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HOUSE BILL NO. 2108

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 26, 2017)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend the Code of Virginia by adding in Chapter 21 of Title 15.2 an article numbered 1.3, consisting of sections numbered 15.2-2108.33 through 15.2-2108.40, relating to broadband services.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 21 of Title 15.2 an article numbered 1.3, consisting of sections numbered 15.2-2108.33 through 15.2-2108.40, as follows:

Article 1.3.

Broadband Services.

§ 15.2-2108.33. Definitions.

As used in this article:

"Affiliate" or "affiliates" refers to any board, authority, district, commission, or other public body having overlapping geographic territory with a locality, or originally created by the locality, or any public body whose jurisdiction or membership includes any part of the locality.

"Broadband services" refers to broadband or Internet services offered by a locality or its affiliate in exchange for compensation to customers or subscribers. A lease or other provision of dark fiber or similar unused communications line capacity by a locality or its affiliate to an Internet service provider or other independent third-party provider shall not be deemed to be "broadband services" provided by the locality or its affiliate.

"Public body" has the meaning set out in § 2.2-3701.

§ 15.2-2108.34. Freedom of Information Act exemptions.

No exemptions from the Freedom of Information Act (§ 2.2-3700 et seq.) based on confidential proprietary records, trade secrets, or working papers shall apply to a locality or its affiliate in its planning or provision of broadband services. Notwithstanding the provisions of subdivisions 18 and 19 of § 2.2-3705.6, subsection F of § 15.2-2160, and subdivision B 10 of § 56-265.4:4, no public records of a locality or affiliate relating to its planning for, or relating to the locations, specifications, or operations of, a broadband services system, or provision of broadband services, shall be exempt from disclosure under the Freedom of Information Act, except those portions of any records showing both an individual customer's name and address. Notwithstanding the provisions of subdivisions A 33 and 34 of § 2.2-3711, no public body may hold a closed meeting where the subject of such meeting would be proposed or actual provision of broadband services by a locality or its affiliate.

§ 15.2-2108.35. Sale or disposal.

A. Any locality or its affiliate that seeks to sell or dispose of all or any material part of the infrastructure of a broadband services system owned by the locality or its affiliate, or any material portion of any subscriber or service contracts in connection therewith, shall do so by a public sale or auction process after advertisement.

B. The provisions of subsection A shall not apply in the event of any sale or disposition to, or merger or consolidation with, a public body.

§ 15.2-2108.36. Transparent pricing.

In calculating the rates charged by a locality for any broadband service:

1. The locality or its affiliate shall include within its rates an amount equal to all taxes, fees, and other assessments that would be applicable to those payable by a private provider of the same broadband service; and

2. The locality or its affiliate shall not price any of its broadband services at a level that is less than the sum of (i) the cost of maintaining, repairing, and operating the project, systems, or facilities; (ii) the cost to pay for the principal of and interest on revenue bonds; (iii) an amount calculated to provide a margin of safety for making such payments; and (iv) the amount determined under subdivision 1.

§ 15.2-2108.37. Annual audit.

A locality or its affiliate shall keep accurate books and records of any provision of broadband services. A locality or its affiliate shall conduct an annual audit of its books and records associated with any provision of broadband services, with such audit to be performed by an independent auditor approved by the Auditor of Public Accounts. Such audit shall include such criteria as the Auditor of Public Accounts deems appropriate and be filed as a public document with the Auditor of Public Accounts.

§ 15.2-2108.38. Eminent domain.

No locality or its affiliate providing broadband services shall exercise any power of eminent domain

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60 to condemn any plant or equipment of a private provider of broadband services for the purpose of
61 allowing the locality or its affiliate to use such plant or equipment in the provision of broadband
62 services.

63 **§ 15.2-2108.39. Nondiscriminatory access.**

64 A locality or its affiliate providing broadband services shall apply the locality's ordinances, rules,
65 and policies, without discrimination as to itself and any affiliate, including any charges or fees for
66 permits, access, or occupancy. In providing broadband services, a locality or its affiliate shall provide
67 nondiscriminatory access to its poles, conduits, rights-of-way, dark fiber, and towers or other structures
68 to any private party offering any broadband services within the locality, unless the facilities of the
69 locality or its affiliate have insufficient capacity for such access and additional capacity cannot
70 reasonably be added to the facilities due to physical limitations.

71 **§ 15.2-2108.40. Enforcement.**

72 Any person who believes that a locality or its affiliate is not in compliance with this article shall
73 have a cause of action and standing to bring an action in the circuit court for the locality to seek to
74 require the locality to comply with this article. No bond shall be required for injunctive relief against
75 the locality.