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SENATE BILL NO. 758

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation

(Patron Prior to Substitute—Senator Williams)

Senate Amendments in [] — February 14, 2000

A BILL 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 Department of Transportation to communications companies for construction and operation of communication facilities.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 33.1-183.2 as follows:

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

A. When it is deemed to be in the public interest [and the department demonstrates a need for its Intelligent Transportation System or communications needs], and subject to guidelines promulgated by the Department, property owned by the Department may be (i) sold or leased or other interests or rights therein granted or conveyed to political subdivisions 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 facilities, antennas, or other radio distribution devices. With regard to any leasing to any person providing communication or information services, if the facility was constructed on Department-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, except for airport safety zoning pursuant to § 15.2-2294. Proposals from a private company as described in this subsection shall not be subject to local zoning or comprehensive plan authority, if:

1. The proposed lessee provides engineering drawings and other data to the Department, showing that the proposed facility will satisfy the following criteria:

a. The height and setback of the facility:

(1) In any county with a population greater 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 residential dwelling by at least 100 feet and from any boundary line of residentially zoned property by at least forty feet; or

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

(2) In any other county and in any town, the facility shall be separated from any 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 additional height is necessary for the accommodation of emergency communications equipment or other equipment necessary for public safety;

b. The base of the facility is screened with landscaping or other techniques, provided that this requirement may be modified if, in the opinion of the commissioner, the proposed screening or landscaping may compromise public safety;

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

d. The proposed facility shall comply with airport safety zoning pursuant to § 15.2-2294 and regulations of the Federal Aviation Administration, the Federal Communications Commission, and the Virginia Aviation Board.

2. The proposed lessee provided the Department with a map that identifies the location of the proposed facility, the existing ground elevation of the proposed location, the proposed height of the facility, and the boundaries of any proposed geographic communications coverage for wireless telephone services.

3. The Department submits the information required under subdivisions 1 and 2 of subsection A of this section to the director or planning of the locality where the facility is proposed to be located for a sixty-day review and comment period [accompanied by a statement of the Department's needs for this facility as specified in subsection A of this section]. The locality shall accept, reject, or modify the proposal and submit a recommendation for an alternate site to the Department if the locality modifies or rejects the initial proposal. Any alternate site proposal shall provide comparable geographic

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60 *communications coverage for wireless telephone services as would have been provided by the original*
61 *proposal.*

62 *4. The lease between the private company and the Department states that space on the facility shall*
63 *be reserved to the locality for the installation of local emergency communications antennas. In addition,*
64 *the lease shall reserve to the locality space in the compound for any ground-based equipment that*
65 *supports the locality's emergency communications antennas. Both reservations shall be at no charge to*
66 *the locality.*

67 *5. Ownership of the tower structure, regardless of whether it is a lattice tower, monopole, guyed*
68 *tower, or other structure used to support communications antennas, and ultimate control of the under*
69 *lying land shall lie with Department.*

70 *6. The facility may only be permitted if the facility is to be constructed in a right-of-way within the*
71 *interstate or primary highway system or within the right-of-way of any other highway that, in the*
72 *opinion of the Commonwealth Transportation Commissioner, is experiencing significant traffic*
73 *congestion levels that, in the interest of the safety and welfare of the traveling public, installation of*
74 *Intelligent Transportation System devices and related equipment is desirable to improve those traffic*
75 *conditions.*

76 *7. If, in response to a written request from the Superintendent of State Police, it is determined by the*
77 *Department to be necessary, in order to support the mission of the Department of State Police, to*
78 *construct a facility in the right-of-way of any highway within the interstate or primary highway system*
79 *to support antennas or other State Police communications equipment, the foregoing provisions of this*
80 *subsection shall not apply.*

81 *B. All conveyances or leases shall be for such consideration as the Commonwealth Transportation*
82 *Commissioner deems appropriate, which may include shared use of such facilities by other political*
83 *subdivisions or persons providing the same or similar services, and by departments, agencies, or*
84 *institutions of the Commonwealth.*

85 *[C. The provisions of this section shall not apply to such facilities which were the subject matter of*
86 *any pending case in a court of competent jurisdiction in the Commonwealth on December 31, 1999.]*