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SENATE BILL NO. 794

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend and reenact § 55.1-306 of the Code of Virginia, relating to the use of existing utility easements to provide or expand broadband services.*

Patrons—Lewis, Peake and Stanley

Referred to Committee on Commerce and Labor

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 services" means any products, services, and equipment related to energy, ~~telecommunications~~ *broadband and other communications services*, water, and sewerage.

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. *It is the policy of the Commonwealth that:*

1. *Existing easements for the location and use of electric facilities be used to provide or expand broadband services;*

2. *Such use of existing easements to provide or expand broadband services is in the public interest;*

3. *The use of such existing easements for the provision of broadband services, where no additional poles are erected, does not (i) constitute a change in the physical use of the easement, (ii) interfere with or impair any vested rights of the owner or occupier of the servient estate, or (iii) place any additional burden on the servient estate; and*

4. *The installation and operation of broadband services within an existing electric easement are merely changes in the manner, purpose, or degree of the granted use as appropriate to accommodate a new technology.*

D. *Absent any express prohibition on the installation and operation of broadband services in an existing electric easement that is contained in the deed or other instrument by which the existing electric easement was granted, the installation and operation of broadband services within the existing electric easement shall be deemed as a matter of law to be permitted uses within the scope of every easement for the location and use of electricity facilities.*

E. *Subject to compliance with any express prohibitions in an electric easement, the owner of an electric easement or a provider of communications services may use an electric easement to install, maintain, lease, and operate any communications services without paying additional compensation to the owner or occupant of servient estate, provided that no additional poles are installed.*

F. *In any action for trespass or any claim sounding in trespass or reasonably related thereto that is brought by the owner of real property against a public utility as defined in § 56-265.1, a subsidiary or affiliate of such public utility, or any employee, attorney, officer, agent, director, representative, or contractor of a public utility, which action is related to or arises from the installation, maintenance, or operation of any utility poles, wires, conduit, or other infrastructure or fiber optic cabling upon such owner's property, the damages that may be awarded to a prevailing owner shall not exceed the lesser of actual damages or \$2,000 per landowner bringing such claim.*

G. *Notwithstanding the foregoing, any electric utility may assess fees and charges and impose reasonable conditions on the use of its poles, conduits, facilities, and infrastructure, which conditions with regard to attachments to utility poles shall be subject to (i) applicable federal law if the electric utility is an investor-owned utility or (ii) § 56-466.1 if the electric utility is an electric cooperative.*

INTRODUCED

SB794