

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 3144

By Delegates Linville, Akers, Holstein, J. Cannon,

Hanshaw (Mr. Speaker), and Kump

[Originating in the Committee on Energy and Public

Works; March 13, 2025.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new chapter,
2 designated §31J-1-1, §31J-1-2, §31J-1-3, §31J-1-4, §31J-1-5, and §31J-1-6, all relating to
3 wireless tower facilities and infrastructure; providing for conditions of permitting and
4 applications for siting and colocation of wireless tower facilities and equipment; providing
5 definitions; clarifying the timing and conditions to act on siting applications; clarifying the
6 timing and conditions to act on wireless facilities and equipment modifications; establishing
7 process and procedures for review of applications for siting and modifications; creating
8 civil penalties; codifying the adoption of a construction code to be applicable to wireless
9 infrastructure; providing for remedies; providing for and defining fees for applications;
10 providing conflict of law provisions; and preserving state preemption.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31J. WIRELESS TOWER FACILITIES.

ARTICLE 1. WIRELESS TOWER FACILITIES SITING AND COLOCATION.

§31J-1-1. Definitions.

1 Terms used in this article have the following meanings:
2 "Action" or "to act" on a siting application means the reviewing authority's grant of a siting
3 application or issuance of a written decision denying a siting application.
4 "Antenna" means an apparatus designed for the purpose of emitting radiofrequency (RF)
5 radiation for the provision of personal wireless service and any commingled information services.
6 "Antenna equipment" means equipment, switches, wiring, cabling, power sources,
7 shelters or cabinets associated with an antenna, located at the same fixed location as the antenna,
8 and, when collocated on a structure, is mounted or installed at the same time as such antenna.
9 "Antenna facility" means an antenna and associated antenna equipment.
10 "Applicant" means a person or entity that submits a siting application and the agents,
11 employees, and contractors of such person or entity.

12 "Authorization" means any approval that a siting authority must issue under applicable law
13 prior to the deployment of personal wireless service facilities, including, but not limited to, zoning
14 approval and building permit.

15 "Colocation" means:

16 (1) Mounting or installing an antenna, or an antenna and associated equipment, on a pre-
17 existing structure; and/or

18 (2) Modifying a structure for the purpose of mounting or installing an antenna, or an
19 antenna and associated equipment, on that structure.

20 "Deployment" means placement, construction, or modification of a personal wireless
21 service facility.

22 "Facility" or "personal wireless service facility" means an antenna facility or a structure that
23 is used for the provision of personal wireless service, whether such service is provided on a stand-
24 alone basis or commingled with other wireless communications services.

25 "Siting application" or "application" means a written submission to a siting authority
26 requesting authorization for the deployment of a personal wireless service facility at a specified
27 location.

28 "Structure" means a pole, tower, base station, or other building that is supporting or is
29 capable of supporting broadband facilities or wireless service facilities, whether or not it is
30 currently supporting a broadband facility or wireless service facility.

§31J-1-2. Timing to act on siting applications.

1 (a) *Timely action required.* If the reviewing authority fails to act on a siting application on or
2 before the shot clock date for the application, as defined in subsection (e) of this section, it is
3 presumed not to have acted within a reasonable period of time.

4 (b) *Shot clock period.* The shot clock period for a siting application is the sum of:

5 (1) The number of days of the presumptively reasonable period of time for the pertinent
6 type of application, pursuant to §31J-1-2(c) plus

7 (2) The number of days of the tolling period, if any, pursuant to subsection (d) of this
8 section.

9 (c) Presumptively reasonable periods of time:

10 (1) Review periods for individual applications. The following are the presumptively
11 reasonable periods of time for action on applications seeking authorization for deployments of
12 facilities subject to this section:

13 (A) Review of an application to colocate a facility using an existing structure: 90 days.

14 (B) Review of an application to deploy a facility using a new structure: 150 days.

