

SENATE BILL NO. 255

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government

on _____)

(Patron Prior to Substitute--Senator Bell)

A BILL to amend and reenact § 15.2-2316.4:2 of the Code of Virginia, relating to zoning; wireless communications infrastructure; application process.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2316.4:2 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2316.4:2. Application reviews.

A. In its receiving, consideration, and processing of a complete application submitted under subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project, a locality shall not:

1. Disapprove an application on the basis of:

a. The applicant's business decision with respect to its designed service, customer demand for service, or quality of its service to or from a particular site;

b. The applicant's specific need for the project, including the applicant's desire to provide additional wireless coverage or capacity; or

c. The wireless facility technology selected by the applicant for use at the project;

2. Require an applicant to provide proprietary, confidential, or other business information to justify the need for the project, including propagation maps and telecommunications traffic studies, or information reviewed by a federal agency as part of the approval process for the same structure and wireless facility, provided that a locality may require an applicant to provide a copy of any approval granted by a federal agency, including conditions imposed by that agency;

25 3. Require the removal of existing wireless support structures or wireless facilities, wherever
26 located, as a condition for approval of an application. A locality may adopt reasonable rules with respect
27 to the removal of abandoned wireless support structures or wireless facilities;

28 4. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other
29 types of financial surety, to ensure that abandoned or unused wireless facilities can be removed, unless
30 the locality imposes similar requirements on other permits for other types of similar commercial
31 development. Any such instrument shall not exceed a reasonable estimate of the direct cost of the removal
32 of the wireless facilities;

33 5. Discriminate or create a preference on the basis of the ownership, including ownership by the
34 locality, of any property, structure, base station, or wireless support structure, when promulgating rules or
35 procedures for siting wireless facilities or for evaluating applications;

36 6. Impose any unreasonable requirements or obligations regarding the presentation or appearance
37 of a project, including unreasonable requirements relating to (i) the kinds of materials used or (ii) the
38 arranging, screening, or landscaping of wireless facilities or wireless structures;

39 7. Impose any requirement that an applicant purchase, subscribe to, use, or employ facilities,
40 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in
41 which a locality has a competitive, economic, financial, governance, or other interest;

42 8. Condition or require the approval of an application solely on the basis of the applicant's
43 agreement to allow any wireless facilities provided or operated, in whole or in part, by a locality or by any
44 other entity, to be placed at or co-located with the applicant's project;

45 9. Impose a setback or fall zone requirement for a project that is larger than a setback or fall zone
46 area that is imposed on other types of similar structures of a similar size, including utility poles;

47 10. Limit the duration of the approval of an application, except a locality may require that
48 construction of the approved project shall commence within two years of final approval and be diligently
49 pursued to completion; ~~or~~

50 11. Require an applicant to perform services unrelated to the project described in the application,
51 including restoration work on any surface not disturbed by the applicant's project;

52 12. Subject to subsections B and D, disapprove an application if the proposed new structure
53 provides additional wireless coverage or capacity for first responders; or

54 13. Subject to subsections B and D, disapprove an application if the proposed wireless support
55 structure is not within a four-mile radius of an existing wireless support structure.

56 B. Nothing in this article shall prohibit a locality from disapproving an application submitted under
57 subsection A of § 15.2-2316.4:1 or for any zoning approval required for a standard process project:

58 1. On the basis of the fact that the proposed height of any wireless support structure, wireless
59 facility, or wireless support structure with attached wireless facilities exceeds ~~50~~ 150 feet above ground
60 level, provided that the locality follows a local ordinance or regulation that does not unreasonably
61 discriminate between the applicant and other wireless services providers, wireless infrastructure providers,
62 providers of telecommunications services, and other providers of functionally equivalent services; or

63 2. That proposes to locate a new structure, or to co-locate a wireless facility, in an area where all
64 cable and public utility facilities are required to be placed underground by a date certain or encouraged to
65 be undergrounded as part of a transportation improvement project or rezoning proceeding as set forth in
66 objectives contained in a comprehensive plan, if:

67 a. The undergrounding requirement or comprehensive plan objective existed at least three months
68 prior to the submission of the application;

69 b. The locality allows the co-location of wireless facilities on existing utility poles, government-
70 owned structures with the government's consent, existing wireless support structures, or a building within
71 that area;

72 c. The locality allows the replacement of existing utility poles and wireless support structures with
73 poles or support structures of the same size or smaller within that area; and

74 d. The disapproval of the application does not unreasonably discriminate between the applicant
75 and other wireless services providers, wireless infrastructure providers, providers of telecommunications
76 services, and other providers of functionally equivalent services.

77 The locality may also disapprove an application if the applicant has not given written notice to
78 adjacent landowners at least 15 days before it applies to locate a new structure in the area.

79 C. Nothing in this article shall prohibit an applicant from voluntarily submitting, and the locality
80 from accepting, any conditions that otherwise address potential visual or aesthetic effects resulting from
81 the placement of a new structure or facility.

82 D. Nothing in this article shall prohibit a locality from disapproving an application submitted under
83 a standard process project on the basis of the availability of existing wireless support structures within a
84 reasonable distance that could be used for co-location at reasonable terms and conditions without imposing
85 technical limitations on the applicant.

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