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**By: Senator Young**

Introduced and read first time: January 31, 1997

Assigned to: Economic and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Zoning - Personal Wireless Services - Antennas and Antenna Towers**

3 FOR the purpose of authorizing local governments to adopt certain criteria and standards  
4 relating to the location of personal wireless services antennas and antenna towers;  
5 authorizing local governments to adopt certain procedures for processing  
6 applications for certain permits relating to personal wireless services; authorizing  
7 local governments to impose certain additional requirements on certain applicants  
8 for certain permits relating to personal wireless services; defining certain terms;  
9 providing for the construction of this Act; and generally relating to zoning and  
10 personal wireless services.

11 BY repealing and reenacting, with amendments,  
12 Article 66B - Zoning and Planning  
13 Section 7.03  
14 Annotated Code of Maryland  
15 (1995 Replacement Volume and 1996 Supplement)

16 BY adding to  
17 Article 66B - Zoning and Planning  
18 Section 9.01 through 9.04, inclusive, to be under the new subheading "Personal  
19 Wireless Services Facilities"  
20 Annotated Code of Maryland  
21 (1995 Replacement Volume and 1996 Supplement)

22 Preamble

23 WHEREAS, The General Assembly of Maryland is aware of the tremendous  
24 growth and increase of use in the area of personal wireless services during recent years;  
25 and

26 WHEREAS, The General Assembly of Maryland understands that this demand  
27 for personal wireless services produces the corresponding need for additional antennas  
28 and antenna towers; and

29 WHEREAS, The General Assembly of Maryland shares the concerns of the  
30 citizens and residents of the State of Maryland that the unregulated proliferation of

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1 towers and antennas within the State would be aesthetically displeasing and create visual  
2 blight; and

3 WHEREAS, The General Assembly of Maryland is aware that recently enacted  
4 federal law delineates the scope of states' and localities' authority to control and regulate  
5 personal wireless services; and

6 WHEREAS, The General Assembly of Maryland has determined it to be in the  
7 best interest of the citizens and residents of the State to provide guidance to local zoning  
8 authorities regarding regulation of the placement, erection, and operation of antennas  
9 and antenna towers within their jurisdictions, as allowed by federal telecommunications  
10 law; now, therefore,

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article 66B - Zoning and Planning**

14 7.03.

15 (a) Except as provided in §§ 3.05(a)(1)(iii), (v), (vi), and (viii), (4), and (b),  
16 3.06(b) and (c), 4.01(a)(2), 4.09, 5.03(e), 7.01(c), 9.01 THROUGH 9.04, 10.01, 11.01, 12.01,  
17 and 13.01 of this article, and subject to subsection (b) of this section, this article does not  
18 apply to the chartered counties of Maryland. This section supersedes § 7.02 of this article  
19 and any inconsistent provision of Article 28 of the Code.

20 (b) Section 13.01 of this article does not apply to Montgomery County or Prince  
21 George's County.

22 **PERSONAL WIRELESS SERVICES FACILITIES**

23 9.01.

24 (A) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS  
25 INDICATED.

26 (B) "ANTENNA" MEANS A TRANSMITTING DEVICE OR RECEIVING DEVICE  
27 USED IN COMMUNICATIONS THAT RADIATES OR CAPTURES ELECTROMAGNETIC  
28 WAVES, DIGITAL SIGNALS, ANALOG SIGNALS, RADIO FREQUENCIES (EXCLUDING  
29 RADAR SIGNALS), WIRELESS TELECOMMUNICATIONS SIGNALS, OR OTHER  
30 COMMUNICATIONS SIGNALS.

31 (C) "ANTENNA TOWER" MEANS A FREE STANDING GUYED, MONOPOLE, OR  
32 SELF-SUPPORT STRUCTURE OR LATTICE STRUCTURE, DESIGNED TO SUPPORT OR  
33 CONTAIN ONE OR MORE ANTENNAS INTENDED FOR TRANSMITTING TELEVISION,  
34 RADIO, DIGITAL, MICROWAVE, CELLULAR, TELEPHONE, ELECTRONIC, OR ANY  
35 FORM OF COMMUNICATIONS SIGNALS.

