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26

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sen. STEC -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to enacting the "wireless broadband eligible facility permitting act" providing for uniform municipal regulation of certain wireless facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature hereby finds and
2 declares that it is the policy of this state to ensure the safe and
3 efficient integration of certain wireless facility modifications neces-
4 sary for the provision of broadband and other advanced wireless services
5 across the entirety of the state. It is the intent of this act to facil-
6 itate the ongoing demand for access to broadband and other advanced
7 wireless services by exempting certain modifications of existing wire-
8 less facilities from the need for municipal zoning, land use or other
9 discretionary siting permits, to eliminate the burdens and resources
10 dedicated by municipal zoning and land use agencies to review certain
11 eligible modifications of such wireless facilities, and create a state-
12 wide uniform process for municipal permitting of such eligible facility
13 modifications. The legislature acknowledges and confirms the authority
14 of local governments to otherwise exercise zoning, land use and permit-
15 ting authority within their territorial boundaries with regard to the
16 placement and construction of wireless facilities in accordance with
17 other laws, rules and requirements that may apply to the siting of wire-
18 less facilities.

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

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ARTICLE 13-E
WIRELESS FACILITIES

Section 300. Definitions.

301. General municipal authority over siting of wireless facilities.

302. Eligible facilities requests.

303. Application to supreme court by aggrieved persons.

304. Preemption.

§ 300. Definitions. For the purposes of this article, the following terms shall have the following meanings unless the context indicates otherwise.

1. "Applicant" shall mean any person who files an application for wireless infrastructure pursuant to a municipal zoning law adopted pursuant to this article or an eligible facilities request with the municipal building inspector.

2. "Application" shall mean a zoning application filed with a municipality for approvals to construct, operate and maintain a wireless facility, an eligible facilities request or an application pursuant to the state uniform fire prevention and building code.

3. "Base station" shall mean a structure or equipment at a fixed location that enables Federal Communications Commission licensed or authorized wireless communications between user equipment and a communications network. Such term shall not encompass a tower or any equipment associated with a tower.

(a) Such term shall include, but not be limited to:

(1) equipment associated with wireless communications services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;

(2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks); and

(3) any structure other than a tower that, at the time the relevant permit application is filed with the municipal building inspector, supports or houses equipment described in subparagraph one or two of this paragraph that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(b) Such term shall not include any structure that, at the time the relevant permit application is filed with the municipal building inspector, does not support or house equipment described in subparagraph one or two of paragraph (a) of this subdivision.

4. "Collocation" shall mean the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

5. "Eligible facilities request" shall mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(a) the collocation of new transmission equipment;

(b) the removal of transmission equipment; or

(c) the replacement of transmission equipment.

1 6. "Eligible support structure" shall mean any tower or base station,
2 provided that it is existing at the time a permit application is filed
3 with a municipal building inspector.

4 7. "Existing" shall mean that a constructed tower or base station has
5 been reviewed and approved under the applicable zoning or siting proc-
6 ess, or under another state or local regulatory review process, provided
7 that a tower that has not been reviewed and approved but was lawfully
8 constructed prior to the current applicable zoning or siting process,
9 shall be deemed to be existing.

10 8. "Modification" shall mean the improvement, upgrade or expansion of
11 an existing wireless facility, base station or wireless support struc-
12 ture that is not a repair, maintenance or in kind replacement of exist-
13 ing transmission equipment.

14 9. "Municipality" shall mean a city, town or village, including any
15 agent, board, authority, commission, agency, department or other instru-
16 mentality thereof.

17 10. "Municipal building inspector" shall mean the official charged
18 with issuing building permits or enforcing the state uniform fire
19 prevention and building code within a municipality. In the event a
20 municipality does not have a municipal official charged with issuing
21 building permits or enforcing the state uniform fire prevention and
22 building code, such term shall be deemed to refer to the entity charged
23 with enforcing the building code pursuant to subdivision two of section
24 three hundred eighty-one of the executive law.

25 11. "Municipal zoning law" shall mean any local law, ordinance, rule,
26 regulation, policy or guideline which regulates or governs the location
27 or use of structures or land adopted by a municipality pursuant to this
28 chapter, the general city law, the town law, the village law and/or any
29 other applicable authority.

30 12. "Site" shall mean, for towers other than towers in the public
31 rights-of-way, the current boundaries of the leased or owned property
32 surrounding the tower and any access or utility easements related to the
33 site, and, for other eligible support structures, further restricted to
34 that area in proximity to the structure and to other transmission equip-
35 ment deployed on the ground.

