

Board of Supervisors
County of Prince George, Virginia

Resolution

At a regular meeting of the Board of Supervisors of the County of Prince George held in the Boardroom, Third Floor, County Administration Building, 6602 Courts Drive, Prince George, Virginia this 14th day of February, 2017:

<u>Present:</u>	<u>Vote:</u>
William A. Robertson, Jr. Chairman	
Jerry J. Skalsky, Vice Chairman	
Alan R. Carmichael	
Donald Hunter	
T.J. Webb	

C-5

On motion of _____, seconded by _____, which carried unanimously, the following resolution was adopted:

A RESOLUTION OF THE PRINCE GEORGE COUNTY BOARD OF SUPERVISORS IN OPPOSITION TO CERTAIN 2017 VIRGINIA GENERAL ASSEMBLY WIRELESS COMMUNICATION AND BROADBAND BILLS

WHEREAS, certain bills before the Virginia General Assembly impede local control and expansion of wireless communication and broadband services; and

WHEREAS, the opposed 2017 Virginia General Assembly bills are as follows:

- House Bill 2108 Virginia Broadband Deployment Act
- House Bill 2196 Zoning for Wireless Communication Infrastructure
- Senate Bill 1282 Zoning for Wireless Communication Infrastructure; and

WHEREAS, the communication providers that currently do not serve the rural communities are supporting proposed bills that would hinder local solutions and remove local control; and

WHEREAS, House Bill 2108 creates procedural roadblocks to stop localities from providing broadband services where current providers do not serve; and

WHEREAS, House Bill 2196 and Senate Bill 1282 forces localities to violate the Federal Spectrum Act by prohibiting localities from asking for the documents which need to be reviewed to ensure that service is not effectively denied to rural communities; and

NOW, THEREFORE, BE IT RESOLVED that the Prince George County Board of Supervisors is opposed to Virginia General Assembly House Bill 2108 Virginia Broadband Deployment Act; House Bill 2196 Zoning for Wireless Communication Infrastructure; and Senate Bill 1282 Zoning for Wireless Communication Infrastructure and requests that the Virginia General Assembly deny passage of said bills.

A Copy Teste:

Percy C. Ashcraft
County Administrator

17103885D

SENATE BILL NO. 1282

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, relating to wireless communications infrastructure.

Patron—McDougle

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, as follows:

Article 7.2.

Zoning for Wireless Communications Infrastructure.

§ 15.2-2316.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Collocation" has a corresponding meaning.

"Department" means the Department of Transportation.

"Distributed antenna system" means a network that distributes radio frequency (RF) signals and consisting of (i) remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmissions and receptions; (ii) a high capacity signal transport medium that is connected to a central communications hub site; and, (iii) radio transceivers located at the hub site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to collocate equipment on that structure. The term includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such higher limits as established by the Federal Communication Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications

59 between user equipment and a communications network, including but not limited to: (a) equipment
60 associated with wireless services such as private, broadcast and public safety services, as well as
61 unlicensed wireless services and fixed wireless services such as microwave backhaul; and (b) radio
62 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable
63 equipment, regardless of technological configuration.

64 "Wireless Infrastructure Provider" means any person that builds or installs transmission equipment,
65 wireless facilities or wireless support structures, but that is not a wireless services provider.

66 "Wireless Services" means "personal wireless services"; "personal wireless service facilities" as
67 defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
68 § 332(d), provided to personal mobile communication devices through wireless facilities; and any other
69 fixed or mobile wireless service provided using wireless facilities.

70 "Wireless services provider" means a provider of wireless services.

71 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
72 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
73 of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or
74 any tower used for the distribution of transmission or electrical service.

75 **§ 15.2-2316.4. Zoning; small cell facilities.**

76 A. A locality shall not require that a special exception, special use permit, or variance be obtained
77 for any small cell facility installed by a wireless service provider or wireless infrastructure provider on
78 an existing structure, provided that the wireless service provider or wireless infrastructure provider (i)
79 has permission from the owner of the structure to collocate equipment on that structure, and (ii) notifies
80 the locality in which the permitting process occurs.

81 B. Localities may require administrative review for the issuance of any required zoning permits for
82 the installation of a small cell facility by a wireless service provider or wireless infrastructure provider
83 on an existing structure. Localities shall permit an applicant to submit multiple permit requests on a
84 single application.

85 1. A locality shall approve or disapprove the application within 60 days. Any disapproval must be in
86 writing and accompanied by an explanation for the disapproval. The application shall be deemed
87 approved if the locality fails to act within 60 days.

88 2. A locality may prescribe and charge a reasonable fee not exceeding \$150 for processing an
89 application.

90 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

91 4. The locality only may disapprove of a proposed location or installation of a small cell facility for
92 the following reasons:

93 a. Material potential interference with other pre-existing communications facilities, or future
94 communications facilities that have already been designed and planned for a specific location or that
95 have been reserved for future public safety communications facilities,

96 b. The public safety or other critical public service needs, and

97 c. Only in the case of an installation on or in locality-owned property, aesthetic impact, or the
98 absence of all necessary approvals from all necessary departments, authorities, and agencies with
99 jurisdiction over such property.

100 5. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
101 removal of abandoned wireless support structures or wireless facilities.

102 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

103 A.1. A locality shall approve or disapprove of a zoning application for the construction of a new
104 wireless support structure within 150 days. Such application shall be deemed approved if the locality
105 fails to act within 150 days.

106 2. A locality shall approve or disapprove of a zoning application for the collocation of any wireless
107 facility that is not a small cell facility within 60 days. Such application shall be deemed approved if the
108 locality fails to act within 60 days.

109 B. Any disapproval of an application under this section must be (i) in writing, (ii) supported by
110 substantial record evidence contained in a written record publicly released contemporaneously with the
111 denial, (iii) accompanied by an explanation for the disapproval and an explanation of what the
112 applicant must do to cure the disapproval, and (iv) nondiscriminatory.

113 C. A locality may charge a reasonable fee for each application submitted pursuant to this chapter;
114 such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is
115 less.

116 **§ 15.2-2316.6. Zoning approval process.**

117 When considering a zoning permit application under § 15.2-2316.5, a locality shall not:

118 1. Require an applicant to submit information about, or evaluate an applicant's business decisions
119 with respect to its designed service, customer demand for service, or quality of its service to or from a
120 particular area or site;

121 2. Require information that concerns the specific need for the wireless support structure, including if
 122 the service to be provided from the wireless support structure is to add additional wireless coverage or
 123 additional wireless capacity. A locality may not require proprietary, confidential, or other business
 124 information to justify the need for the new wireless support structure, including propagation maps and
 125 telecommunications traffic studies;

126 3. Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant,
 127 including, but not limited to, requiring an applicant to construct a distributed antenna system or small
 128 cell facility in lieu of constructing a new wireless support structure; provided that an authority may
 129 consider the height of the wireless support structure or wireless facilities in its zoning review, if the
 130 height of the structure, facilities or structure with attached facilities exceeds 50 feet above ground level,
 131 so long as the authority does not unreasonably discriminate between the applicant and other wireless
 132 service providers, providers of telecommunications services and nonpublic providers of cable television
 133 and electric services.

134 4. Require the removal of existing wireless support structures or wireless facilities, wherever located,
 135 as a condition for approval of an application. This section shall not preclude a locality from adopting
 136 reasonable rules with respect to the removal of abandoned wireless support structures or wireless
 137 facilities;

138 5. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type
 139 of financial surety, to ensure that abandoned or unused facilities can be removed unless the locality
 140 imposes similar requirements on other permits for other types of commercial development or land uses
 141 and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the
 142 facility;

143 6. Discriminate or create a preference on the basis of the ownership, including ownership by the
 144 locality, of any property, structure, base station or wireless support structure when promulgating rules
 145 or procedures for siting wireless facilities or for evaluating applications;

146 7. Impose any unreasonable requirements or obligations regarding the presentation or appearance of
 147 facilities, including, but not limited to, those relating to any kinds of materials used and those relating
 148 to arranging, screening, or landscaping of facilities;

149 8. Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities,
 150 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in
 151 which a locality has a competitive, economic, financial, governance, or other interest;

152 9. Condition or require the approval of an application based on the applicant's agreement to permit
 153 any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to
 154 be placed at or collocated with the applicant's wireless support structure;

155 10. Impose a setback or fall zone requirement for a wireless support structure that is larger than a
 156 setback or fall zone area that is imposed on other types of commercial structures of a similar size;

157 11. Limit the duration of the approval of an application, except that construction of the approved
 158 structure or facilities shall commence within two years of final approval, and diligently pursued to
 159 completion; or

160 12. Require an applicant to perform services unrelated to an application, including restoration work
 161 on any surface not disturbed by the applicant.

162 **§ 15.2-2316.7. Moratorium prohibited.**

163 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless
 164 service providers or wireless infrastructure providers.

165 **CHAPTER 15.1.**

166 **WIRELESS COMMUNICATIONS INFRASTRUCTURE.**

167 **§ 56-484.26. Definitions.**

168 As used in this chapter, unless the context requires a different meaning:

169 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals
 170 used in the provision of any type of wireless communications services.

171 "Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,
 172 under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or
 173 wireless support structure. "Collocation" has a corresponding meaning.

174 "Department" means the Department of Transportation.

