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SENATE BILL NO. 1351

Offered January 16, 2007

A *BILL to amend and reenact §§ 12.1-39 and 15.2-2232 of the Code of Virginia, relating to procedures for the approval of certain public utility facilities.*

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 12.1-39 and 15.2-2232 of the Code of Virginia are amended and reenacted as follows:

§ 12.1-39. Appeals generally.

The Commonwealth, any party in interest, or any party aggrieved by any final finding, decision settling the substantive law, order, or judgment of the Commission, *other than a decision approving or denying the construction and operation of electrical generating facilities of 50 megawatts or less as referenced in subsection D of § 56-578*, shall have, of right, an appeal to the Supreme Court irrespective of the amount involved; provided, however, that the petition for such appeal shall be filed with the Clerk of the Supreme Court within four months from the final judgment or finding of the State Corporation Commission; and provided further that an appeal bond is filed pursuant to § 8.01-676.1. *An appeal from a decision approving or denying the construction and operation of electrical generating facilities of 50 megawatts or less shall not be permitted as a matter of right but shall proceed by a petition for appeal as prescribed by § 8.01-671.*

No other court of the Commonwealth shall have jurisdiction to review, reverse, correct, or annul any action of the Commission or to enjoin or restrain it in the performance of its official duties; provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission.

The Commission shall, whenever an appeal is taken therefrom, file in the record of the case a statement of the reasons upon which the action appealed from was based.

§ 15.2-2232. Legal status of plan.

A. Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. *The governing body may, in its discretion, authorize a feature listed above, conditioned upon the commission's finding of substantial accord with the adopted comprehensive plan or part thereof.*

B. The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor. The governing body may overrule the action of the commission by a vote of a majority of its membership. Failure of the commission to act within sixty days of a submission, unless the time is extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.

D. Any public area, facility or use as set forth in subsection A which is identified within, but not the entire subject of, a submission under either § 15.2-2258 for subdivision or provision 8 of § 15.2-2286 for development or both may be deemed a feature already shown on the adopted master plan, and, therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided, that the governing body has by ordinance or resolution defined standards

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59 governing the construction, establishment or authorization of such public area, facility or use or has
60 approved it through acceptance of a proffer made pursuant to § 15.2-2303.

61 E. Approval and funding of a public telecommunications facility by the Virginia Public Broadcasting
62 Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 shall be deemed to satisfy
63 the requirements of this section and local zoning ordinances with respect to such facility with the
64 exception of television and radio towers and structures not necessary to house electronic apparatus. The
65 exemption provided for in this subsection shall not apply to facilities existing or approved by the
66 Virginia Public Telecommunications Board prior to July 1, 1990. The Virginia Public Broadcasting
67 Board shall notify the governing body of the locality in advance of any meeting where approval of any
68 such facility shall be acted upon.

69 F. On any application for a telecommunications facility, the commission's decision shall comply with
70 the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on
71 any such application for a telecommunications facility under subsection A submitted on or after July 1,
72 1998, within ninety days of such submission shall be deemed approval of the application by the
73 commission unless the governing body has authorized an extension of time for consideration or the
74 applicant has agreed to an extension of time. The governing body may extend the time required for
75 action by the local commission by no more than sixty additional days. If the commission has not acted
76 on the application by the end of the extension, or by the end of such longer period as may be agreed to
77 by the applicant, the application is deemed approved by the commission.