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SENATE BILL NO. 1131

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 33.2-902, 33.2-909, and 33.2-919 of the Code of Virginia, relating to abandonment of highways and roads; consideration of alternative use.

 Patron—Perry

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-902, 33.2-909, and 33.2-919 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-902. Abandonment of highway or railroad crossing; procedure.

A. The Commissioner of Highways either on his own motion or upon petition of any interested landowner may cause any section of a highway in the primary state highway system, or any crossing by such highway of the lines of a railroad company or crossing by the lines of a railroad company of such highway, to be abandoned altogether as a public highway or as a public crossing by complying substantially with the procedure provided in this section.

B. The Commissioner of Highways or any interested landowner may file application with the Board setting out the section of the highway or the railroad crossing sought to be abandoned as a public highway or public railroad crossing. The Board shall give notice of the filing of the application (i) by posting a notice of such application at least three days before the first day of a regular term of the circuit court at the front door of the courthouse of the county in which the section of the highway or railroad crossing sought to be abandoned as a public highway or public railroad crossing is located, or if the section of the highway or the railroad crossing is located partly in two or more counties, at the front door of the courthouse of each county, or (ii) by publishing a notice of such application in two or more issues of a newspaper published in the county or one of the counties in which the section of the highway or the crossing is located. The Board shall also send by registered mail a notice of the application to the governing body of the county or counties. If such highway or railroad crossing is in a town with a population of 3,500 or less, the Board shall give notice to the governing body of the town in the same manner as notice is required to be given to the governing body of the county in which the town is located.

C. If one or more landowners in the county or counties affected by such proposed abandonment or the governing body of a county or town in which the highway or railroad crossing is located files a petition with the Board within 30 days after notice is posted or published and mailed as provided in this section, the Board or a representative thereof shall hold a public hearing in the county or one of the counties for consideration of the application and shall give notice of the time and place of the hearing by publishing such information in at least two issues in a newspaper having general circulation in the county or one of the counties and by mailing notice of the hearing to the governing body of the county or counties, and if applicable to the governing body of the town, in which the highway or railroad crossing is located.

D. If a petition for a public hearing is not filed as provided in this section, or if after a public hearing is held a majority of the Board is satisfied that no public necessity exists for the continuance of the section of highway as a public highway or the railroad crossing as a public railroad crossing or that the welfare of the public would be served best by abandoning the section of highway or the railroad crossing as a public highway or public railroad crossing, the Board shall (i) within four months of the 30-day period during which notice was posted where no petition for a public hearing was filed or (ii) within four months after the public hearing enter an order on its minutes abandoning the section of highway as a public highway or the railroad crossing as a public railroad crossing, and with that order the section of highway shall cease to be a public highway, unless the local governing body takes control as provided in this article, or the railroad crossing shall cease to be a public railroad crossing. If the Board is not so satisfied, it shall enter an order dismissing the application within the applicable four months provided in this subsection.

E. In considering the abandonment of any section of highway under the provisions of this section, due consideration shall be given to the historic value, if any, of such highway. *For any section of highway in Planning District 8, due consideration shall be given to the discontinuance of such highway pursuant to § 33.2-901 in lieu of abandonment pursuant to this section and the potential uses of such discontinued highway for purposes of (i) hiking or bicycle trails and paths or other nonvehicular transportation and recreation; (ii) greenway corridors for resource protection and biodiversity enhancement, with or without public ingress and egress; and (iii) access to historic, cultural, and educational sites.*

§ 33.2-909. Abandonment of highway, landing, or railroad crossing; procedure.

INTRODUCED

SB1131

59 A. The governing body of any county on its own motion or upon petition of any interested landowner may
60 cause any section of the secondary state highway system, or any crossing by the highway of the lines of a
61 railroad company or crossing by the lines of a railroad company of the highway, deemed by it to be no longer
62 necessary for the uses of the secondary state highway system to be abandoned altogether as a public highway,
63 a public landing, or a public railroad crossing by complying substantially with the procedure provided in this
64 section. *For such a governing body in Planning District 8, the governing body, in determining whether to*
65 *abandon such highway, shall consider, instead of abandonment, the discontinuance of such highway*
66 *pursuant to § 33.2-908 for the purposes described in § 33.2-911 instead of abandonment pursuant to this*
67 *section.*