175 "Districtwide permit" means a permit granted by the Department to a wireless services provider or
 176 wireless infrastructure provider that allows the permittee to use the rights-of-way under the
 177 Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the
 178 Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform
 179 multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited
 180 access right-of-way without obtaining a single use permit for each occurrence. The central office permit
 181 manager shall be responsible for the issuance of all districtwide permits. The Department may authorize

182 *districtwide permits covering multiple districts.*

183 *"Existing structure" means any structure that is installed or approved for installation at the time a*
 184 *wireless services provider or wireless infrastructure provider provides notice to a locality or the*
 185 *Department of an agreement with the owner of the structure to collocate equipment on that structure.*
 186 *The term includes any structure that is currently supporting, designed to support, or capable of*
 187 *supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility*
 188 *poles, light poles, flag poles, signs, and water towers.*

189 *"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each*
 190 *antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an*
 191 *antenna that has exposed elements, the antenna and all of its exposed elements could fit within an*
 192 *imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated*
 193 *with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such*
 194 *higher limits as established by the Federal Communication Commission. The following types of*
 195 *associated equipment are not included in the calculation of equipment volume: electric meter,*
 196 *concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems,*
 197 *grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the*
 198 *connection of power and other services.*

199 *"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local*
 200 *government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or*
 201 *wires for communications, cable television, or electricity.*

202 *"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support*
 203 *structure, originally constructed for use as a reservoir or facility to store or deliver water.*

204 *"Wireless facility" means equipment at a fixed location that enables wireless communications*
 205 *between user equipment and a communications network, including but not limited to: (i) equipment*
 206 *associated with wireless services such as private, broadcast, and public safety services, as well as*
 207 *unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio*
 208 *transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable*
 209 *equipment, regardless of technological configuration.*

210 *"Wireless infrastructure provider" means any person, including a person authorized to provide*
 211 *telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,*
 212 *or wireless support structures, but that is not a wireless services provider.*

213 *"Wireless services" means (i) "personal wireless services"; (ii) "personal wireless service facilities"*
 214 *as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.*
 215 *§ 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any*
 216 *other fixed or mobile wireless service provided using wireless facilities.*

217 *"Wireless services provider" means a provider of wireless services.*

218 *"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed*
 219 *or self-supporting, or suitable existing structure or alternative structure designed to support or capable*
 220 *of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or*
 221 *any tower used for the distribution of transmission or electrical service.*

222 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
 223 **infrastructure providers; generally.**

224 *A. No locality or the Department shall impose on wireless services providers or wireless*
 225 *infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,*
 226 *including, but not limited to the permitting process, the zoning process, notice, time and location of*
 227 *excavations and repair work, enforcement of the statewide building code, and inspections, which are (i)*
 228 *unfair or unreasonable or (ii) any greater than those imposed on the following users of its public*
 229 *rights-of-way: all providers of telecommunications services and nonpublic providers of cable television,*
 230 *electric, natural gas, water and sanitary sewer services.*

231 *B. No locality or the Department shall impose any fees on a wireless services provider or wireless*
 232 *infrastructure provider for the use of public rights-of-way except in the manner prescribed in 56-484.30.*

233 *C. No locality or the Department shall require a wireless services provider or wireless infrastructure*
 234 *provider to provide in-kind services or physical assets as a condition of consent to use public*
 235 *rights-of-way or easements, or in lieu of the Wireless Support Structure Public Rights-of-Way Use Fee.*
 236 *This shall not limit the ability of localities, their authorities or commissions which provide utility*
 237 *services, or the Department to enter into voluntary pole attachment, tower occupancy, conduit*
 238 *occupancy or conduit construction agreements with wireless services providers or wireless infrastructure*
 239 *providers.*

240 *D. No locality or the Department shall adopt a moratorium on considering requests for access to the*
 241 *rights-of-way from wireless service providers or wireless infrastructure providers.*

242 **§ 56-484.28. Access to public rights-of-way under the jurisdiction of the Department for the**
 243 **installation and maintenance of small cell facilities on existing structures.**

244 A. Upon application by a wireless services provider or wireless infrastructure provider, the
 245 Department shall issue a district-wide permit granting access to public rights-of-way under its
 246 jurisdiction to install and maintain small cell facilities on existing structures in the rights-of-way,
 247 provided that the wireless service provider or wireless infrastructure provider (i) has permission from
 248 the owner of the structure to collocate equipment on that structure, and (ii) provides notice of the
 249 agreement and collocation to the Department. The Department shall issue the district-wide permit
 250 within 30 days after receipt of the notice. The district-wide permit shall be deemed granted if not issued
 251 within 30 days after receipt of the notice by the Department. The district-wide permit issued for the
 252 original installation allows the permittee to repair, replace, or perform routine maintenance operations
 253 to small cell facilities once installed.

254 B. The Department may require a separate single use permit to allow a wireless services provider or
 255 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when
 256 such activity requires (i) working within the highway travel lane; (ii) disturbing the pavement, shoulder,
 257 roadway, or ditch line; or (iii) placement on limited access rights-of-way. The Department shall
 258 approve or disapprove the requested single use permit within 60 days. Any disapproval must be in
 259 writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by
 260 the Department in writing for a period not to exceed an additional 30 days. The single use permit
 261 request shall be deemed approved if the Department fails to act within the initial 60 days or an
 262 extended 30 day period.

263 C. The Department shall not impose any fee for the use of the right-of-way on a wireless service
 264 provider or wireless infrastructure provider to attach or collocate small cell facilities on an existing
 265 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not
 266 to exceed \$150 for processing an application for a district-wide or single use permit.

267 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
 268 **on existing structures.**

269 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality
 270 may issue a permit granting access to the public rights-of-way under its jurisdiction to install and
 271 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way
 272 in the locality for the purpose of installing small cell facilities on existing structures, provided that the
 273 wireless service provider or wireless infrastructure provider (i) has permission from the owner of the
 274 structure to collocate equipment on that structure, and (ii) provides notice of the agreement and
 275 collocation to the locality. The locality shall approve or disapprove any such requested permit within
 276 60 days of receipt of the application. Any disapproval must be in writing and accompanied by an
 277 explanation for the disapproval. The 60-day period may be extended by the locality in writing for a
 278 period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality
 279 fails to act within the initial 60 days or an extended 30 day period.

280 B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,
 281 site plan, and comprehensive plan fees of general application, on a wireless services provider or
 282 wireless infrastructure provider to attach or collocate small cell facilities on an existing structure in the
 283 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$150 for
 284 processing a permit application under subsection A.

285 **§ 56-484.30. Access to public right-of-way to construct new wireless support structures.**

286 A. Public right-of-way permits or agreements for the construction of wireless support structures shall
 287 be for an initial term of at least 10 years, with at least three options for renewal for terms of five years,
 288 subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is
 289 intended to prohibit the Department or localities from requiring permittees to relocate wireless support
 290 structures when relocation is necessary due to a transportation project or material change to the
 291 right-of-way, so long as all users of the right-of-way are required to relocate. Such relocation shall be
 292 completed as soon as reasonably possible within the time set forth in any written request by the
 293 Department or a locality for such relocation, as long as the Department or a locality provides the
 294 permittee with a minimum of 180 days advance written notice to comply with such relocation, unless
 295 circumstances beyond the control of the Department or the locality require a shorter period of advance
 296 notice. The permittee shall bear only the proportional cost of the relocation that is caused by the
 297 transportation project and shall not bear any cost related to private benefit or where the permittee was
 298 on private right-of-way. In the event the locality or the Department bears any of the cost of the
 299 relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for
 300 such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds
 301 for the cost of such relocation and the Department or a locality shall have no obligation to collect such
 302 funds. If relocation is deemed necessary, the Department or locality must work cooperatively with the
 303 permittee to minimize any negative impact to the wireless signal caused by the relocation.

304 B. Notwithstanding any other provisions of law, there is hereby established an annual Wireless

305 *Support Structure Public Rights-of-Way Use Fee to replace any and all fees of general application,*
 306 *except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise*
 307 *chargeable to wireless service providers and wireless infrastructure providers for access to the public*
 308 *rights-of-way by the Department and localities to construct new wireless support structures. The amount*
 309 *of the Wireless Support Structure Public Rights-of-Way Use Fee shall be:*

- 310 1. \$1,000 for any wireless support structure at or below 60 feet;
- 311 2. \$3,000 for any wireless support structure above 60 feet;
- 312 3. \$1 per square foot for any other equipment, shelter, or equipment constructed on the ground.

313 *The fee amount specified herein shall be adjusted every five years, as of January 1 of that year, in*
 314 *an amount equal to the annual increases for that five-year period in the United States Average*
 315 *Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor*
 316 *Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.*

317 *C. No later than June 30th of each year, the wireless services provider or wireless infrastructure*
 318 *provider shall remit directly to the applicable locality all Wireless Support Structure Public*
 319 *Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained*
 320 *by the Department; and (iii) any county that has withdrawn or elects to withdraw from the secondary*
 321 *system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932*
 322 *and that has elected not to return. The Wireless Support Structure Public Rights-of-Way Use Fees*
 323 *applicable in all other counties shall be remitted by each wireless services provider and wireless*
 324 *infrastructure provider to the Department. Wireless Support Structure Public Rights-of-Way Fees paid*
 325 *to the Department pursuant to this chapter shall be deposited in the Highway Maintenance and*
 326 *Operating Fund established pursuant to §33.2-1530.*

327 **§ 56-484.31. Attachment of small cell facilities on government owned structures.**

328 *A. Upon request by a wireless service provider or a wireless infrastructure provider to the*
 329 *Commonwealth or a local government, both the government entity and the wireless services or wireless*
 330 *infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract for small*
 331 *cell facility attachments to government owned structures by the wireless service provider or wireless*
 332 *infrastructure provider.*

333 *B. The rates, terms, and conditions for such agreement must be just and reasonable, cost-based,*
 334 *nondiscriminatory, competitively neutral, and comply with all applicable state and federal laws.*

335 *C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for*
 336 *video, communications, or electric service, the parties shall comply with the process for make-ready*
 337 *work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government*
 338 *entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole*
 339 *to support the requested collocation shall include pole replacement if necessary.*

340 *D. For utility poles owned by a locality or the Commonwealth that do no support aerial cables used*
 341 *for video, communications, or electric service, the government entity owning or controlling the utility*
 342 *pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to*
 343 *support the requested collocation, including pole replacement, if necessary, within 60 days after receipt*
 344 *of a complete application. Make-ready work, including any pole replacement, shall be completed within*
 345 *60 days of written acceptance of the good faith estimate by the wireless service provider or a wireless*
 346 *infrastructure provider.*

347 *E. The government entity owning or controlling the utility pole shall not require more make-ready*
 348 *work than required to meet applicable codes or industry standards. Charges for make-ready work,*
 349 *including any pole replacement, shall not exceed actual costs or the amount charged to other wireless*
 350 *service providers, providers of telecommunications services and nonpublic providers of cable television*
 351 *and electric services for similar work and shall not include consultants' fees or expenses.*

352 *F. The annual recurring rate to collocate a small cell facility on a government owned utility pole*
 353 *shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or*
 354 *wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the*
 355 *appropriateness of the rate, the government entity owning or controlling the utility pole shall have the*
 356 *burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs*
 357 *incurred for use of space on the utility pole for such period.*

358 **§ 46-484.32. Access to public property other than rights-of-way.**

359 *Localities and the Department shall permit wireless service providers and wireless infrastructure*
 360 *providers access to public property outside of the rights-of-way on a nondiscriminatory basis to the*
 361 *extent it is allowed for providers of telecommunications services and nonpublic providers of cable*
 362 *television, electric, natural gas, water and sanitary sewer services.*

17103873D

HOUSE BILL NO. 2108

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 2.2-3705.6, 2.2-3711, 10.1-1458, 15.2-2160, 32.1-276.5:1, and 56-265.4:4 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.33, relating to broadband deployment.

