

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 755

An Act to amend and reenact § 33.1-94 of the Code of Virginia, relating to right of Commonwealth Transportation Commissioner to enter land to ascertain suitability for highway purposes.

[H 2538]

Approved March 23, 2007

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-94 of the Code of Virginia is amended and reenacted as follows:

§ 33.1-94. Right to enter on land to ascertain its suitability for highway and other transportation purposes; damage resulting from such entry.

A. The Commonwealth Transportation Commissioner, through his duly authorized officers, agents, or servants, may enter upon any land in the Commonwealth for the purposes of making examination and survey thereof, ~~with a view to ascertainment of~~ *including but not limited to photographing, testing, including but not limited to soil borings or testing for contamination, making appraisals, and taking such actions as may be necessary or desirable to determine* its suitability for highway and other transportation purposes, or for any other purpose incidental thereto. Such officers, agents, or servants shall exercise care to protect any improvements, growing crops, or timber in making such examination or survey.

~~In the event that the Commissioner and any landowner affected cannot agree as to the amount of damage, if any, sustained by reason of the entry upon land for the purposes herein stated, the Commissioner shall institute condemnation proceedings, as hereinafter provided in this chapter, for the purpose of determining the amount of such damage, if any.~~

B. Notice shall be sent to the owner by certified mail, at the address recorded in the tax records, return receipt requested, or delivered by guaranteed overnight courier or otherwise delivered to the owner in person with proof of delivery not less than 15 days prior to the first date of the proposed entry. Notice of intent to enter shall be deemed made on the earlier of the date of mailing, if mailed, or on the date delivered.

C. The notice shall include the anticipated date or dates such entry is proposed to be made and the purpose of such entry. Any entry authorized by this section shall be for the purposes of making examination and survey thereof, including but not limited to photographing, testing, including but not limited to soil borings or testing for contamination, making appraisals, and taking such other actions as may be necessary or desirable to determine the suitability of such property for highway and transportation purposes and shall not be deemed a trespass.

D. The Commonwealth Transportation Commissioner, through his duly authorized officers, agents, or servants, shall make reimbursement for any actual damages to real or personal property resulting from entry upon the property. In any action filed under this section, the court may award the owner his reasonable attorney fees, court costs, and fees for no more than three expert witnesses testifying at trial if: (i) the court finds that the Commissioner maliciously, willfully, or recklessly damaged the owner's property and (ii) the court awards the owner actual damages in an amount 30 percent or more greater than the Commissioner'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 to the landowner.