15 (2) Commencement of Review Period. An applicant has submitted a request for approval
16 that triggers the running of the timeframe for review in §31J-1-2(c):

17 (1) when it takes the first procedural step that the local government requires as part of its
18 applicable regulatory review process, and, to the extent it has not done so as part of the first
19 required procedural step, or

20 (2) the applicant submits written documentation showing that a proposed modification is an
21 eligible facilities request.

22 The reviewing authority may not define the first procedural step as a combination or
23 sequencing of steps, rather than a single step.

24 (d) Tolling period. Unless a written agreement between the applicant and the reviewing
25 authority provides otherwise, the tolling period for an application (if any) is as set forth herein.

26 (1) For initial applications, the tolling period shall be the number of days from:

27 (A) The day after the date when the reviewing authority notifies the applicant in writing that
28 the application is materially incomplete and clearly and specifically identifies the missing
29 documents or information that the applicant must submit to render the application complete and
30 the specific rule or regulation creating this obligation; until

31 (B) The date when the applicant submits all the documents and information identified by
32 the siting authority to render the application complete;

33 (C) But only if the notice pursuant to §31J-1-2(d)(2)(A) is effectuated on or before the 30th
34 day after the date when the application was submitted; or

35 (2) For resubmitted applications following a notice of deficiency, the tolling period shall be
36 the number of days from:

37 (A) The day after the date when the siting authority notifies the applicant in writing that the
38 applicant's supplemental submission was not sufficient to render the application complete and
39 clearly and specifically identifies the missing documents or information that need to be submitted
40 based on the siting authority's original request under §31J-1-2(d); until

41 (B) The date when the applicant submits all the documents and information identified by
42 the reviewing authority to render the application complete;

43 (C) But only if the notice pursuant to paragraph §31J-1-2(d)(2)(A) of this section is
44 effectuated on or before the 10th day after the date when the applicant makes a supplemental
45 submission in response to the siting authority's request under §31J-1-2(d) of this section.

46 (e) *Shot clock date.* The shot clock date for a siting application is determined by counting
47 forward, beginning on the day after the date when the application was submitted, by the number of
48 calendar days of the shot clock period identified pursuant to §31J-1-2(b) and including any pre-
49 application period asserted by the siting authority: *Provided*, That if the date calculated in this
50 manner is a legal holiday under either federal or state law, the shot clock date is the next business
51 day after such date. The term "business day" means any day that is not a weekend day or a legal
52 holiday as defined by the State of West Virginia.

53 (f) *Failure to act.* In the event the reviewing authority fails to approve or deny a request
54 seeking approval under this section within the timeframe for review (accounting for any tolling), the
55 request shall be deemed granted. The deemed grant does not become effective until the applicant
56 notifies the reviewing authority in writing after the review period has expired (accounting for any
57 tolling) that the application has been deemed granted.

58 (g) Fees for applications. A reviewing authority may not impose on an applicant fees or
59 charges that exceed the one-time non-recurring reasonable costs actually incurred by the
60 reviewing authority to review the application.

§31J-1-3. Wireless facility modifications.

1 (a) Definitions. Terms used in this section have the following meanings.

2 "Base station" means a structure or equipment at a fixed location that enables
3 Commission-licensed or authorized wireless communications between user equipment and a
4 communications network. The term does not encompass a tower as defined in this subpart or any
5 equipment associated with a tower.

6 (A) The term includes, but is not limited to, equipment associated with wireless
7 communications services such as private, broadcast, and public safety services, as well as
8 unlicensed wireless services and fixed wireless services such as microwave backhaul.

9 (B) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-
10 optic cable, regular and backup power supplies, and comparable equipment, regardless of
11 technological configuration.

12 (C) The term includes any structure other than a tower that, at the time the relevant
13 application is filed with the state or local government under this section, supports or houses
14 equipment defined as base stations and transmission equipment that has been reviewed and
15 approved under the applicable zoning or siting process, or under another state or local regulatory
16 review process, even if the structure was not built for the sole or primary purpose of providing such
17 support.

18 (D) The term does not include any structure that, at the time the relevant application is filed
19 with the state or local government under this section, does not support or house equipment
20 defined as base stations and transmission equipment.

