

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3144

BY DELEGATES LINVILLE, AKERS, HOLSTEIN, J. CANNON,

HANSHAW (MR. SPEAKER), AND KUMP

[Passed April 10, 2025; in effect 90 days from
passage (July 9, 2025)]

1 AN ACT 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
3 to 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;
7 establishing process and procedures for review of applications for siting and modifications;
8 creating civil penalties; codifying the adoption of a construction code to be applicable to
9 wireless infrastructure; providing for remedies; providing for and defining fees for
10 applications; 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
8 antenna, and, when colocated on a structure, is mounted or installed at the same time as such
9 antenna.

10 "Antenna facility" means an antenna and associated antenna equipment.

11 "Applicant" means a person or entity that submits a siting application and the agents,
12 employees, and contractors of such person or entity.

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

16 "Colocation" means:

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

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

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

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

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

29 "Structure" means a pole, tower, base station, or other building that is supporting or is
30 capable of supporting broadband facilities or wireless service facilities, whether or not it is
31 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
2 or 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
21 an 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
48 of 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),
55 the request shall be deemed granted. The deemed grant does not become effective until the

56 applicant notifies the reviewing authority in writing after the review period has expired (accounting
57 for any 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
17 such support.

18 (D) The term does not include any structure that, at the time the relevant application is
19 filed 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
24 the original facility for wireless service that a stealth design would look like something other than
25 a 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,
42 is 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

47 on the ground. The current boundaries of a site are the boundaries that existed as of the date that
48 the original support structure or a modification to that structure was last reviewed and approved
49 by a state or local government, if the approval of the modification occurred prior to the adoption
50 of this 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
58 of 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;
70 or, 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

72 the structure, or else involves installation of ground cabinets that are more than 10% larger in
73 height or 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
84 (iv).

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

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

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

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

100 (2) The requested modification involves:

101 (A) Colocation of new transmission equipment;

102 (B) Removal of transmission equipment; or

103 (C) Replacement of transmission equipment; and

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

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

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

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

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

122 (1) To toll the timeframe for incompleteness, the reviewing state or local government must
123 provide written notice to the applicant within 30 days of receipt of the application, clearly and

124 specifically delineating all missing documents or information. Such delineated information is
125 limited to documents or information meeting the standard under §31J-1-3(c).

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

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

134 (g) *Failure to act.* In the event the reviewing authority fails to approve or deny a request
135 seeking approval under this section within the timeframe for review (accounting for any tolling),
136 the request shall be deemed granted. The deemed grant does not become effective until the
137 applicant notifies the reviewing authority in writing after the review period has expired (accounting
138 for any 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.*
3 of this code; the Vertical Real Estate Management and Availability Act, being §31G-5-1 *et seq.* of

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- 4 this code; or the state's existing Pre-emption of Conflicting Local Ordinances and Private
- 5 Restrictions statute, being §31G-6-1 *et seq.* of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

.....
Speaker of the House of Delegates

.....
President of the Senate

The within is this the.....
Day of, 2025.

.....
Governor