

# 2021 SPECIAL SESSION I

## SENATE SUBSTITUTE REPRINT

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### SENATE BILL NO. 1385

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Local Government  
on February 1, 2021)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact § 15.2-816.1 of the Code of Virginia, relating to underground utility facilities; Fairfax County.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-816.1 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-816.1. Underground electric distribution, telecommunications, cable, and other utility facilities.

A. There is hereby established a pilot program under which the governing body of any locality operating under the urban county executive form of government may request an electric utility, telecommunications provider, cable provider, or other utility to enter into a written agreement with the locality to place underground electric distribution lines in transportation projects to serve and facilitate the creation of transit-oriented development in such locality in conjunction with facilities, telecommunications facilities, cable facilities, or other utility facilities as part of a transportation infrastructure improvement project or roads serving such project that the Commonwealth Transportation Board or such locality identifies that reduces congestion, improves mobility, incorporates transit systems infrastructure, and improves safety. Such pilot program shall further an understanding of such underground electric distribution lines in regard to electric reliability, construction methods and related cost and timeline estimating, and the probability of meeting such projections. The pilot program shall consist of the approval to convert qualifying electric distribution lines in whole or in part underground in areas of transit-oriented developments in conjunction with a transportation infrastructure project the Commonwealth Transportation Board identifies. The pilot program shall terminate on July 1, 2022, after which date no agreement shall be entered into pursuant to subsection B. The termination of the pilot program shall not affect any such agreement entered into prior to such date or any of the terms of such an agreement, including any additional levy imposed pursuant to such an agreement while encouraging higher density development.

B. If the parties agree to proceed, the locality operating under the urban county executive form of government and the utility shall enter into an agreement with an electric utility, telecommunications provider, cable provider, or other utility that provides that (i) the locality shall pay to the utility its full additional or provider its agreed-upon costs of relocating and converting that portion of the line or facility located in the locality underground rather than overhead that are not recoverable under applicable rates, minus the net of relocation credits, which costs shall include associated feasibility costs, or any smaller portion of such costs as the utility and the locality may agree; (ii) the locality shall impose an additional levy on electric utility customers in the locality pursuant to § 58.1-3814 in an amount sufficient to cover the utility's additional costs, which additional levy shall be collected by the utility on behalf of the locality utility or provider shall convert, operate, and maintain the agreed-upon portion of the line or facility underground in cooperation with any other utility or provider with lines or facilities placed underground there; (iii) the utility shall convert, operate, and maintain the agreed portion of the line underground; and agreement is contingent upon the adoption of the levy set forth in subsection C; and (iv) other terms and conditions on which the parties may agree shall be included in the agreement. No agreement shall require any telecommunications provider or cable provider to share conduit.

C. If the locality operating under the urban county executive form of government and the utility enter into an agreement as described in subsection B, the locality may impose an additional levy on electric utility customers in the locality pursuant to § 58.1-3814. The locality shall by ordinance fix the amount of such additional levy, which shall not exceed \$1 per month on residential customers be imposed at a rate in excess of 6.67 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of \$15 per month for residential customers, provided that the initial proceeds of such levy shall be dedicated to a project incorporating bus rapid transit on a road in the National Highway System serving a Metrorail station and an anticipated extension of Metrorail in a designated revitalization area in such locality. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any levy imposed pursuant to this section shall be in addition to the limit for any utility consumer tax prescribed in § 58.1-3814. If the provisions of this section are inconsistent with the provisions of § 58.1-3814, the provisions of this section shall be controlling.

D. Upon The locality may or, upon presentation of the agreement to the Commonwealth

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60 Transportation Board, the Commissioner of Highways shall be responsible for securing the necessary  
61 easements and permits for the utility *or provider necessary* for the conversion of the existing distribution  
62 lines, based upon plans that the electric utility provides. The electric utility shall take such other actions  
63 as it deems appropriate in furtherance of the conversion of the approved distribution line, including  
64 acquiring the materials necessary for the underground installation, telecommunication, cable, or other  
65 utility facilities.

66 E. ~~If~~ *With the exception of any local zoning ordinances and review under § 15.2-2232 or any cable*  
67 *franchise agreement*, if the provisions of this section are inconsistent with the provisions of any other  
68 law or local ordinance, the provisions of this section shall be controlling.

69 F. *For purposes of this section, the term "electric utility" includes any cooperative, as that term is*  
70 *defined in § 56-231.15, operating within the locality.*