Patrons—Byron, Boysko, Hugo and Leftwich

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 2.2-3711, 10.1-1458, 15.2-2160, 32.1-276.5:1, and 56-265.4:4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.33, as follows:

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or

INTRODUCED

HB2108

59 proprietary information by any person in connection with a procurement transaction or by any person
60 who has submitted to a public body an application for prequalification to bid on public construction
61 projects in accordance with subsection B of § 2.2-4317.

62 11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity,
63 its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed
64 under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private
65 Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information
66 was made public prior to or after the execution of an interim or a comprehensive agreement,
67 § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public
68 entity would be adversely affected and (ii) the basis for the determination required in clause (i) is
69 documented in writing by the responsible public entity; and

70 b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or
71 affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995
72 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002
73 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity
74 as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private
75 entity, including balance sheets and financial statements, that are not generally available to the public
76 through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity
77 where if such information was made public prior to the execution of an interim agreement or a
78 comprehensive agreement, the financial interest or bargaining position of the public or private entity
79 would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be
80 excluded from the provisions of this chapter, the private entity shall make a written request to the
81 responsible public entity:

82 (1) Invoking such exclusion upon submission of the data or other materials for which protection from
83 disclosure is sought;

84 (2) Identifying with specificity the data or other materials for which protection is sought; and

85 (3) Stating the reasons why protection is necessary.

86 The responsible public entity shall determine whether the requested exclusion from disclosure is
87 necessary to protect the trade secrets or financial information of the private entity. To protect other
88 information submitted by the private entity from disclosure, the responsible public entity shall determine
89 whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement
90 would adversely affect the financial interest or bargaining position of the public or private entity. The
91 responsible public entity shall make a written determination of the nature and scope of the protection to
92 be afforded by the responsible public entity under this subdivision. Once a written determination is made
93 by the responsible public entity, the information afforded protection under this subdivision shall continue
94 to be protected from disclosure when in the possession of any affected jurisdiction or affected local
95 jurisdiction.

96 Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to
97 authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b)
98 information concerning the terms and conditions of any interim or comprehensive agreement, service
99 contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity
100 and the private entity; (c) information concerning the terms and conditions of any financing arrangement
101 that involves the use of any public funds; or (d) information concerning the performance of any private
102 entity developing or operating a qualifying transportation facility or a qualifying project.

103 For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction,"
104 "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation
105 facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined
106 in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education
107 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

108 12. Confidential proprietary information or trade secrets, not publicly available, provided by a private
109 person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a
110 fund administered in connection with financial assistance rendered or to be rendered by the Virginia
111 Resources Authority where, if such information were made public, the financial interest of the private
112 person or entity would be adversely affected.

113 13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential
114 proprietary information that is not generally available to the public through regulatory disclosure or
115 otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21
116 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of
117 confidentiality from the franchising authority, to the extent the information relates to the bidder's,
118 applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies
119 or implementation of improvements, where such new services, technologies, or improvements have not
120 been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such

121 information were made public, the competitive advantage or financial interests of the franchisee would
122 be adversely affected.

123 In order for trade secrets or confidential proprietary information to be excluded from the provisions
124 of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of
125 the data or other materials for which protection from disclosure is sought, (b) identify the data or other
126 materials for which protection is sought, and (c) state the reason why protection is necessary.

127 No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the
128 bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the
129 applicable franchising authority serves on the management board or as an officer of the bidder,
130 applicant, or franchisee.

131 14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the
132 Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

133 15. Information related to Virginia apple producer sales provided to the Virginia State Apple Board
134 pursuant to § 3.2-1215.

135 16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1,
136 submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery
137 Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

138 17. Information relating to a grant or loan application, or accompanying a grant or loan application,
139 to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.)
140 of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3
141 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary
142 business or research-related information produced or collected by the applicant in the conduct of or as a
143 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
144 issues, when such information has not been publicly released, published, copyrighted, or patented, and
145 (ii) be harmful to the competitive position of the applicant.

146 18. Confidential proprietary information and trade secrets developed and held by a local public body
147 (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television
148 services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such
149 information would be harmful to the competitive position of the locality.

150 In order for confidential proprietary information or trade secrets to be excluded from the provisions
151 of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify
152 with specificity the information for which protection is sought, and (c) state the reasons why protection
153 is necessary. However, the exemption provided by this subdivision shall not apply to any authority
154 created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

155 19. Confidential proprietary information and trade secrets developed by or for a local authority
156 created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to
157 provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of
158 Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive
159 position of the authority, except that information required to be maintained in accordance with §-
160 15.2-2160 shall be released.

161 20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial
162 information of a business, including balance sheets and financial statements, that are not generally
163 available to the public through regulatory disclosure or otherwise, provided to the Department of Small
164 Business and Supplier Diversity as part of an application for certification as a small, women-owned, or
165 minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade
166 secrets or financial information to be excluded from the provisions of this chapter, the business shall (i)
167 invoke such exclusion upon submission of the data or other materials for which protection from
168 disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state
169 the reasons why protection is necessary.

170 ~~21. 19. Information of a proprietary or confidential nature disclosed by a carrier to the State Health
171 Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.~~

172 ~~22. 20. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including,
173 but not limited to, financial information, including balance sheets and financial statements, that are not
174 generally available to the public through regulatory disclosure or otherwise, and revenue and cost
175 projections supplied by a private or nongovernmental entity to the State Inspector General for the
176 purpose of an audit, special investigation, or any study requested by the Office of the State Inspector
177 General in accordance with law.~~

178 In order for the information specified in this subdivision to be excluded from the provisions of this
179 chapter, the private or nongovernmental entity shall make a written request to the State Inspector
180 General:

181 a. Invoking such exclusion upon submission of the data or other materials for which protection from

182 disclosure is sought;

183 b. Identifying with specificity the data or other materials for which protection is sought; and

184 c. Stating the reasons why protection is necessary.

185 The State Inspector General shall determine whether the requested exclusion from disclosure is
186 necessary to protect the trade secrets or financial information of the private entity. The State Inspector
187 General shall make a written determination of the nature and scope of the protection to be afforded by it
188 under this subdivision.

189 ~~23.~~ 21. Information relating to a grant application, or accompanying a grant application, submitted to
190 the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in the
191 Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not
192 a public body, including balance sheets and financial statements, that are not generally available to the
193 public through regulatory disclosure or otherwise, or (c) research-related information produced or
194 collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative,
195 scientific, technical, technological, or scholarly issues, when such information has not been publicly
196 released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the
197 applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its
198 staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision
199 shall apply to grants that are consistent with the powers of and in furtherance of the performance of the
200 duties of the Commission pursuant to § 3.2-3103.

201 In order for the information specified in this subdivision to be excluded from the provisions of this
202 chapter, the applicant shall make a written request to the Commission:

203 a. Invoking such exclusion upon submission of the data or other materials for which protection from
204 disclosure is sought;

205 b. Identifying with specificity the data, information or other materials for which protection is sought;
206 and

207 c. Stating the reasons why protection is necessary.

208 The Commission shall determine whether the requested exclusion from disclosure is necessary to
209 protect the trade secrets, financial information, or research-related information of the applicant. The
210 Commission shall make a written determination of the nature and scope of the protection to be afforded
211 by it under this subdivision.

212 ~~24.~~ 22. a. Information held by the Commercial Space Flight Authority relating to rate structures or
213 charges for the use of projects of, the sale of products of, or services rendered by the Authority if
214 disclosure of such information would adversely affect the financial interest or bargaining position of the
215 Authority or a private entity providing the information to the Authority; or

216 b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of
217 such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade
218 Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets
219 and financial statements, that are not generally available to the public through regulatory disclosure or
220 otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial
221 interest or bargaining position of the Authority or private entity.

222 In order for the information specified in clauses (a), (b), and (c) of subdivision ~~24~~ 22 b to be
223 excluded from the provisions of this chapter, the private entity shall make a written request to the
224 Authority:

225 (1) Invoking such exclusion upon submission of the data or other materials for which protection from
226 disclosure is sought;

227 (2) Identifying with specificity the data or other materials for which protection is sought; and

228 (3) Stating the reasons why protection is necessary.

229 The Authority shall determine whether the requested exclusion from disclosure is necessary to protect
230 the trade secrets or financial information of the private entity. To protect other information submitted by
231 the private entity from disclosure, the Authority shall determine whether public disclosure would
232 adversely affect the financial interest or bargaining position of the Authority or private entity. The
233 Authority shall make a written determination of the nature and scope of the protection to be afforded by
234 it under this subdivision.

235 ~~25.~~ 23. Information of a proprietary nature furnished by an agricultural landowner or operator to the
236 Department of Conservation and Recreation, the Department of Environmental Quality, the Department
237 of Agriculture and Consumer Services, or any political subdivision, agency, or board of the
238 Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part
239 of a state or federal regulatory enforcement action.

240 ~~26.~~ 24. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to
241 the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such
242 trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this
243 exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii)

244 identify the data or materials for which protection is sought, and (iii) state the reasons why protection is
245 necessary.

246 27. 25. Information of a proprietary nature furnished by a licensed public-use airport to the
247 Department of Aviation for funding from programs administered by the Department of Aviation or the
248 Virginia Aviation Board, where if such information was made public, the financial interest of the
249 public-use airport would be adversely affected.

250 In order for the information specified in this subdivision to be excluded from the provisions of this
251 chapter, the public-use airport shall make a written request to the Department of Aviation:

252 a. Invoking such exclusion upon submission of the data or other materials for which protection from
253 disclosure is sought;

254 b. Identifying with specificity the data or other materials for which protection is sought; and

255 c. Stating the reasons why protection is necessary.

256 ~~28.~~ 26. Records submitted as a grant or loan application, or accompanying a grant or loan
257 application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§
258 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary
259 business or research-related information produced or collected by the applicant in the conduct of or as a
260 result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly
261 issues, when such information has not been publicly released, published, copyrighted, or patented, if the
262 disclosure of such information would be harmful to the competitive position of the applicant.

263 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

264 A. Public bodies may hold closed meetings only for the following purposes:

265 1. Discussion, consideration, or interviews of prospective candidates for employment; assignment,
266 appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public
267 officers, appointees, or employees of any public body; and evaluation of performance of departments or
268 schools of public institutions of higher education where such evaluation will necessarily involve
269 discussion of the performance of specific individuals. Any teacher shall be permitted to be present
270 during a closed meeting in which there is a discussion or consideration of a disciplinary matter that
271 involves the teacher and some student and the student involved in the matter is present, provided the
272 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
273 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
274 or an elected school board to discuss compensation matters that affect the membership of such body or
275 board collectively.

