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SENATE BILL NO. 1260

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact § 33.2-1011 of the Code of Virginia, relating to entry onto land for inspection for transportation purposes.*

Patron—Bell

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 33.2-1011 of the Code of Virginia is amended and reenacted as follows:****§ 33.2-1011. Right to enter on land to ascertain its suitability for highway and other transportation purposes; damage resulting from such entry.**

A. The Commissioner of Highways, through his duly authorized officers, agents, or employees, may enter upon any land in the Commonwealth for the purposes of making examination and survey thereof, including photographing; testing, including 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. Such officers, agents, or servants may enter upon any property without the written permission of its owners if (i) the Commissioner 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 Commissioner has given the owner notice of intent to enter as provided in subsection C.

B. 1. A request for permission notice of intent to enter and 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 30 days prior to the first date of the proposed inspection. A request for permission notice of intent to enter and 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 notice of intent to enter and 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 number of persons for whom permission is sought expected to enter the property; (iv) the purpose for which entry is made; and (v) the testing, appraisals, or examinations to be performed and other actions to be taken.

3. Any persons entering the property pursuant to a notice of intent to enter and inspect shall carry identification and shall present such identification upon the request of the landowner or his authorized representative.

C. If the owner's written permission is not received within 15 days of the request for permission, then the Commissioner shall provide notice of intent to enter. 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. The notice of intent to enter shall include (a) the specific date or dates of such intended entry; (b) the name of the entity entering the property; (c) the number of persons intending to enter the property; (d) the purpose for which entry is made; and (e) the testing, appraisals, or examinations to be performed and other actions to be taken, which in no way shall exceed those set forth in the request for permission pursuant to subdivision B 2. Notice of intent to enter shall be deemed made on the earlier of (1) the date of mailing, if mailed, or (2) 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. D. The Commissioner 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) attorney fees, (ii) court costs, and (iii) fees for up to three experts or as many experts as are called

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59 by the condemnor, whichever is greater, who testified at trial if the court finds that the Commissioner
60 damaged the owner's property. A proceeding under this subsection shall not preclude the owner from
61 pursuing any additional remedies available at law or equity.
62 F. E. The requirements of this section shall not apply to the practice of land surveying, as defined in
63 § 54.1-400, when such surveying is not involved in any eminent domain or any proposed eminent
64 domain matter.