

New York State Pending Legislation Update

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NYS Assembly Bill A04098 / NYS Senate Bill S04305 – Renewable Power Requirements for Wireless Facilities.

The New York State Senate has introduced a Bill on February 7, 2023 (February 9, 2023 State Assembly) for the 2023-2024 Regular Legislative Session which will require all owners and operators of “cell towers” within the state to provide plans to the New York State Public Service Commission (“PSC”) to make all cell towers powered by 100% renewable energy by 2031. This current version of the Bill only requires the submission of plans to make the conversion and does not actually require that all cell towers be powered by renewable energy, but such regulation may soon follow after the PSC receives plans to make the conversion to renewable energy sources.

The Bill was introduced to the Senate by Senator Kevin S. Parker (D, 21st District) and on March 21, 2023 the Bill passed the Senate and was delivered to the New York State Assembly (Bill A04098). The NYS Assembly referred the Bill to corporations, authorities, and commissions and has been sponsored by Assemblyman Cunningham (D, 43rd District). The Bill is currently in committee in the Assembly.

The Bill is Co-Sponsored by Iwen Chu (D, 17th District) and Rachel May (D, 48th District) in the Senate.

NYS Assembly Bill A00030 / NYS Senate Bill S0026 – Wireless Broadband Eligible Facility Permitting Act.

The New York State Legislatures have for the past several years introduced bills to enact the Wireless Broadband Eligible Facility Permitting Act to provide uniform municipal regulation of eligible facility requests within the state. The current Bill was simultaneously introduced in the New York State Assembly and Senate on January 4, 2023 for the 2023-2024 Regular Legislative Session. The Bill in both the Assembly and Senate has been referred to the Committee on Local Governments.

The Bill would add a new Article to New York State’s General Municipal Law that would attempt to parallel the current implementing regulations (47 C.F.R. §1.6100) for Section 6409 of the Middle Class Tax Relief Act, as well as set into state law the applicable review periods or “shot clocks” for different types of wireless applications. Of note, the new law exempts eligible facility request applications from compliance with local zoning codes and SEQRA review, and requires that such applications be processed as a building department review only. The new law also requires that the municipality issue all necessary permits for an eligible facility request within 15 days of receiving a written notice from the applicant that the review period has expired and that the permit is now deemed granted.

The Bill is sponsored in the New York State Assembly by Assemblywoman Carrie Woerner (D, 113th District) and co-sponsored by Assemblyman Harvey Epstein (D, 74th District), Assemblyman Brian Miller (R, 122nd District), Assemblyman Clyde Vanel (D, 33rd District), Assemblyman Nader Sayegh (D, 90th District), Assemblyman Matthew Simpson (R, 114th District), Assemblyman Ken Blankenbush (R, 117th District).

The Bill is sponsored in the New York State Senate by Senator Daniel Stec (R, 45th District).

NYS Assembly Bill A00088 / NYS Senate Bill S2996 – Back-up Power Requirements for Cell Towers

The New York State Legislatures have for the last couple years introduced bills to require cell towers to be equipped with a back-up power source in case of a power outage. The current Bill was introduced in the New York State Assembly on January 4, 2023 and in the New York State Senate on January 26, 2023 for the 2023-2024 Regular Legislative Session. The Bill in the Assembly has been referred to the Corporations, Authorities and Commissions Committee, and in the Senate it has been referred to the Energy and Telecommunications Committee.

The Bill would amend NY State General Business Law to require every “macro cell tower site” to have emergency back-up power source capable of providing adequate power to maintain the operation of the facility in case of a power loss and that such back-up power source “shall use a renewable energy system, fuel cell electric generating equipment, or an energy storage system and be capable of powering a macro cell tower site for a minimum of at least seventy-two hours.” The Bill does remove from the definition of a “macro cell tower site” rooftop sites, small cell sites, and DAS systems (both indoor and outdoor), but would require all other sites to provide emergency back-up power.

The Bill is sponsored in the NYS Assembly by Assemblyman Nader Sayegh (D, 90th District), and is co-sponsored by Assemblyman Kenneth Zebrowski (D, 96th District), Assemblyman Fred Thiele (D, 1st District), Assemblyman Angelo Santabarbara (D, 111th District) and Assemblyman Chris Tague (R, 102nd District).

The Bill is sponsored in the NYS Senate by Pete Harckham (D, 40th District).

NYS Assembly Bill A02636 – Wireless Facility Siting Act.

A Bill was introduced to the NYS Assembly on January 26, 2023 in the 2023-24 Regular Legislative Session that would set minimum zoning requirements for wireless facilities that all local zoning jurisdictions must follow. The Bill has been referred to the Committee on Local Governments.

The Bill is very much anti-wireless and would set requirements for proof of need, public notice to all property owners within 1,000 feet of the facility, set certain aesthetic requirements, require escrow submissions for local consultants, prevent wireless facilities from being located within

1,500 feet of a school, and require the removal of all facilities if not used for over one year. At an initial review it is unclear how this Bill would address NY Home Rule and that zoning authority has been entrusted to local governments.

The Bill is sponsored by Assemblyman William Colton (D 47th District), and is co-sponsored by Assemblyman Michael Bendetto (D, 82nd District), Assemblyman Jonathan Rivera (D, 149th District), Assemblywoman Linda Rosenthal (D, 67th District), Assemblywoman Deborah Glick (D, 66th District), Assemblyman Fred Thiele (D, 1st District), Assemblywoman Latrice Walker (D, 55th District).

NYS Senate Bill S5123 – New Law to prohibit 5G “towers” within 250 feet of a business or residence in cities with a population of one million or more.

A Bill was introduced to the NYS Senate on February 23, 2023 by NYS Senator Andrew Lanza (R, 24th District), to prohibit the placement of a “5G telecommunications tower” within 250 feet of a business or residence in cities with a population of 1 million or more, without the owner’s consent. The Bill has been referred to the Senate’s Cities 1 Committee.

The Bill would also require community board approval and the completion of CEQR before the placement of any 5G tower can be approved. The Bill defines a 5G telecommunications tower as “any freestanding tower, monopole or similar structure used for the provision of fifth generation wireless services including ancillary telecommunications equipment required to integrate such tower, monopole or similar structure into an existing or proposed wireless network.”

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