276 2. Discussion or consideration of admission or disciplinary matters or any other matters that would
277 involve the disclosure of information contained in a scholastic record concerning any student of any
278 Virginia public institution of higher education or any state school system. However, any such student,
279 legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to
280 be present during the taking of testimony or presentation of evidence at a closed meeting, if such
281 student, parents, or guardians so request in writing and such request is submitted to the presiding officer
282 of the appropriate board.

283 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
284 disposition of publicly held real property, where discussion in an open meeting would adversely affect
285 the bargaining position or negotiating strategy of the public body.

286 4. The protection of the privacy of individuals in personal matters not related to public business.

287 5. Discussion concerning a prospective business or industry or the expansion of an existing business
288 or industry where no previous announcement has been made of the business' or industry's interest in
289 locating or expanding its facilities in the community.

290 6. Discussion or consideration of the investment of public funds where competition or bargaining is
291 involved, where, if made public initially, the financial interest of the governmental unit would be
292 adversely affected.

293 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual
294 or probable litigation, where such consultation or briefing in open meeting would adversely affect the
295 negotiating or litigating posture of the public body; and consultation with legal counsel employed or
296 retained by a public body regarding specific legal matters requiring the provision of legal advice by such
297 counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been
298 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
299 will be commenced by or against a known party. Nothing in this subdivision shall be construed to
300 permit the closure of a meeting merely because an attorney representing the public body is in attendance
301 or is consulted on a matter.

302 8. In the case of boards of visitors of public institutions of higher education, discussion or
303 consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts
304 for services or work to be performed by such institution. However, the terms and conditions of any such

305 gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign
306 person and accepted by a public institution of higher education in Virginia shall be subject to public
307 disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision,
308 (i) "foreign government" means any government other than the United States government or the
309 government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity
310 created under the laws of the United States or of any state thereof if a majority of the ownership of the
311 stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the
312 membership of any such entity is composed of foreign persons or foreign legal entities, or any legal
313 entity created under the laws of a foreign government; and (iii) "foreign person" means any individual
314 who is not a citizen or national of the United States or a trust territory or protectorate thereof.

315 9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum
316 of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia,
317 discussion or consideration of matters relating to specific gifts, bequests, and grants.

318 10. Discussion or consideration of honorary degrees or special awards.

319 11. Discussion or consideration of tests, examinations, or other information excluded from this
320 chapter pursuant to subdivision 4 of § 2.2-3705.1.

321 12. Discussion, consideration, or review by the appropriate House or Senate committees of possible
322 disciplinary action against a member arising out of the possible inadequacy of the disclosure statement
323 filed by the member, provided the member may request in writing that the committee meeting not be
324 conducted in a closed meeting.

325 13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to
326 consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing
327 body in open meeting finds that an open meeting will have an adverse effect upon the negotiating
328 position of the governing body or the establishment of the terms, conditions and provisions of the siting
329 agreement, or both. All discussions with the applicant or its representatives may be conducted in a
330 closed meeting.

331 14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic
332 activity and estimating general and nongeneral fund revenues.

333 15. Discussion or consideration of medical and mental health records excluded from this chapter
334 pursuant to subdivision 1 of § 2.2-3705.5.

335 16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to
336 subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and
337 discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game
338 information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3
339 and subdivision 11 of § 2.2-3705.7.

340 17. Those portions of meetings by local government crime commissions where the identity of, or
341 information tending to identify, individuals providing information about crimes or criminal activities
342 under a promise of anonymity is discussed or disclosed.

343 18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity
344 of, or information tending to identify, any prisoner who (i) provides information about crimes or
345 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
346 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
347 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

348 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
349 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement
350 or emergency service officials concerning actions taken to respond to such matters or a related threat to
351 public safety; discussion of information excluded from this chapter pursuant to subdivision 3 or 4 of
352 § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the
353 security of any facility, building, structure, information technology system, or software program; or
354 discussion of reports or plans related to the security of any governmental facility, building or structure,
355 or the safety of persons using such facility, building or structure.

356 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or
357 of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the
358 University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings
359 Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or
360 other ownership interest in an entity, where such security or ownership interest is not traded on a
361 governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential
362 analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement
363 system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
364 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
365 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
366 the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of

367 the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
 368 construed to prevent the disclosure of information relating to the identity of any investment held, the
 369 amount invested or the present value of such investment.

370 21. Those portions of meetings in which individual child death cases are discussed by the State Child
 371 Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
 372 individual child death cases are discussed by a regional or local child fatality review team established
 373 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
 374 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
 375 which individual adult death cases are discussed by the state Adult Fatality Review Team established
 376 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
 377 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

378 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
 379 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
 380 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
 381 Virginia Medical School, as the case may be, have been delegated, in which there is discussed
 382 proprietary, business-related information pertaining to the operations of the University of Virginia
 383 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
 384 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
 385 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
 386 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
 387 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
 388 Medical School, as the case may be.

389 23. In the case of the Virginia Commonwealth University Health System Authority, discussion or
 390 consideration of any of the following: the acquisition or disposition of real or personal property where
 391 disclosure would adversely affect the bargaining position or negotiating strategy of the Authority;
 392 operational plans that could affect the value of such property, real or personal, owned or desirable for
 393 ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and
 394 contracts for services or work to be performed by the Authority; marketing or operational strategies
 395 where disclosure of such strategies would adversely affect the competitive position of the Authority;
 396 members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications
 397 or evaluations of other employees. This exclusion shall also apply when the foregoing discussions occur
 398 at a meeting of the Virginia Commonwealth University Board of Visitors.

399 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within
 400 the Department of Health Professions to the extent such discussions identify any practitioner who may
 401 be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

402 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
 403 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
 404 by or on behalf of individuals who have requested information about, applied for, or entered into
 405 prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.)
 406 of Title 23.1 is discussed.

407 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created
 408 pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et
 409 seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless
 410 E-911 service.

411 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
 412 Professional and Occupational Regulation, Department of Health Professions, or the Board of
 413 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
 414 a decision or meetings of health regulatory boards or conference committees of such boards to consider
 415 settlement proposals in pending disciplinary actions or modifications to previously issued board orders as
 416 requested by either of the parties.

417 28. Discussion or consideration of information excluded from this chapter pursuant to subdivision 11
 418 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are
 419 defined in § 33.2-1800, or any independent review panel appointed to review information and advise the
 420 responsible public entity concerning such records.

421 29. Discussion of the award of a public contract involving the expenditure of public funds, including
 422 interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
 423 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
 424 the public body.

425 30. Discussion or consideration of grant or loan application information excluded from this chapter
 426 pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the
 427 Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment

428 Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

429 31. Discussion or consideration by the Commitment Review Committee of information excluded from
430 this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to commitment as
431 sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

432 32. ~~[Expired.]~~

433 33. ~~Discussion or consideration of confidential proprietary information and trade secrets excluded~~
434 ~~from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption provided by this~~
435 ~~subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et~~
436 ~~seq.).~~

437 34. ~~Discussion or consideration by a local authority created in accordance with the Virginia Wireless~~
438 ~~Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets~~
439 ~~excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.~~

440 35. Discussion or consideration by the State Board of Elections or local electoral boards of voting
441 security matters made confidential pursuant to § 24.2-625.1.

442 36. ~~33. Discussion or consideration by the Forensic Science Board or the Scientific Advisory~~
443 ~~Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records~~
444 ~~excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.~~

445 37. ~~34. Discussion or consideration by the Brown v. Board of Education Scholarship Program~~
446 ~~Awards Committee of information or confidential matters excluded from this chapter pursuant to~~
447 ~~subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual~~
448 ~~maximum scholarship award, review and consider scholarship applications and requests for scholarship~~
449 ~~award renewal, and cancel, rescind, or recover scholarship awards.~~

450 38. ~~35. Discussion or consideration by the Virginia Port Authority of information excluded from this~~
451 ~~chapter pursuant to subdivision 1 of § 2.2-3705.6.~~

452 39. ~~36. Discussion or consideration by the Board of Trustees of the Virginia Retirement System~~
453 ~~acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to §~~
454 ~~51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia~~
455 ~~College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's~~
456 ~~Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this~~
457 ~~chapter pursuant to subdivision 25 of § 2.2-3705.7.~~

458 40. ~~37. Discussion or consideration of information excluded from this chapter pursuant to subdivision~~
459 ~~3 of § 2.2-3705.6.~~

460 41. ~~38. Discussion or consideration by the Board of Education of information relating to the denial,~~
461 ~~suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of~~
462 ~~§ 2.2-3705.3.~~

463 42. ~~39. Those portions of meetings of the Virginia Military Advisory Council or any commission~~
464 ~~created by executive order for the purpose of studying and making recommendations regarding~~
465 ~~preventing closure or realignment of federal military and national security installations and facilities~~
466 ~~located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs~~
467 ~~organization appointed by a local governing body, during which there is discussion of information~~
468 ~~excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.~~

469 43. ~~40. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of~~
470 ~~information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.~~

471 44. ~~41. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of~~
472 ~~information excluded from this chapter pursuant to subdivision 2321 of § 2.2-3705.6.~~

473 45. ~~42. Discussion or consideration by the board of directors of the Commercial Space Flight~~
474 ~~Authority of information excluded from this chapter pursuant to subdivision 24 22 of § 2.2-3705.6.~~

475 46. ~~43. Discussion or consideration of personal and proprietary information that are excluded from~~
476 ~~the provisions of this chapter pursuant to (i) subdivision 25 23 of § 2.2-3705.6 or (ii) subsection E of~~
477 ~~§ 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain~~
478 ~~information that has been certified for release by the person who is the subject of the information or~~
479 ~~transformed into a statistical or aggregate form that does not allow identification of the person who~~
480 ~~supplied, or is the subject of, the information.~~

481 47. ~~44. (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the Virginia~~
482 ~~Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision~~
483 ~~1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.~~

484 48. ~~45. Discussion or consideration of grant or loan application records excluded from this chapter~~
485 ~~pursuant to subdivision 28 26 of § 2.2-3705.6 related to the submission of an application for an award~~
486 ~~from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of~~
487 ~~Title 23.1.~~

488 49. ~~46. Discussion or development of grant proposals by a regional council established pursuant to~~
489 ~~Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth~~

490 and Opportunity Board.

491 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
492 closed meeting shall become effective unless the public body, following the meeting, reconvenes in open
493 meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or
494 motion that shall have its substance reasonably identified in the open meeting.

495 C. Public officers improperly selected due to the failure of the public body to comply with the other
496 provisions of this section shall be de facto officers and, as such, their official actions are valid until they
497 obtain notice of the legal defect in their election.