36 13. "Substantial change" shall mean a modification substantially
37 changes the physical dimensions of an eligible support structure if it
38 meets any of the following criteria:

39 (a) For towers other than towers in the public rights-of-way, it
40 increases the height of the tower by more than ten percent or by the
41 height of one additional antenna array with separation from the nearest
42 existing antenna not to exceed twenty feet, whichever is greater; and
43 for other eligible support structures, it increases the height of the
44 structure by more than ten percent or more than ten feet, whichever is
45 greater. For the purpose of this paragraph, changes in height shall be
46 measured from the original support structure in cases where deployments
47 are or will be separated horizontally, such as on buildings' rooftops;
48 and in other circumstances, changes in height shall be measured from the
49 dimensions of the tower or base station, inclusive of originally
50 approved appurtenances and any modifications that were approved prior to
51 the enactment of the Middle Class Tax Relief and Job Creation Act of
52 2012 (Public Law 112-96);

53 (b) For towers other than towers in the public rights-of-way, it
54 involves adding an appurtenance to the body of the tower that would
55 protrude from the edge of the tower more than twenty feet, or more than
56 the width of the tower structure at the level of the appurtenance,

1 whichever is greater; and for other eligible support structures, it
2 involves adding an appurtenance to the body of the structure that would
3 protrude from the edge of the structure by more than six feet;

4 (c) For any eligible support structure, it involves installation of
5 more than the standard number of new equipment cabinets for the technol-
6 ogy involved, but not to exceed four cabinets; or, for towers in the
7 public rights-of-way and base stations, it involves installation of any
8 new equipment cabinets on the ground if there are no pre-existing ground
9 cabinets associated with the structure, or else involves installation of
10 ground cabinets that are more than ten percent larger in height or over-
11 all volume than any other ground cabinets associated with the structure;

12 (d) It entails any excavation or deployment outside the current site;

13 (e) It would defeat the concealment elements of the eligible support
14 structure; or

15 (f) It does not comply with conditions associated with the siting
16 approval of the construction or modification of the eligible support
17 structure or base station equipment; provided, however, that this limi-
18 tation shall not apply to any modification that is non-compliant only in
19 a manner that would not exceed the thresholds identified in paragraphs
20 (a) through (d) of this subdivision.

21 14. "Transmission equipment" shall mean equipment that facilitates
22 transmission for any Federal Communications Commission licensed or
23 authorized wireless communications services including, but not limited
24 to, radio transceivers, antennas, coaxial or fiber-optic cable, and
25 regular and backup power supply. Such term shall include equipment asso-
26 ciated with wireless communications services including, but not limited
27 to, private, broadcast and public safety services, as well as unlicensed
28 wireless services and fixed wireless services such as microwave back-
29 haul.

30 15. "Tower" shall mean any structure built for the sole or primary
31 purpose of supporting any Federal Communications Commission licensed or
32 authorized antennas and their associated facilities, including struc-
33 tures that are constructed for wireless communications services includ-
34 ing, but not limited to, private, broadcast and public safety services,
35 as well as unlicensed wireless services and fixed wireless services such
36 as microwave backhaul, and the associated site.

37 16. "Wireless facility" shall mean the wireless services equipment
38 including transmission equipment, base station, tower and accessory
39 equipment, utilities and other site development components.

40 17. "Wireless services" shall mean the use of any wireless technology,
41 including without limitation, commercial mobile services, commercial
42 mobile radio services, unlicensed wireless services, common carrier
43 wireless exchange access services, cellular radiotelephone, specialized
44 mobile radio systems, personal communications services, advanced wire-
45 less services, two-way personal wireless services, and any such other
46 wireless technologies that may from time to time be utilized, in order
47 to transmit and/or receive radio waves.

48 § 301. General municipal authority over siting of wireless facilities.

49 1. A municipality may enact municipal zoning laws regulating the siting
50 and installation of base stations and towers provided that such municip-
51 al zoning laws comply with federal laws, including the provisions of 47
52 U.S.C. § 332(c)(7), the Federal Communications Commission cell tower
53 shot clock order, the Middle Class Tax Relief and Job Creation Act of
54 2012 and the provisions of this article.

1 2. Every municipality shall act on an application for a wireless
2 facility in accordance with the regulations and orders of the Federal
3 Communications Commission as follows for:

4 (a) a base station within ninety days of the application being filed
5 with the municipality;

6 (b) a tower within one hundred fifty days of the application being
7 filed with the municipality; or

8 (c) an eligible facilities request within sixty days of the applica-
9 tion being filed with the municipality, as set forth in section three
10 hundred two of this article.

