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HOUSE BILL NO. 2128

Offered January 10, 2007

Prefiled January 8, 2007

A BILL to amend and reenact § 33.1-351 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 33.1-95.2, relating to adjustment or relocation of billboard signs.

 Patron—Hugo

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 33.1-351 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.1-95.2 as follows:

§ 33.1-95.2. Adjustment or relocation of billboard signs in the event of exercise of eminent domain.

A. Whenever land is acquired due to the widening, construction, or reconstruction of the highways of the Commonwealth as defined in § 33.1-351 by purchase or by use of the power of eminent domain and upon such land is situated a lawfully erected billboard sign as defined in § 33.1-351, such billboard sign may be relocated as provided for in this section.

B. Notwithstanding any other provision of law, if a billboard sign meets all requirements under the provisions of Title 33.1 but is considered nonconforming due to local ordinance, the owner of the billboard sign, at his sole cost and expense, shall have the option to relocate the billboard sign to another location on the same property, adjusting the height or angle of the billboard sign to a height or angle that restores the visibility of the billboard sign to the same or comparable visibility as before the taking, provided the new location also meets all requirements of Title 33.1.

C. Nothing in this section shall authorize the owner of a billboard sign to increase the size of the sign face, and the provisions of § 33.1-370.2 shall be applicable to any relocation.

§ 33.1-351. Policy; definitions.

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

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

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

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

"Billboard sign" means a sign not located on the property where the advertised activity is conducted or where the goods or services advertised are available.

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

"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

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59 highway.

60 "Certification Acceptance Program" means a program which will allow any person, firm, or
61 corporation owning five or more signs, advertisements, or outdoor advertising structures within a
62 municipality to inspect their own signs, advertisements, or outdoor advertising structures two times
63 during each calendar year, with inspections at least four to six months apart, and certify to the
64 Commonwealth Transportation Commissioner that the inspections have been performed and that their
65 outdoor advertising structures meet all applicable laws, rules, and regulations in lieu of paying an annual
66 permit fee as required in §§ 33.1-360, 33.1-361, and 33.1-362. The Commonwealth Transportation
67 Commissioner may, after a hearing, decertify any person, firm, or corporation that fails to perform the
68 required inspections annually or whose sign, advertisement, or outdoor advertising structures are found
69 in violation of any federal, state or local law, rule, or regulation and shall collect all permit fees for the
70 year the decertification occurs and all subsequent years if the Commissioner finds that the violation has
71 been committed.

72 "Distance from edge of a right-of-way" shall be the horizontal distance measured along a line normal
73 or perpendicular to the centerline of the highway.

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

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

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

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

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

88 "Lawfully erected" means any sign that was erected pursuant to the issuance of a permit from the
89 Commonwealth Transportation Commissioner under § 33.1-360 unless the local governing body has
90 evidence of noncompliance with ordinances in effect at the time the sign was erected.

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

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

96 "Maintain" means to allow to exist.

97 "Municipalities" means cities and incorporated towns.

98 "National highway system" means the federal-aid highway system described in subsection (b) of
99 § 103 of Title 23, United States Code, and regulations adopted pursuant thereto. For the purpose of this
100 article, outdoor advertising controls on the national highway system shall be implemented as those
101 highways are designated and approved by congressional action and such designation and approval shall
102 be kept on file in the central office of the Department of Transportation and placed in the minutes of the
103 Commonwealth Transportation Board by the Commonwealth Transportation Commissioner. Prior to
104 congressional approval, highways classified as National System of Interstate and Defense Highways,
105 Dwight D. Eisenhower National System of Interstate and Defense Highways, Interstate System, or
106 federal-aid primary as defined herein shall be considered as the national highway system.

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

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

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

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

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

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

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

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

126 "Town" means an incorporated town.

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

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

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

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

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

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

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

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