



Talking Points: HB1258 and SB405

What the bills don't do

These bills will not expand wireless service to rural and underserved areas. These bills address wireless service, not secure broadband that delivers access to the Internet to homes, schools, offices and businesses.

What the bills do:

- Eliminate most local control over the installation and operation of new wireless structures by classifying most new wireless structure projects as "Administrative Review-Eligible Projects." (Some projects would be classified as "Standard Process Projects.")
- Treat the wireless industry differently from all other private profit-making industries, thus leaving localities (and the state) open to charges of discrimination against other industries.
- Move the decision-making process about land use from the community and its citizens and elected officials to for-profit companies who care about their bottom line, not about citizens' welfare and desires.

What "Administrative Review-Eligible Project" and "Standard process Project" are:

- These are new zoning classifications, but working definitions are not included in the bills. That likely means more litigation, because the proposed wording is not clear.
- Most projects will fall under the "Administrative Review-Eligible Project" category, to include: 1) All co-locations on any existing structure that is not a small cell facility and 2) Installation or construction of a new structure that is not more than 50 feet tall, if the structure is not more than 10 feet above the tallest existing utility pole located within 500 feet of a new structure, is not located in an historic district and is designed to support small cell facilities.
- "Standard process project" is defined as any project other than an administrative review-eligible project.

Problems with Administrative Review-Eligible Projects

- A locality cannot use a special exception, variance or special permit in reviewing "Administrative Review-Eligible Projects." This removes the ability of local elected officials, residents and businesses to have input into decisions affecting the character of their own communities.
- A locality cannot require co-location, condition approval on the removal of another structure, or limit the duration of the approval.
- If applications for "Administrative Review-Eligible Projects" are incomplete, the locality must supply guidance within 10 days on completing them or the project is "Deemed Approved."
- The bills set other aggressive timetables for approval of projects. If the timetables are not met, the project is "Deemed Approved".

- The “Deemed Approved” language strikes down the legislative process. This bill takes away the ability of a locality to ask questions of the applicant or negotiate with the industry about a specific location or type of equipment or screening.
- If the project is not approved, the locality must produce a substantial written record, some of which may end up being used by the applicant as evidence that the locality’s disapproval was arbitrary and capricious.
- The bills put in statute the fees for applications. A state-determined fee does not account for the differences in workloads as well as the costs and availability of professional services costs that occur throughout the Commonwealth.
- The bills throw the door wide-open to requests for similar special treatment from other industries.

Problems with “Standard Project Review”

- There are only a narrow set of circumstances under which a “Standard Project Review” could be disapproved:
 - The proposed height is over 50 feet, if there is no discrimination between the applicant and other service providers and
 - All utility facilities are underground if 1) the undergrounding requirement was in place 3 months prior to submission, 2) the locality allows co-location on existing poles and 3) the locality allows replacement of existing poles

The bottom line:

- These bills are based on the best interest of a particular type of industry, not on the best interest of a community.
- Zoning decisions should be made based upon the best interests of the community. The health, safety and welfare of the citizens should outweigh the profitability of corporations.
- Local zoning recognizes the importance of citizen input. The bill’s provisions remove the ability of our citizens to have meaningful input over the character of their communities.
- Local zoning takes into consideration that the economic, social, cultural, and other conditions are not one-size fits-all.