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SENATE BILL NO. 1013

Offered January 17, 1997

A BILL to amend and reenact §§ 2.1-504.4, 56-458 and 56-462 of the Code of Virginia, relating to payments for the use of rights-of-way.

Patrons—Holland, Benedetti, Chichester, Earley, Lambert, Lucas, Maxwell, Miller, Y.B., Potts, Reasor, Schrock, Stolle, Trumbo and Wampler

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-504.4, 56-458 and 56-462 of the Code of Virginia are amended and reenacted 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.

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. *Fees charged for right-of-way easements shall not exceed the incremental, activity-related costs directly incurred by the authorizing state department, agency or institution in administering the right-of-way easements or any appurtenances thereto. "Activity-related costs" are those costs which arise directly from (i) the issuance of permits for placing or repairing facilities in the rights-of-way, (ii) inspections to ensure compliance with the conditions of the permit, and (iii) coordination of the use of the rights-of-way among all such users. Such fees are permitted only to the extent that the fees are charged on a nondiscriminatory basis to each such user of the rights-of-way.*

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, property owned by the Commonwealth may be sold or leased or other interests or rights therein granted or conveyed to political subdivisions or persons providing communication or information services for the purpose of erecting, operating, using or maintaining communication towers, 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 providing communication or information services, and there is no immediate use thereof planned or anticipated by any department, agency or institution of the Commonwealth or political subdivision, the guidelines shall provide a means to obtain comments from the local governing body where the property is located. The conveyances shall be for such consideration as the Director of the Department of General Services deems appropriate, and may include shared use of such facilities by other political subdivisions or persons providing the same or similar services, and by departments, agencies, or institutions of the Commonwealth.

D. No transaction authorized by this section shall be made without prior written recommendation of the Department of General Services to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments.

§ 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same.

Every telegraph company and every telephone company incorporated by this or any other state, or by the United States, may construct, maintain and operate its line along and parallel to any of the railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues and alleys in any of the counties, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within this Commonwealth, for the erection of poles and wires, or cables, or

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60 the laying of underground conduits, portions of which they may lease, rent, or hire to other like
61 companies; provided, however, that if the road or street be in the State Highway System or the
62 secondary system of state highways, the consent of the board of supervisors or other governing authority
63 of any county shall not be necessary, but a permit for such occupation and use shall first be obtained
64 from the Commonwealth Transportation Board. *Notwithstanding any other provision of law, any and all*
65 *fees, including but not limited to franchise, permit and inspection fees, charged by (i) a county, city or*
66 *town in connection with a franchise, lease or right to use any public property or easement or (ii) the*
67 *Commonwealth Transportation Board in connection with a permit for such occupation and use shall not*
68 *exceed the incremental, activity-related costs directly incurred by the county, city or town in*
69 *administering the franchise, lease or right to use any public property or easement or by the*
70 *Commonwealth Transportation Board in administering the permit, respectively. "Activity-related costs"*
71 *are those costs which arise directly from (i) the issuance of permits for placing or repairing facilities in*
72 *the rights-of-way, (ii) inspections to ensure compliance with the conditions of the permit, and (iii)*
73 *coordination of the use of the rights-of-way among all such users. Such fees are permitted only to the*
74 *extent that the fees are charged on a nondiscriminatory basis to each such user of the rights-of-way. In*
75 *any controversy concerning the appropriateness of any such fees, the public entity shall have the burden*
76 *of proving that the fees imposed do not exceed such costs. No county, city or town or the*
77 *Commonwealth Transportation Board shall require the provision of in-kind services or physical assets*
78 *as a condition of consent to use public property or easements or in lieu of any fees.*

79 § 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of
80 streets, etc., and construction thereon.

81 No incorporated city or town shall grant to any such telegraph or telephone corporation the right to
82 erect its poles, wires, or cables, or to lay its conduits upon or beneath its parks, streets, avenues, or
83 alleys until such company shall have first obtained, in the manner prescribed by the laws of this
84 Commonwealth, the franchise to occupy the same. Notwithstanding the provisions of this chapter the
85 corporate authorities of any city or town may impose upon any such corporation any terms and
86 conditions inconsistent herewith or supplemental hereto, as to the occupation and use of its parks,
87 streets, avenues, and alleys, and as to the construction and use of its parks, streets, avenues, and alleys,
88 and as to the construction and maintenance of the works of such company along, over, or under the
89 same, the corporate authorities may deem expedient and proper, and the Commonwealth Transportation
90 Board may impose upon any such company any terms, rules, regulations, requirements, restrictions and
91 conditions inconsistent herewith or supplemental hereto, as to the occupation and use of roads and
92 streets in either state highway system, and as to the construction, operation or maintenance of the works
93 along, over, or under the same, which the Board may deem expedient and proper, but not in conflict, in
94 incorporated cities and towns, with any vested contractual rights of any such company with such city or
95 town. *However, any and all fees, including but not limited to franchise, permit and inspection fees,*
96 *charged by (i) a city or town in connection with such franchise or (ii) the Commonwealth*
97 *Transportation Board in connection with the occupation and use of roads and streets in either state*
98 *highway system shall not exceed the incremental, activity-related costs directly incurred by the city or*
99 *town in administering the franchise or by the Commonwealth Transportation Board in administering*
100 *such occupation and use, respectively. "Activity-related costs" are those costs which arise directly from*
101 *(i) the issuance of permits for placing or repairing facilities in the rights-of-way, (ii) inspections to*
102 *ensure compliance with the conditions of the permit, and (iii) coordination of the use of the*
103 *rights-of-way among all such users. Such fees are permitted only to the extent that the fees are charged*
104 *on a nondiscriminatory basis to each such user of the rights-of-way. In any controversy concerning the*
105 *appropriateness of any such fees, the public entity shall have the burden of proving that the fees*
106 *imposed do not exceed such costs. No city or town or the Commonwealth Transportation Board shall*
107 *require the provision of in-kind services or physical assets as a condition of consent to grant a franchise*
108 *or to occupy and use the roads and streets in either state highway system in lieu of any fees.*