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HOUSE BILL NO. 618

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 33.1-89, 33.1-119, and 33.1.205 of the Code of Virginia, relating to acquisition of land for construction of highways, sidewalks, and lighting therefor.

Patron—Amundson

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-89, 33.1-119, and 33.1-205 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.

A. 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, including sidewalks and lighting therefor, 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 the Commissioner may deem 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.

B. The Commissioner is authorized to exercise the above power within municipalities on projects which are constructed with state or federal participation, if requested by the municipality concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality, he shall convey the title so acquired to the municipality, 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.

C. 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 § 25.1-417. 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.

D. 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 D of § 25.1-204.

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

F. Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. However, the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance or to create any right to compensation or to

INTRODUCED

HB618

59 limit the Commissioner's authority to reasonably control the use of public highways so as to promote the  
60 public health, safety and welfare.

61 G. For the purposes of this article, "owner" means any person owning land, buildings, structures or  
62 improvements upon land where such ownership is of record in the land records of the clerk's office of  
63 the circuit court of the city or county where the property is located. Owner shall not include trustees or  
64 beneficiaries under a deed of trust, any person with a security interest in the property, or any person  
65 with a judgment or lien against the property. In proceedings instituted by the Commonwealth  
66 Transportation Commissioner under Title 25.1 or this title, owner also includes persons owning  
67 structures or improvements for which an outdoor advertising permit has been issued by the  
68 Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not  
69 alter in any way the valuation of such land, buildings, structures or improvements under existing law.

70 § 33.1-119. Authority to take possession and title to property before or during condemnation; purpose  
71 and intent of provisions.

72 In addition to the exercise of the power of eminent domain prior to the entry upon land being  
73 condemned, as provided hereinabove, the Commissioner is authorized to acquire title and to enter upon  
74 and take possession of such property and rights-of-way, for the purposes set out in § 33.1-89, as the  
75 Commissioner may deem necessary, and proceed with the construction of such highway, *including*  
76 *sidewalks and lighting therefor*, such taking to be made pursuant to the following sections.

77 It is the intention of these sections to provide that such property and rights-of-way may, in the  
78 discretion of the Commissioner, be condemned during or after the construction of the highway, as well  
79 as prior thereto, and to direct the fund out of which the judgment of the court in condemnation  
80 proceedings shall be paid, and to provide that in all other respects the provisions of this article shall  
81 apply, whether the property and rights-of-way are condemned before, during or after the construction of  
82 the highway. But the authorities constructing such highway under the authority of these sections shall  
83 use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So  
84 far as possible all rights-of-way shall be acquired or contracted for before any condemnation is resorted  
85 to.

86 § 33.1-205. Sidewalks and walkways for pedestrian traffic and lighting therefor.

87 The Commonwealth Transportation Board may construct such sidewalks or walkways, *and install*  
88 *lighting therefor*, on the bridges and along the highways under its jurisdiction as it deems necessary for  
89 the protection of pedestrian traffic.

90 All the provisions of general law with respect to the acquisition of lands and interests therein and the  
91 construction, reconstruction, alteration, improvement and maintenance of highways in the primary and  
92 secondary systems of state highways, including the exercise of the power of eminent domain by the  
93 Commonwealth Transportation Board and the Commonwealth Transportation Commissioner, shall be  
94 applicable to such sidewalks and walkways.