21 "Concealment element" means elements of a stealth-designed facility intended to make
22 the facility look like something other than a telecommunications tower. There must be express

23 evidence in the record to demonstrate that the reviewing authority considered in its approval of the
24 original facility for wireless service that a stealth design would look like something other than a
25 facility for wireless service, such as a pine tree, flag pole, or chimney.

26 "Colocation" means the mounting or installation of transmission equipment on an eligible
27 support structure for the purpose of transmitting and/or receiving radio frequency signals for
28 communications purposes.

29 "Eligible facilities request" means any request for modification of an existing tower or base
30 station that does not substantially change the physical dimensions of such tower or base station,
31 involving:

32 (A) Colocation of new transmission equipment;

33 (B) Removal of transmission equipment; or

34 (C) Replacement of transmission equipment.

35 "Eligible support structure" means any tower or base station as defined in this section,
36 provided that it is existing at the time the relevant application is filed with the state or local
37 government under this section.

38 "Existing" means a constructed tower or base station is existing for purposes of this section
39 if it has been reviewed and approved under the applicable zoning or siting process, or under
40 another state or local regulatory review process, provided that a tower that has not been reviewed
41 and approved because it was not in a zoned area when it was built, but was lawfully constructed, is
42 existing for purposes of this definition.

43 "Site" means for towers other than towers in the public rights-of-way, the current
44 boundaries of the leased or owned property surrounding the tower and any access or utility
45 easements currently related to the site, and, for other eligible support structures, further restricted
46 to that area in proximity to the structure and to other transmission equipment already deployed on
47 the ground. The current boundaries of a site are the boundaries that existed as of the date that the
48 original support structure or a modification to that structure was last reviewed and approved by a

49 state or local government, if the approval of the modification occurred prior to the adoption of this
50 Act.

51 "Substantial change" means a modification substantially changes the physical dimensions
52 of an eligible support structure if it meets any of the following criteria:

53 (A) For towers, it increases the height of the tower by more than 10% or by the height of
54 one additional antenna array with separation from the nearest existing antenna not to exceed 20
55 feet, whichever is greater, and where separation from the nearest existing antenna means the
56 distance from the top of the highest existing antenna on the tower to the bottom of the proposed
57 new antenna to be deployed above it; for other eligible support structures, it increases the height of
58 the structure by more than 10% or more than ten feet, whichever is greater;

59 (i) Changes in height should be measured from the original support structure in cases
60 where deployments are or will be separated horizontally, such as on buildings' rooftops; in other
61 circumstances, changes in height should be measured from the dimensions of the tower or base
62 station.

63 (ii) For towers, it involves adding an appurtenance to the body of the tower that would
64 protrude from the edge of the tower more than 20 feet, or more than the width of the tower
65 structure at the level of the appurtenance, whichever is greater; for other eligible support
66 structures, it involves adding an appurtenance to the body of the structure that would protrude
67 from the edge of the structure by more than six feet;

68 (iii) For any eligible support structure, it involves installation of more than the standard
69 number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or,
70 for towers in the public rights-of-way and base stations, it involves installation of any new
71 equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the
72 structure, or else involves installation of ground cabinets that are more than 10% larger in height or
73 overall volume than any other ground cabinets associated with the structure;

74 (iv) It entails any excavation or deployment outside of the current site, except that, for
75 towers other than towers in the public rights-of-way, it entails any excavation or deployment of
76 transmission equipment outside of the current site by more than 30 feet in any direction. The site
77 boundary from which the 30 feet is measured excludes any access or utility easements currently
78 related to the site;

79 (v) It would defeat the concealment elements of the eligible support structure; or

80 (vi) It does not comply with conditions associated with the siting approval of the
81 construction or modification of the eligible support structure or base station equipment: *Provided*
82 however, That this limitation does not apply to any modification that is non-compliant only in a
83 manner that would not exceed the thresholds identified in 47 C.F.R. § 1.40001(b)(7)(i) through (iv).