36 (D) "COLLOCATION" MEANS THE PLACEMENT OF MULTIPLE ANTENNAS ON  
37 ONE ANTENNA TOWER OR STRUCTURE, BY MORE THAN ONE PERSONAL WIRELESS  
38 SERVICES PROVIDER, EITHER FOR THE SAME TYPE OF PERSONAL WIRELESS  
39 SERVICE OR FOR DIFFERING TYPES OF PERSONAL WIRELESS SERVICES.

1 (E) "COMMERCIAL MOBILE SERVICES" INCLUDES CELLULAR TELEPHONE  
2 SERVICES, PAGING SERVICES, PERSONAL COMMUNICATIONS SERVICES (PCS), AND  
3 SPECIALIZED MOBILE RADIO SERVICES.

4 (F) "PERMIT" MEANS ANY PERMIT, VARIANCE, SPECIAL EXCEPTION, OR  
5 OTHER CERTIFICATION OF APPROVAL REQUIRED BY A LOCAL ZONING AUTHORITY  
6 FOR THE LOCATION, ERECTION, OR OPERATION OF A PERSONAL WIRELESS  
7 SERVICES ANTENNA OR ANTENNA TOWER.

8 (G) (1) "PERSONAL WIRELESS SERVICES" INCLUDES COMMERCIAL MOBILE  
9 SERVICES, UNLICENSED WIRELESS SERVICES, AND COMMON CARRIER WIRELESS  
10 EXCHANGE ACCESS SERVICES.

11 (2) "PERSONAL WIRELESS SERVICES" DOES NOT INCLUDE  
12 DIRECT-TO-HOME SATELLITE SERVICES.

13 (H) (1) "PERSONAL WIRELESS SERVICES FACILITY" MEANS A FACILITY FOR  
14 THE PROVISION OF PERSONAL WIRELESS SERVICES.

15 (2) "PERSONAL WIRELESS SERVICES FACILITY" INCLUDES:

16 (I) AN ANTENNA; AND

17 (II) AN ANTENNA TOWER.

18 9.02.

19 (A) A COUNTY OR MUNICIPAL CORPORATION MAY ADOPT STANDARDS AND  
20 CRITERIA RELATING TO THE SITING OF PERSONAL WIRELESS SERVICES FACILITIES,  
21 INCLUDING ANTENNAS AND ANTENNA TOWERS.

22 (B) THE COUNTY OR MUNICIPAL CORPORATION SHALL ENCOURAGE THE  
23 LOCATION OF ANTENNAS AND ANTENNA TOWERS ON PUBLIC PROPERTY,  
24 CONSISTENT WITH THE INTENT OF THE FEDERAL TELECOMMUNICATIONS ACT OF  
25 1996.

26 (C) A PREFERRED SEQUENCE FOR SITING PERSONAL WIRELESS SERVICES  
27 FACILITIES IS:

28 (1) PUBLIC PROPERTY;

29 (2) INDUSTRIAL OR MANUFACTURING ZONES;

30 (3) COMMERCIAL ZONES;

31 (4) MULTI-FAMILY RESIDENTIAL ZONES; AND

32 (5) SINGLE-FAMILY RESIDENTIAL ZONES.

33 (D) IN CONSIDERING A PERMIT APPLICATION FOR A PERSONAL WIRELESS  
34 SERVICES FACILITY, THE LOCAL ZONING AUTHORITY SHALL DETERMINE:

35 (1) WHETHER THE FACILITY CANNOT BE LOCATED IN A MORE HIGHLY  
36 PREFERRED ZONE OR ZONES WITHOUT UNREASONABLY COMPROMISING THE

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1 CAPABILITY OF THE PROPOSED PERSONAL WIRELESS SYSTEM OR OTHER  
2 COMMUNICATIONS SYSTEMS; AND

