

# 2021 SESSION

SENATE SUBSTITUTE

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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 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

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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 (iii); (iv) be made not less than 45-30 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.

90     C. If the owner's written permission is not received within 45 days of the request for permission,  
91 then the Commissioner shall provide notice of intent to enter. Notice of intent to enter shall be sent to  
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  
94 which the property to be entered is located, if the parcel contains a residence or business; (ii) delivered  
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.  
102 Notice of intent to enter shall be deemed made on the earlier of (1) the date of mailing, if mailed, or (2)  
103 the date of delivery or posting. Any individuals entering the property shall carry identification and shall  
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.