

1896--A

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- recommitted to the Committee on Energy and Telecommunications in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to enact the "wireless facility siting act"; to amend the general municipal law, in relation to the placement, construction and modification of wireless services facilities; and to direct the department of health to study, evaluate and make recommendations on the health effects of radio frequency signals and microwave energy emitted by wireless communications service facilities and wireless communications devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. Municipal control over the siting of
2 wireless services facilities is an important component of municipal home
3 rule. The legislature recognizes the federal, state and local interests
4 of providing for proper and convenient wireless services to the public.
5 As such, the legislature needs to balance the interests of providing
6 quality wireless communication services with local concerns on the inap-
7 propriate siting of telecommunications towers. This act provides for a
8 process of municipal review for applications to site, construct and
9 modify wireless services facilities. Such process must incorporate the
10 needs and desires of the local community, with regard to the public
11 health, environmental and aesthetic ramifications of such siting. It is
12 the intent of the legislature in adopting the "wireless facility siting
13 act" to implement enabling legislation which specifically sets forth a
14 uniform statewide process for municipal review of applications for the
15 placement, construction and modification of wireless services facilities
16 in all municipalities that do not have local laws to regulate the place-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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ment of such towers. Each municipality shall be able to enact approval processes that are more strict than those established by this act.

S 2. Short title. This act shall be known as and may be cited as the "wireless facility siting act".

S 3. The general municipal law is amended by adding a new article 13-E to read as follows:

ARTICLE 13-E

WIRELESS FACILITY SITING ACT

SECTION 300. DEFINITIONS.

301. PERMIT REQUIREMENTS.

302. MINIMUM STATE-WIDE PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS.

303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A WIRELESS FACILITY.

304. CO-LOCATION STANDARDS.

305. PERMIT APPROVAL; NON-CONFORMING FACILITIES.

306. APPLICABILITY.

S 300. DEFINITIONS. THE FOLLOWING TERMS SHALL HAVE THE MEANINGS SET FORTH IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

1. "ANCILLARY EQUIPMENT" MEANS ALL EQUIPMENT NECESSARY FOR THE SECURE AND SUCCESSFUL OPERATION OF A WIRELESS FACILITY INCLUDING BUT NOT LIMITED TO, SUPPORT STRUCTURES, TRANSMITTING, RECEIVING AND COMBINING EQUIPMENT, EQUIPMENT SHELTERS, TRANSMISSION CABLES, AND BACKUP POWER SOURCES. ANCILLARY EQUIPMENT SHALL NOT INCLUDE RESIDENTIAL, INDUSTRIAL OR COMMERCIAL BUILDINGS BUT SHALL INCLUDE ANY SUCH EQUIPMENT PLACED ON RESIDENTIAL, INDUSTRIAL OR COMMERCIAL BUILDINGS.

2. "BUILDING INSPECTOR" MEANS THE MUNICIPAL OFFICIAL CHARGED WITH ISSUING BUILDING PERMITS AND/OR ENFORCING THE ZONING LAW OF SUCH MUNICIPALITY OR OTHER INDIVIDUAL DESIGNATED BY THE LEGISLATIVE BODY TO ISSUE PERMITS FOR WIRELESS FACILITIES.

3. "HISTORIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN ONE THOUSAND FEET OF, ANY HISTORIC BUILDING, STRUCTURE, FACILITY, SITE OR DISTRICT, THAT IS LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES, OR THAT HAS BEEN PROPOSED BY THE NEW YORK STATE BOARD ON HISTORIC PRESERVATION FOR A RECOMMENDATION TO THE STATE HISTORIC PRESERVATION OFFICER FOR NOMINATION FOR INCLUSION IN THE NATIONAL REGISTER, THAT IS LISTED ON THE STATE REGISTER OF HISTORIC PLACES, OR HAS BEEN DESIGNATED AS A HISTORIC PLACE OR LANDMARK BY THE MUNICIPALITY.

