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SENATE BILL NO. SB 255

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on January 24, 2022)

(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;

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

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

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

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

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

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

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

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

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

12. *Subject to subsections B and D, disapprove an application submitted on or after July 1, 2022, if the proposed new structure provides additional wireless coverage or capacity for first responders; or*13. *Subject to subsections B and D, disapprove an application submitted on or after July 1, 2022, if the proposed wireless support structure is not within a four-mile radius of an existing wireless support structure.**The provisions of subdivisions 12 and 13 shall expire on July 1, 2024.*

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

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

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

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

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

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

77 d. The disapproval of the application does not unreasonably discriminate between the applicant and
78 other wireless services providers, wireless infrastructure providers, providers of telecommunications
79 services, and other providers of functionally equivalent services.

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

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

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