

SENATE No. 2183

The Commonwealth of Massachusetts

—
In the Year Two Thousand Twenty-Two
—

SENATE, June 6, 2014.

The committee on Telecommunications, Utilities and Energy to whom was referred the (accompanied by bill, Senate, No. 1908) of Jennifer L. Flanagan for legislation relative to upgrading mobile broadband coverage in the Commonwealth, reports recommending that the accompanying bill (Senate, No. 2183).

For the committee,
Benjamin B. Downing

SENATE No. 2183

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act upgrading mobile broadband coverage in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 3 of chapter 40A of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by inserting at the end thereof the following paragraph:-

3 No zoning ordinance or by-law shall prohibit, regulate or restrict collocation of wireless
4 facilities on existing structures in a manner inconsistent with chapter 43F.

5 SECTION 2. The General Laws are hereby amended by inserting after chapter 43E, the
6 following chapter:-

7 CHAPTER 43F.

8 EXPEDITED COLLOCATION PERMITTING.

9 Section 1. As used in this chapter the following words shall, unless the context clearly
10 requires otherwise, have the following meanings:-

11 “Antenna”, communications equipment that transmits and receives electromagnetic radio
12 signals used in the provision of all types of wireless communications services.

13 “Applicant”, any person engaged in the business of providing wireless communications
14 services or the wireless communications infrastructure required for wireless communications
15 services who submits a collocation application.

16 “Building Permit”, a permit issued by an issuing authority prior to the collocation of
17 wireless facilities, solely to ensure that the work to be performed by the applicant satisfies the
18 state building code.

19 “Collocation”, the placement, installation, replacement, upgrade or modification of
20 wireless facilities on or in existing structures or wireless support structures that have been
21 previously approved by an issuing authority and are capable of structurally supporting the
22 attachment of wireless facilities in compliance with the state building code. The term collocation
23 includes the placement, installation, replacement, upgrade or modification of wireless facilities
24 within a previously approved equipment compound, but does not include a substantial
25 modification. The term collocation excludes the placement or installation of wireless facilities
26 on the exterior of an existing structure listed on the national or state register of historic structures
27 unless the Massachusetts historical commission’s state historic preservation officer has made a
28 finding that this placement or installation either would have no effect or no adverse effect on the
29 characteristics of the building or structure or that any adverse effect will be eliminated,
30 minimized or, mitigated.

31 “Collocation Application”, a request submitted by an applicant to an issuing authority for
32 collocation of wireless facilities on an existing structure or wireless support structure.

33 “Equipment Compound”, an area surrounding or near the base of an existing structure
34 within which wireless facilities are located.

35 “Existing Structure”, any structure previously approved by an issuing authority that is
36 capable of supporting the attachment of existing wireless facilities in compliance with the state
37 building code, including, but not limited to, towers, buildings and water towers. The term shall
38 not include any utility pole.

39 “Issuing Authority”, a local board, commission, department or other municipal entity
40 that is responsible for granting the approval or otherwise involved in administrative decisions
41 relative to the construction, installation, modification, or siting of wireless facilities and wireless
42 support structures.

43 “Substantial Modification”, the mounting of a proposed wireless facility on a wireless
44 support structure which: (a) increases the existing vertical height of the structure and existing
45 wireless facilities by (i) more than 10 per cent, or (ii) the height of one additional antenna array
46 with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
47 (b) involves adding an appurtenance to the body of an existing wireless support structure that
48 protrudes horizontally from the edge of the wireless support structure more than 20 feet, or more
49 than the width of the existing wireless support structure at the level of the appurtenance,
50 whichever is greater (except where necessary to shelter the antenna from inclement weather or to
51 connect the antenna to the tower via cable); or (c) increases the area of the existing equipment
52 compound by more than 2,500 square feet; or (d) adds to or modifies an existing structure or
53 wireless support structure by removing previously approved conditions placed on the existing
54 structure or wireless support structure to camouflage, disguise, or hide a wireless facility.

55 “Utility Pole”, a structure owned or operated by a public utility, municipality, electric
56 membership corporation or that is designed specifically for and used to carry lines, cables, or
57 wires for telephony, cable television, or electricity or to provide lighting. This term shall not
58 apply to towers, overhead wires and associated overhead structures used exclusively in the
59 transmission but not the distribution of electricity.

60 “Water Tower”, a water storage tank, or a standpipe or an elevated tank situated on a
61 support structure, originally constructed for use as a reservoir or facility to store or deliver water.

