

## HOUSE BILL NO. 277

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on \_\_\_\_\_)

(Patron Prior to Substitute—Delegate Seibold)

*A BILL to amend the Code of Virginia by adding a section numbered 15.2-2316.4:4, relating to zoning; wireless facility modifications; application process.*

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 15.2-2316.4:4 as follows:****§ 15.2-2316.4:4. Wireless facility modifications.**

*A. Notwithstanding the provisions of this article, a locality shall not deny an application for the modification of an existing wireless facility if:*

*1. The requested modification would not substantially change the physical dimensions of the existing wireless facility;*

*2. The requested modification involves the (i) co-location of new transmission equipment, (ii) removal of transmission equipment, or (iii) replacement of transmission equipment; and*

*3. The request meets the requirements of this section.*

*For the purposes of this subsection, a modification that entails any excavation or deployment adjacent to an existing wireless support structure or base station, except for wireless support structures or base stations in public rights-of-way, does not substantially change the physical dimensions of the existing wireless facility if it entails the excavation or deployment of transmission equipment within 30 feet, in any direction, of the existing wireless support structure or base station. The site boundary from which the 30 feet is measured shall exclude any access or utility easements related to the existing wireless support structure or base station.*

*B. When an applicant asserts, in writing, that a request for modification is permitted pursuant to this section, a locality may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A locality shall not require an applicant to submit any other documentation, including documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.*

*C. A locality shall not impose fees or charges on the applicant that exceed the one-time, non-recurring reasonable costs actually incurred by the locality to review the application. A locality may impose a fee, not to exceed \$1,000, for technical consultation and the review of a co-location or eligible facilities request application. Such fee shall be based on the actual, direct, and reasonable administrative costs incurred for*

the review, processing, and approval of an application. A locality may engage a third-party consultant for technical consultation and the review of a co-location application. The fee imposed by a locality for the review of an application shall not be used for travel expenses incurred during a third-party review of a co-location application or reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

D. A locality shall approve an application made pursuant to this section within 60 days of the date on which an applicant submits such application, unless the locality determines that the application does not meet the requirements of this section. The 60-day period may be tolled only by mutual agreement or in cases where the reviewing locality determines that an application is incomplete.

1. To toll the timeframe for incompleteness, the reviewing locality shall provide written notice to the applicant within 30 days of receipt of the application and shall clearly and specifically delineate all missing documents or information in such notice. Such delineated information is limited to documents or information meeting the provisions of subsection B. The timeframe for review shall begin running again whenever the applicant submits a supplemental application in response to the locality's notice of incompleteness.

2. Following the submission of a supplemental application, a locality shall have 10 days to notify the applicant that the supplemental application did not provide the information identified in the original notice delineating missing information. The timeframe shall be tolled in the case of second or subsequent notices pursuant to the procedures outlined in this subdivision. Second or subsequent notices of incompleteness shall not specify any missing documents or information that were not delineated in the original notice of incompleteness.

E. If a locality fails to approve or deny an application seeking approval under this section within the timeframe for review, accounting for any tolling pursuant to subsection D, the application shall be deemed approved. The deemed approval shall not become effective until the applicant notifies the locality, in writing, that the application has been deemed approved pursuant to this subsection. Upon receipt of the notification from the applicant, the locality shall, within 30 calendar days, (i) issue all permits and authorizations necessary for the completion of the project described in the application or (ii) seek judicial review of the operation of this section on the application.

F. Any applicant or locality may bring claims related to this section to any court of competent jurisdiction. For any party other than an applicant or locality, neither the issuance of permits or authorizations by a locality regarding an application nor an approval granted pursuant to subsection E due to a locality's failure to approve or deny an application shall be deemed a final decision or action appealable

**64**     *under applicable law.*