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HOUSE BILL NO. 831**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Communications, Technology and Innovation
on January 27, 2020)

(Patron Prior to Substitute—Delegate Carroll Foy)

A BILL to amend and reenact § 55.1-306 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-306.1, relating to utility easements; broadband and other communications services.

Be it enacted by the General Assembly of Virginia:

1. That § 55.1-306 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-306.1 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.

§ 55.1-306.1. Utility easements; expansion of broadband.

A. As used in this section:

"Communications provider" means a broadband or other communications service provider, including a public utility as defined in § 56-265.1, a cable operator as defined in § 15.2-2108.1:1, a local exchange carrier, competitive or incumbent, or a subsidiary or affiliate of any such entity.

"Easement" means an existing or future occupied electric distribution or communications easement, including a prescriptive easement, except that "easement" does not include (i) easements that contain electric substations or other installations or facilities of a nonlinear character and (ii) electric transmission easements.

"Enterprise data center operations" has the same meaning as provided in § 58.1-422.2.

"Incumbent utility" means the entity that is the owner of the easement.

"Indemnified parties" means a public utility, an incumbent utility, or any subsidiary or affiliate of any such entity and the employees, attorneys, officers, agents, directors, representatives, or contractors of any such entity.

"Occupancy license agreement" means an uncompensated agreement between an incumbent utility and a communications provider, for use when the communications provider wishes to occupy an easement underground, that contains nondiscriminatory provisions based on safety, reliability, and generally applicable engineering principles.

"Prescriptive easement" means an easement in favor of an incumbent utility or communications provider that is deemed to exist, without any requirement of adverse possession, claim of right, or exclusivity, when physical evidence, records of the incumbent utility, public records, or other evidence indicate that it has existed on the servient estate for a continuous period of 20 years or more, without intervening litigation during such period by any party with a title interest seeking the removal of utility facilities or reformation of the easement.

"Public utility" has the same meaning as provided in § 56-265.1.

"Sensitive site" means an underlying servient estate that is occupied by a railroad or an owner or tenant having operations related to national defense, national security, or law-enforcement purposes.

B. It is the policy of the Commonwealth that:

1. Easements for the location and use of electric and communications facilities may be used to provide or expand broadband or other communications services;

2. The use of such easements to provide or expand broadband or other communications services is in the public interest;

3. The use of such easements to provide or expand broadband or other communications services does not (i) constitute a change in the physical use of the easement, (ii) interfere with, impair, or take any vested or other 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 or other communications services within any such

60 easements are merely changes in the manner, purpose, or degree of the granted use as appropriate to
61 accommodate a new technology.

62 C. Absent any express prohibition on the installation and operation of broadband or other
63 communications services in an easement that is contained in a deed or other instrument by which the
64 easement was granted, the installation and operation of broadband or other communications services
65 within any easement shall be deemed, as a matter of law, to be a permitted use within the scope of
66 every easement for the location and use of electric and communications facilities.

67 D. Subject to compliance with any express prohibitions in a written easement, any incumbent utility
68 or communications provider may use an easement to install, construct, provide, maintain, modify, lease,
69 operate, repair, replace, or remove any communications equipment, system, or facilities, and provide
70 communications services through the same, without such incumbent utility or communications provider
71 paying additional compensation to the owner or occupant of the servient estate, provided that no
72 additional utility poles are installed.

73 E. In cases of a prescriptive easement as prior established in a court of competent jurisdiction, such
74 easement shall be deemed to exist.

75 F. Any incumbent utility or communications provider may use a prescriptive easement to install,
76 construct, provide, maintain, modify, lease, operate, repair, replace, or remove any communications
77 equipment, system, or facilities, and provide communications services through the same, without such
78 incumbent utility or communications provider paying additional compensation to the owner or occupant
79 of the servient estate, provided that no additional utility poles are installed.

80 G. Any incumbent utility may grant to any communications provider rights to install, construct,
81 provide, maintain, modify, lease, operate, repair, replace, or remove any communications equipment,
82 system, or facilities, and to provide communications services through the incumbent utility's prescriptive
83 easement, including the right to enter upon such easement without approval of the owner of the servient
84 estate, such grant and use being in the public interest and within the scope of the property interests
85 acquired by the incumbent utility when the prescriptive easement was established.

86 H. In any action for trespass, or any claim sounding in trespass or reasonably related thereto, to
87 real property that is brought against an incumbent utility or a communications provider arising after
88 July 1, 2020, in relation to the existence, installation, construction, maintenance, modification,
89 operation, repair, replacement, or removal of any poles, wires, conduit, or other communications
90 infrastructure, including fiber optic or coaxial cabling, if proven, damages recoverable by any
91 landowner bringing such claim shall be limited to actual damages based on any reduction in the value
92 of the land as a result of the existence, installation, construction, maintenance, modification, operation,
93 repair, replacement, or removal of communications facilities, as such tract existed at the time that any
94 alleged trespass began giving rise to such claim.

95 I. Nothing in this section shall be deemed to limit any liability for personal injury or damage to
96 tangible personal property of the landowner caused directly by the activities of the incumbent utility or
97 communications provider while on or adjacent to the landowner's real property.

98 J. Any communications provider making use of an easement pursuant to this section shall:

99 1. Enter into an agreement with the incumbent utility authorizing it to use an easement;

100 2. Adhere to such restrictions as the incumbent utility may place on the communications provider,
101 provided that such restrictions are reasonably related to safety, reliability, or generally applicable
102 engineering principles and are applied on a nondiscriminatory basis;

103 3. For underground facilities, enter into an occupancy license agreement with the incumbent utility;
104 and

105 4. Indemnify and hold harmless the indemnified parties as against any third party for any claim
106 arising out of its entry onto, use of, or occupancy of such easement.

107 K. A communications provider, making use of an easement pursuant to this section, shall not locate
108 a telecommunications tower in such easement.

109 L. As against a communications provider, no incumbent utility shall:

110 1. Solely by virtue of the provisions of this section, require any additional compensation for use of
111 an easement, unless such compensation is required expressly in a written easement or other agreement;

112 2. Unreasonably refuse to grant an occupancy license agreement to any communications provider;

113 3. Include in an occupancy license agreement demands for title reports, surveys, or engineering
114 drawings; or

115 4. Use an occupancy license agreement for dilatory purposes or to create a barrier to broadband or
116 other communications services deployment.

117 M. Nothing in this section shall apply to those easements located on sensitive sites or housing
118 enterprise data center operations.

119 N. Notwithstanding any provision of this section, a public utility or an incumbent utility may (i)
120 assess fees and charges and impose reasonable conditions on the use of its poles, conduits, facilities,
121 and infrastructure, which, as regarding attachments to electric utility poles, shall be subject to the

- 122 provisions of 47 U.S.C. § 224 for investor-owned utilities and to § 56-466.1 for electric cooperatives.
123 O. Nothing in this section shall be construed to inhibit, diminish, or modify the application of the
124 provisions of Chapter 4 (§ 56-76 et seq.) of Title 56 or § 56-231.34:1 or 56-231.50:1, as applicable.
125 P. The provisions of this section shall be liberally construed.