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HOUSE BILL NO. 925

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 25.1-203 of the Code of Virginia, relating to reimbursement for damages from entry on property by the Virginia Department of Transportation.

Patrons—Landes, Athey, Byron, Callahan, Cosgrove, Crockett-Stark, Dudley, Gear, Gilbert, Jones, S.C., Lohr, Morgan, Nutter, O'Bannon, Oder, Rust, Scott, E.T. and Wittman

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 25.1-203 of the Code of Virginia is amended and reenacted as follows:**

§ 25.1-203. Authority of certain condemnors to inspect property; reimbursement for damages; notice prior to entry.

A. In connection with any project wherein the power of eminent domain may be exercised, any locality or any petitioner exercising the procedure set forth in Chapter 3 (§ 25.1-300 et seq.) of this title, acting through its duly authorized officers, agents or employees, may enter upon any property without the written permission of its owner if (i) the petitioner has requested the owner's permission to inspect the property as provided in subsection B, (ii) the owner's written permission is not received prior to the date entry is proposed, and (iii) the petitioner has given the owner notice of intent to enter as provided in subsection C.

B. 1. A request for permission to inspect shall (i) be sent to the owner by certified mail, return receipt requested, delivered by guaranteed overnight courier, or otherwise delivered to the owner in person with proof of delivery; and (ii) be made not less than 15 days prior to the first date of the proposed inspection. A request for permission to inspect shall be deemed to be made on the date of mailing, if mailed, or otherwise on the date of delivery.

2. A request for permission to inspect shall include: (i) the specific date or dates such inspection is proposed to be made; (ii) the name of the entity entering the property; (iii) the purpose for which entry is made; and (iv) the testing, appraisals, or examinations to be performed and other actions to be taken.

C. Notice of intent to enter shall be sent to the owner by certified mail and be (i) posted at the entryway to the property or at the front door or such other door that appears to be the main entrance of the residence or business located on the parcel upon which the property to be entered is located, if the parcel contains a residence or business; (ii) delivered by guaranteed overnight courier; or (iii) otherwise delivered to the owner in person with evidence of receipt. The notice of intent to enter shall include a copy of the request for permission to inspect and shall be made not less than 15 days prior to the date of intended entry. Notice of intent to enter shall be deemed made on the earlier of (a) the date of mailing, if mailed, or (b) on the date of delivery or posting. Any individuals entering the property shall carry identification and shall present such identification upon request of the landowner or his authorized representative.

D. Any entry authorized by this section (i) shall be for the purpose of making surveys, tests, appraisals or examinations thereof in order to determine the suitability of such property for the project, and (ii) shall not be deemed a trespass.

E. The petitioner shall make reimbursement for any actual damages resulting from entry upon the property. In any action filed under this section, the court may award the owner his reasonable (i) attorneys' fees, (ii) court costs, and (iii) fees for no more than three expert witnesses testifying at trial if: (a) the court finds that the petitioner maliciously, willfully, or recklessly damaged the owner's property; or (b) the court awards the owner actual damages in an amount 30 percent or more greater than the petitioner's final written offer made no later than 30 days after the filing of an answer in circuit court or the return date in general district court. A proceeding under this subsection shall not preclude the owner from pursuing any additional remedies available at law or equity. *The provisions of this subsection shall apply to any entry or action by the Virginia Department of Transportation.*

F. The requirements of this section shall not apply to the practice of land surveying, as defined in § 54.1-400, when such surveying is not involved in any eminent domain or any proposed eminent domain matter.

INTRODUCED

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