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SENATE BILL NO. 758

Offered January 24, 2000

A BILL to amend and reenact § 2.1-504.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 33.1-183.2, relating to leasing or otherwise conveying use of land owned by the Commonwealth or the Virginia Department of Transportation to communications companies for construction and operation of communication facilities.

Patrons—Williams, Martin, Rerras and Schrock

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-504.4 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 33.1-183.2 as follows:

§ 2.1-504.4. Conveyance of easements and appurtenances thereto to cable television companies, utility companies, public service companies, political subdivisions by state departments, agencies or institutions; communication ~~towers~~ facilities.

A. Any state department, agency or institution, through its executive head or governing board as the case may be, is authorized to convey to public utility companies, public service corporations or companies, political subdivisions or cable television companies, right-of-way easements over property owned by the Commonwealth and held in its possession and any wires, pipes, conduits, fittings, supports and appurtenances thereto for the transmission of electricity, telephone, cable television, water, gas, steam, or sewage placed on, over or under such property for such consideration as the executive head or governing board of the agency shall deem proper, when such conveyance is deemed to be in the public interest.

B. Any state department, agency or institution having responsibility for a state-owned office building, through its executive head or governing board as the case may be, shall be authorized to lease space to a credit union in such building for the purpose of providing credit union services which are readily accessible to state employees. Any such lease shall be for a term of not more than five years, with annual renewals or new leases permitted thereafter. The department, agency or institution responsible for the building may at its discretion forego all rent or charge less than the fair market value.

C. When it is deemed to be in the public interest, and subject to guidelines promulgated by the Department of General Services *and the provisions of this section*, property owned by the Commonwealth may be (i) sold or leased or other interests or rights therein granted or conveyed to political subdivisions ~~or for the purpose of erecting, operating, using, or maintaining communication towers, antennas, or other radio distribution devices, or~~ (ii) leased or other interests or rights therein granted to persons providing communication or information services for the purpose of erecting, operating, using or maintaining communication ~~towers~~ facilities, antennas, or other radio distribution devices. ~~If any tower proposed for erection on property owned by the Commonwealth is to be used solely by private persons. With regard to any leasing to any person providing communication or information services, and there is no immediate use thereof planned or anticipated by any department, agency or institution or if the facility was constructed on state-owned property prior to December 31, 1999, or if the proposal from a private company meets the following criteria, then such facilities shall not be subject to local zoning or comprehensive plan authority. Proposals described in this subsection shall not be subject to local zoning or comprehensive plan authority, if:~~

1. The proposed lessee provides engineered drawings and other data to the agency leasing the land, showing that the proposed facility will satisfy the following criteria:

a. The height of the facility :

(1) In any county with a population than 170,000 but less than 200,000; in any county with a population greater than 800,000; or in any city, the height and location of the facility shall be governed by the following:

(a) If the facility is no taller than 149 feet, as measured from the ground, then the facility shall be separated from any then-existing single-family residential dwelling by at least 100 feet; or

(b) If the facility is taller than 149 feet, as measured from the ground, the facility shall be separated from any then-existing single family residential dwelling by at least 100 hundred feet plus the number of feet by which the height of the facility exceeds 100 feet, measured from the ground;

(2) In any other county and in any town, the facility shall be separated from any then-existing single family residential dwelling by at least 200 feet;

(3) In any case, no such facility shall be taller than 199 feet, measured from the ground, unless the

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60 additional height is necessary for the accommodation of emergency communications equipment or their
61 equipment necessary for public safety;

62 b. The base of the facility shall be screened by landscaping or by other means so that any
63 ground-based equipment supporting the antennas on the facility are obscured from adjacent areas,
64 provided that this requirement maybe modified if, in the opinion of the agency, the proposed
65 landscaping or other screening may compromise public safety;

66 c. The facility shall be designed to accommodate collocation of the antennas of multiple wireless
67 communications carriers;

68 d. The proposed facility shall comply with Federal Aviation Administration and Federal
69 Communications Commission regulations.

70 2. The agency advises the director of planning and the governing body of the affected locality of the
71 proposal and submits the information required under subdivision 1 of subsection C of this section to the
72 director of planning and the governing body for a thirty-day review and comment period. The local
73 governing body shall accept, reject, or modify the proposal and submit a recommendation for an
74 alternate site to the agency if the local governing body modifies or rejects the initial proposal. Any
75 alternate site proposal shall comport to the requirement of providing the identical geographic
76 communications coverage for wireless telephone services as would have been provided by the original
77 proposal.

78 3. The lease between the private company and the agency or the Commonwealth, as the case may be,
79 states that space on the facility shall be reserved to the locality for the installation of local emergency
80 communications antennas. In addition, the lease shall reserve to the locality space in the compound for
81 any ground-based equipment that supports the locality's emergency communications antennas. Both
82 reservations shall be at no charge to the locality.