3 (2) WHETHER THERE IS SUITABLE PUBLIC PROPERTY NEAR THE  
4 PROPOSED SITE OF THE FACILITY WHICH WOULD PHYSICALLY ACCOMMODATE THE  
5 FACILITY WITHOUT:

6 (I) UNREASONABLY COMPROMISING THE FACILITY'S SIGNAL  
7 RECEPTION OR TRANSMITTING CAPABILITY OR THE CAPABILITY OF OTHER  
8 COMMUNICATIONS SYSTEMS;

9 (II) SIGNIFICANTLY INCREASING ANY NEGATIVE EFFECTS ON THE  
10 AESTHETICS OF THE FACILITY'S LOCATION; AND

11 (III) INCREASING THE LIKELIHOOD OF PROPERTY DAMAGE IN THE  
12 EVENT OF STRUCTURAL FAILURE.

13 9.03.

14 (A) THE COUNTY OR MUNICIPAL CORPORATION MAY IMPOSE ADDITIONAL  
15 PROCEDURAL REQUIREMENTS ON AN APPLICANT FOR A PERMIT.

16 (B) ADDITIONAL PROCEDURAL REQUIREMENTS MAY INCLUDE:

17 (1) REQUIRING THE APPLICANT TO PROVIDE TO THE LOCAL ZONING  
18 AUTHORITY OPINIONS FROM ENGINEERS OR OTHER PROFESSIONALS WITH  
19 EXPERTISE IN PERSONAL WIRELESS SERVICES FACILITY CONSTRUCTION;

20 (2) ISSUING A STAY OF CONSIDERATION OF A PERMIT FOR 90 DAYS IN  
21 ORDER TO ALLOW GOOD FAITH NEGOTIATIONS BETWEEN AN APPLICANT AND A  
22 PROPERTY OWNER OF A SITE WITHIN A PREFERRED ZONING CLASS;

23 (3) REQUIRING THE APPLICANT TO OBTAIN THE CONSENT OF ALL  
24 NECESSARY OWNERS, EASEMENT HOLDERS, TENANTS, AND OTHER INTERESTED  
25 PARTIES PRIOR TO SUBMITTING AN APPLICATION;

26 (4) REQUIRING THE APPLICANT TO PROVIDE EVIDENCE OF THE STATUS  
27 OF TITLE OF THE PROPOSED FACILITY SITE TO ASSURE THAT ALL NECESSARY  
28 OWNERS, EASEMENT HOLDERS, TENANTS, AND OTHER INTERESTED PARTIES HAVE  
29 CONSENTED TO THE APPLICATION; AND

30 (5) REQUIRING THE APPLICANT TO PROVIDE EVIDENCE THAT THE  
31 APPLICANT HAS ASSESSED THE ALTERNATIVE OF COLLOCATION WITH AN EXISTING  
32 OR PROPOSED FACILITY.

33 9.04.

34 (A) A COUNTY OR MUNICIPAL CORPORATION MAY IMPOSE ADDITIONAL  
35 REQUIREMENTS FOR APPROVAL OF A PERMIT, INCLUDING ZONING PROVISIONS TO  
36 ENFORCE THE JURISDICTION'S POLICIES REGARDING SITING AND APPROVAL OF  
37 PERSONAL WIRELESS SERVICE FACILITIES.

38 (B) ADDITIONAL REQUIREMENTS MAY INCLUDE:

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1 (1) TO AVOID UNNECESSARY DUPLICATION OF THE SITING OF  
2 ANTENNAS AND ANTENNA TOWERS THROUGHOUT THE LOCALITY, REQUIRING AN  
3 APPLICANT FOR A PERMIT, AS A CONDITION OF APPROVAL OF THE PERMIT, TO  
4 AGREE TO:

5 (I) ALLOW COLLOCATION OF ANTENNAS OF OTHER PERSONAL  
6 WIRELESS SERVICES PROVIDERS ON A NONDISCRIMINATORY BASIS; OR

7 (II) PROVIDE REASONS BASED ON VERIFIABLE, OBJECTIVE DATA  
8 WHY IT CANNOT COLLOCATE THE ANTENNAS OF OTHER PROVIDERS WITH ITS OWN  
9 FACILITIES;

