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SENATE BILL NO. 1283

Offered January 21, 1999

A BILL to amend and reenact §§ 15.2-2232, 15.2-2280, and 56-458 of the Code of Virginia, relating to planning and zoning.

Patrons—Couric, Chichester, Colgan, Edwards, Gartlan, Hanger, Howell, Lambert, Lucas, Marsh, Maxwell, Miller, K.G., Miller, Y.B., Norment, Quayle, Saslaw, Stolle, Ticer, Trumbo, Wampler, Whipple and Woods; Delegates: Almand, Armstrong, Baskerville, Bloxom, Callahan, Cranwell, Darner, Davies, Day, Deeds, Dickinson, Grayson, Harris, Hull, Ingram, Joannou, Johnson, May, Moran, Murphy, Parrish, Plum, Robinson, Spruill and Van Yahres

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2232, 15.2-2280, and 56-458 of the Code of Virginia are amended and reenacted 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 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. *Facilities subject to the requirements of this section shall include telecommunications towers, monopoles and appurtenant structures and facilities on state property but shall not include railroad facilities.* 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.

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 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 by the Virginia Public Broadcasting Board pursuant to Article 6.1 (§ 2.1-563.27:1 et seq.) of Chapter 35.2 of Title 2.1 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 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 Virginia Public Broadcasting Board 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

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60 any such application for a telecommunications facility under subsection A submitted on or after July 1,
61 1998, within ninety days of such submission shall be deemed approval of the application by the
62 commission unless the governing body has authorized an extension of time for consideration or the
63 applicant has agreed to an extension of time. The governing body may extend the time required for
64 action by the local commission by no more than sixty additional days. If the commission has not acted
65 on the application by the end of the extension, or by the end of such longer period as may be agreed to
66 by the applicant, the application is deemed approved by the commission.

67 § 15.2-2280. Zoning ordinances generally.

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

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

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

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

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

81 5. *Notwithstanding any other provision of law, the siting of telecommunications towers, monopoles*
82 *and appurtenant structures on state property.*

83 § 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same.

84 A. Every telegraph company and every telephone company incorporated by this or any other state, or
85 by the United States, may construct, maintain and operate its line along and parallel to any of the
86 railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads,
87 works, turnpikes, streets, avenues and alleys in any of the counties, with the consent of the board of
88 supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of
89 the council thereof, and the waterways within this Commonwealth, for the erection of poles and wires,
90 or cables, or the laying of underground conduits, portions of which they may lease, rent, or hire to other
91 like companies; provided, however, that if the road or street be in the State Highway System or the
92 secondary system of state highways, the consent of the board of supervisors or other governing authority
93 of any county shall not be necessary, but and a permit for such occupation and use shall first be
94 obtained from the Commonwealth Transportation Board.

95 B. No locality or the Commonwealth Transportation Board shall impose any fees on a certificated
96 provider of telecommunications service for the use of public rights-of-way except in the manner
97 prescribed in § 56-468.1; provided, however, the provisions of § 56-468.1 shall not apply to providers of
98 commercial mobile radio services.

99 C. No locality or the Commonwealth Transportation Board shall impose on certificated providers of
100 telecommunications service, whether by franchise, ordinance or other means, any restrictions or
101 requirements concerning the use of the public rights-of-way (including but not limited to the permitting
102 process; notice, time and location of excavations and repair work; enforcement of the statewide building
103 code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the
104 following users of the public rights-of-way: all providers of telecommunications services and nonpublic
105 providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this
106 subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include
107 any existing franchise fee or the Public Rights-of-Way Use Fee.

108 D. Notwithstanding any other provision of law, any permit or other permission required by a locality
109 pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the
110 Commonwealth Transportation Board of a certificated provider of telecommunications services to use the
111 public rights-of-way shall be granted or denied within forty-five days from submission and, if denied,
112 accompanied by a written explanation of the reasons the permit was denied and the actions required to
113 cure the denial.

114 E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth
115 Transportation Board shall require a certificated provider of telecommunications services to provide
116 in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or
117 in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities
118 or commissions which provide utility services, or the Commonwealth Transportation Board to enter into
119 voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated
120 providers of telecommunications service. Any locality, other than a city or town electing to continue to
121 enforce an existing franchise, ordinance or other form of consent under subsection I of § 56-468.1, or

122 the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as
123 of December 31, 1997. Any pole attachment or conduit occupancy fees charged by certificated providers
124 of telecommunications services for this use shall be waived for facilities in place as of December 31,
125 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000,
126 so long as the locality or the Commonwealth Transportation Board continues to use these facilities on
127 such poles or in such conduits solely for their internal communications needs. The fee waiver is for the
128 occupancy fees only and does not cover any relocation, rearrangement or other make-ready costs.

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