

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia and Thomas P. Kennedy relative to the issuance of special permits for the siting of communication towers in cities and towns. Government Regulations.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety-Nine.

AN ACT REGULATING THE SITING OF COMMUNICATION TOWERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 25 of the General Laws, as appearing in  
2 the 1996 Official Edition, is hereby amended by inserting after  
3 section 4A the following new section:—

4 Section 4B. The governor shall convene within the department  
5 of telecommunications and energy an administrative board to  
6 resolve any dispute arising from the disposition by a municipality  
7 of any petition or application for a variance, special permit, or  
8 building permit from a commercial mobile radio service provider  
9 to site a communication tower within said municipality pursuant  
10 to the provisions of section 3 of chapter 40A. Said board shall  
11 consist of five members, to be appointed by the governor, one of  
12 whom shall be an elected municipal official, one of whom shall be  
13 recommended by the Massachusetts municipal association, one of  
14 whom shall be a person recommended by the commercial mobile  
15 radio service providers, one of whom shall have a background and  
16 expertise in consumer protection and advocacy issues, and one of  
17 whom shall have a background and expertise in telecommunica-  
18 tions and zoning issues. Each member shall be appointed by the  
19 governor to serve a term of three years. Each member shall hold  
20 office until the appointment and qualifications of his successor.  
21 The governor shall remove any member for cause and shall fill  
22 any vacancy for the unexpired term. The governor shall designate

23 one of the board members to serve as chairman. Any decision  
24 made or issued by the board shall be made by a majority vote of a  
25 quorum of three members. The members of the board shall serve  
26 without compensation, but they shall receive necessary expenses  
27 incurred in the discharge of their official duties. The board shall  
28 make an annual report of its activities in January of each year to  
29 the general court.

1 SECTION 2. Section 3 of chapter 40A of the General Laws, as  
2 most recently amended by sections 65 and 66 of chapter 164 of  
3 the Acts of 1997, is hereby amended by adding at the end of the  
4 second paragraph the following:—

5 The department of telecommunications and energy, through the  
6 communication tower siting review board established pursuant to  
7 section 4B of chapter 25, may consider such a petition from a  
8 commercial mobile radio service provider, hereinafter referred to  
9 as “service provider”, only if a request for zoning relief in the city  
10 or town has been denied, has been pending without decision for  
11 twelve months from the date of first filing. Said siting review  
12 board shall conduct at least one public hearing in the affected  
13 community on the petition filed by a service provider; provided,  
14 however, that said siting review board shall render a final decision  
15 on such petition within 180 days after the date of the filing of such  
16 petition by the service provider. If a service provider seeks to con-  
17 struct a new communication tower or pole in a city or town, such  
18 provider shall demonstrate that no existing communication tower  
19 or pole within said city or town or within an adjacent city or town  
20 is operationally or economically suitable to serve as a substitute  
21 communication site. In considering such a petition from a service  
22 provider, said siting review board shall weigh the interests of the  
23 city or town in which the land or structure is located, the interests  
24 of abutting cities and towns, the commonwealth as a whole, that  
25 the service provider is aggrieved by a final decision of the permit  
26 granting authority or board of appeals and that such decision was  
27 arbitrary, capricious, or beyond its authority, that there are no fea-  
28 sible alternatives to the present or proposed use, and the territory  
29 served by such service provider in evaluating whether the facility  
30 is reasonably necessary for the convenience or welfare of the  
31 public. If said siting review board determines that a present or

32 proposed use meets the criteria set forth above for exemption in  
33 particular respects from the operation of a zoning ordinance or by-  
34 law, said siting review board shall only grant exemptions to the  
35 extent required.

1 SECTION 3. Said chapter 40A, as appearing in the 1996  
2 Official Edition, is hereby further amended by inserting after sec-  
3 tion 9C the following new section:—

4 Section 9D. A city or town shall not use a zoning ordinance or  
5 by-law to prohibit the construction or modification of a commer-  
6 cial mobile radio service facility or communication tower within  
7 said city or town; provided, however, that a city or town may  
8 enact a zoning ordinance or by-law to designate the location, size,  
9 appearance, and construction of such commercial mobile radio  
10 service facility or communication tower. In enacting a local  
11 zoning ordinance or by-law, the ordinance or by-law shall con-  
12 sider, but not be limited to, the following criteria: (i) a commercial  
13 mobile radio service provider shall demonstrate that no existing  
14 communication tower or pole in said city or town is operationally  
15 or economically suitable to serve as a substitute communication  
16 site; (ii) a communication tower or pole shall meet minimum set-  
17 back requirements; (iii) suitable fencing as required by the city or  
18 town shall be provided to secure the site; provided, however, that  
19 no barbed wire or razor wire shall be permitted to be used in resi-  
20 dential areas; (iv) all obsolete or unused facilities shall be  
21 removed within twelve months of cessation of operations at the  
22 site; (v) all municipally-owned property in the geographic area  
23 shall be considered; and (vi) aesthetic standards shall be estab-  
24 lished to require that any such communication tower or pole is  
25 constructed to minimize, to the maximum extent possible, any  
26 change to the existing environment, including, but not limited to,  
27 the appearance of the environment and its aesthetic qualities.

1 SECTION 4. Notwithstanding any general or special law, rule,  
2 or regulation to the contrary, any application or petition for the  
3 construction or modification of a communication tower or pole  
4 filed or pending in any city or town without a zoning ordinance or  
5 by-law governing the placement, location, size, and appearance of  
6 such tower shall be suspended, tolling any and all applicable time

7 limits or requirements, for a period of 120 days after the effective  
8 date of this act or upon adoption of a zoning ordinance or by-law  
9 in said city or town, whichever is sooner. Any decision on such  
10 application or petition shall be based on any ordinance or by-law  
11 enacted during said period of suspension.

1 SECTION 5. It is the intention of this act to provide the cities  
2 and towns of the commonwealth the maximum ability allowed by  
3 state and federal law to control the size, location, appearance, and  
4 construction of communication towers and poles through local  
5 zoning ordinances and by-laws. Any hearing, appeal, petition, or  
6 other adjudicatory procedure by any agency, board, court, com-  
7 mission, or political subdivision of the commonwealth shall be  
8 conducted to give maximum effect to the intent herein expressed.