498 D. Nothing in this section shall be construed to prevent the holding of conferences between two or
499 more public bodies, or their representatives, but these conferences shall be subject to the same
500 procedures for holding closed meetings as are applicable to any other public body.

501 E. This section shall not be construed to (i) require the disclosure of any contract between the
502 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1
503 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant
504 to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body
505 empowered to issue industrial revenue bonds by general or special law, to identify a business or industry
506 to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of
507 public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance
508 of such bonds.

509 **§ 10.1-1458. Persons to provide plans, specifications, and information.**

510 Every person the Department has reason to believe is generating, storing, transporting, disposing of,
511 or treating waste shall, on request of the Department, furnish such plans, specifications, and information
512 as the Department may require in the discharge of its duties under this chapter. Trade secret information
513 included within any plans, specifications, or information submitted pursuant to this section shall be
514 excluded from the provisions of the Virginia Freedom of Information Act as provided in subdivision 26
515 24 of § 2.2-3705.6. At all times, the Department may disclose such trade secret information to the
516 appropriate officials of the Environmental Protection Agency pursuant to the requirements of the federal
517 Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., or as otherwise required by law.

518 **§ 15.2-2160. Provision of telecommunications services.**

519 A. Any locality that operates an electric distribution system may provide telecommunications
520 services, including local exchange telephone service as defined in § 56-1, within or outside its
521 boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide
522 telecommunications services within any locality in which it has electric distribution system facilities as
523 of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide
524 telecommunications, Internet access, broadband, information, and data transmission services within any
525 locality within 75 miles of the geographic boundaries of its electric distribution system as such system
526 existed on March 1, 2002. The BVU Authority may provide telecommunications, Internet access,
527 broadband, information, and data transmission services as provided in the BVU Authority Act
528 (§ 15.2-7200 et seq.).

529 B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all
530 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable
531 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility
532 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit
533 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any
534 franchise fees and other state and local fees (including permit fees and pole rental fees), and
535 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider
536 of telecommunications services, (iv) prepare and publish annually financial statements in accordance
537 with generally accepted accounting principles showing the results of operations of its provision of
538 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of
539 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of
540 Information Act (§ 2.2-3700 et seq.).

541 C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide
542 nondiscriminatory access to for-profit providers of telecommunications services on a first-come,
543 first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased
544 or operated by the locality unless the facilities have insufficient capacity for such access and additional
545 capacity cannot reasonably be added to the facilities.

546 D. The prices charged and the revenue received by a locality for providing telecommunications
547 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in
548 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as
549 permitted by the provisions of subdivision B 5 of § 56-265.4:4. The provisions of this subsection shall
550 not apply to Internet access, broadband, information, and data transmission services provided by any

551 locality providing telecommunications services on March 1, 2002.

552 E. No locality providing such services shall acquire by eminent domain the facilities or other
553 property of any telecommunications service provider to offer cable, telephone, data transmission or other
554 information or online programming services.

555 F. ~~Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records~~
556 ~~contain confidential proprietary information or trade secrets pertaining to the provision of~~
557 ~~telecommunications service, shall be exempt from disclosure under the Freedom of Information Act~~
558 ~~(§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary~~
559 ~~information or trade secrets if its acquisition by a competing provider of telecommunications services~~
560 ~~would provide the competing provider with a competitive benefit. However, the exemption provided by~~
561 ~~this subsection shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200~~
562 ~~et seq.).~~

563 G. ~~As used in this section, "locality" shall mean means any county, city, town, authority, or other~~
564 ~~governmental entity which that provides or seeks to provide telecommunications services. Every locality~~
565 ~~shall comply with the requirements of § 56-265.4:4 or 56-484.7:1 unless otherwise specifically exempt.~~
566 ~~Any locality that has obtained a certificate pursuant to § 56-265.4:4, and which surrenders or transfers~~
567 ~~such certificate shall continue to remain subject to subsections C, D, and E if any substantial part of its~~
568 ~~telecommunications assets or operations are transferred to an entity in which the locality has the right to~~
569 ~~appoint board members, directors, or managers.~~

570 § 32.1-276.5:1. (Contingent repeal — see Editor's note) Disclosures of contractual arrangements to be
571 made publicly available.

572 A. In order to advance transparency in health care and provide patients and families with better
573 information on which to judge value among their treatment options, the Commissioner shall negotiate
574 and contract with a nonprofit organization authorized under § 32.1-276.4 for an annual survey of carriers
575 offering private group health insurance policies, which are subject to HEDIS reporting, to determine the
576 reimbursement that is paid for a minimum of 25 most frequently reported health care services which
577 may include inpatient and outpatient diagnostic services, surgical services or the treatment of certain
578 conditions or diseases. Each carrier shall report the average reimbursement paid for a specific service
579 from all providers and provider types, to include hospitals, outpatient or ambulatory surgery centers and
580 physician offices. The survey shall also include, when available, the average reimbursement rates for the
581 same services provided for reimbursement by fee-for-service Medicare and Medicaid. The survey shall
582 be managed by the Commissioner to insure that when such information is reported it will provide the
583 aggregate information so that readers will be able to determine the average amount of reimbursement
584 paid for specific healthcare services. No provider, facility or carrier specific reimbursement information
585 shall be included in the public survey reports. Such specific information shall be deemed proprietary and
586 shall not be disclosed to the public; only the Commissioner will have access to the underlying survey
587 data. The public survey reports shall be made available to the public through an Internet Website
588 operated by the contracting organization.

589 The Commissioner, in conjunction with stakeholders working through the non-profit organization,
590 shall work to (i) incorporate existing service quality data and guidance to the price information to
591 further assist informed consumer choice to the extent it is practical and consistent with generally
592 accepted national guidelines, and (ii) seek over time to display price and quality information for
593 episodes of care in a manner which is consistent with generally accepted national guidelines.

594 B. The information acquired in the survey and provided to the Commissioner shall be confidential
595 and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to
596 subdivision ~~21~~ 19 of § 2.2-3705.6.

597 **§ 56-265.4:4. Certificate to operate as a telephone utility.**

598 A. The Commission may grant certificates to competing telephone companies, or any county, city or
599 town that operates an electric distribution system, for interexchange service where it finds that such
600 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and
601 restrictions as may be prescribed by the Commission for competitive telecommunications services. A
602 certificate to provide interexchange services shall not authorize the holder to provide local exchange
603 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates
604 an electric distribution system, to furnish local exchange services as provided in subsection B.

605 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other
606 interested parties and following an opportunity for hearing, the Commission may grant certificates to any
607 telephone company, or any county, city or town that operates an electric distribution system, proposing
608 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a
609 certificate under this subsection, the Commission may require that the applicant show that it possesses
610 sufficient technical, financial, and managerial resources. Before granting any such certificate, the
611 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local
612 exchange telephone service, as such service is defined by the Commission, and reasonably assures the

613 continuation of quality local exchange telephone service; and (ii) find that such action will not
614 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service
615 providers, including the new entrant and any incumbent local exchange telephone company, and is in the
616 public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted
617 by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth
618 unless the applicant specifically requests a different certificated service territory. The Commission shall
619 amend the certificated service territory of each local exchange carrier that was previously certificated to
620 provide service in only part of the Commonwealth to permit such carrier's provision of local exchange
621 service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange
622 carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated
623 service territory. A local exchange carrier shall only be considered an incumbent in any certificated
624 service territory in which it was considered an incumbent prior to July 1, 2002, except that the
625 Commission may make changes to a local exchange carrier's incumbent certificated service territory at
626 the request of those incumbent local exchange carriers that are directly involved in a proposed change in
627 the certificated service territory.

628 2. A Commission order, including appropriate findings of fact and conclusions of law, denying or
629 approving, with or without modification, an application for certification of a new entrant shall be entered
630 no more than 180 days from the filing of the application, except that the Commission, upon notice to all
631 parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90
632 days in all.

633 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all
634 classes of customers throughout all geographic areas of the Commonwealth by a variety of service
635 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so
636 as to encourage competition based on service, quality, and price differences between alternative
637 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the
638 markets to be served or the services offered by any provider; (iv) determine the form of rate regulation,
639 if any, for the local exchange services to be provided by the applicant and, upon application, the form
640 of rate regulation for the comparable services of the incumbent local exchange telephone company
641 provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure
642 that there is no cross-subsidization of the applicant's competitive local exchange telephone services by
643 any other of its services over which it has a monopoly, whether or not those services are telephone
644 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue
645 received by a county, city or town for providing telecommunications services shall not be
646 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas
647 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized
648 pursuant to subdivision 5.

649 4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal
650 Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including,
651 but not limited to, the arbitration of interconnection agreements between local exchange carriers;
652 however, the Commission may exercise its discretion to defer selected issues under the Act. If the
653 Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or
654 disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that
655 levy shall be increased above the levy authorized by that section to the extent necessary to recover such
656 additional costs.

657 5. Upon the Commission's granting of a certificate to a county, city or town under this section, such
658 county, city, or town (i) shall be subject to regulation by the Commission for intrastate
659 telecommunications services, (ii) shall have the same duties and obligations as other certificated
660 providers of telecommunications services, (iii) shall separately account for the revenues, expenses,
661 property, and source of investment dollars associated with the provision of such services, and (iv) to
662 ensure that there is no unreasonable advantage gained from a government agency's taxing authority and
663 control of government-owned land, shall charge an amount for such services that (a) does not include
664 any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or
665 allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs
666 incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications
667 services regulated by the Commission shall file an annual report with the Commission demonstrating
668 that the requirements of clauses (iii) and (iv) have been met. The Commission may approve a subsidy
669 under this section if deemed to be in the public interest and provided that such subsidy does not result
670 in a price for the service lower than the price for the same service charged by the incumbent provider in
671 the area.

672 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all
673 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable

674 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility
 675 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit
 676 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any
 677 franchise fees and other state and local fees (including permit fees and pole rental fees), and
 678 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider
 679 of telecommunications services, (iv) prepare and publish annually financial statements in accordance
 680 with generally accepted accounting principles showing the results of operations of its provision of
 681 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of
 682 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of
 683 Information Act (§ 2.2-3700 et seq.).

684 7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory
 685 access to for-profit providers of telecommunications services on a first-come, first-served basis to
 686 rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the
 687 locality unless the facilities have insufficient capacity for such access and additional capacity cannot
 688 reasonably be added to the facilities.

689 8. The prices charged and the revenue received by a locality for providing telecommunications
 690 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in
 691 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as
 692 permitted by the provisions of subdivision 5. The provisions of this subdivision shall not apply to
 693 Internet access, broadband, information, and data transmission services provided by any locality
 694 providing telecommunications services on March 1, 2002, except for an authority created pursuant to the
 695 BVU Authority Act (§ 15.2-7200 et seq.).

