GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 90

AS ENACTED

TUESDAY, MARCH 29, 2016

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to the siting of cellular antenna towers.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 100.987 is amended to read as follows:

4 (1) A planning unit as defined in KRS 100.111 and legislative body or fiscal court that
5 has adopted planning and zoning regulations may plan for and regulate the siting of
6 cellular antenna towers in accordance with locally adopted planning or zoning
7 regulations in this chapter***, except as otherwise provided in this section***.

8 (2) Every utility or a company that is engaged in the business of providing the required
9 infrastructure to a utility that proposes to construct an antenna tower for cellular
10 telecommunications services or personal communications services within the
11 jurisdiction of a planning unit that has adopted planning and zoning regulations in
12 accordance with this chapter shall:

13 (a) Submit a copy of the applicant's completed uniform application to the
14 planning commission of the affected planning unit to construct an antenna
15 tower for cellular or personal telecommunications services. The uniform
16 application shall include a grid map that shows the location of all existing
17 cellular antenna towers and that indicates the general position of proposed
18 construction sites for new cellular antenna towers within an area that includes:

19 1. All of the planning unit's jurisdiction; and

20 2. A one-half (1/2) mile area outside of the boundaries of the planning
21 unit's jurisdiction, if that area contains either existing or proposed
22 construction sites for cellular antenna towers;

23 (b) Include in any contract with an owner of property upon which a cellular
24 antenna tower is to be constructed, a provision that specifies, in the case of
25 abandonment, a method that the utility will follow in dismantling and
26 removing a cellular antenna tower, including a timetable for removal; and

27 (c) Comply with any local ordinances concerning land use, subject to the

1 limitations imposed by 47 U.S.C. sec. 332(c), KRS 278.030, 278.040, and
2 278.280.
3 (3) All information contained in the application and any updates, except for any map or
4 other information that specifically identifies the proposed location of the cellular
5 antenna tower then being reviewed, shall be deemed confidential and proprietary
6 within the meaning of KRS 61.878. The local planning commission shall deny any
7 public request for the inspection of this information, whether submitted under
8 Kentucky's Open Records Act or otherwise, except when ordered to release the
9 information by a court of competent jurisdiction. Any person violating this
10 subsection shall be guilty of official misconduct in the second degree as provided
11 under KRS 522.030.
12 (4) After an applicant's submission of the uniform application to construct a cellular
13 antenna tower, the planning commission shall:
14 (a) Review the uniform application in light of its agreement with the
15 comprehensive plan and locally adopted zoning regulations;
16 (b) Make its final decision to approve or disapprove the uniform application; and
17 (c) Advise the applicant in writing of its final decision within sixty (60) days
18 commencing from the date that the uniform application is submitted to the
19 planning commission or within a date certain specified in a written agreement
20 between the local planning commission and the applicant. If the planning
21 commission fails to issue a final decision within sixty (60) days and if there is
22 no written agreement between the local planning commission and the
23 applicant to a specific date for the planning commission to issue a decision,
24 the uniform application shall be deemed approved.
25 (5) If the planning commission disapproves of the proposed construction, it shall state
26 the reasons for disapproval in its written decision and may make suggestions which,
27 in its opinion, better accomplish the objectives of the comprehensive plan and the

1 locally adopted zoning regulations. No permit for construction of a cellular or
2 personal communications services antenna tower shall be issued until the planning
3 commission approves the uniform application or the sixty (60) day time period has
4 expired, whichever occurs first.

5 (6) The planning commission may require the applicant to make a reasonable attempt to
6 co-locate additional transmitting or related equipment. A planning commission may
7 provide the location of existing cellular antenna towers on which the commission
8 deems the applicant can successfully co-locate its transmitting and related
9 equipment. If the local planning commission requires the applicant to attempt co-
10 location, the applicant shall provide the local planning unit with a statement
11 indicating that the applicant has:

12 (a) Successfully attempted to co-locate on towers designed to host multiple
13 wireless service providers' facilities or existing structures such as a
14 telecommunications tower or another suitable structure capable of supporting
15 the applicant's facilities, and that identifies the location of the tower or
16 suitable structure on which the applicant will co-locate its transmission and
17 related facilities; or

18 (b) Unsuccessfully attempted to co-locate on towers designed to host multiple
19 wireless service provider's facilities or existing structures such as a
20 telecommunications tower or another suitable structure capable of supporting
21 the applicant's facilities and that:

22 1. Identifies the location of the towers or other structures on which the
23 applicant attempted to co-locate; and

24 2. Lists the reasons why the co-location was unsuccessful in each instance.

25 (7) The local planning commission may deny a uniform application to construct a
26 cellular antenna tower based on an applicant's unwillingness to attempt to co-locate
27 additional transmitting or related equipment on any new or existing towers or other

1 structures.

2 (8) In the event of co-location, a utility shall be considered the primary user of the
3 tower, if the utility is the owner of the antenna tower and if no other agreement
4 exists that prescribes an alternate arrangement between the parties for use of the
5 tower. Any other entity that co-locates transmission or related facilities on a cellular
6 antenna tower shall do so in a manner that does not impose additional costs or
7 operating restrictions on the primary user.

8 (9) Upon the approval of an application for the construction of a cellular antenna tower
9 by a planning commission, the applicant shall notify the Public Service Commission
10 within ten (10) working days of the approval. The notice to the Public Service
11 Commission shall include a map showing the location of the construction site. If an
12 applicant fails to file notice of an approved uniform application with the Public
13 Service Commission, the applicant shall be prohibited from beginning construction
14 on the cellular antenna tower until such notice has been made.

15 (10) A party aggrieved by a final action of a planning commission under the provisions
16 of KRS 100.985 to 100.987 may bring an action for review in any court of
17 competent jurisdiction.

18 ***(11) Applications for approval of cellular antenna towers on property owned by any***
19 ***state agency, university electing to perform financial management of its real***
20 ***properties pursuant to KRS 164A.555 to 164A.630, department, board,***
21 ***commission, authority, or other instrumentality of the state that is exempt from***
22 ***zoning regulations under KRS 100.361, other than property for which the use is***
23 ***controlled by the secretary of the Finance and Administration Cabinet pursuant***
24 ***to KRS 56.463(4)(a), shall be submitted to the Public Service Commission for***
25 ***approval under KRS 278.650.***

26 ➔Section 2. KRS 278.650 is amended to read as follows:

27 If an applicant proposes construction of an antenna tower for cellular telecommunications

1 services or personal communications services which is to be located in an area outside the
2 jurisdiction of a planning commission, ***or outside the jurisdiction of the secretary of the***
3 ***Finance and Administration Cabinet pursuant to KRS 56.463(4)(a),*** the applicant shall
4 apply to the Public Service Commission for a certificate of public convenience and
5 necessity pursuant to KRS 278.020(1), 278.665, and this section. The commission shall
6 convene a local public hearing on the application upon the receipt of a request from the
7 local governing body or from not less than three (3) interested persons that reside in a
8 county or municipal corporation in which the tower is proposed to be constructed. In
9 reviewing the application, the commission may take into account the character of the
10 general area concerned and the likely effects of the installation on nearby land uses and
11 values. A local government may charge a fee for a building permit, in connection with the
12 construction or alteration of any structure for cellular telecommunications services or
13 personal communication services, if the fee does not exceed that charged for any other
14 commercial structure of comparable cost of construction.

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 9 APRIL 2016