84 "Transmission equipment" means equipment that facilitates transmission for any
85 Commission-licensed or authorized wireless communication service, including, but not limited to,
86 radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.
87 The term includes equipment associated with wireless communications services including, but not
88 limited to, private, broadcast, and public safety services, as well as unlicensed wireless services
89 and fixed wireless services such as microwave backhaul.

90 "Tower" means any structure built for the sole or primary purpose of supporting any
91 Commission-licensed or authorized antennas and their associated facilities, including structures
92 that are constructed for wireless communications services including, but not limited to, private,
93 broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless
94 services such as microwave backhaul, and the associated site.

95 (b) *Review of applications.* A state or local government may not deny and shall approve an
96 application for a modification of an existing wireless service facility if:

97 (1) The request modification would not substantially change the physical dimensions of the
98 wireless service facility;

99 (2) The requested modification involves:

100 (A) Colocation of new transmission equipment;

101 (B) Removal of transmission equipment; or

102 (C) Replacement of transmission equipment; and

103 (3) The request meets the requirements of this section.

104 (c) Documentation requirement for review. When an applicant asserts in writing that a
105 request for modification is covered by this section, the reviewing authority may require the
106 applicant to provide documentation or information only to the extent reasonably related to
107 determining whether the request meets the requirements of this section. The reviewing authority
108 may not require an applicant to submit any other documentation, including but not limited to
109 documentation intended to illustrate the need for such wireless facilities or to justify the business
110 decision to modify such wireless facilities.

111 (d) Fees for applications. A reviewing authority may not impose on an applicant fees or
112 charges that exceed the one-time non-recurring reasonable costs actually incurred by the
113 reviewing authority to review the application.

114 (e) Timeframe for review. Within 60 days of the date on which an applicant submits a
115 request seeking approval under this section, the reviewing authority shall approve the application
116 unless it determines that the application is not covered by this section.

117 (f) Tolling of the timeframe for review. The 60-day period begins to run when the application
118 is filed and may be tolled only by mutual agreement or in cases where the reviewing state or local
119 government determines that the application is incomplete. The timeframe for review is not tolled by
120 a moratorium on the review of applications.

121 (1) To toll the timeframe for incompleteness, the reviewing state or local government must
122 provide written notice to the applicant within 30 days of receipt of the application, clearly and
123 specifically delineating all missing documents or information. Such delineated information is
124 limited to documents or information meeting the standard under §31J-1-3(c).

125 (2) The timeframe for review begins running again when the applicant makes a
126 supplemental submission in response to the state or local government's notice of incompleteness.

127 (3) Following a supplemental submission, the state or local government will have 10 days
128 to notify the applicant that the supplemental submission did not provide the information identified
129 in the original notice delineating missing information. The timeframe is tolled in the case of second
130 or subsequent notices pursuant to the procedures identified in §31J-1-3(e). Second or subsequent
131 notices of incompleteness may not specify missing documents or information that were not
132 delineated in the original notice of incompleteness.

133 (g) Failure to act. In the event the reviewing authority fails to approve or deny a request
134 seeking approval under this section within the timeframe for review (accounting for any tolling), the
135 request shall be deemed granted. The deemed grant does not become effective until the applicant
136 notifies the reviewing authority in writing after the review period has expired (accounting for any
137 tolling) that the application has been deemed granted.

§31J-1-4. Construction code.

1 The state adopts and incorporates by reference the current TIA 222 Standard of the
2 International Building Code, as amended, as the applicable wireless infrastructure construction
3 code.

§31J-1-5. Remedies.

1 Applicants and reviewing authorities may bring claims related to this Chapter to any court
2 of competent jurisdiction.

§31J-1-6. Prior law, interpretations, preemption preserved.

1 Nothing herein shall be interpreted to change or otherwise impact the application of this
2 state's existing West Virginia Small Wireless Facilities Development Act, being §31H-1-1 et seq. of
3 this code; the Vertical Real Estate Management and Availability Act, being §31G-5-1 et seq. of this
4 code; or the state's existing Pre-emption of Conflicting Local Ordinances and Private Restrictions
5 statute, being §31G-6-1 et seq. of this code.