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SENATE BILL NO. 1260

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on January 28, 2021)

(Patron Prior to Substitute—Senator Bell)

A BILL to amend and reenact §§ 25.1-203 and 33.2-1011 of the Code of Virginia, relating to entry onto land for inspection.

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-203 and 33.2-1011 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-203. Authority of certain condemnors 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.), 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.

B. 1. A request for permission to inspect shall (i) be on the petitioner's official letterhead and signed by an authorized employee of such entity; (ii) 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 (iii) be made not less than 15 30 days prior to the first date of the proposed inspection; and (iv) notify the owner that if permission is withheld, the petitioner shall be permitted to enter the property on the date of the proposed inspection. A mere citation of this section number of the Code of Virginia shall not satisfy the requirements of clause (iv). 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 number of persons for whom permission is sought; (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. If a request for permission is provided in accordance with subdivision 1, a petitioner may enter the property sooner than the 30 days indicated in the request only if the owner provides permission, in writing, to enter on an earlier date.

C. If the owner's written permission is not received within 15 days of the request for permission, then the petitioner 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) 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.

E. D. The petitioner 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 by the petitioner, whichever is greater, who testified at trial if the court finds that the petitioner damaged the owner's property. A proceeding under this subsection shall not preclude the owner from pursuing any additional remedies available at law or equity.

F. E. 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

60 domain matter.

61 **§ 33.2-1011. Right to enter on land to ascertain its suitability for highway and other**
62 **transportation purposes; damage resulting from such entry.**

63 A. The Commissioner of Highways, through his duly authorized officers, agents, or employees, may
64 enter upon any land in the Commonwealth for the purposes of making examination and survey thereof,
65 including photographing; testing, including soil borings or testing for contamination; making appraisals;
66 and taking such actions as may be necessary or desirable to determine its suitability for highway and
67 other transportation purposes or for any other purpose incidental thereto. Such officers, agents, or
68 servants shall exercise care to protect any improvements, growing crops, or timber in making such
69 examination or survey. Such officers, agents, or servants may enter upon any property without the
70 written permission of its owners if (i) the Commissioner has requested the owner's permission to inspect
71 the property as provided in subsection B; (ii) ~~the owner's written permission is not received prior to the~~
72 ~~date entry is proposed; and (iii) the Commissioner has given the owner notice of intent to enter as~~
73 ~~provided in subsection C.~~

74 B. 1. A request for permission to inspect shall (i) *be on the Commissioner's official letterhead and*
75 *signed by an authorized employee of the Commissioner;* (ii) be sent to the owner by certified mail,
76 return receipt requested, delivered by guaranteed overnight courier, or otherwise delivered to the owner
77 in person with proof of delivery ~~and (ii); (iii) be made not less than 15 30 days prior to the first date of~~
78 ~~the proposed inspection; (iv) notify the owner that if permission is withheld, the Commissioner or his~~
79 ~~duly authorized officers, agents, or employees shall be permitted to enter the property on the date of the~~
80 ~~proposed inspection. A mere citation of this section number of the Code of Virginia shall not satisfy the~~
81 ~~requirements of clause (iv).~~ A request for permission to inspect shall be deemed to be made on the date
82 of mailing, if mailed, or otherwise on the date of delivery.

83 2. A request for permission to inspect shall include (i) the specific date or dates such inspection is
84 proposed to be made; (ii) the name of the entity entering the property; (iii) the number of persons for
85 whom permission is sought; (iv) the purpose for which entry is made; and (v) the testing, appraisals, or
86 examinations to be performed and other actions to be taken.

87 3. *If a request for permission is provided in accordance with subdivision 1, the Commissioner or his*
88 *duly authorized officer, agent, or employee may enter the property sooner than the 30 days indicated in*
89 *the request only if the owner provides permission, in writing, to enter on an earlier date.*

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92 ~~the owner by certified mail and be (i) posted at the entryway to the property or at the front door or such~~
93 ~~other door that appears to be the main entrance of the residence or business located on the parcel upon~~
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95 ~~by guaranteed overnight courier; or (iii) otherwise delivered to the owner in person with evidence of~~
96 ~~receipt. The notice of intent to enter shall include a copy of the request for permission to inspect and~~
97 ~~shall be made not less than 15 days prior to the date of intended entry. The notice of intent to enter~~
98 ~~shall include (a) the specific date or dates of such intended entry; (b) the name of the entity entering the~~
99 ~~property; (c) the number of persons intending to enter the property; (d) the purpose for which entry is~~
100 ~~made; and (e) the testing, appraisals, or examinations to be performed and other actions to be taken,~~
101 ~~which in no way shall exceed those set forth in the request for permission pursuant to subdivision B 2.~~
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104 ~~present such identification upon request of the landowner or his authorized representative.~~

105 D. Any entry authorized by this section (i) shall be for the purpose of making surveys, tests,
106 appraisals, or examinations thereof in order to determine the suitability of such property for the project
107 and (ii) shall not be deemed a trespass.

108 E. D. The Commissioner shall make reimbursement for any actual damages resulting from entry
109 upon the property. In any action filed under this section, the court may award the owner his reasonable
110 (i) attorney fees, (ii) court costs, and (iii) fees for up to three experts or as many experts as are called
111 by the condemnor, whichever is greater, who testified at trial if the court finds that the Commissioner
112 damaged the owner's property. A proceeding under this subsection shall not preclude the owner from
113 pursuing any additional remedies available at law or equity.

114 F. E. The requirements of this section shall not apply to the practice of land surveying, as defined in
115 § 54.1-400, when such surveying is not involved in any eminent domain or any proposed eminent
116 domain matter.