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## SENATE BILL NO. 1341

Offered January 18, 2013

A *BILL to amend and reenact §§ 15.2-2232, 15.2-2280, and 15.2-2281 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2280.1, relating to the application of zoning and other land use regulations to certain renewable energy facilities.*

Patrons—Saslaw and Watkins

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-2232, 15.2-2280, and 15.2-2281 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2280.1 as follows:**

**§ 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 (i) a railroad facility or, (ii) an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, or (iii) an exempt renewable energy facility as defined in § 15.2-2280.1, 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. Following the adoption of the Statewide Transportation Plan by the Commonwealth Transportation Board pursuant to § 33.1-23.03 and written notification to the affected local governments, each local government through which one or more of the designated corridors of statewide significance traverses, shall, at a minimum, note such corridor or corridors on the transportation plan map included in its comprehensive plan for information purposes at the next regular update of the transportation plan map. Prior to the next regular update of the transportation plan map, the local government shall acknowledge the existence of corridors of statewide significance within its boundaries.

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 60 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 10 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 60 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 such work involves 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 subdivision A 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 governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to § 15.2-2303.

E. Approval and funding of a public telecommunications facility on or before July 1, 2012, by the Virginia Public Broadcasting Board pursuant to Article 12 (§ 2.2-2426 et seq.) of Chapter 24 of Title 2.2 or after July 1, 2012, by the Board of Education pursuant to § 22.1-20.1 shall be deemed to satisfy the requirements of this section and local zoning ordinances with respect to such facility with the exception of television and radio towers and structures not necessary to house electronic apparatus. The exemption

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provided for in this subsection shall not apply to facilities existing or approved by the Virginia Public Telecommunications Board prior to July 1, 1990. The Board of Education shall notify the governing body of the locality in advance of any meeting where approval of any such facility shall be acted upon.

F. On any application for a telecommunications facility, the commission's decision shall comply with the requirements of the Federal Telecommunications Act of 1996. Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission.

**§ 15.2-2280. Zoning ordinances generally.**

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or

4. The excavation or mining of soil or other natural resources.

*As used in this section, "territory under its jurisdiction" does not include any parcel upon which is, or will be, located an exempt renewable energy facility as defined in § 15.2-2280.1.*

**§ 15.2-2280.1. Exempt renewable energy facilities.**

A. As used in this section:

*"Electric utility" means any investor-owned electric utility or electric cooperative, including a utility aggregation cooperative.*

*"Exempt renewable energy facility" means an electrical generation facility, which may include more than one generating unit if all units are located on one parcel, that:*

*1. Is owned by an electric utility;*

*2. Has a rated capacity of not less than four megawatts;*

*3. Generates electricity only from sunlight, wind, falling water, wave motion, tides, geothermal power, or biomass;*

*4. Occupies a parcel with an area of not less than 25 acres;*

*5. Has received all approvals from the State Corporation Commission required for its construction and operation; and*

*6. Has been issued all environmental permits and approvals that are required for its construction and operation; however, an environmental permit or approval that has not been issued or obtained solely as a result of the application of any zoning or other land use ordinance to the facility shall be deemed issued or approved for purposes of this definition.*

B. An exempt renewable energy facility is exempt from regulation under any zoning ordinance adopted under this chapter, including any requirement that a special exception or special use permit be obtained for the exempt renewable energy facility or that the exempt renewable energy facility comply with requirements regarding setback or minimum lot area or restrictions on hours of operation or maximum noise levels.

**§ 15.2-2281. Jurisdiction of localities.**

A. For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.

B. Nothing in subsection A shall be construed as granting to the governing body of a county or municipality jurisdiction for the purpose of zoning over any property upon which an exempt renewable energy facility, as defined in § 15.2-2280.1, is located.