62 “Wireless Support Structure”, a freestanding structure, such as a monopole or tower,
63 designed to support wireless facilities. This term does not include utility poles.

64 “Wireless Facility”, the set of equipment and network components, exclusive of the
65 underlying wireless support structure, including, but not limited to utility or transmission
66 equipment, antennas, cables, transmitters, receivers, base stations, power supplies, generators,
67 batteries, equipment buildings, cabinets, storage sheds and all other associated equipment and
68 installations that may be involved in providing wireless communications services.

69 Section 2. Notwithstanding any other general or special law, ordinance, by-law, rule or
70 regulation to the contrary, each issuing authority shall follow the following process for reviewing
71 and deciding collocation applications:

72 (a) Collocation applications shall be reviewed for conformity with state building code
73 requirements but shall not otherwise be subject to zoning or land use requirements.

74 (b) The issuing authority, within 90 days of receiving a collocation application, shall: (i)
75 review the collocation application in light of its conformity with applicable building permit
76 requirements and consistency with this chapter. A collocation application is considered
77 complete unless the issuing authority notifies the applicant in writing, within 30 calendar days of
78 submission of the collocation application, of the specific deficiencies in the collocation
79 application which, if cured, would make the collocation application complete. Upon receipt of a
80 timely written notice that a collocation application is deficient, an applicant may take 15 calendar
81 days from receiving that notice to cure the specific deficiencies. If the applicant cures the
82 deficiencies within 15 calendar days, the collocation application shall be reviewed and processed
83 within 90 calendar days from the initial date the collocation application was received; (ii) make
84 its final decision to approve or disapprove the collocation application; and (iii) advise the
85 applicant in writing of its final decision.

86 (c) an applicant aggrieved by the final decision of an issuing authority with respect to a
87 collocation application subject to this chapter, or by the issuing authority’s failure to act on such
88 a collocation application within the 90 calendar days, may bring an action for judicial review
89 pursuant to section 4 of chapter 249 within 60 days after the receipt by the applicant of the final
90 decision of the issuing authority or within 60 days after the failure of the issuing authority to take

91 final action within the required time, as applicable, in the land court department or the superior
92 court department in which the land concerned is situated.

93 Section 3. Notwithstanding any other general or special law, ordinance, by-law, rule or
94 regulation to the contrary, an issuing authority shall not:

95 (a) Evaluate a collocation application based on the availability of other potential locations
96 for the placement of wireless support structures or wireless facilities;

97 (b) Dictate the type of wireless facilities, infrastructure or technology to be used by the
98 applicant;

99 (c) Require the removal of existing wireless support structures or wireless facilities,
100 wherever located, as a condition to approval of a collocation application;

101 (d) Evaluate a collocation application based on perceived environmental or health effects
102 of radio frequency emissions contrary to 47 U.S.C. section 332(c)(7)(b)(iv) or impose
103 environmental testing, sampling, or monitoring requirements for radio frequency emissions on
104 wireless facilities that are excluded under the Federal Communication Commission's rules for
105 radio frequency emissions, including 47 CFR 1.1307(b)(1), or otherwise establish, apply, or
106 enforce regulations or procedures for radio frequency signal strength or the adequacy of service
107 quality;

108 (e) Impose any restrictions or requirements with respect to objects in navigable airspace
109 that are greater than or in conflict with the restrictions imposed by the Federal Aviation
110 Administration;

111 (f) Prohibit or regulate the placement or operation of emergency power systems that serve
112 wireless facilities and that comply with the state building code and federal and state
113 environmental requirements; or

114 (g) Charge an application fee, consulting fee or other fee associated with the submission,
115 review, processing and approval of a collocation application that is not required for similar types
116 of commercial development within the issuing authority's jurisdiction. Fees imposed by an
117 issuing authority or by a third-party entity providing review or technical consultation to the
118 issuing authority must be based on actual, direct and reasonable administrative costs incurred for
119 the review, processing and approval of a collocation application, but in no case should total
120 charges and fees exceed \$1,000. Notwithstanding the foregoing: (i) an issuing authority or any
121 third-party entity shall not include within its charges any travel expenses incurred in a third-
122 party's review of a collocation application; and (ii) an applicant shall not be required to pay or
123 reimburse an issuing authority for consultant or other third party fees based on a contingency or
124 result-based arrangement.