

12103091D

HOUSE BILL NO. 1255

Offered January 20, 2012

A *BILL to amend and reenact §§ 15.2-2108.21 and 15.2-2108.30 of the Code of Virginia, relating to cable franchises.*

Patron—Marshall, R.G.

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2108.21 and 15.2-2108.30 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2108.21. Ordinance cable franchises.

A. This section shall govern the procedures by which a locality may grant ordinance cable franchises.

B. An ordinance cable franchise, which shall have a term of 15 years, may be requested by (i) a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise; (ii) a certificated provider of telecommunications services that lacked previous consent to provide cable service in a locality but provided telecommunications services over facilities leased from an entity having previous consent to use of the public rights-of-way in such locality through a franchise; or (iii) a cable operator with previous consent to use the public rights-of-way to provide cable service in a locality through a franchise and who *timely* seeks to renew its existing cable franchise pursuant to § 15.2-2108.30 as an ordinance cable franchise. *The right of a cable operator to renew its authority by means of an ordinance franchise shall not apply as to any locality where the cable operator is in material default of the terms and conditions of the franchise last granted by that locality. Nothing contained herein shall proscribe or limit a cable operator from pursuing a negotiated cable agreement renewal pursuant to § 15.2-2108.20 or from utilizing the renewal procedures contained in 47 U.S.C. § 546.* A cable operator with previous consent to use the public rights-of-way to provide cable service in a locality through a franchise may opt into the new terms of an ordinance cable franchise under § 15.2-2108.26.

C. In order to obtain an ordinance cable franchise, an applicant shall first file with the chief administrative officer of the locality from which it seeks to receive such ordinance cable franchise a request to negotiate the terms and conditions of a negotiated cable franchise under § 15.2-2108.20. An applicant shall request and make itself available to participate in cable franchise negotiations with the locality from which it seeks to receive a negotiated cable franchise at least 45 calendar days prior to filing a notice electing an ordinance cable franchise; this prerequisite shall not be applicable if a locality refuses to engage in negotiations at the request of an applicant or if the applicant already holds a negotiated cable franchise from the locality. Thereafter, an applicant, through its president or chief executive officer, shall file notice with the locality that it elects to receive an ordinance cable franchise at least 30 days prior to offering cable in such locality. The notice shall be accompanied by a map or a boundary description showing (i) the initial service area in which the cable operator intends to provide cable service in the locality within the three-year period required for an initial service area and (ii) the area in the locality in which the cable operator has its telephone facilities. The map or boundary description of the initial service areas may be amended by the cable operator by filing with the locality a new map or boundary description of the initial service area.

D. The cable operator shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. The local franchising authority shall have the right to monitor and inspect the deployment of cable services and the cable operator shall submit semiannual progress reports detailing the current provision of cable services in accordance with the deployment schedule and its new service area plans for the next six months. The failure to correct or remedy any material deficiencies shall be subject to the same remedies as contained in the cable television franchise of the existing cable operator as that franchise existed at the time of the grant of the ordinance franchise.

E. The locality from which the applicant seeks to receive an ordinance cable franchise shall adopt any ordinance requiring adoption under this article within 120 days of the applicant filing the notice required in subsection C. Any ordinance adopted under this section that relates to a cable operator's provision of cable service shall apply to such cable operator retroactively to the date on which the cable operator began to offer cable service in the locality pursuant to this article.

F. Notice of any ordinance that requires a public hearing shall be advertised once a week for two successive weeks in a newspaper having general circulation in the locality. The advertisement shall

INTRODUCED

HB1255

59 include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of
60 the locality. All costs of such advertising shall be assessed against the operator or applicant.

61 G. If the governing body of any town adopts an ordinance pursuant to the provisions of this article,
62 such town shall not be subject to any ordinance adopted by the county within which such town lies.

63 § 15.2-2108.30. Renewal.

64 *Except as otherwise set forth herein, a cable operator electing to renew its cable franchise shall do*
65 *so (i) pursuant to the renewal procedures in 47 U.S.C. § 546 or (ii) by providing notice to the locality*
66 *that it will opt into an ordinance cable franchise pursuant to this article. A cable operator may file such*
67 *notification that its cable franchise will be renewed by an ordinance cable franchise not more than one*
68 *year in advance of the expiration date of the existing franchise and by no later than 30 days prior to the*
69 *date of such expiration or by a renewal certification filed within 90 days after the effective date of this*
70 *act, amended hereto, in the case of a current cable franchise whose original, renewal, or extension term*
71 *has expired. Except as provided by federal law, the restrictions in §§ 15.2-2015 through 15.2-2018,*
72 *15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107, including, but not limited to, the advertisement*
73 *and receipt of bids for cable franchises, shall not apply to renewal certifications except where a renewal*
74 *would result in a city or town having granted a cable franchise and a renewal with combined terms in*
75 *excess of 40 years. In the event an incumbent cable operator fails to timely file a notice of intent*
76 *pursuant to this article, or if it is otherwise ineligible to seek an ordinance franchise renewal under*
77 *subsection B of § 15.2-2108.21, it may pursue a negotiated cable agreement renewal pursuant to*
78 *§ 15.2-2108.20.*