696 9. The Commission shall promulgate rules necessary to implement this section. In no event, however,
 697 shall the rules necessary to implement clauses (iii) and (iv) of subdivision 5, clauses (ii) through (v) of
 698 subdivision 6, and subdivision 8 impose any obligations on a locality that has obtained a certificate
 699 pursuant to this section, but is not yet providing telecommunications services regulated by the
 700 Commission.

701 ~~10. Public records of a locality that has obtained a certificate pursuant to this section, which records~~
 702 ~~contain confidential proprietary information or trade secrets pertaining to the provision of~~
 703 ~~telecommunications service, shall be exempt from disclosure under the Freedom of Information Act~~
 704 ~~(§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary~~
 705 ~~information or trade secrets if its acquisition by a competing provider of telecommunications services~~
 706 ~~would provide the competing provider with a competitive benefit. However, the exemption provided by~~
 707 ~~this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§~~
 708 ~~15.2-7200 et seq.).~~

709 C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 shall not apply to a county, city, or town that has
 710 obtained a certificate pursuant to this section.

711 D. Any county, city, or town that has obtained a certificate pursuant to this section may construct,
 712 own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with
 713 Internet services, data transmission services, and any other communications service that its infrastructure
 714 is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of
 715 cable television services or other multi-channel video programming service. Furthermore, nothing in this
 716 subsection shall alter the authority of the Commission.

717 E. Any county, city, or town that has obtained a certificate pursuant to this section and that had
 718 installed a cable television headend prior to December 31, 2002, is authorized to own and operate a
 719 cable television system or other multi-channel video programming service and shall be exempt from the
 720 provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the
 721 Commission to regulate cable television service.

722 CHAPTER 15.1.

723 VIRGINIA BROADBAND DEPLOYMENT ACT.

724 § 56-484.26. Definitions.

725 *As used in this chapter:*

726 *"Affiliate" or "affiliates" refers to any board, authority, district, commission, or other public body*
 727 *having overlapping geographic territory with a locality, or originally created by the locality, or any*
 728 *public body whose jurisdiction or membership includes any part of the locality.*

729 *"Broadband expansion services" refers to broadband or Internet services offered by a locality or its*
 730 *affiliate in exchange for compensation to customers or subscribers in an unserved area.*

731 *"Broadband speeds" means average Internet speeds of both 10 Mbps or more download and 1 Mbps*
 732 *or more upload.*

733 *"Communications services" refers to any of the following: internal government services, broadband*
 734 *expansion services, or overbuild broadband services.*

735 *"Internal government services" refers to broadband, Internet, and data transmission services offered*

736 by a locality or its affiliate, whether or not in exchange for compensation, only to a locality and to one
 737 or more public bodies with facilities located within the locality. "Internal government services" includes
 738 only those services provided within the boundaries of a locality, except as necessary to provide service
 739 to a building owned or leased by the locality and used for governmental purposes, but located within an
 740 adjacent jurisdiction. Nothing herein shall be deemed to prohibit or restrict interconnection of the
 741 internal government services communications facilities of a locality or its affiliate to one or more
 742 communications networks extending outside the locality.

743 "Locality" refers to a county, city, or town.

744 "Overbuild broadband services" refers to broadband or Internet services offered by a locality or its
 745 affiliate in exchange for compensation which do not qualify as internal government services or
 746 broadband expansion services.

747 "Public body" has the meaning set out in § 2.2-3701.

748 "Unserved Area" refers to a geographic area of the locality in which broadband or Internet services
 749 providing broadband speeds are not generally available from any provider.

750 **§ 56-484.27. Provision of internal government services.**

751 Any locality or an affiliate may own and operate a broadband or Internet communications system,
 752 including ownership or lease of fiber optic or other communications lines and facilities, and may lease
 753 or grant rights in such communications facilities to other public bodies, all for the purpose of providing
 754 internal government services.

755 **§ 56-484.28. Provision of broadband expansion services.**

756 Notwithstanding any provision of the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.)
 757 or any other provision of law, a locality or any affiliate may own and operate a broadband or Internet
 758 communications system, including ownership or lease of fiber optic or other communications lines and
 759 facilities, to provide broadband expansion services only if the following conditions are met:

760 1. The locality or its affiliate has obtained a comprehensive broadband assessment by report or
 761 study, by the Center for Innovative Technology, or an independent consulting firm knowledgeable and
 762 experienced in analyzing broadband deployment, which report or study is made available to the public
 763 and specifically identifies any unserved areas. The locality or its affiliate shall be responsible for all
 764 fees charged by the Center for Innovative Technology or an independent consulting firm for the
 765 preparation of such comprehensive broadband assessment report or study.

766 2. Based upon the comprehensive broadband assessment, the locality or its affiliate formally adopts
 767 and publishes specific broadband goals regarding capacity, geography and documented demand for
 768 Internet services in the specific unserved areas which the locality or its affiliate desires to address.

769 3. The locality or its affiliate has issued a request or solicitation for proposals, consistent with the
 770 specific broadband goals of the locality previously identified, requesting the capital cost which an
 771 existing for-profit local Internet service provider offering communications services with broadband
 772 speeds would incur to meet the locality's specific broadband goals by extending or upgrading such
 773 services with broadband speeds to any specific unserved areas of the locality identified in the
 774 comprehensive broadband assessment. Copies of such request or solicitation shall be sent to any
 775 franchised cable operator and other known Internet service providers with local facilities offering
 776 communications services in the locality at least 180 days in advance of the deadline for the response to
 777 the request or solicitation for proposals. The governing body of the locality or its affiliate shall analyze
 778 any responses it receives to determine if capital grants or subsidies by the locality to pay for such
 779 extension by an existing provider would be more cost effective than construction and operation of a new
 780 distribution system by the locality or its affiliate.

781 4. If no incumbent broadband provider advises the governing body of the locality within six months
 782 after the release of the request or solicitation for proposal that it is willing or able to meet the local
 783 goals, either without a capital grant or subsidy, or with the capital grant or subsidy or portion thereof
 784 proposed by the locality, then the governing body of the locality or its affiliate, after a public hearing,
 785 may vote to authorize one or more projects, consistent with the specific broadband goals of the locality
 786 previously identified, to provide broadband expansion services to unserved areas within the locality
 787 identified by the comprehensive broadband assessment report or study described above, which report or
 788 study shall not be more than one year old at the time of the public hearing. The chief executive officer
 789 of the locality or its affiliate shall certify that the comprehensive broadband assessment report or study
 790 identification of unserved areas is still correct based upon information presented at the hearing.

791 5. Any locality or affiliate project to provide broadband expansion services shall be designed and
 792 built or otherwise implemented so that at the time of authorization, the project (i) does not duplicate
 793 existing broadband facilities offering broadband speeds to customers, within 90 percent of the
 794 geographic area of the project, and (ii) does not duplicate service to customers who already are in a
 795 position to connect to an Internet service offering broadband speeds, for 90 percent of the projected
 796 residential and commercial customers who will be served by the project or otherwise are within the

797 service area of the project.

798 6. Any locality or its affiliates seeking to offer or offering broadband expansion services shall, at
799 least 120 days prior to commencement of construction of any project, file with the Virginia Broadband
800 Advisory Council, (i) copies of its report or study from the Center for Innovative Technology, including
801 any updates or supplements thereto, (ii) copies of the minutes of the meeting at which it voted to
802 authorize the offering of broadband expansion services, (iii) a map or description of each project and
803 projected area in which it plans to offer broadband expansion services, (iv) an annual certification by
804 July 1 of each year that any expansion to or changes in its projects or system since the preceding July
805 1 still qualify as broadband expansion services, and (v) an annual certification that its provision of
806 services meets or in the case of a prospective or an incomplete project shall meet, the requirements of
807 subdivisions 1 through 6 of § 56-484.30. Any person who believes that any part of such filings is
808 incomplete, incorrect or false and who is in the business of providing Internet services within the
809 locality shall have standing to bring an action in the circuit court for the locality to seek to require the
810 locality to either comply with the substantive and procedural content of the filings required by this
811 section, or cease to provide services, and no bond shall be required for injunctive relief against the
812 locality.

813 **§ 56-484.29. Provision of overbuild broadband services.**

814 Any locality or its affiliate that is providing overbuild broadband services as of July 1, 2017, may
815 continue to serve customers within the geographic service area within which it is actually providing
816 such services as of that date; however, except as hereafter provided such locality or its affiliate shall
817 not subsequently expand the geographic scope of its services or expand the nature of the service being
818 offered. Any locality or its affiliate that is not actually providing overbuild broadband services as of
819 July 1, 2017, or if providing such services, subsequently seeks to expand the geographic territory or
820 nature of services being offered, shall submit a proposal to the Virginia Broadband Advisory Council
821 with a full explanation of the proposed overbuild broadband services, and if recommended by the
822 Virginia Broadband Advisory Council, shall then require the express approval of the General Assembly
823 through legislation approving the offering or expansion of such services by the locality or its affiliate.

824 **§ 56-484.30. Operating requirements.**

825 The following provisions shall apply to any locality or its affiliate which offers broadband expansion
826 services or overbuild broadband services, after July 1, 2017:

827 1. A locality or its affiliate shall apply, without discrimination as to itself and any affiliate, including
828 any charges or fees for permits, access or occupancy, the locality's ordinances, rules, and policies,
829 including those relating to (i) obligation to serve; (ii) access to public rights of way and municipal
830 utility poles and conduits; (iii) permitting; (iv) performance bonding; (v) reporting; and (vi) quality of
831 service.

832 2. In calculating the rates charged by a locality for any communications service:

833 a. The locality or its affiliate shall include within its rates an amount equal to all taxes, fees, and
834 other assessments that would be applicable to a similarly situated private provider of the same
835 communications services, including federal, state, and local taxes; franchise fees; permit fees; pole
836 attachment fees; and any similar fees; and

837 b. The locality or its affiliate shall not price any of its communications services at a level that is less
838 than the sum of: (i) the actual direct costs of providing the service; (ii) the actual indirect costs of
839 providing the service; and (iii) the amount determined under subdivision 2a.

840 3. A locality or its affiliate shall keep accurate books and records of any provision of
841 communications services. A locality or its affiliate shall conduct an annual audit of its books and
842 records associated with any provision of communications services, with such audit to be performed by
843 an independent auditor approved by the Auditor of Public Accounts. Such audit shall include such
844 criteria as the Auditor of Public Accounts deems appropriate and be filed with him, and with copies to
845 be submitted to the Virginia Broadband Advisory Council. If, after review of such audit, the Auditor of
846 Public Accounts determines that there are violations of this chapter, he shall provide public notice of
847 same, and the locality or its affiliate shall take appropriate corrective action to cure past violations and
848 prevent future violations.