10 (2) IN THE ZONING ORDINANCES PROVIDING THAT THE  
11 UNREASONABLE REFUSAL OF A PERSONAL WIRELESS SERVICES PROVIDER TO  
12 ALLOW COLLOCATION IS A VIOLATION WHICH MAY RESULT IN REVOCATION OF THE  
13 PERSONAL WIRELESS SERVICES PROVIDER'S PERMIT;

14 (3) REQUIRING THAT AN APPLICANT AGREE THAT ANY ANTENNA  
15 PROPOSED FOR A SITE WILL NOT:

16 (I) INTERFERE WITH PUBLIC SAFETY COMMUNICATIONS; OR

17 (II) UNREASONABLY INTERFERE WITH THE RECEPTION OR  
18 TRANSMISSION OF TELEVISION, RADIO, MICROWAVE, TELEPHONE, DIGITAL, OR  
19 OTHER SIMILAR COMMUNICATIONS SIGNALS FOR NEARBY RESIDENCES OR  
20 BUSINESSES;

21 (4) REQUIRING THAT AN ANTENNA TOWER MUST BE LOCATED TO  
22 MINIMIZE THE LIKELIHOOD OF INJURY TO PROPERTY OR PERSONS IN THE EVENT  
23 OF STRUCTURAL FAILURE;

24 (5) REQUIRING THAT AN ANTENNA TOWER MUST, TO THE FULLEST  
25 EXTENT PRACTICABLE, BE SCREENED FROM VIEW BY LANDSCAPING OR EXISTING  
26 NATURAL VEGETATION, OR OTHERWISE AESTHETICALLY DESIGNED TO BLEND  
27 INTO AND HARMONIZE WITH THE AREA OR LOCATION;

28 (6) PROHIBITING COMMERCIAL ADVERTISING ON AN ANTENNA  
29 TOWER;

30 (7) REQUIRING THAT NO LIGHTS OR SIGNALS BE PLACED ON AN  
31 ANTENNA UNLESS REQUIRED BY THE FEDERAL COMMUNICATIONS COMMISSION OR  
32 THE FEDERAL AVIATION ADMINISTRATION; AND

33 (8) REQUIRING AN APPLICANT FOR A PERMIT TO FILE A  
34 CERTIFICATION IN WHICH THE APPLICANT:

35 (I) AGREES TO KEEP AN ANTENNA PROPOSED FOR A SITE IN  
36 CONTINUAL COMPLIANCE WITH ALL PRESENT AND FUTURE SAFETY LAWS, RULES,  
37 AND REGULATIONS CONCERNING ELECTROMAGNETIC FREQUENCY EMISSIONS,  
38 RADIO FREQUENCY EMISSIONS, OR OTHER SIMILAR EMISSIONS;

39 (II) ACKNOWLEDGES THE LOCAL ZONING AUTHORITY'S  
40 AUTHORITY TO REQUIRE IMMEDIATE REMOVAL OF AN ANTENNA THAT DOES NOT

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1 MEET ANY SAFETY STANDARD DESCRIBED IN SUBPARAGRAPH (I) OF THIS  
2 PARAGRAPH;  
3 (III) AGREES THAT THE CERTIFICATION SHALL BE BINDING ON THE  
4 APPLICANT'S SUCCESSORS IN INTEREST; AND  
5 (IV) AGREES TO PAY THE JURISDICTION'S COURT COSTS AND  
6 REASONABLE ATTORNEY'S FEES IF LITIGATION IS NECESSARY TO ENFORCE THE  
7 CERTIFICATION.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be  
9 construed to require a local government to adopt the standards and criteria enumerated  
10 in this Act and may not abrogate existing powers, explicit or implied, exercised by a local  
11 government to regulate zoning of communications facilities.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 1997.