11 § 302. Eligible facilities requests. 1. Notwithstanding any other
12 provision of law to the contrary, a municipality shall not require
13 zoning, land use or other discretionary permits for any eligible facili-
14 ties request.

15 2. All eligible facilities requests shall be submitted to the munici-
16 pal building inspector for review with any application or applications
17 for permits that may be required by the state uniform fire prevention
18 and building code, and shall not otherwise be subject to any municipal
19 zoning law which may otherwise apply to wireless facilities.

20 3. All eligible facilities requests shall be exempt from environmental
21 quality review pursuant to article eight of the environmental conserva-
22 tion law on the basis that administrative review of an eligible facili-
23 ties request is an official act of a ministerial nature involving no
24 exercise of discretion, and the issuance of any associated administra-
25 tive approval by the municipal building inspector predicated solely on
26 compliance or noncompliance with this section. No environmental assess-
27 ment form shall be required for review of an eligible facilities review.

28 4. When a person files an eligible facilities review and asserts in
29 writing that a request for modification is covered by this section, the
30 municipal building inspector may only require documentation or informa-
31 tion customarily required in a building permit application and such
32 other information reasonably related to determining whether the request
33 meets the requirements of this article. A municipal building inspector
34 may adopt a form for use in assessing eligible facilities review filings
35 in addition to any other customary forms used for the processing of
36 building permit applications.

37 5. The municipal building inspector shall review and approve an appli-
38 cation of eligible facilities review and issue any necessary building
39 and/or electrical permits within sixty days of the submission, subject
40 to tolling as set forth in subdivision six of this section, unless the
41 municipal building inspector determines that the modification does not
42 meet the criteria for an eligible facilities review in which case a
43 written denial thereof shall be transmitted within sixty days of the
44 filing date. If the municipal building inspector determines that the
45 modification does not meet the criteria for an eligible facilities
46 review, the reasons shall be stated in the written denial and include a
47 determination of what if any application shall be required under any
48 municipal zoning law.

49 6. The sixty day review period begins to run when the application for
50 an eligible facilities review and application for any necessary permits
51 are filed, and may be tolled only (a) by mutual agreement of the munici-
52 pal building inspector and the applicant or (b) where the municipal
53 building inspector determines that the eligible facilities review and/or
54 any necessary permit applications are incomplete and provides written
55 notice to the applicant within thirty days of receipt of such permit
56 applications specifically delineating all missing supporting information

1 or documentation that is required. The timeframe for review begins
2 running again when the applicant makes a supplemental submission in
3 response to any notice of incompleteness. Following a supplemental
4 submission, the municipal building inspector shall notify the applicant
5 within ten days if the supplemental submission did not provide the
6 information identified in the original notice delineating missing infor-
7 mation and these tolling procedures. Second or subsequent notices of
8 incompleteness shall only toll the timeframe for review to the extent
9 they request documents or information that were delineated in the
10 original notice of incompleteness.

11 7. In the event the municipal building inspector fails to approve or
12 deny an application for eligible facilities review and issue any neces-
13 sary permits within the timeframe set forth in subdivision five of this
14 section, subject to tolling set forth in subdivision six of this
15 section, the eligible facilities review and any necessary permits shall
16 be deemed granted. The deemed grant approval will become effective when
17 the applicant notifies the municipal building inspector in writing that
18 the sixty day period, and any applicable tolling, has expired and the
19 permits have been deemed granted by operation of law. The municipality
20 shall issue any necessary permits within fifteen days of the date the
21 municipality receives notice of the deemed grant approval.

22 § 303. Application to supreme court by aggrieved persons. Any person
23 or persons, jointly or severally aggrieved by any act of a municipality
24 that is inconsistent with the provisions of this article or a failure to
25 act in a manner consistent therewith, may, within thirty days after such
26 action or failure to act, commence an action pursuant to article seven-
27 ty-eight of the civil practice law and rules in the supreme court for
28 the county in which such municipality is situate. The supreme court
29 shall hear and decide such action on an expedited basis.

30 § 304. Preemption. The provisions of this article shall supersede any
31 inconsistent provision of law relating to the placement, collocation,
32 modification or maintenance of wireless facilities.

33 § 4. This act shall take effect on the thirtieth day after it shall
34 have become a law.