

Resources Guide: Deploying and Developing Broadband Infrastructure for Municipalities and Localities

Virginia Resources Authority

I. What is the Virginia Resources Authority?

The Virginia Resources Authority ("VRA") was created by the General Assembly in 1984 to assist municipalities with funding for infrastructure projects. Since 1984, VRA has supported over \$3.1 billion of investment in Virginia's communities, funding more than 750 projects across the Commonwealth. In Fiscal year 2007, VRA invested over \$377.5 million in 51 communities statewide. VRA's mission is to provide cost effective financial solutions for community investments that improve the quality of life for Virginians. VRA finances municipal facilities, equipment & infrastructure, including projects relating to the deployment of Wireless Broadband.

II. How does a Locality apply for assistance from the VRA?

The VRA provides three different financing programs that are available to localities for the development of Wireless Broadband infrastructure.

A. Virginia Pooled Financing Program

Virginia Resources Authority: solicits and accepts applications, obtains VRA Board of Directors' approval, performs credit analysis, manages loan closing, & services the loan in conjunction with VRA's Trustee.

This program can be applied to at any time. Loans are typically closed twice a year. This type of financing is available for wireless broadband projects. The application process consists of several steps:

1. Initial application for financing through the VRA. (Application available at www.virginiaresources.org).
2. The VRA completes a credit analysis of the locality.
3. The VRA board then approves the loan.
4. The VRA performs bond pricing.
5. Finally, the VRA closes and services the loan in conjunction with the VRA trustee.

B. VRA Term Financing Program

VRA has competitively procured Term Financing (1-10 yr terms) with SunTrust Leasing Corp. (STLC). VRA solicits and accepts applications, obtains VRA Board of Directors' approval, performs credit analysis, manages loan closing, & services the loan in conjunction with STLC

C. VRA Interim Financing Program

VRA has procured Interim Financing Program with SunTrust Bank. Local governments who have been approved for other VRA-related loans may utilize interim financing from SunTrust prior to closing of long-term financing.

Public-Private Education Facilities and Infrastructure Act ("PPEA")

I. What is a PPEA? What services does a PPEA provide?

The Public-Private Education Facilities and Infrastructure Act of 2002 (VA. CODE § 56-575.1 -575.18 (2007)) authorizes the creation of public-private partnerships for the

purpose of developing "new education facilities, technology infrastructure and other public infrastructure and government facilities" Va. Code § 56-575.2(3).

II. How and when can a locality set up a PPEA?

In order for a locality to establish a PPEA it must first determine whether the proposed infrastructure improvement falls within the scope of the act. The act defines a qualifying project to include "utility and telecommunications and other communications infrastructure" VA. CODE § 56-575.1 (2007).

The project may then be initiated one of two ways, the locality may solicit proposals from private entities (§ 56-575.4(B)), or private entities may request approval for an unsolicited proposal (§ 56-575.4(A)).

Wireless Service Authorities

I. What is a Wireless Service Authority? What services does it provide?

A Wireless Service Authority ("WSA") is an authority established by a locality for the purpose of developing the infrastructure requirements related to providing wireless broadband service.

The Virginia Water and Waste Authorities Act (VA. CODE §§ 15.2-5100 - 5158) allows counties, cities, and towns to form authorities for a variety of purposes. The Act provides that the WSA may:

"Install, own and lease pipe or conduit for the purpose of carrying fiber optic cable, provided that such pipe or conduit and the rights-of-way in

which they are contained are made available on a nondiscriminatory, first-come, first-served basis to retail providers of broadband and other telecommunications services unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities." Va. Code § 15.2-5114(15).

A WSA may borrow funds, issue revenue bonds, and collect fees for its services. In addition the WSA may contract with parties to accomplish its purposes.

II. How and when can a locality set up a Wireless Service Authority?

"The governing body of a locality may by resolution, or two or more localities may by concurrent resolutions, create an authority" VA. CODE § 15.2-5431.3. The authority must contain the word "authority" in its name. Additionally, the authority should not be created "until a public hearing has been held in each participating locality." *Id.*

Zoning

I. Spot Zoning

"Spot Zoning" is the zoning of a small area of land for a use that does not conform with the zoning comprehensive plan for the area. Determining if a specific instance of spot zoning is invalid depends on whether the permitted use is very different from the surrounding area. The Virginia Supreme Court has defined when "spot zoning" is illegal.

"Illegal spot zoning occurs when the purpose of a zoning ordinance or rezoning amendment is solely to serve the private interests of one or more landowners, rather than to further a locality's welfare as part of an overall zoning plan that may include a concurrent benefit to private interests."

Riverview Farm Associates v. Board of Supervisors of Charles City County, 259 Va. 419, 429, 528 S.E.2d 99, 105 (2000) (citations omitted).

Spot zoning may be an issue for a locality that has to make zoning changes as a part of broadband deployment. The locality must be sure to comply with its own comprehensive plan and should avoid making small zoning changes that do not relate to a zoned areas current use. For instance, changing the zoning on a small plot in a suburban neighborhood in order to place a tower as a part of broadband deployment may violate Virginia's prohibition against spot zoning.

The Virginia Code contains a chapter that covers zoning entitled: Planning, Subdivision of Land, Zoning (Va. Code §§ 15.2-2200 -2329). That chapter emphasizes that zoning must be uniform throughout an area and comply with the existing comprehensive plan. "All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts." (Va. Code § 15.2-2282). When a locality considers a change in zoning it must do so "with reasonable consideration for the existing use and character of property" (Va. Code § 15.2-2284).