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HOUSE BILL NO. 918

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 25-46.3, 25-238 and 33.1-351 of the Code of Virginia, relating to owners of fee interest, buildings and improvements.

Patron—Griffith

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 25-46.3, 25-238 and 33.1-351 of the Code of Virginia are amended and reenacted as follows:

§ 25-46.3. Definitions.

As used in this chapter, unless otherwise clearly indicated herein or required by the context, the term:

(a) "Court" means the court having jurisdiction and the judge or judges thereof in vacation.

(b) "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition, whichever occurs first.

(c) "Land" means land, lands and real estate and all rights and appurtenances thereto, together with the buildings and other improvements thereon, and any right, title, interest, estate or claim in or to land, lands or real estate.

(d) "Law" means any statute, general, special, private or local, of this Commonwealth, including, but not limited to, the Code of Virginia or any section thereof.

(e) "Owner" means any person owning an interest or estate in land, buildings, structures or improvements upon land.

(f) "Person" may extend and be applied to bodies politic and corporate as well as individuals.

~~(f)~~ (g) "Petitioner" means any person or public or private entity possessing the power to exercise the right of eminent domain seeking to exercise such power under this chapter.

~~(g)~~ (h) "Property" means real and personal property, and land, and any right, title, interest, estate or claim in or to such property.

~~(h)~~ (i) "State" or "Commonwealth" means the Commonwealth of Virginia.

§ 25-238. Definitions.

As used in this chapter the term:

"Business" means any lawful activity, excepting a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25-239 A for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is decent, safe and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Displaced person" means any person who moves (i) from real property, or moves his personal property from real property, (a) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (b) on which such person is a residential tenant, or conducts a small business, or a farm operation or a business defined in this article as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and (ii) solely for the purposes of §§ 25-239 A and B and 25-242, as a direct result of a written notice of intent to acquire or the acquisition of real property on which such person conducts a business or farm operation, for such program or project; or as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent.

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59 The term "displaced person" does not include (i) a person who has been determined, according to
60 criteria established by the state agency to be either in unlawful occupancy of the displacement dwelling
61 or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in
62 any case which the state agency acquires property for a program or project, any person, other than a
63 person who was an occupant of the property at the time it was acquired, who occupies such property on
64 a rental basis for a short term or a period subject to termination when the property is needed for the
65 program or project.

66 "Farm operation" means any activity conducted solely or primarily for the production of one or more
67 agricultural products or commodities, including timber, for sale or home use, and customarily producing
68 such products or commodities in sufficient quantity to be capable of contributing materially to the
69 operator's support.

70 "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid
71 purchase price of, real property, together with the credit instruments, if any, secured thereby.

72 "Nonprofit organization" means an organization that is exempt from paying federal income taxes
73 under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

74 "Owner" means any person owning an interest or estate in land, buildings, structures or
75 improvements upon land.

76 "Person" means any individual, partnership, corporation or association.

77 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public
78 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth
79 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire
80 property by eminent domain under state law; or (iv) two or more of the aforementioned, which carries
81 out projects that cause people to be displaced.

82 § 33.1-351. Policy; definitions.

83 In order to promote the safety, convenience, and enjoyment of travel on and protection of the public
84 investment in highways within this Commonwealth, to attract tourists and promote the prosperity,
85 economic well-being, and general welfare of the Commonwealth, and to preserve and enhance the
86 natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly
87 declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor
88 advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be
89 regulated in accordance with the terms of this article and regulations promulgated by the Commonwealth
90 Transportation Board pursuant thereto.

91 The following terms, wherever used or referred to in this article, shall have the following meanings
92 unless a different meaning clearly appears from the context:

93 "Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign, or
94 similar device which is posted or displayed outdoors on real property and is intended to invite or to
95 draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or
96 personal property, business, services, entertainment, or amusement manufactured, produced, bought, sold,
97 conducted, furnished, or dealt in by any person; the term shall also include any part of an advertisement
98 recognizable as such.

99 "Advertising structure" means any rigid or semirigid material, with or without any advertisement
100 displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the
101 purpose of furnishing a background or base or support upon which an advertisement may be posted or
102 displayed.

103 "Business of outdoor advertising" means the erection, use or maintenance of advertising structures or
104 the posting or display of outdoor advertisements by any person who receives profit gained from rentals
105 or any other compensation from any other person for the use or maintenance of such advertising
106 structures or the posting or display of such advertisements, except reasonable compensation for materials
107 and labor used or furnished in the actual erection of advertising structures or the actual posting of
108 advertisements. The business of outdoor advertising shall not include the leasing or rental of advertising
109 structures or advertisements used to advertise products, services, or entertainment sold or provided on
110 the premises where the advertising structures or advertisement is located.