4. "MUNICIPAL BOARD" OR "BOARD" MEANS THE MUNICIPAL BOARD AUTHORIZED TO REVIEW APPLICATIONS FOR WIRELESS FACILITIES. IN THE EVENT A MUNICIPALITY HAS NOT DESIGNATED A BOARD, REFERENCES IN THIS ARTICLE TO THE MUNICIPAL BOARD SHALL BE DEEMED TO REFER TO THE LEGISLATIVE BODY OF SUCH MUNICIPALITY.

5. "MUNICIPAL ZONING LAW" MEANS A MUNICIPALITY'S ZONING LOCAL LAW OR ORDINANCE.

6. "MUNICIPALITY" MEANS ANY CITY, TOWN OR VILLAGE.

7. "PERMIT" MEANS THE AUTHORIZATION BY THE BUILDING INSPECTOR PURSUANT TO THIS ARTICLE TO CONSTRUCT A WIRELESS FACILITY.

8. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, JOINT VENTURE, PUBLIC BENEFIT CORPORATION, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP OR ASSOCIATION.

9. "SCENIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR A WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN ONE THOUSAND FEET OF, ANY PUBLICLY OWNED OR OPERATED PARKLAND, RECREATION AREA OR DESIGNATED OPEN SPACE, INCLUDING ANY WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN ONE

THOUSAND FEET OF THE CENTERLINE OF ANY SCENIC BYWAY AS DEFINED IN ARTICLE TWELVE-C OF THE HIGHWAY LAW OR AS DESIGNATED BY THE MUNICIPALITY.

10. "TECHNICAL REVIEW" MEANS REVIEW OF A PERMIT APPLICATION BY AN INDEPENDENT EXPERT IN TELECOMMUNICATIONS SITING.

11. "TECHNICALLY AND COMMERCIALY REASONABLE" MEANS IN ACCORDANCE WITH GENERAL INDUSTRY PRACTICE IN THE PROVISION OF WIRELESS SERVICES PERTAINING TO COST AND SERVICE COVERAGE.

12. "TELECOMMUNICATIONS TOWER" MEANS ANY FREESTANDING TOWER, MONOPOLE OR SIMILAR STRUCTURE USED FOR THE PROVISION OF WIRELESS SERVICES INCLUDING ANCILLARY TELECOMMUNICATIONS EQUIPMENT REQUIRED TO INTEGRATE SUCH FACILITY INTO AN EXISTING OR PROPOSED WIRELESS NETWORK.

13. "WIRELESS FACILITY" MEANS ONLY THE PART OR PARTS OF ANY FACILITY USED IN CONNECTION WITH THE PROVISION OF WIRELESS SERVICES INCLUDING, BUT NOT LIMITED TO, ANTENNAS, ANCILLARY EQUIPMENT AND TELECOMMUNICATIONS TOWERS.

14. "WIRELESS SERVICES" MEANS ALL COMMERCIAL MOBILE SERVICES, AS THAT TERM IS DEFINED IN SECTION 332(D) OF TITLE 47, UNITED STATES CODE, AS AMENDED FROM TIME TO TIME, INCLUDING, BUT NOT LIMITED TO, ALL BROADBAND PERSONAL COMMUNICATIONS SERVICES, WIRELESS RADIO TELEPHONE SERVICES, GEOGRAPHIC AREA SPECIALIZED AND ENHANCED SPECIALIZED MOBILE RADIO SERVICES, AND INCUMBENT-WIDE AREA SPECIALIZED MOBILE RADIO LICENSEES, WHICH OFFER REAL TIME, TWO-WAY VOICE OR DATA SERVICE THAT IS INTERCONNECTED WITH THE PUBLIC SWITCHED TELEPHONE NETWORK OR OTHERWISE PROVIDES ACCESS TO COMMUNICATIONS SERVICES.

