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SENATE BILL NO. 539

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact § 55.1-306 of the Code of Virginia, relating to the use of electric utility easements to provide communications services.*

Patrons—Peake; Delegate: Kory

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~~ As used in this section, "utility:

"Broadband service provider" means any (i) information service provider as defined in subdivision 24 of 47 U.S.C. § 153, (ii) cable operator as defined in § 15.2-2108.1:1, (iii) competitive or incumbent local exchange carrier, or (iv) subsidiary or affiliate of a public utility as defined in § 56-265.1 that is organized for purposes of providing retail broadband, communications, or information services.

"Utility services" means any products, services, and equipment related to energy, telecommunications, 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 hereby declared to be the policy of the Commonwealth that (i) existing or future easements, including those acquired by prescription, for the location and use of electric facilities be used to provide or expand broadband or other communications services; (ii) such use is in the public interest; (iii) the use of such easements for the provision of broadband or other communications services, where no additional utility poles are erected, does not constitute a change in the physical use of the easement or interfere with, impair, or take any vested or other rights of the owner or occupier of the servient estate, or place any additional burden on the servient estate; and (iv) the installation and operation of broadband or other communications services within any such existing or future electric easements are merely changes in the manner, purpose, or degree of the granted use as appropriate to accommodate a new technology, and absent any express prohibition contained in the easement itself, such installation and operation will be deemed, as a matter of law, to be a permitted use within the scope of every easement for the location and use of electric utility facilities. Subject to compliance with any express prohibitions in an electric easement, any electric utility or broadband or other communications service provider, including any affiliate of an electric utility, may use an electric easement to install, construct, provide, maintain, modify, lease, operate, repair, or replace any communications equipment, system, or facilities and provide communications services through the same without such communications provider or the electric utility paying additional compensation to the owner of occupant of the servient estate, provided that no additional utility poles are installed.

C. In any action for trespass, or any claim sounding in trespass or reasonably related thereto, to real property brought against a public utility as defined in § 56-265.1, a broadband service provider, any subsidiary or affiliate of any such entity, or employees, attorneys, officers, agents, directors, representatives, or contractors of any such entity, in relation to the existence, installation, construction, maintenance, modification, operation, repair, or replacement of any utility poles, wires, conduit, or other communications infrastructure including fiber optic cabling, if proven, damages recoverable by any landowner bringing such claim will be limited to the lesser of (i) actual damages based on any reduction in the value of the land as a result of the existence, installation, construction, maintenance, modification, operation, repair, or replacement of communications facilities or (ii) \$2,000 per tract of land, as such tract existed at the time that any alleged trespass began giving rise to such claim.

D. Nothing in this section will be deemed to limit any liability for personal injury or damage to tangible personal property of the landowner caused directly by the activities of the public utility, cable operator, or local exchange carrier, while on or adjacent to the landowner's real property.

E. Nothing in this section will be deemed to (i) affect the ability or right any electric utility may

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59 *have to assess fees and charges and impose reasonable conditions on the use of its poles, conduits,*
60 *facilities, and infrastructure, which, as regarding attachments to electric utility poles, will be subject to*
61 *applicable federal law for investor-owned utilities and to § 56-466.1 for electric cooperatives; (ii) inhibit*
62 *or diminish any requirement of nondiscriminatory access to utility infrastructure; or (iii) inhibit or*
63 *diminish the application of the provisions of Chapter 4 (§ 56-76 et seq.) of Title 56.*