

The evolution of SB 1351 from introduction to enactment

The excerpts below focus on the changes proposed. The existing law is in normal type, deletions are ~~shown in strikeout~~, and insertions are *shown in italic*. Only enough of the existing law is shown to create context for the changes.

071417832 **SENATE BILL NO. 1351** — as originally introduced on 16 January 2007

A BILL to amend and reenact §§ 12.1-39 and 15.2-2232 of the Code of Virginia, relating to procedures for the approval of certain public utility facilities.

Patron – Wagner

§ 12.1-39. Appeals generally.

The Commonwealth, any party in interest, or any party aggrieved by any final finding, decision settling the substantive law, order, or judgment of the Commission, *other than a decision approving or denying the construction and operation of electrical generating facilities of 50 megawatts or less as referenced in subsection D of § 56-578*, shall have, of right, an appeal to the Supreme Court . . . *An appeal from a decision approving or denying the construction and operation of electrical generating facilities of 50 megawatts or less shall not be permitted as a matter of right but shall proceed by a petition for appeal as prescribed by § 8.01-671.*

§ 15.2-2232. Legal status of plan.

A. Whenever a . . . comprehensive plan . . . has been approved and adopted by the governing body, it shall control the . . . location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan . . . no public utility facility other than railroad facility . . . 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 . . . *The governing body may, in its discretion, authorize a feature listed above, conditioned upon the commission's finding of substantial accord with the adopted comprehensive plan or part thereof.*

070246832 **SENATE BILL NO. 1351** — Amendment in the nature of a substitute
(Proposed by the Senate Committee on Commerce and Labor on February 5, 2007)
(Patron Prior to Substitute – Senator Wagner)

A BILL to amend and reenact § 15.2-2232 of the Code of Virginia, relating to approvals of certain public utility facilities.

Changes to § 12.1-39, Appeals generally, were dropped from this version.

§ 15.2-2232. Legal status of plan.

Subsection A remains as introduced, above.

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. *Ordinary extensions or improvements in the usual course of business by public utilities or public service corporations shall not require approval.*

070289832 **SENATE BILL NO. 1351** — Amendment in the nature of a substitute
(Proposed by the House Committee on Counties, Cities, and Towns on February 16, 2007)
(Patron Prior to Substitute – Senator Wagner)

A BILL to amend and reenact § 15.2-2232 of the Code of Virginia, relating to approvals of certain public utility facilities.

§ 15.2-2232. Legal status of plan.

A. Whenever a . . . comprehensive plan . . . has been approved and adopted by the governing body, it shall control the . . . location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan . . . no public utility facility other than *a railroad facility or 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 . . . 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*

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~~ *such work involves* a change in location or extent of a street or public area.

The Senate Commerce & Labor Committee substitute bill passed the Senate 26-11 with three abstentions. Sen. Emmett Hanger voted Aye, Sen. Creigh Deeds voted Nay, and Sen. Mark Obenshain abstained. It is worth noting that Sen. Obenshain is a senior partner in Keeler Obenshain PC, the law firm representing Highland New Wind Development, and represents Harrisonburg, where the McBride family lives. It is thought that he was instrumental in have Sen. Wagner introduce this bill.

The bill as passed by the Senate eliminated the section that limited the right of appeal but retained the section that turned the planning process upside down, approving retroactively the flawed process used by Highland County in approving HNWD.

The House substitute eliminated that section as well, so it now has no impact on wind facilities in general or HNWD in particular. It was passed out of committee by a vote of 21-1 and passed by the full House 97-1. The Senate accepted the House version by a vote of 38-0-2. A vile special-interest bill has received its just reward. Thanks to Delegate Chris Saxman, and everyone who wrote letters or made phone calls, for helping to make this happen.

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22 February 2007