S 301. PERMIT REQUIREMENTS. NO PERSON SHALL COMMENCE THE CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY WITHOUT FIRST OBTAINING A MUNICIPAL PERMIT.

S 302. MINIMUM STATE-WIDE PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS. 1. (A) UPON RECEIPT OF A COMPLETED APPLICATION FOR PERMISSION TO CONSTRUCT, PLACE OR MODIFY A WIRELESS FACILITY, THE MUNICIPAL BOARD SHALL CONDUCT A PUBLIC HEARING WITHIN NINETY DAYS OF SUCH APPLICATION. A WRITTEN DECISION SHALL BE RENDERED WITHIN SIXTY-TWO DAYS OF SUCH PUBLIC HEARING. THE TIME WITHIN WHICH THE MUNICIPAL BOARD MUST RENDER ITS WRITTEN DECISION MAY BE EXTENDED BY MUTUAL CONSENT OF THE APPLICANT AND THE BOARD.

(B) EACH APPLICANT SHALL PROVIDE WRITTEN NOTICE TO ALL OWNERS AND RESIDENTS OF PROPERTY LOCATED WITHIN ONE THOUSAND FEET OF THE PROPOSED WIRELESS FACILITY WITHIN TEN DAYS OF FILING AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, AND AGAIN NOT MORE THAN THIRTY DAYS BEFORE ANY SCHEDULED PUBLIC HEARING.

2. (A) AN APPLICATION FEE MAY BE IMPOSED BY A MUNICIPALITY UPON AN APPLICANT FOR THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY THAT SHALL NOT EXCEED THE NORMAL AND CUSTOMARY FEE FOR A BUILDING PERMIT APPLICATION IN SUCH MUNICIPALITY FOR PROJECTS OF SUCH SCOPE AND NATURE.

(B) UPON REQUEST OF THE BOARD, AN APPLICANT MAY BE REQUIRED TO ESTABLISH AN ESCROW ACCOUNT FOR THE PAYMENT OF THE ACTUAL, REASONABLE AND CUSTOMARY COSTS INCURRED BY THE MUNICIPALITY FOR AN INDEPENDENT TECHNICAL REVIEW OF EACH ASPECT OF THE APPLICATION.

S 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A WIRELESS FACILITY. 1. PERMIT APPROVAL MAY BE GRANTED IF THE APPLICANT DEMONSTRATES COMPLIANCE WITH THE FOLLOWING STANDARDS FOR THE REVIEW, PAYS ALL APPLICABLE FEES AND COSTS, AND SUBMITS THE REQUIRED DOCUMENTS.

2. (A) THE APPLICATION SHALL INCLUDE, AT A MINIMUM, INFORMATION, WHICH SHALL INCLUDE A MAP, THAT IDENTIFIES THE LOCATION OF ALL EXISTING WIRELESS FACILITIES TOGETHER WITH ALL FACILITIES FOR WHICH AN APPLICATION

1 HAS BEEN FILED WITHIN TWENTY MILES OF WHERE SUCH FACILITIES ARE TO BE
2 LOCATED. ON SUCH MAP THE FACILITIES IDENTIFIED MUST NOTE THE OWNER AND
3 OPERATOR OF SUCH FACILITIES.

4 (B) THE APPLICATION SHALL CONTAIN INFORMATION THAT ESTABLISHES THAT
5 THERE IS A SPECIFIC NEED FOR THE PROPOSED WIRELESS FACILITY INCLUDING,
6 BUT NOT LIMITED TO, EVIDENCE THAT THE EXISTING WIRELESS FACILITIES DO
7 NOT PROVIDE ADEQUATE COVERAGE AND DO NOT HAVE THE VIABILITY TO PROVIDE
8 ADEQUATE COVERAGE BY ADJUSTING THE FACILITIES AT EXISTING SITES.

