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HOUSE BILL NO. 979

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 55.1-306 of the Code of Virginia, relating to utility easements.

Patron—LaRock

Referred to Committee on Communications, Technology and Innovation

Be it enacted by the General Assembly of Virginia:**1. That § 55.1-306 of the Code of Virginia is amended and reenacted as follows:****§ 55.1-306. Utility easements.**A. For the purposes of this section, ~~“utility:~~*“Electric cooperative” means a utility consumer services cooperative formed under or subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of Title 56.**“Unserved by broadband” means those areas in which broadband speeds of 10 MBps or less download speed and 1 MBps or less upload speed, or such higher speeds as may be subsequently established from time to time by regulation by the Department of Housing and Community Development for its Virginia Telecommunication Initiative, are not generally available. An area shall be categorized as unserved by broadband for purposes of determining the existence of a prescriptive easement as provided in subsection C if an electric cooperative certifies that less than 10 percent of residential and commercial units within the designated area are capable of receiving broadband service at qualifying speeds at the time that the certification is made by the electric cooperative, and that no duplicative grant or loan to provide broadband access at qualifying speeds for the designated area has been made within the prior three years by any of the Tobacco Region Revitalization Commission or the Department of Housing and Community Development's Virginia Telecommunications Initiative, the federal Connect America program, or the federal U.S. Department of Agriculture or Rural Utilities Service.**“Utility services” means any products, services, and equipment related to energy, broadband and other telecommunications services, water, and sewerage. Designation of a service as a utility service pursuant to this definition shall not imply any authority of the State Corporation Commission to regulate a particular type of service.**B. Where an easement, whether appurtenant or gross, is expressly granted by an instrument recorded on or after July 1, 2006, that imposes on a servient tract of land a covenant (i) to provide an easement in the future for the benefit of utility services; (ii) to relocate, construct, or maintain facilities owned by an entity that provides utility services; or (iii) to pay the cost of such relocation, construction, or maintenance, such covenant shall be deemed for all purposes to touch and concern the servient tract, to run with the servient tract, its successors, and assigns for the benefit of the entity providing utility services, its successors, and assigns.**C. A prescriptive easement, including the apportionable right to use such easement for both electric and communications services, shall be deemed to exist in an area unserved by broadband when an electric cooperative has a utility map or other documentation, in any format, kept in the records of the electric cooperative in the regular course of its business, showing the placement, dating back not fewer than 20 years, of facilities owned, maintained, or controlled by the electric cooperative within an easement, and there is no documentation in those records of the electric cooperative or in the public record showing a grant of an inconsistent express easement by the landowner to the cooperative within the easement area. A prescriptive easement shall be deemed to include the right to install, maintain, operate, repair, and replace either aerial or underground electrical and communications lines and equipment or combinations thereof. A third-party nongovernmental broadband service provider shall be entitled to utilize such a prescriptive easement at no charge by the electric cooperative for apportionment and lease of the real estate rights of the cooperative; however, any use of cooperative poles or conduits shall be regulated pursuant to § 56-466.1. Once a determination is made that an area is unserved by broadband, that determination shall remain in place for that area for purposes of the prescriptive easement without regard to subsequent changes in broadband speed or availability. A cooperative shall, on request by any nongovernmental broadband provider, furnish high-resolution, street-level maps showing all prescriptive easements held by the cooperative in a requested area, at no charge.**D. A copy of an electric cooperative's certification pursuant to subsection C that an area in which a prescriptive easement is located is unserved by broadband and a high-resolution street-level map of the designated unserved by broadband area shall be filed by the electric cooperative with the State*

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59 Corporation Commission as a public document.

60 E. When a cooperative has acquired a prescriptive easement in an area unserved by broadband
61 pursuant to which it has the right to install, maintain, and use poles and wires, underground conduits,
62 or a combination thereof, for any communications purpose, it shall be the public policy of the
63 Commonwealth to encourage broadband expansion and to interpret such easement to also include the
64 right of a nongovernmental broadband service provider to install, maintain, operate, repair, and replace
65 broadband lines, systems, and facilities necessary for the provision and extension of broadband and
66 other communications services within such easement.

67 F. Exclusive jurisdiction over any dispute as to the right of an electric cooperative or
68 nongovernmental broadband service provider to use such a prescriptive easement shall lie with the State
69 Corporation Commission, which is authorized to hear and adjudicate any disputes between or among a
70 broadband service provider, electric cooperative, and landowner with respect to the use or value of such
71 easements for broadband and other communications services, and award just compensation to any
72 landowner for such use where appropriate, based upon the authorized provision of broadband as a
73 utility service.

74 G. In maintaining, repairing, and replacing electric and communications infrastructure within an
75 easement, an electric cooperative or its lessees may replace existing poles for make-ready purposes to
76 address capacity and safety concerns and to ensure that proper electrical zone and telecommunications
77 zone clearances are met, but shall not install new poles or facilities above ground that are in nature,
78 character, or visual appearance materially different from the existing poles or facilities.