

# STATE OF NEW YORK

4506

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

Introduced by M. of A. COLTON, CYMBROWITZ, WRIGHT, HOOPER, BENEDETTO, ENGLEBRIGHT, RIVERA, ROSENTHAL, JAFFEE -- Multi-Sponsored by -- M. of A. FINCH, GLICK, HIKIND, McKEVITT, THIELE, TITUS, WALKER -- read once and referred to the Committee on Local Governments

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

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 aesthetic  
11 ramifications of such siting. It is the intent of the legislature in  
12 adopting the "wireless facility siting act" to implement enabling legis-  
13 lation which specifically sets forth a uniform statewide process for  
14 municipal review of applications for the placement, construction and  
15 modification of wireless services facilities in all municipalities that  
16 do not have local laws to regulate the placement of such towers. Each  
17 municipality shall be able to enact approval processes that are more  
18 strict than those established by this act.

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

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

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

LBD04978-01-7

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.

§ 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.

1 11. "Technically and commercially reasonable" means in accordance with  
2 general industry practice in the provision of wireless services pertain-  
3 ing to cost and service coverage.

4 12. "Telecommunications tower" means any freestanding tower, monopole  
5 or similar structure used for the provision of wireless services includ-  
6 ing ancillary telecommunications equipment required to integrate such  
7 facility into an existing or proposed wireless network.

8 13. "Wireless facility" means only the part or parts of any facility  
9 used in connection with the provision of wireless services including,  
10 but not limited to, antennas, ancillary equipment and telecommunications  
11 towers.

12 14. "Wireless services" means all commercial mobile services, as that  
13 term is defined in section 332(d) of title 47, United States Code, as  
14 amended from time to time, including, but not limited to, all broadband  
15 personal communications services, wireless radio telephone services,  
16 geographic area specialized and enhanced specialized mobile radio  
17 services, and incumbent-wide area specialized mobile radio licensees,  
18 which offer real time, two-way voice or data service that is intercon-  
19 ected with the public switched telephone network or otherwise provides  
20 access to communications services.

21 § 301. Permit requirements. No person shall commence the construction  
22 or modification of a wireless facility without first obtaining a munic-  
23 ipal permit.

24 § 302. Minimum state-wide procedure for municipal review of permit  
25 requests. 1. (a) Upon receipt of a completed application for permis-  
26 sion to construct, place or modify a wireless facility, the municipal  
27 board shall conduct a public hearing within ninety days of such applica-  
28 tion. A written decision shall be rendered within sixty-two days of such  
29 public hearing. The time within which the municipal board must render  
30 its written decision may be extended by mutual consent of the applicant  
31 and the board.

32 (b) Each applicant shall provide written notice to all owners and  
33 residents of property located within one thousand feet of the proposed  
34 wireless facility within ten days of filing an application pursuant to  
35 paragraph (a) of this subdivision, and again not more than thirty days  
36 before any scheduled public hearing.

37 2. (a) An application fee may be imposed by a municipality upon an  
38 applicant for the placement, construction or modification of a wireless  
39 facility that shall not exceed the normal and customary fee for a build-  
40 ing permit application in such municipality for projects of such scope  
41 and nature.

42 (b) Upon request of the board, an applicant may be required to estab-  
43 lish an escrow account for the payment of the actual, reasonable and  
44 customary costs incurred by the municipality for an independent techni-  
45 cal review of each aspect of the application.

46 § 303. Standards for review and application requirements for a wire-  
47 less facility. 1. Permit approval may be granted if the applicant  
48 demonstrates compliance with the following standards for the review,  
49 pays all applicable fees and costs, and submits the required documents.

50 2. (a) The application shall include, at a minimum, information, which  
51 shall include a map, that identifies the location of all existing wire-  
52 less facilities together with all facilities for which an application  
53 has been filed within twenty miles of where such facilities are to be  
54 located. On such map the facilities identified must note the owner and  
55 operator of such facilities.

1 (b) The application shall contain information that establishes that  
2 there is a specific need for the proposed wireless facility including,  
3 but not limited to, evidence that the existing wireless facilities do  
4 not provide adequate coverage and do not have the viability to provide  
5 adequate coverage by adjusting the facilities at existing sites.

6 (c) The information submitted pursuant to this subdivision shall  
7 include data on the effects upon the public health of the radio waves  
8 emitted by the proposed wireless facility.

9 3. The application shall demonstrate that operation of the wireless  
10 facility complies with all applicable regulations of the Federal Commu-  
11 nications Commission. If new, more restrictive standards are adopted by  
12 such agency, the facility shall, in a manner consistent with such stan-  
13 dards, be brought into compliance, or continued operations may be  
14 restricted by the municipality.

15 4. The wireless facility shall be designed and finished in a manner  
16 which minimizes the visual impact on surrounding properties in accord-  
17 ance with generally accepted practices, while providing the level of  
18 service requested by the applicant. Minimization of visual impact in an  
19 historic or scenic area shall include reasonable efforts that take into  
20 account the topography and surroundings of the wireless facility.

21 5. No telecommunications tower shall be located within one thousand  
22 five hundred feet of any elementary or secondary school.

23 6. The wireless facility shall be designed, constructed, maintained  
24 and operated in a manner that ensures the security of the facility and  
25 protects against unauthorized access.