9 (C) THE INFORMATION SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL
10 INCLUDE DATA ON THE EFFECTS UPON THE PUBLIC HEALTH OF THE RADIO WAVES
11 EMITTED BY THE PROPOSED WIRELESS FACILITY.

12 3. THE APPLICATION SHALL DEMONSTRATE THAT OPERATION OF THE WIRELESS
13 FACILITY COMPLIES WITH ALL APPLICABLE REGULATIONS OF THE FEDERAL COMMU-
14 NICATIONS COMMISSION, THE PUBLIC SERVICE COMMISSION AND THE DEPARTMENT
15 OF HEALTH, INCLUDING REGULATIONS REGARDING RADIO-FREQUENCY EMISSIONS.
16 IF NEW, MORE RESTRICTIVE STANDARDS ARE ADOPTED BY SUCH AGENCIES, THE
17 FACILITY SHALL, IN A MANNER CONSISTENT WITH SUCH STANDARDS, BE BROUGHT
18 INTO COMPLIANCE, OR CONTINUED OPERATIONS MAY BE RESTRICTED BY THE MUNI-
19 CIPALITY.

20 4. THE WIRELESS FACILITY SHALL BE DESIGNED AND FINISHED IN A MANNER
21 WHICH MINIMIZES THE VISUAL IMPACT ON SURROUNDING PROPERTIES IN ACCORD-
22 ANCE WITH GENERALLY ACCEPTED PRACTICES, WHILE PROVIDING THE LEVEL OF
23 SERVICE REQUESTED BY THE APPLICANT. MINIMIZATION OF VISUAL IMPACT IN AN
24 HISTORIC OR SCENIC AREA SHALL INCLUDE REASONABLE EFFORTS THAT TAKE INTO
25 ACCOUNT THE TOPOGRAPHY AND SURROUNDINGS OF THE WIRELESS FACILITY.

26 5. NO TELECOMMUNICATIONS TOWER SHALL BE LOCATED WITHIN ONE THOUSAND
27 FIVE HUNDRED FEET OF ANY ELEMENTARY OR SECONDARY SCHOOL.

28 6. THE WIRELESS FACILITY SHALL BE DESIGNED, CONSTRUCTED, MAINTAINED
29 AND OPERATED IN A MANNER THAT ENSURES THE SECURITY OF THE FACILITY AND
30 PROTECTS AGAINST UNAUTHORIZED ACCESS.

31 7. WIRELESS FACILITIES SHALL NOT BE ILLUMINATED BY ARTIFICIAL MEANS
32 AND SHALL NOT DISPLAY OBSTRUCTION MARKING AND/OR LIGHTING UNLESS SUCH
33 MARKING AND/OR LIGHTING IS SPECIFICALLY REQUIRED BY THE FEDERAL AVIATION
34 ADMINISTRATION OR OTHER FEDERAL OR STATE AUTHORITY FOR A PARTICULAR
35 WIRELESS FACILITY; PROVIDED, HOWEVER, WHEN INCORPORATED INTO THE DESIGN,
36 LIGHT FIXTURES USED TO ILLUMINATE BALL FIELDS, PARKING LOTS, OR OTHER
37 GROUND AREAS OR GROUND STRUCTURES MAY BE ATTACHED TO WIRELESS FACILI-
38 TIES.

39 8. THE APPLICANT SHALL PRESERVE EXISTING ON-SITE VEGETATION TO THE
40 MAXIMUM EXTENT PRACTICABLE. THE BASE OF THE FACILITY AND ANY ACCESSORY
41 STRUCTURES SHALL BE LANDSCAPED.