849 4. In providing communications services, a locality or its affiliate shall provide nondiscriminatory
850 access to its poles, conduits, rights of way, dark fiber, and towers or other structures, to any private
851 party offering any communications services within the locality, including, without limitation, collocation
852 rights and access to leased fiber, unless the facilities of the locality or its affiliate have insufficient
853 capacity for such access and additional capacity cannot reasonably be added to the facilities due to
854 physical limitations.

855 5. No locality or its affiliate shall exercise any power of eminent domain to condemn any plant or
856 equipment of a private provider of communications service for the purpose of allowing the locality or its
857 affiliate to use such plant or equipment in the provision of communications services.

858 6. No other political subdivision of the Commonwealth, or public body, shall provide loans, or issue

859 notes or bonds, or facilitate the construction of facilities, to provide communications services by a
860 locality or its affiliate, nor shall any locality or its affiliate enter into a commercial loan agreement for
861 funding to provide communications services, unless the locality and its affiliate are in compliance with
862 the provisions of this section.

863 7. Any person who believes that a locality or its affiliate are in violation of this section and who is
864 in the business of providing Internet services within the locality shall have standing to bring an action
865 in the circuit court for the locality to seek to require the locality to either comply with this section, or
866 cease to provide services, and no bond shall be required for injunctive relief against the locality.

867 **§ 56-484.31. Sale or disposal.**

868 Any locality or its affiliate that seeks to sell or dispose of all or any material part of the
869 infrastructure of an internal government services, broadband expansion services, or overbuild
870 broadband services system, or any material portion of any subscriber or service contracts in connection
871 therewith, shall do so by a public sale or auction process after advertisement.

872 **§ 56-484.32. Freedom of Information Act exemptions.**

873 No exemptions from the Freedom of Information Act (§ 2.2-3700 et seq.) based on confidential
874 proprietary records, trade secrets, or working papers shall apply to a locality or its affiliate in its
875 planning or provision of communications services.

876 **§ 56-484.33. Refinancing or refunding.**

877 Nothing in this chapter shall impair the ability or right of any locality or other political subdivision
878 or public institution of the Commonwealth to refinance or refund loans or notes, or issue refunding
879 bonds, or participate in such refinancing or refunding, or participate in such refinancing or refunding,
880 with respect to projects originally funded prior to July 1, 2017.

INTRODUCED

HB2108

17103884D

HOUSE BILL NO. 2196

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, relating to wireless communications infrastructure.

Patrons—Kilgore, Heretick, Hugo, Kory and Marshall, D.W.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, as follows:

Article 7.2.

Zoning for Wireless Communications Infrastructure.

§ 15.2-2316.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Collocation" has a corresponding meaning.

"Department" means the Department of Transportation.

"Distributed antenna system" means a network that distributes radio frequency (RF) signals and consisting of (i) remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmissions and receptions; (ii) a high capacity signal transport medium that is connected to a central communications hub site; and, (iii) radio transceivers located at the hub site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to collocate equipment on that structure. The term includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such higher limits as established by the Federal Communication Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications

59 between user equipment and a communications network, including but not limited to: (a) equipment
 60 associated with wireless services such as private, broadcast and public safety services, as well as
 61 unlicensed wireless services and fixed wireless services such as microwave backhaul; and (b) radio
 62 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable
 63 equipment, regardless of technological configuration.

64 "Wireless Infrastructure Provider" means any person that builds or installs transmission equipment,
 65 wireless facilities or wireless support structures, but that is not a wireless services provider.

66 "Wireless Services" means "personal wireless services"; "personal wireless service facilities" as
 67 defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
 68 § 332(d), provided to personal mobile communication devices through wireless facilities; and any other
 69 fixed or mobile wireless service provided using wireless facilities.

70 "Wireless services provider" means a provider of wireless services.

71 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
 72 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
 73 of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or
 74 any tower used for the distribution of transmission or electrical service.

75 **§ 15.2-2316.4. Zoning; small cell facilities.**

76 A. A locality shall not require that a special exception, special use permit, or variance be obtained
 77 for any small cell facility installed by a wireless service provider or wireless infrastructure provider on
 78 an existing structure, provided that the wireless service provider or wireless infrastructure provider (i)
 79 has permission from the owner of the structure to collocate equipment on that structure, and (ii) notifies
 80 the locality in which the permitting process occurs.

81 B. Localities may require administrative review for the issuance of any required zoning permits for
 82 the installation of a small cell facility by a wireless service provider or wireless infrastructure provider
 83 on an existing structure. Localities shall permit an applicant to submit multiple permit requests on a
 84 single application.

85 1. A locality shall approve or disapprove the application within 60 days. Any disapproval must be in
 86 writing and accompanied by an explanation for the disapproval. The application shall be deemed
 87 approved if the locality fails to act within 60 days.

88 2. A locality may prescribe and charge a reasonable fee not exceeding \$150 for processing an
 89 application.

90 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

91 4. The locality only may disapprove of a proposed location or installation of a small cell facility for
 92 the following reasons:

93 a. Material potential interference with other pre-existing communications facilities, or future
 94 communications facilities that have already been designed and planned for a specific location or that
 95 have been reserved for future public safety communications facilities,

96 b. The public safety or other critical public service needs, and

97 c. Only in the case of an installation on or in locality-owned property, aesthetic impact, or the
 98 absence of all necessary approvals from all necessary departments, authorities, and agencies with
 99 jurisdiction over such property.

100 5. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
 101 removal of abandoned wireless support structures or wireless facilities.

102 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

103 A.1. A locality shall approve or disapprove of a zoning application for the construction of a new
 104 wireless support structure within 150 days. Such application shall be deemed approved if the locality
 105 fails to act within 150 days.

106 2. A locality shall approve or disapprove of a zoning application for the collocation of any wireless
 107 facility that is not a small cell facility within 60 days. Such application shall be deemed approved if the
 108 locality fails to act within 60 days.

109 B. Any disapproval of an application under this section must be (i) in writing, (ii) supported by
 110 substantial record evidence contained in a written record publicly released contemporaneously with the
 111 denial, (iii) accompanied by an explanation for the disapproval and an explanation of what the
 112 applicant must do to cure the disapproval, and (iv) nondiscriminatory.

113 C. A locality may charge a reasonable fee for each application submitted pursuant to this chapter;
 114 such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is
 115 less.

116 **§ 15.2-2316.6. Zoning approval process.**

117 When considering a zoning permit application under § 15.2-2316.5, a locality shall not:

118 1. Require an applicant to submit information about, or evaluate an applicant's business decisions
 119 with respect to its designed service, customer demand for service, or quality of its service to or from a
 120 particular area or site;

121 2. Require information that concerns the specific need for the wireless support structure, including if
 122 the service to be provided from the wireless support structure is to add additional wireless coverage or
 123 additional wireless capacity. A locality may not require proprietary, confidential, or other business
 124 information to justify the need for the new wireless support structure, including propagation maps and
 125 telecommunications traffic studies;

126 3. Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant,
 127 including, but not limited to, requiring an applicant to construct a distributed antenna system or small
 128 cell facility in lieu of constructing a new wireless support structure; provided that an authority may
 129 consider the height of the wireless support structure or wireless facilities in its zoning review, if the
 130 height of the structure, facilities or structure with attached facilities exceeds 50 feet above ground level,
 131 so long as the authority does not unreasonably discriminate between the applicant and other wireless
 132 service providers, providers of telecommunications services and nonpublic providers of cable television
 133 and electric services.

134 4. Require the removal of existing wireless support structures or wireless facilities, wherever located,
 135 as a condition for approval of an application. This section shall not preclude a locality from adopting
 136 reasonable rules with respect to the removal of abandoned wireless support structures or wireless
 137 facilities;

138 5. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type
 139 of financial surety, to ensure that abandoned or unused facilities can be removed unless the locality
 140 imposes similar requirements on other permits for other types of commercial development or land uses
 141 and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the
 142 facility;

143 6. Discriminate or create a preference on the basis of the ownership, including ownership by the
 144 locality, of any property, structure, base station or wireless support structure when promulgating rules
 145 or procedures for siting wireless facilities or for evaluating applications;

146 7. Impose any unreasonable requirements or obligations regarding the presentation or appearance of
 147 facilities, including, but not limited to, those relating to any kinds of materials used and those relating
 148 to arranging, screening, or landscaping of facilities;

149 8. Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities,
 150 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in
 151 which a locality has a competitive, economic, financial, governance, or other interest;

152 9. Condition or require the approval of an application based on the applicant's agreement to permit
 153 any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to
 154 be placed at or collocated with the applicant's wireless support structure;

155 10. Impose a setback or fall zone requirement for a wireless support structure that is larger than a
 156 setback or fall zone area that is imposed on other types of commercial structures of a similar size;

157 11. Limit the duration of the approval of an application, except that construction of the approved
 158 structure or facilities shall commence within two years of final approval, and diligently pursued to
 159 completion; or

160 12. Require an applicant to perform services unrelated to an application, including restoration work
 161 on any surface not disturbed by the applicant.

162 **§ 15.2-2316.7. Moratorium prohibited.**

163 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless
 164 service providers or wireless infrastructure providers.

165 **CHAPTER 15.1.**

166 **WIRELESS COMMUNICATIONS INFRASTRUCTURE.**

167 **§ 56-484.26. Definitions.**

168 As used in this chapter, unless the context requires a different meaning:

169 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals
 170 used in the provision of any type of wireless communications services.

171 "Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,
 172 under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or
 173 wireless support structure. "Collocation" has a corresponding meaning.

174 "Department" means the Department of Transportation.

175 "Districtwide permit" means a permit granted by the Department to a wireless services provider or
 176 wireless infrastructure provider that allows the permittee to use the rights-of-way under the
 177 Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the
 178 Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform
 179 multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited
 180 access right-of-way without obtaining a single use permit for each occurrence. The central office permit
 181 manager shall be responsible for the issuance of all districtwide permits. The Department may authorize

182 districtwide permits covering multiple districts.

183 "Existing structure" means any structure that is installed or approved for installation at the time a
 184 wireless services provider or wireless infrastructure provider provides notice to a locality or the
 185 Department of an agreement with the owner of the structure to collocate equipment on that structure.
 186 The term includes any structure that is currently supporting, designed to support, or capable of
 187 supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility
 188 poles, light poles, flag poles, signs, and water towers.