111 "Certification Acceptance Program" means a program which will allow any person, firm, or
112 corporation owning five or more signs, advertisements, or outdoor advertising structures within a
113 municipality to inspect their own signs, advertisements, or outdoor advertising structures two times
114 during each calendar year, with inspections at least four to six months apart, and certify to the
115 Commonwealth Transportation Commissioner that the inspections have been performed and that their
116 outdoor advertising structures meet all applicable laws, rules, and regulations in lieu of paying an annual
117 permit fee as required in §§ 33.1-360, 33.1-361, and 33.1-362. The Commonwealth Transportation
118 Commissioner may, after a hearing, decertify any person, firm, or corporation that fails to perform the
119 required inspections annually or whose sign, advertisement, or outdoor advertising structures are found
120 in violation of any federal, state or local law, rule, or regulation and shall collect all permit fees for the

year the decertification occurs and all subsequent years if the Commissioner finds that the violation has been committed.

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth.

"Municipalities" means cities and incorporated towns.

"Owner" means any person owning an interest or estate in land, buildings, structures or improvements upon land.

"Person" includes an individual, partnership, association or corporation.

"Post" means post, display, print, paint, burn, nail, paste or otherwise attach.

"Real property" includes any property physically attached or annexed to real property in any manner whatsoever.

"Town" means an incorporated town.

"Historic place, museum or shrine" includes only places that are maintained wholly at public expense or by a nonprofit organization.

"Information center" means an area or site established and maintained at rest areas for the purpose of informing the public of places of interest within the Commonwealth and providing such other information as the Commonwealth may consider desirable.

"Rest area" means an area or site established and maintained within or adjacent to the right-of-way or under public supervision or control, for the convenience of the traveling public.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

"Interchange" means a grade separated intersection with one or more turning roadways for travel between intersection legs, or an intersection at grade, where two or more highways join or cross.

"Legible" means capable of being read without visual aid by a person of normal visual acuity.

"Maintain" means to allow to exist.

"Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

"National highway system" means the federal-aid highway system described in subsection (b) of § 103 of Title 23, United States Code, and regulations adopted pursuant thereto. For the purpose of this article, outdoor advertising controls on the national highway system shall be implemented as those highways are designated and approved by congressional action and such designation and approval shall be kept on file in the central office of the Department of Transportation and placed in the minutes of the Commonwealth Transportation Board by the Commonwealth Transportation Commissioner. Prior to congressional approval, highways classified as National System of Interstate and Defense Highways, Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or federal-aid primary as defined herein shall be considered as the national highway system.

"National System of Interstate and Defense Highways," "Dwight D. Eisenhower National System of Interstate and Defense Highways," and "Interstate System" means the system presently defined in subsection (e) of § 103 of Title 23, United States Code.

"Federal-aid primary highway" means any highway within that portion of the State Highway System as established and maintained under Article 2 (§ 33.1-25 et seq.) of Chapter 1 of Title 33.1, including extensions of such system within municipalities, which has been approved by the Secretary of Transportation pursuant to subsection (b) of § 103 of Title 23, United States Code, as that system existed on June 1, 1991.

"Scenic area" means any public park, area of particular scenic beauty or historical significance designated as a scenic area by the Commonwealth Transportation Board.

"Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any highway.

"Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

"Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

"Distance from edge of a right-of-way" shall be the horizontal distance measured along a line normal

182 or perpendicular to the centerline of the highway.

183 "Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than
184 one state, that part of the "urbanized area" within the Commonwealth, or an urban place.

185 "Urban place" means an area so designated by the United States Bureau of the Census having a
186 population of 5,000 or more and not within any urbanized area, within boundaries fixed by the
187 Commonwealth Transportation Commissioner, in his discretion, in cooperation with the governing bodies
188 of the several counties, towns or cities affected and the appropriate federal authority. Such boundaries
189 shall, as a minimum, encompass the entire urban place designated by the United States Bureau of the
190 Census.

191 "Urbanized area" means an area so designated by the United States Bureau of the Census, within
192 boundaries fixed by the Commonwealth Transportation Commissioner, in his discretion, in cooperation
193 with the governing bodies of the several counties, towns or cities affected and the appropriate federal
194 authority. Such boundaries shall, as a minimum, encompass the entire urbanized area within a state as
195 designated by the United States Bureau of the Census.

196 A "nonconforming sign," "nonconforming advertisement," or "nonconforming advertising structure" is
197 one which was lawfully erected adjacent to any highway in the Commonwealth, but which does not
198 comply with the provisions of state law, state regulations, or ordinances adopted by local governing
199 bodies passed at a later date or which later fails to comply with state law, state regulations, or
200 ordinances adopted by local governing bodies due to changed conditions.

201 "Virginia byway" and "scenic highway" mean those highways designated by the Commonwealth
202 Transportation Board pursuant to Article 5 (§ 33.1-62 et seq.) of Chapter 1 of this title. For the purposes
203 of the article, a Virginia byway shall mean a scenic byway as referenced in Title 23, United States
204 Code, § 131 (s).