

019006776

## HOUSE BILL NO. 1949

Offered January 10, 2001

Prefiled January 9, 2001

*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
 

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

**1. That § 33.1-89 of the Code of Virginia is amended and reenacted, and that 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 § 33.1-23.4.*

*§ 33.1-89. (Effective until July 1, 2002) 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. The amount of the offer shall not be less than the amount of the approved appraisal of the fair market value of such property, in accordance with the provisions of § 25-248. Any such appraisal used by the Commissioner as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.*

*The Commissioner shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition, if prepared pursuant to subsection C of § 25-46.5.*

*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*

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59 or his authorized representative is properly informed as to the type and amount of foreseeable damage  
60 and/or enhancement. Adequate briefing will include: (i) the giving of plats and profiles of the project,  
61 showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed  
62 changes in profile, elevation and grade of the highway and entrances, including the elevations of  
63 proposed pavement and shoulders, both center and edges, with relation to the present pavement, and  
64 approximate grade of entrances to the property.

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

71 § 33.1-89. (Effective July 1, 2002) Power to acquire lands, etc., by purchase, gift or eminent domain;  
72 conveyance to municipality after acquisition; property owners to be informed and briefed

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

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

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

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

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

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

119 **3. That the provisions of this act shall not operate to affect any contract entered into prior to the**  
120 **effective date of this act by the Commonwealth Transportation Board, the Commonwealth**

121 Transportation Commissioner, or the Virginia Department of Transportation and involving the  
122 construction or maintenance of any highway within any county operating under the urban county  
123 executive form of government.  
124 4. That the provisions of this act shall become effective on July 1, 2002, if the governing body of  
125 the affected county so requests in a resolution transmitted to the Commonwealth Transportation  
126 Board no later than January 1, 2002.  
127 5. That no later than sixty days from the effective date of this act, the Commonwealth  
128 Transportation Board, the Commonwealth Transportation Commissioner, and the Virginia  
129 Department of Transportation shall, as provided in the 2002 general appropriation act, transfer to  
130 the affected county those structures, facilities, equipment, employees, and resources that, prior to  
131 the effective date of this act, were assigned to, used or employed by the Board, Commissioner, or  
132 Department in carrying out functions transferred to the county under the provisions of this act.