26 7. Wireless facilities shall not be illuminated by artificial means  
27 and shall not display obstruction marking and/or lighting unless such  
28 marking and/or lighting is specifically required by the Federal Aviation  
29 Administration or other federal or state authority for a particular  
30 wireless facility; provided, however, when incorporated into the design,  
31 light fixtures used to illuminate ball fields, parking lots, or other  
32 ground areas or ground structures may be attached to wireless facili-  
33 ties.

34 8. The applicant shall preserve existing on-site vegetation to the  
35 maximum extent practicable. The base of the facility and any accessory  
36 structures shall be landscaped.

37 9. (a) Any contract with an owner of property upon which a wireless  
38 facility is to be placed, constructed or modified shall include a  
39 provision requiring the owner of the wireless facility to remove such  
40 facility in the event the facility has not been in use for a period of  
41 at least twelve months. The terms of such provision shall be filed with  
42 the municipality where the proposed wireless facility is to be  
43 located. The permit may be revoked upon a finding that the required  
44 contract language has been removed.

45 (b) The municipality may require that, in the event the wireless  
46 facility is not used by the applicant, other co-locators, their succes-  
47 sors and/or assigns for a period of one year or more, such facility  
48 shall be removed by its then-current owner. In the event the wireless  
49 facility is not so removed, the municipality shall give written notice  
50 to the owner of such facility (i) stating that the wireless facility is  
51 considered abandoned, and (ii) setting a time, date and place for a  
52 public hearing. Such public hearing shall be on not less than thirty  
53 days notice to such owner. Upon a finding that the wireless facility  
54 has been abandoned, the municipality shall deliver written notice to the  
55 applicant indicating the reasons for its finding, and directing that the  
56 wireless facility be removed within one hundred twenty days, weather

1 permitting. In the event that the wireless facility is not so removed,  
2 the municipality may commence an action in supreme court against the  
3 owner of such facility seeking an order requiring the removal. The  
4 prevailing party in such enforcement action shall be entitled to recover  
5 from the other reasonable attorneys fees, as determined by the court.

6 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this  
7 subdivision, a municipality may adopt a local law to require the posting  
8 of a bond or other security in order to finance dismantling of an aban-  
9 doned wireless facility.

10 § 304. Co-location standards. 1. Where an application proposes  
11 construction of a wireless facility designed to support only one provid-  
12 er, the applicant shall demonstrate that co-locating with another wire-  
13 less facility instead of construction of the proposed wireless facility  
14 is not technically and commercially reasonable.

15 2. The board may require the applicant for a wireless facility to make  
16 a reasonable attempt to co-locate with another wireless facility that  
17 can adequately serve the needs of the applicant.

18 3. If the board requires the applicant to attempt to co-locate a wire-  
19 less facility with an existing wireless facility, the applicant shall  
20 provide the board with a statement indicating that the applicant has  
21 either:

22 (a) agreed to co-locate the wireless facility with an existing wire-  
23 less facility, and which statement identifies the location of the facil-  
24 ity on which the applicant will be co-located; or

25 (b) attempted to co-locate the wireless facility with an existing  
26 wireless facility; such statement should identify the location of the  
27 facilities which the applicant attempted to co-locate on wireless facil-  
28 ities which the applicant has reviewed, and list the reasons why each  
29 such attempt to co-locate a wireless facility was unsuccessful.

30 4. The board may deny an application if it determines that such appli-  
31 cant can co-locate its proposed facility at another site.

32 § 305. Permit approval; non-conforming facilities. 1. Upon finding  
33 that a proposed wireless facility complies with the provisions of  
34 sections three hundred three and three hundred four of this article, the  
35 board shall issue a permit. Appeals from board actions pursuant to the  
36 provisions of this article shall be governed by article seventy-eight of  
37 the civil practice law and rules.

38 2. (a) Where the wireless facility does not meet the specifications  
39 outlined in this article, the municipal board shall not issue the permit  
40 pursuant to this article.

41 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-  
42 sion, upon a showing that construction of a wireless facility meeting  
43 the requirements of this article is not technically and commercially  
44 reasonable, application may be made pursuant to the provisions of any  
45 municipal zoning law or other local law, ordinance, rule or regulation  
46 adopted pursuant to the provisions of article five-A of the general city  
47 law, the statute of local governments or municipal home rule law govern-  
48 ing the placement, construction or modification of wireless facilities;  
49 provided, however that an area or use variance shall be granted for a  
50 wireless facility upon a showing that:

51 (i) the wireless facility is a public necessity in that it is required  
52 to render the safe and adequate level of service required by the appli-  
53 cant; and

54 (ii) the placement, construction or modification of the wireless  
55 facility is necessary in order for the applicant to render the required

1 level of service in a manner that is technically and commercially  
2 reasonable.

3 § 306. Applicability. Notwithstanding any provision of law to the  
4 contrary, the provisions of this article shall govern the placement,  
5 construction and modification of all wireless facilities in a munici-  
6 pality; whether such placement, construction or modification shall be  
7 upon state, county, municipality or privately owned lands or rights of  
8 way provided, however, no provision of this article shall be deemed to  
9 prohibit any municipality from enacting and implementing a local law  
10 which is consistent with the minimum requirements of this article, and  
11 imposes stricter or more restrictive standards on the siting of wireless  
12 facilities than those enacted in this article.

13 § 4. This act shall take effect immediately, provided that section  
14 three of this act shall take effect on the one hundred eightieth day  
15 after it shall have become a law and shall apply to all applications for  
16 building permits for wireless facilities submitted on or after the  
17 effective date of such section.