83 4. Ownership of the town structure, regardless of whether it is a lattice tower, monopole, guyed
84 tower, or other structure used to support communications antennas, and ultimate control of the under
85 lying land shall lie with the Commonwealth or political subdivision; the guidelines shall provide a
86 means to obtain comments from the local governing body where the property is located its agency, as
87 the case may be. The

88 All conveyances or leases shall be for such consideration as the Director of the Department of
89 General Services deems appropriate, and may include shared use of such facilities by other political
90 subdivisions or persons providing the same or similar services, and by departments, agencies, or
91 institutions of the Commonwealth.

92 D. ~~No~~ Except for the transactions described in subsection C of this section, no transaction authorized
93 by this section shall be made without prior written recommendation of the Department of General
94 Services to the Governor, the written approval of the Governor of the transaction itself, and the approval
95 of the Attorney General as to the form of the instruments.

96 § 33.1-183.2. Sharing or resources in support of the Intelligent Transportation System Program.

97 A. When it is deemed to be in the public interest, and subject to guidelines promulgated by the
98 Department, property owned by the Department may be (i) sold or leased or other interests or rights
99 therein granted or conveyed to political subdivisions for the purpose of erecting, operating, using, or
100 maintaining communication towers, antennas, or other radio distribution devices, or (ii) leased or other
101 interests or rights therein granted to persons providing communication or information services for the
102 purpose of erecting, operating, using or maintaining communication facilities, antennas, or other radio
103 distribution devices. With regard to any leasing to any person providing communication or information
104 services, if the facility was constructed on Department-owned property prior to December 31, 1999, or
105 if the proposal from a private company meets the following criteria, then such facilities shall not be
106 subject to local zoning or comprehensive plan authority. Proposals from a private company as described
107 in this subsection shall not be subject to local zoning or comprehensive plan authority, if:

108 1. The proposed lessee provides engineered drawings and other data to the agency leasing the land,
109 showing that the proposed facility will satisfy the following criteria:

110 a. The height of the facility meets the following criteria:

111 (1) In any county with a population greater than 170,000 but less than 200,000; in any county with
112 a population greater than 800,000; or in any city, the height and location of the facility shall be
113 governed by the following:

114 (a) If the facility is no taller than 149 feet, as measured from the ground, then the facility shall be
115 separated from any then-existing single-family residential dwelling by at least 100 feet; or

116 (b) If the facility is taller than 149 feet, as measured from the ground, the facility shall be separated
117 from any then-existing single family residential dwelling by at least 100 hundred feet plus the number of
118 feet by which the height of the facility exceeds 149 feet, measured from the ground;

119 (2) In any other county and in any town, the facility shall be separated from any then-existing single
120 family residential dwelling by at least 200 feet;

121 (3) In any case, no such facility shall be taller than 199 feet, measured from the ground, unless the

122 additional height is necessary for the accommodation of emergency communications equipment or their
123 equipment necessary for public safety;

124 b. The base of the facility shall be screened by landscaping or by other means so that any
125 ground-based equipment supporting the antennas on the facility are obscured from adjacent areas,
126 provided that this requirement may be modified if, in the opinion of the agency, the proposed
127 landscaping or other screening may compromise public safety;

128 c. The facility shall be designed to accommodate collocation of the antennas of multiple wireless
129 communications carriers;

130 d. The proposed facility shall comply with Federal Aviation Administration and Federal
131 Communications Commission regulations.

132 2. The Department advises the director of planning and the governing body of the affected locality of
133 the proposal and submits the information required under subdivision 1 of subsection A of this section to
134 the director of planning and the governing body for a thirty-day review and comment period.

135 3. The lease between the private company and the Department states that space on the facility shall
136 be reserved to the locality for the installation of local emergency communications antennas. In addition,
137 the lease shall reserve to the locality space in the compound for any ground-based equipment that
138 supports the locality's emergency communications antennas. Both reservations shall be at no charge to
139 the locality.

140 4. Ownership of the tower structure, regardless of whether it is a lattice tower, monopole, guyed
141 tower, or other structure used to support communications antennas, and ultimate control of the under
142 lying land shall lie with Department.

143 5. The facility may only be permitted if the facility is to be constructed in a right-of-way within the
144 interstate or primary highway system or within the right-of-way of any other highway that, in the
145 opinion of the Commonwealth Transportation Commissioner, is experiencing significant traffic
146 congestion levels that, in the interest of the safety and welfare of the traveling public, installation of
147 Intelligent Transportation System monitoring devices and related equipment is needed to monitor those
148 traffic conditions.

149 B. All conveyances or leases shall be for such consideration as the Commonwealth Transportation
150 Commissioner deems appropriate, and may include shared use of such facilities by other political
151 subdivisions or persons providing the same or similar services, and by departments, agencies, or
152 institutions of the Commonwealth.