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HOUSE BILL NO. 2124

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact §§ 25.1-203 and 56-49.01 of the Code of Virginia, relating to eminent domain; just compensation for entry onto property.

Patrons—Minchew, Bell, Richard P., Cole and Edmunds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-203 and 56-49.01 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-203. Authority of certain condemners 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, and (iv) the petitioner complies with the payment provisions contained in subsection E.

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, provided that the petitioner complies with the provisions of subsection E.

E. The petitioner shall provide just compensation and make reimbursement for any actual damages resulting from entry upon the property. For the purposes of this subsection, "just compensation" is presumed to be \$100 and shall be paid to the landowner in advance of the entry upon the property. In the event the landowner disagrees with the presumptive amount or there is a dispute regarding the amount due for actual damages, he may seek increased compensation or damages in the circuit court for the county or city in which the property is located. In any action filed under this section, the court may award the owner his reasonable (i) attorneys' attorney 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.

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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59 **§ 56-49.01. Natural gas companies; right of entry upon property.**

60 A. Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating
61 as a natural gas company as defined in 15 U.S.C. § 717a, as amended, may make such examinations,
62 tests, hand auger borings, appraisals, and surveys for its proposed line or location of its works as are
63 necessary (i) to satisfy any regulatory requirements and (ii) for the selection of the most advantageous
64 location or route, the improvement or straightening of its line or works, changes of location or
65 construction, or providing additional facilities, and for such purposes, by its duly authorized officers,
66 agents, or employees, may enter upon any property without the written permission of its owner if (a) the
67 natural gas company has requested the owner's permission to inspect the property as provided in
68 subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, ~~and~~
69 (c) the natural gas company has given the owner notice of intent to enter as provided in subsection C,
70 *and (d) the natural gas company complies with the payment provisions contained in subsection D.* A
71 natural gas company may use motor vehicles, self-propelled machinery, and power equipment on
72 property only after receiving the permission of the landowner or his agent.

73 B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth
74 the date such inspection is proposed to be made, and (iii) be made not less than 15 days prior to the
75 date of the proposed inspection.

76 C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of
77 the intended entry, and (iii) be made not less than 15 days prior to the date of mailing of the notice of
78 intent to enter.

79 D. Any entry authorized by this section shall not be deemed a trespass, *provided that the natural gas*
80 *company complies with the payment provisions of this subsection.* The natural gas company shall *provide*
81 *just compensation and make reimbursement for any actual damages resulting from such entry. For the*
82 *purposes of this subsection, "just compensation" is presumed to be \$100 and shall be paid to the*
83 *landowner in advance of the entry upon the property. In the event the landowner disagrees with the*
84 *presumptive amount or there is a dispute regarding the amount due for actual damages, he may seek*
85 *increased compensation or damages pursuant to subsection E of § 25.1-203.* Nothing in this section
86 shall impair or limit any right of a natural gas company obtained by (i) the power of eminent domain,
87 (ii) any easement granted by the landowner or his predecessor in title, or (iii) any right-of-way
88 agreement, lease or other agreement by and between a natural gas company and a landowner or their
89 predecessors in title or interest.