annual recurring rate to collocate small wireless facilities on an authority utility pole that equals $65 per year per pole. An authority may adjust this rate 10 percent every five years, rounded to the nearest five dollars. Nothing in this subdivision prohibits a wireless provider and an authority from mutually agreeing to an annual recurring rate of less than $65 to collocate a small wireless facility on an authority utility pole;
4. The rates, fees, and terms for make-ready work must be nondiscriminatory, competitively neutral, and commercially reasonable and must comply with this section;
(5) An authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority utility pole only if it demonstrates that the collocation would make the authority utility pole structurally unsound; and

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

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

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

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

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

(3) An authority may charge an application fee for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility that are
permitted uses in accordance with the specifications in this chapter not to exceed $250. An authority may adjust this fee 10 percent every five years, rounded to the nearest five dollars; and

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

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

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

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

or

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

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

(c) Except as authorized by federal law, this chapter, and municipal taxation ordinances authorizing collection of business and occupation taxes since at least November 1, 1998, an authority shall not regulate any communications services or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a right-of-way, to the extent the communications service provider is already paying the authority a fee for access to the right-of-way.
(d) Subject to the provisions of this chapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures and utility poles; no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes; and an authority shall evaluate the structure classification for wireless support structures under the latest version of ANSI/TIA-222. Nothing in this chapter authorizes the state or any political subdivision, including an authority, to require wireless facility deployment or to regulate wireless services.

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

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

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

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

(i) Except for a wireless provider with an existing franchise to occupy and operate in the
rights-of-way, during the period in which the wireless provider’s facilities are located on the
authority improvements or rights-of-way, the authority may require the wireless provider to carry,
at the wireless provider’s own cost and expense, the following insurance:
(1) Property insurance for its property's replacement cost against all risks;
(2) Workers' compensation insurance, as required by law; or
(3) Commercial general liability insurance with respect to its activities on the authority
improvements or rights-of-way to afford minimum protection limits consistent with its requirements
of other users of authority improvements or rights-of-way, including coverage for bodily injury and
property damage. An authority may require a wireless provider to include the authority as an
additional insured on the commercial general liability policy and provide certification and
documentation of inclusion of the authority in a commercial general liability policy as reasonably
required by the authority.

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

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

(k) On or before December 31, 2026, all Class I and Class II municipalities shall report to
the Joint Committee on Government and Finance of the effects of the implementation of this
article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 29th Day of March 2019.

Governor
PRESENTED TO THE GOVERNOR

MAR 20 2019

Time 3:52 PM