42 9. (A) ANY CONTRACT WITH AN OWNER OF PROPERTY UPON WHICH A WIRELESS
43 FACILITY IS TO BE PLACED, CONSTRUCTED OR MODIFIED SHALL INCLUDE A
44 PROVISION REQUIRING THE OWNER OF THE WIRELESS FACILITY TO REMOVE SUCH
45 FACILITY IN THE EVENT THE FACILITY HAS NOT BEEN IN USE FOR A PERIOD OF
46 AT LEAST TWELVE MONTHS. THE TERMS OF SUCH PROVISION SHALL BE FILED WITH
47 THE MUNICIPALITY WHERE THE PROPOSED WIRELESS FACILITY IS TO BE
48 LOCATED. THE PERMIT MAY BE REVOKED UPON A FINDING THAT THE REQUIRED
49 CONTRACT LANGUAGE HAS BEEN REMOVED.

50 (B) THE MUNICIPALITY MAY REQUIRE THAT, IN THE EVENT THE WIRELESS
51 FACILITY IS NOT USED BY THE APPLICANT, OTHER CO-LOCATORS, THEIR SUCCE-
52 SORS AND/OR ASSIGNS FOR A PERIOD OF ONE YEAR OR MORE, SUCH FACILITY
53 SHALL BE REMOVED BY ITS THEN-CURRENT OWNER. IN THE EVENT THE WIRELESS
54 FACILITY IS NOT SO REMOVED, THE MUNICIPALITY SHALL GIVE WRITTEN NOTICE
55 TO THE OWNER OF SUCH FACILITY (I) STATING THAT THE WIRELESS FACILITY IS
56 CONSIDERED ABANDONED, AND (II) SETTING A TIME, DATE AND PLACE FOR A

1 PUBLIC HEARING. SUCH PUBLIC HEARING SHALL BE ON NOT LESS THAN THIRTY
2 DAYS NOTICE TO SUCH OWNER. UPON A FINDING THAT THE WIRELESS FACILITY
3 HAS BEEN ABANDONED, THE MUNICIPALITY SHALL DELIVER WRITTEN NOTICE TO THE
4 APPLICANT INDICATING THE REASONS FOR ITS FINDING, AND DIRECTING THAT THE
5 WIRELESS FACILITY BE REMOVED WITHIN ONE HUNDRED TWENTY DAYS, WEATHER
6 PERMITTING. IN THE EVENT THAT THE WIRELESS FACILITY IS NOT SO REMOVED,
7 THE MUNICIPALITY MAY COMMENCE AN ACTION IN SUPREME COURT AGAINST THE
8 OWNER OF SUCH FACILITY SEEKING AN ORDER REQUIRING THE REMOVAL. THE
9 PREVAILING PARTY IN SUCH ENFORCEMENT ACTION SHALL BE ENTITLED TO RECOVER
10 FROM THE OTHER REASONABLE ATTORNEYS FEES, AS DETERMINED BY THE COURT.

11 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS
12 SUBDIVISION, A MUNICIPALITY MAY ADOPT A LOCAL LAW TO REQUIRE THE POSTING
13 OF A BOND OR OTHER SECURITY IN ORDER TO FINANCE DISMANTLING OF AN ABAN-
14 DONED WIRELESS FACILITY.

15 S 304. CO-LOCATION STANDARDS. 1. WHERE AN APPLICATION PROPOSES
16 CONSTRUCTION OF A WIRELESS FACILITY DESIGNED TO SUPPORT ONLY ONE PROVID-
17 ER, THE APPLICANT SHALL DEMONSTRATE THAT CO-LOCATING WITH ANOTHER WIRE-
18 LESS FACILITY INSTEAD OF CONSTRUCTION OF THE PROPOSED WIRELESS FACILITY
19 IS NOT TECHNICALLY AND COMMERCIALY REASONABLE.

20 2. THE BOARD MAY REQUIRE THE APPLICANT FOR A WIRELESS FACILITY TO MAKE
21 A REASONABLE ATTEMPT TO CO-LOCATE WITH ANOTHER WIRELESS FACILITY THAT
22 CAN ADEQUATELY SERVE THE NEEDS OF THE APPLICANT.

