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SENATE BILL NO. 396

Offered January 23, 1998

A BILL to amend and reenact § 56-16 of the Code of Virginia, relating to wagonways.

Patron—Trumbo

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 56-16 of the Code of Virginia is amended and reenacted as follows:**

§ 56-16. Wagonways to be constructed across roads, railroads, canals, and other works; enforcement.

For the purpose of this section, "wagonway" means a vehicular crossing adequate to permit the passage of machinery and vehicles used for agricultural or forestal purposes, including but not limited to the transportation of agricultural and forestal products to markets. Every public service corporation whose road, railroad, canal, or works passes through the lands of any person in this Commonwealth shall provide and maintain proper and suitable wagonways across such road, railroad, canal, or other works, from one part of such land to the other, and shall keep such wagonways in good repair. Such wagonways shall be constructed and maintained on the request of the landowner, in writing, by certified mail, made to the registered agent for the corporation owning such road, railroad, canal, or other works at that point, and shall designate the points at which the wagonways are desired. If the company fails or refuses for ninety days after such request to construct and maintain wagonways of a convenient and proper character at the places designated, then the owner may apply to the circuit court of the county or city wherein such land is located for the appointment of three disinterested persons whose lands do not abut on such road, railroad, canal, or other works, who shall constitute a board of commissioners whose duty it shall be to go upon the land and determine whether the requested wagonways should be constructed and maintained.

Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies, or failure of any local, state, or federal government agencies to grant permits shall extend the aforesaid period. The decision of such board shall be in writing and, if favorable to the landowner, shall set forth the points at which the wagonways should be constructed and maintained, giving also a description of what should be done by the company to make and maintain a suitable and convenient wagonway. The decision of the board of commissioners shall be returned to, and filed in, the clerk's office of such court, and when called up at the next or any succeeding term of such court, it shall be confirmed, unless good cause is shown against it by the company. Either party shall have the right of appeal to the Supreme Court from the judgment of the court. If the company fails, within a reasonable time fixed by the court at the time of the confirmation of a report favorable to the landowner, to make and maintain the wagonways therein referred to, it shall pay the landowner fifty dollars for each day of such failure, which may be recovered on motion by the landowner against the company, in the circuit court of the county or city wherein such land is located having jurisdiction to try the same. The commissioners shall each receive for their services the sum of fifty dollars per day, to be taxed as a part of the costs of the proceeding.

Once the right to such wagonway has been established, should the railroad change the grade of any portion of the tracks across which such wagonway passes, it shall be the duty of the railroad to make whatever reasonable modifications of the wagonway are necessary within the railroad right-of-way to permit the passage of the aforesaid machinery and vehicles.

Once the right to such wagonway has been established, if the lands thereafter are divided into two or more parcels lying on either side of the railroad, the railroad shall continue to have the duty to provide and maintain a wagonway for continuing usage by the owners of such parcels.

Once such wagonway has been established, and has been used openly and notoriously under claim of right, for access to any parcel of land for a continuous period of twenty years or more, then the owner of such land shall have a vested right for continuous use of such wagonway.

INTRODUCED

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