189 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each
 190 antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an
 191 antenna that has exposed elements, the antenna and all of its exposed elements could fit within an
 192 imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated
 193 with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such
 194 higher limits as established by the Federal Communication Commission. The following types of
 195 associated equipment are not included in the calculation of equipment volume: electric meter,
 196 concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems,
 197 grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the
 198 connection of power and other services.

199 "Utility pole" means a structure owned, operated, or owned and operated by a public utility, local
 200 government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or
 201 wires for communications, cable television, or electricity.

202 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support
 203 structure, originally constructed for use as a reservoir or facility to store or deliver water.

204 "Wireless facility" means equipment at a fixed location that enables wireless communications
 205 between user equipment and a communications network, including but not limited to: (i) equipment
 206 associated with wireless services such as private, broadcast, and public safety services, as well as
 207 unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio
 208 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable
 209 equipment, regardless of technological configuration.

210 "Wireless infrastructure provider" means any person, including a person authorized to provide
 211 telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,
 212 or wireless support structures, but that is not a wireless services provider.

213 "Wireless services" means (i) "personal wireless services"; (ii) "personal wireless service facilities"
 214 as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
 215 § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any
 216 other fixed or mobile wireless service provided using wireless facilities.

217 "Wireless services provider" means a provider of wireless services.

218 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
 219 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
 220 of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or
 221 any tower used for the distribution of transmission or electrical service.

222 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
 223 **infrastructure providers; generally.**

224 A. No locality or the Department shall impose on wireless services providers or wireless
 225 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,
 226 including, but not limited to the permitting process, the zoning process, notice, time and location of
 227 excavations and repair work, enforcement of the statewide building code, and inspections, which are (i)
 228 unfair or unreasonable or (ii) any greater than those imposed on the following users of its public
 229 rights-of-way: all providers of telecommunications services and nonpublic providers of cable television,
 230 electric, natural gas, water and sanitary sewer services.

231 B. No locality or the Department shall impose any fees on a wireless services provider or wireless
 232 infrastructure provider for the use of public rights-of-way except in the manner prescribed in 56-484.30.

233 C. No locality or the Department shall require a wireless services provider or wireless infrastructure
 234 provider to provide in-kind services or physical assets as a condition of consent to use public
 235 rights-of-way or easements, or in lieu of the Wireless Support Structure Public Rights-of-Way Use Fee.
 236 This shall not limit the ability of localities, their authorities or commissions which provide utility
 237 services, or the Department to enter into voluntary pole attachment, tower occupancy, conduit
 238 occupancy or conduit construction agreements with wireless services providers or wireless infrastructure
 239 providers.

240 D. No locality or the Department shall adopt a moratorium on considering requests for access to the
 241 rights-of-way from wireless service providers or wireless infrastructure providers.

242 **§ 56-484.28. Access to public rights-of-way under the jurisdiction of the Department for the**
 243 **installation and maintenance of small cell facilities on existing structures.**

244 A. Upon application by a wireless services provider or wireless infrastructure provider, the
 245 Department shall issue a district-wide permit granting access to public rights-of-way under its
 246 jurisdiction to install and maintain small cell facilities on existing structures in the rights-of-way,
 247 provided that the wireless service provider or wireless infrastructure provider (i) has permission from
 248 the owner of the structure to collocate equipment on that structure, and (ii) provides notice of the
 249 agreement and collocation to the Department. The Department shall issue the district-wide permit
 250 within 30 days after receipt of the notice. The district-wide permit shall be deemed granted if not issued
 251 within 30 days after receipt of the notice by the Department. The district-wide permit issued for the
 252 original installation allows the permittee to repair, replace, or perform routine maintenance operations
 253 to small cell facilities once installed.

254 B. The Department may require a separate single use permit to allow a wireless services provider or
 255 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when
 256 such activity requires (i) working within the highway travel lane; (ii) disturbing the pavement, shoulder,
 257 roadway, or ditch line; or (iii) placement on limited access rights-of-way. The Department shall
 258 approve or disapprove the requested single use permit within 60 days. Any disapproval must be in
 259 writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by
 260 the Department in writing for a period not to exceed an additional 30 days. The single use permit
 261 request shall be deemed approved if the Department fails to act within the initial 60 days or an
 262 extended 30 day period.

263 C. The Department shall not impose any fee for the use of the right-of-way on a wireless service
 264 provider or wireless infrastructure provider to attach or collocate small cell facilities on an existing
 265 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not
 266 to exceed \$150 for processing an application for a district-wide or single use permit.

267 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
 268 **on existing structures.**

269 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality
 270 may issue a permit granting access to the public rights-of-way under its jurisdiction to install and
 271 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way
 272 in the locality for the purpose of installing small cell facilities on existing structures, provided that the
 273 wireless service provider or wireless infrastructure provider (i) has permission from the owner of the
 274 structure to collocate equipment on that structure, and (ii) provides notice of the agreement and
 275 collocation to the locality. The locality shall approve or disapprove any such requested permit within
 276 60 days of receipt of the application. Any disapproval must be in writing and accompanied by an
 277 explanation for the disapproval. The 60-day period may be extended by the locality in writing for a
 278 period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality
 279 fails to act within the initial 60 days or an extended 30 day period.

280 B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,
 281 site plan, and comprehensive plan fees of general application, on a wireless services provider or
 282 wireless infrastructure provider to attach or collocate small cell facilities on an existing structure in the
 283 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$150 for
 284 processing a permit application under subsection A.

285 **§ 56-484.30. Access to public right-of-way to construct new wireless support structures.**

286 A. Public right-of-way permits or agreements for the construction of wireless support structures shall
 287 be for an initial term of at least 10 years, with at least three options for renewal for terms of five years,
 288 subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is
 289 intended to prohibit the Department or localities from requiring permittees to relocate wireless support
 290 structures when relocation is necessary due to a transportation project or material change to the
 291 right-of-way, so long as all users of the right-of-way are required to relocate. Such relocation shall be
 292 completed as soon as reasonably possible within the time set forth in any written request by the
 293 Department or a locality for such relocation, as long as the Department or a locality provides the
 294 permittee with a minimum of 180 days advance written notice to comply with such relocation, unless
 295 circumstances beyond the control of the Department or the locality require a shorter period of advance
 296 notice. The permittee shall bear only the proportional cost of the relocation that is caused by the
 297 transportation project and shall not bear any cost related to private benefit or where the permittee was
 298 on private right-of-way. In the event the locality or the Department bears any of the cost of the
 299 relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for
 300 such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds
 301 for the cost of such relocation and the Department or a locality shall have no obligation to collect such
 302 funds. If relocation is deemed necessary, the Department or locality must work cooperatively with the
 303 permittee to minimize any negative impact to the wireless signal caused by the relocation.

304 B. Notwithstanding any other provisions of law, there is hereby established an annual Wireless

305 *Support Structure Public Rights-of-Way Use Fee to replace any and all fees of general application,*
306 *except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise*
307 *chargeable to wireless service providers and wireless infrastructure providers for access to the public*
308 *rights-of-way by the Department and localities to construct new wireless support structures. The amount*
309 *of the Wireless Support Structure Public Rights-of-Way Use Fee shall be:*

- 310 1. \$1,000 for any wireless support structure at or below 60 feet;
 - 311 2. \$3,000 for any wireless support structure above 60 feet;
 - 312 3. \$1 per square foot for any other equipment, shelter, or equipment constructed on the ground.
- 313 *The fee amount specified herein shall be adjusted every five years, as of January 1 of that year, in*
314 *an amount equal to the annual increases for that five-year period in the United States Average*
315 *Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor*
316 *Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.*

317 C. *No later than June 30th of each year, the wireless services provider or wireless infrastructure*
318 *provider shall remit directly to the applicable locality all Wireless Support Structure Public*
319 *Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained*
320 *by the Department; and (iii) any county that has withdrawn or elects to withdraw from the secondary*
321 *system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932*
322 *and that has elected not to return. The Wireless Support Structure Public Rights-of-Way Use Fees*
323 *applicable in all other counties shall be remitted by each wireless services provider and wireless*
324 *infrastructure provider to the Department. Wireless Support Structure Public Rights-of-Way Fees paid*
325 *to the Department pursuant to this chapter shall be deposited in the Highway Maintenance and*
326 *Operating Fund established pursuant to §33.2-1530.*

327 **§ 56-484.31. Attachment of small cell facilities on government owned structures.**

328 A. *Upon request by a wireless service provider or a wireless infrastructure provider to the*
329 *Commonwealth or a local government, both the government entity and the wireless services or wireless*
330 *infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract for small*
331 *cell facility attachments to government owned structures by the wireless service provider or wireless*
332 *infrastructure provider.*

333 B. *The rates, terms, and conditions for such agreement must be just and reasonable, cost-based,*
334 *nondiscriminatory, competitively neutral, and comply with all applicable state and federal laws.*

335 C. *For utility poles owned by a locality or the Commonwealth that support aerial cables used for*
336 *video, communications, or electric service, the parties shall comply with the process for make-ready*
337 *work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government*
338 *entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole*
339 *to support the requested collocation shall include pole replacement if necessary.*

340 D. *For utility poles owned by a locality or the Commonwealth that do not support aerial cables used*
341 *for video, communications, or electric service, the government entity owning or controlling the utility*
342 *pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to*
343 *support the requested collocation, including pole replacement, if necessary, within 60 days after receipt*
344 *of a complete application. Make-ready work, including any pole replacement, shall be completed within*
345 *60 days of written acceptance of the good faith estimate by the wireless service provider or a wireless*
346 *infrastructure provider.*

347 E. *The government entity owning or controlling the utility pole shall not require more make-ready*
348 *work than required to meet applicable codes or industry standards. Charges for make-ready work,*
349 *including any pole replacement, shall not exceed actual costs or the amount charged to other wireless*
350 *service providers, providers of telecommunications services and nonpublic providers of cable television*
351 *and electric services for similar work and shall not include consultants' fees or expenses.*

352 F. *The annual recurring rate to collocate a small cell facility on a government owned utility pole*
353 *shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or*
354 *wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the*
355 *appropriateness of the rate, the government entity owning or controlling the utility pole shall have the*
356 *burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs*
357 *incurred for use of space on the utility pole for such period.*

358 **§ 46-484.32. Access to public property other than rights-of-way.**

359 *Localities and the Department shall permit wireless service providers and wireless infrastructure*
360 *providers access to public property outside of the rights-of-way on a nondiscriminatory basis to the*
361 *extent it is allowed for providers of telecommunications services and nonpublic providers of cable*
362 *television, electric, natural gas, water and sanitary sewer services.*