23 3. IF THE BOARD REQUIRES THE APPLICANT TO ATTEMPT TO CO-LOCATE A WIRE-
24 LESS FACILITY WITH AN EXISTING WIRELESS FACILITY, THE APPLICANT SHALL
25 PROVIDE THE BOARD WITH A STATEMENT INDICATING THAT THE APPLICANT HAS
26 EITHER:

27 (A) AGREED TO CO-LOCATE THE WIRELESS FACILITY WITH AN EXISTING WIRE-
28 LESS FACILITY, AND WHICH STATEMENT IDENTIFIES THE LOCATION OF THE FACIL-
29 ITY ON WHICH THE APPLICANT WILL BE CO-LOCATED; OR

30 (B) ATTEMPTED TO CO-LOCATE THE WIRELESS FACILITY WITH AN EXISTING
31 WIRELESS FACILITY; SUCH STATEMENT SHOULD IDENTIFY THE LOCATION OF THE
32 FACILITIES WHICH THE APPLICANT ATTEMPTED TO CO-LOCATE ON WIRELESS FACIL-
33 ITIES WHICH THE APPLICANT HAS REVIEWED, AND LIST THE REASONS WHY EACH
34 SUCH ATTEMPT TO CO-LOCATE A WIRELESS FACILITY WAS UNSUCCESSFUL.

35 4. THE BOARD MAY DENY AN APPLICATION IF IT DETERMINES THAT SUCH APPLI-
36 CANT CAN CO-LOCATE ITS PROPOSED FACILITY AT ANOTHER SITE.

37 S 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES. 1. UPON FINDING
38 THAT A PROPOSED WIRELESS FACILITY COMPLIES WITH THE PROVISIONS OF
39 SECTIONS THREE HUNDRED THREE AND THREE HUNDRED FOUR OF THIS ARTICLE, THE
40 BOARD SHALL ISSUE A PERMIT. APPEALS FROM BOARD ACTIONS PURSUANT TO THE
41 PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY ARTICLE SEVENTY-EIGHT OF
42 THE CIVIL PRACTICE LAW AND RULES.

43 2. WHERE THE WIRELESS FACILITY DOES NOT MEET THE SPECIFICATIONS
44 OUTLINED IN THIS ARTICLE, THE MUNICIPAL BOARD SHALL NOT ISSUE THE PERMIT
45 PURSUANT TO THIS ARTICLE.

46 S 306. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL GOVERN THE
47 PLACEMENT, CONSTRUCTION AND MODIFICATION OF ALL WIRELESS FACILITIES IN A
48 MUNICIPALITY; PROVIDED, HOWEVER, NO PROVISION OF THIS ARTICLE SHALL BE
49 DEEMED TO PROHIBIT ANY MUNICIPALITY FROM ENACTING AND IMPLEMENTING A
50 LOCAL LAW WHICH IS CONSISTENT WITH THE MINIMUM REQUIREMENTS OF THIS
51 ARTICLE, AND IMPOSES STRICTER OR MORE RESTRICTIVE STANDARDS ON THE
52 SITING OF WIRELESS FACILITIES THAN THOSE ENACTED IN THIS ARTICLE.

53 S 4. The department of health shall study, evaluate and make recommen-
54 dations concerning the potential adverse health effects to the general
55 public due to exposure to the radio frequency signals and microwave
56 energy emitted by wireless facilities, as defined in section 300 of the

1 general municipal law, as added by section three of this act. Such
2 department shall report its findings, conclusions and recommendations
3 thereon, with special focus on the incidence of cancer, to the governor
4 and the legislature on or before the three hundred sixty-fifth day after
5 this act shall have become a law, and shall submit with its report such
6 legislative proposals as it deems necessary to implement its recommenda-
7 tions.
8 S 5. This act shall take effect immediately, provided that section
9 three of this act shall take effect on the one hundred eightieth day
10 after it shall have become a law and shall apply to all applications for
11 building permits for wireless facilities submitted on or after the
12 effective date of such section.