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HOUSE BILL NO. 2417

Offered January 18, 2011

A *BILL to amend and reenact §§ 18.2-162 and 56-466.1 of the Code of Virginia, relating to attachments to utility poles owned by electric cooperatives; penalty.*

Patrons—Landes and Pollard

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-162 and 56-466.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-162. Damage or trespass to public services or utilities.

Any person who shall intentionally destroy or damage any facility which is used to furnish oil, telegraph, telephone, electric, gas, sewer, wastewater or water service to the public, shall be guilty of a Class 4 felony, provided that in the event the destruction or damage may be remedied or repaired for \$200 or less such act shall constitute a Class 3 misdemeanor. On electric generating property marked with no trespassing signs, the security personnel of a utility may detain a trespasser for a period not to exceed one hour pending arrival of a law-enforcement officer.

Notwithstanding any other provisions of this title, any person who shall intentionally destroy or damage, or attempt to destroy or damage, any such facility, equipment or material connected therewith, the destruction or damage of which might, in any manner, threaten the release of radioactive materials or ionizing radiation beyond the areas in which they are normally used or contained, shall be guilty of a Class 4 felony, provided that in the event the destruction or damage results in the death of another due to exposure to radioactive materials or ionizing radiation, such person shall be guilty of a Class 2 felony; provided further, that in the event the destruction or damage results in injury to another, such person shall be guilty of a Class 3 felony.

Notwithstanding any other provision of this title, any person who places unauthorized attachments to a utility pole owned by an electric cooperative, as defined in § 56-466.1 shall be guilty of a Class 1 misdemeanor.

§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers.

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

"Public utility" has the same meaning ascribed thereto in § 56-232.

"Rearrangement" means work performed at the request of a telecommunications service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

"Unauthorized attachment" means any pole attachment made by a cable television system that has not been specifically authorized in writing by the pole owner.

B. Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system.

C. After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions

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59 and the payment of reasonable annual charges and the cost of any required rearrangement, the
60 attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any
61 wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such
62 telecommunications service provider or cable television system that is authorized by law, to construct
63 and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the
64 service and operation of the public utility or create a safety hazard.

65 D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service
66 may deny access by a telecommunications service provider or cable television system to any pole, duct,
67 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,
68 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
69 of safety, reliability, or generally applicable engineering principles.

70 E. *Notwithstanding the provisions of subsections C and D, cable television systems shall adhere to*
71 *the following conditions and standards when attaching to poles owned by any electric cooperative:*

72 1. *A cable television system shall pay the electric cooperative for unauthorized attachments*
73 *discovered by a survey of poles on the electric cooperative's system. The payment shall consist of the*
74 *product obtained by multiplying (i) the annual payment due to the electric cooperative pursuant to the*
75 *contract for attachments to the electric cooperative's poles; by (ii) the number of years since the most*
76 *recent survey of the electric cooperative's poles. The surveys shall be undertaken by an independent*
77 *third-party engineer agreeable to both the electric cooperative and the cable television system, but the*
78 *fee for the survey shall be borne by the cable television system and shall be undertaken no less often*
79 *than every three years. In addition, among other remedies as may be provided by law or regulation,*
80 *cable television systems shall pay a penalty of \$40 per pole for unauthorized attachments. Payment of*
81 *such fees shall be due no later than 10 days from the date the electric cooperative notifies the cable*
82 *television system in writing of the unauthorized attachments;*

83 2. *Any overlashing by a cable television system shall be done in accordance with generally accepted*
84 *engineering standards. The cable television system conducting overlashing shall provide 10 days' notice*
85 *to the electric cooperative before beginning such overlashing. All overlashes will be subject to a*
86 *postconstruction inspection and may be subject to a pole loading analysis. Each overlash shall be*
87 *considered a separate pole attachment subject to an additional fee as set forth in this subsection. If an*
88 *overlash is made without the notice required herein, then such overlash shall be considered an*
89 *unauthorized attachment as set forth in this subsection;*

90 3. *Any cable television system that attaches facilities to poles owned by electric cooperatives shall (i)*
91 *have work crews available at all times to respond to emergency facility safety conditions arising on the*
92 *poles, and such emergency safety conditions include any failure to comply with the National Electric*
93 *Safety Code or other applicable safety codes; (ii) respond to and adequately resolve nonemergency*
94 *notices of required facility safety service provided by electric cooperatives within 48 hours following*
95 *such notices; and (iii) move or remove facilities from poles when directed by the electric cooperative as*
96 *a result of decommissioning, abandonment, or moving of poles within five business days following notice*
97 *from the electric cooperative. The Commission, after determining that a cable television system has*
98 *failed to comply with the requirements of this subdivision, may levy upon the cable television system a*
99 *fine in an amount not to exceed that authorized pursuant to § 12.1-13 for each violation and enforce the*
100 *collection thereof by its judgments and processes.*

101 4. *Any cable television system that attaches facilities to poles owned by an electric cooperative shall*
102 *make payments when due and otherwise adhere to the payment procedures set forth in the agreement*
103 *between the parties. A cable television system that has a bona fide reason for failure to make payment*
104 *when due may make such payment under protest subject to refund in the event a subsequent dispute is*
105 *settled in the favor of the cable television system. If payment is not made by the cable television system*
106 *when due, then the electric cooperative must provide written notice to the cable television system that*
107 *the pole attachment will be removed if payment is not made within 10 calendar days after such notice.*
108 *If payment is not made by the cable television system within 10 calendar days after such notice, then the*
109 *electric cooperative may remove the pole attachment without its incurring liability to the cable television*
110 *system as a result of either such action, and the cable television system shall be responsible for the*
111 *costs incurred by the electric cooperative for removal of said pole attachment;*

112 5. *Upon inquiry by an electric cooperative, any cable television system that attaches facilities to*
113 *poles owned by the electric cooperative shall provide written evidence from a landowner or*
114 *governmental entity, or both, of its legal authority to occupy the right-of-way to install and operate*
115 *facilities on a particular piece of property. Such evidence shall be provided within 30 days of the*
116 *request. If the cable television system fails to demonstrate that it has legal authority to occupy said*
117 *right-of-way, then the electric cooperative, if it has the permission of the person upon whose property*
118 *the cable television system's facilities are unlawfully present, may remove the facilities of the cable*
119 *television system located on that property. The electric cooperative shall remove such facilities with no*
120 *liability, and the cable television system shall, in addition to other remedies as may be provided by law*

121 or regulation, pay the electric cooperative for the cost of such removal; and
122 6. Any cable television system that provides broadband service over the facilities attached to electric
123 cooperative poles shall provide nondiscriminatory access to the broadband service provided, at
124 reasonable rates and according to such terms and conditions provided to similarly situated customers,
125 to the electric cooperative itself and to members of electric cooperatives in the counties in which those
126 poles are located.
127 F. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

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