

# Overview of SB 1759 (Surovell) – Undergrounding Utility Lines

## Summary of SB 1759 (Surovell) as Introduced

- Provided that when the Commonwealth Transportation Board (CTB) determined it was necessary that any existing overhead electric distribution, cable, or telecommunications line be replaced with an underground line to accommodate a transportation infrastructure improvement in an area of transit-oriented development (TOD), the utility would relocate the line underground, with the CTB paying to the utility the cost of relocating or removing the line above ground.
- An electric utility could apply to recover the net costs of undergrounding a distribution line through a rate adjustment clause.
- A cable operator or telecommunications service provider could recover the net cost of undergrounding overhead cable or telecommunications lines in the same manner as it recovers other capital costs.

## Summary of February 7 Draft of SB 1759

- Establishes a pilot program under which Fairfax County can request that an electric utility place underground electric utility distribution lines in TOD areas in conjunction with a transportation infrastructure improvement project, identified by the CTB as reducing congestion, improving mobility, incorporating transit systems and improving safety.
- The bill allows Fairfax County and an electric utility to enter into an agreement providing that:
  - The locality will pay to the utility its full additional costs of relocating and converting that portion of the line in the locality underground, rather than overhead that are not recoverable under applicable rates (net of relocation credits), these costs shall include associated feasibility costs, or any smaller portion of such costs as the utility and the locality may agree;
  - The locality will impose a levy on electric utility customers in the locality in an amount sufficient to cover the utility's additional costs, with the levy collected by the utility on behalf of the locality – residential utility customers will only be charged up to \$1 per month;
  - The utility will convert, operate, and maintain the agreed portion of the line underground; and,
  - Such other terms and conditions on which the parties agree.
- The bill requires that when the CTB receives the agreement, the Commissioner of Highways will be responsible for securing the necessary easements and permits for the pilot program.
- The bill is silent on whether telecommunications and cable providers must similarly underground their lines, and is also silent on a mechanism to recover costs if they do underground those lines.
- The agreement shall be deemed to satisfy the requirements of §15.2-2232 and local zoning ordinances with respect to such distribution line and any associated facilities, such as stations, substations, transition stations and locations, and switchyards or stations, that may be required.
- The pilot program terminates three years after the effective date of the bill.

## Related Statutes in the Code of Virginia

- §15.2-2404 allows the governing body of any locality to request an electric utility that proposes to construct an overhead electric transmission line of 150 kilovolts or more in that locality to enter into an agreement with the locality in which:
  - The locality will impose a tax or assessment on electric utility customers in a special rate district to cover the utility's additional costs of constructing that portion of the proposed line to be

located in the locality as an *underground* rather than an overhead line – the locality would be required to set the boundaries of the special rate district within a reasonable distance of the route of that portion of the line to be placed underground pursuant to the agreement;

- The tax or assessment will be shown as a separate item on such customers' electric bills and will be collected by the utility on behalf of the locality;
  - The locality would be required to set the amount of such tax or assessment based on the assessed value of real property within such district;
  - The utility will construct, operate, and maintain the agreed portion of the line underground; and,
  - The locality will pay to the utility its full additional costs of constructing that portion of the line underground rather than overhead.
- To execute such an agreement, the owners of real property of at least 60 percent of the assessed value of real property within such a district could petition the locality to impose such tax or assessment.
  - The locality would submit the agreement to the State Corporation Commission (SCC) and the SCC may approve the agreement if it finds it to be in the public interest.
  - If the agreement is approved by the SCC, the locality will impose the tax or assessment on electric utility customers within the district, and the locality and the utility will carry out the agreement according to its terms and conditions.
  - This does not apply to lines in operation as of March 1, 2005.

### **Analysis of February 7 Draft of SB 1759**

**Undergrounding Levy:** All electric utility customers within Fairfax County would pay the undergrounding levy, but residential customers would only be assessed no more than \$1 per month. The timeframe for recouping any costs of paying for the undergrounding is unclear.

**Levy Oversight:** Currently, the SCC reviews every request by a utility to assess rate increases and authorize any new construction or renovation – SCC staff provide detailed analysis, require extensive supporting documentation from the utilities, and are able to compare the utility cost estimates with projects across the Commonwealth. SCC proceedings are open to the public, and any interested person (individuals, businesses, homeowner's associations, localities, among others) may participate, including requesting the underlying data to support the utility's cost figures. Fairfax County has participated in multiple SCC proceedings and has frequently requested information about underlying costs. SB 1759 does not appear to contain such safeguards to protect County customers, and without them the County would be dependent on the utility's estimate of the total project cost without the ability to ensure costs are reasonable.

**Initial Payment:** The bill requires the County to pay for the project upfront and then recover the cost from ratepayers by adding a utility surcharge. It is not clear whether the County could receive interest on the surcharge.

**Transit-Oriented Development:** The Richmond Highway widening project (Mount Vernon Memorial Highway to Napper Road), which is the impetus for this legislation, contains TOD areas but the entirety of the project is not a TOD area (much of the project is actually between TODs).

**Procedural Timeline Conflicts:** The sequence of events contained in SB 1759 needs to be clarified. The current draft seems to require the County to enter into an agreement with a utility prior to adopting an ordinance codifying the utility levy on Fairfax County residents; however, if the County enters into an agreement and then is unable or unwilling to pass the ordinance, the County could be in breach of the agreement with the utility, as well as potentially liable to pay the entire cost of the undergrounding.

**CTB Involvement:** Since the agreement between the County and the utility would not include the CTB, it is unclear how the CTB would secure the necessary easements and permits for the project as required under the bill, including how that would be funded and the timeframe involved. Further, while the project envisioned by this bill is being undertaken by VDOT, County managed projects (i.e. Richmond Highway BRT) could qualify as well, in which case it is unlikely that the CTB would be interested in securing easements.

**Countywide Assessment:** Unlike §15.2-2404, which specifically provides that adjoining property owners to the improvement shall be taxed or assessed, SB 1759 specifies that all Fairfax County electrical customers would pay for undergrounding lines in one part of the County. Tax law typically requires all residents being taxed to receive a benefit from the tax revenues. Additionally, as written, the bill seems to require the County to impose the same levy on Northern Virginia Electric Cooperative (NOVEC) customers.

**Project Schedule:** The design public hearing for the Richmond Highway widening project (Mount Vernon Memorial Highway to Napper Road) is currently scheduled for March 26, 2019. If SB 1759 is enacted, it will become effective on July 1, 2019, and if the County elects to pursue undergrounding the overall project schedule would be significantly affected.

**Zoning Authority:** The bill states that if the County enters into an agreement with a utility, the agreement shall be deemed to satisfy the requirements of §15.2-2232 and local zoning ordinances with respect to such distribution line and any associated facilities, such as stations, substations, transition stations and locations, and switchyards or stations, that may be required. Similar language exists in other related code sections, but in those cases the SCC is also involved in the process while this proposal does not include SCC engagement.

**Transmission Lines:** It is important to note that SB 1759 applies only to distribution lines (smaller, more numerous lines) and not transmission lines (large lines such as the upcoming Idylwood-Tysons line).