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## HOUSE BILL NO. 1446

Offered January 24, 2000

*A BILL to amend and reenact § 33.1-89 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 33.1-23.02:1, relating to highway construction and maintenance by certain counties; exercise of power of eminent domain by Commonwealth Transportation Commissioner; certain contracts not affected.*

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 Patron—Hull
 

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Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That § 33.1-89 of the Code of Virginia is amended and reenacted and the Code of Virginia is amended by adding a section numbered 33.1-23.02:1 as follows:**

*§ 33.1-23.02:1. Highway construction and maintenance by certain counties.*

*When so requested by a resolution adopted by the local governing body and transmitted to the Commonwealth Transportation Board, every county operating under the urban county executive form of government shall be deemed to be a city for all the purposes of highway construction maintenance and allocation of funds therefor as provided in this chapter, except that highway construction funds shall be paid to such county from funds allocated to secondary system highways under subdivision 3 of subsection B of § 33.1-23.1, and the amount of such payments shall be calculated as allocations of county secondary highway construction funds are calculated under § 33.23.4.*

*§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.*

The Commonwealth Transportation Commissioner is hereby vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as by the Commissioner may be deemed requisite and suitable, including locations for permanent, temporary, continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose of this article "public highway" means highway, road and street; and when applicable, the term "public highway" also includes bridge, ferry, causeway, landing and wharf.

The Commissioner is authorized to exercise the above power within municipalities *and counties operating under the urban county executive form of government* on projects which are constructed with state or federal participation, if requested by the municipality *or county* concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality *or county*, he shall convey the title so acquired to the municipality *or county*, except that rights-of-way or easements acquired for the relocation of a railroad, public utility company, public service corporation or company, another political subdivision, or cable television company in connection with said projects shall be conveyed to that entity in accordance with § 33.1-96. The authority for such conveyance shall apply to acquisitions made by the Commissioner pursuant to previous requests as well as any subsequent request.

Any offer by the Commissioner to a property owner with respect to payment of compensation for the prospective taking of property and damage to property not taken incident to the purposes of this section shall separately state (i) the property to be taken and the amount of compensation offered therefor and (ii) the nature of the prospective damage or damages and the amount of compensation offered for each such prospective damage.

In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement. Adequate briefing will include: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

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60 Any option or deed executed by the property owner shall contain a statement that the plans as they  
61 affect his property have been fully explained. ~~Provided, however, that~~ *However*, the requirements of this  
62 section with respect to information and briefing and the acknowledgment thereof in options and deeds  
63 shall in no way be construed to affect the validity of any conveyance or to create any right to  
64 compensation or to limit the Commissioner's authority to reasonably control the use of public highways  
65 so as to promote the public health, safety and welfare.

66 2. That the Commonwealth Transportation Commissioner shall, as provided in § 33.1-89, within  
67 sixty days of the effective date of this act, convey to the affected county title to all real property,  
68 rights-of-way, and easements hitherto acquired by him or by the Virginia Department of  
69 Transportation or the Commonwealth Transportation Board for the purpose of highway  
70 construction or maintenance in such county.

71 3. That the provisions of this act shall not operate to affect any contract entered into prior to the  
72 effective date of this act by the Commonwealth Transportation Board, the Commonwealth  
73 Transportation Commissioner, or the Virginia Department of Transportation and involving the  
74 construction or maintenance of any highway within any county operating under the urban county  
75 executive form of government.

76 4. That the provisions of this act shall become effective on July 1, 2001, if the governing body of  
77 the affected county so requests in a resolution transmitted to the Commonwealth Transportation  
78 Board no later than January 1, 2001.

79 5. That no later than sixty days from the effective date of this act, the Commonwealth  
80 Transportation Board, the Commonwealth Transportation Commissioner, and the Virginia  
81 Department of Transportation shall, as provided in the 2001 general appropriation act, transfer to  
82 the affected county those structures, facilities, equipment, employees, and resources that, prior to  
83 the effective date of this act, were assigned to, used or employed by the Board, Commissioner, or  
84 Department in carrying out functions transferred to the county under the provisions of this act.