68 B. The governing body of the county shall give notice of its intention to abandon any such highway,
69 landing, or railroad crossing (i) by posting a notice of such intention at least three days before the first day of
70 a regular term of the circuit court at the front door of the courthouse of the county in which the section of the
71 highway, landing, or railroad crossing sought to be abandoned as a public highway, public landing, or public
72 railroad crossing is located or (ii) by posting notice in at least three places on and along the highway, landing,
73 or railroad crossing sought to be abandoned for at least 30 days and in either case by publishing notice of its
74 intention in two or more issues of a newspaper having general circulation in the county. In addition, the
75 governing body of the county shall give notice of its intention to abandon such highway, landing, or railroad
76 crossing to the Board or the Commissioner of Highways. In any case in which the highway, landing, or
77 railroad crossing proposed to be abandoned lies in two or more counties, the governing bodies of such
78 counties shall not abandon such highway, landing, or railroad crossing unless and until all affected governing
79 bodies agree. The procedure in such cases shall conform mutatis mutandis to the procedure prescribed for the
80 abandonment of a highway, landing, or railroad crossing located entirely within a county.

81 When the governing body of a county gives notice of intention to abandon a public landing, the governing
82 body shall also give such notice to the Department of Wildlife Resources.

83 C. If one or more landowners in the county whose property abuts the highway, landing, or railroad
84 crossing proposed to be abandoned, or if only a section of a highway, landing, or railroad crossing is
85 proposed to be abandoned, whose property abuts such section, or the Board or the Department of Wildlife
86 Resources, in the case of a public landing, files a petition with the governing body of the county within 30
87 days after notice is posted and published as provided in this section, the governing body of the county shall
88 hold a public hearing on the proposed abandonment and shall give notice of the time and place of the hearing
89 by publishing such information twice in a newspaper having general circulation in the county, with the first
90 publication appearing no more than 28 days before and the second publication appearing no less than seven
91 days before the hearing. The governing body shall also give notice to the Board or, if a public landing is
92 sought to be abandoned, to the Department of Wildlife Resources.

93 D. If a petition for a public hearing is not filed as provided in this section, or if after a public hearing is
94 held the governing body of the county is satisfied that no public necessity exists for the continuance of the
95 section of the secondary highway as a public highway or the railroad crossing as a public railroad crossing or
96 the landing as a public landing or that the safety and welfare of the public would be served best by
97 abandoning the section of highway, the landing, or the railroad crossing as a public highway, public landing,
98 or public railroad crossing, the governing body of the county shall (i) within four months of the 30-day period
99 during which notice was posted where no petition for a public hearing was filed or (ii) within four months
100 after the public hearing adopt an ordinance or resolution abandoning the section of highway as a public
101 highway, or the landing as a public landing, or the railroad crossing as a public railroad crossing, and with
102 that ordinance or resolution the section of highway shall cease to be a public highway, a public landing, or a
103 public railroad crossing. If the governing body is not so satisfied, it shall dismiss the application within the
104 applicable four months provided in this subsection.

105 E. A finding by the governing body of a county that a section of the secondary state highway system is no
106 longer necessary for the uses of the secondary state highway system may be made if the following conditions
107 exist:

- 108 1. The highway is located within a residence district as defined in § 46.2-100;
- 109 2. The residence district is located within a county having a density of population exceeding 1,000 per
110 square mile;
- 111 3. Continued operation of the section of highway in question constitutes a threat to the public safety and
112 welfare; and
- 113 4. Alternate routes for use after abandonment of the highway are readily available.

114 F. In considering the abandonment of any section of highway under the provisions of this section, due
115 consideration shall be given to the historic value, if any, of such highway.

116 G. Any ordinance or resolution of abandonment issued in compliance with this section shall give rise in
117 subsequent proceedings, if any, to a presumption of adequate justification for the abandonment.

118 H. No public landing shall be abandoned unless the Board of Wildlife Resources shall by resolution
119 concur in such abandonment.

120 **§ 33.2-919. Action of governing body.**

121 If a petition for a public hearing is not filed as provided in § 33.2-918, or if after a public hearing is held
122 the governing body is satisfied that no public necessity exists for the continuance of the section of road as a
123 public road or the railroad crossing as a public railroad crossing or that the welfare of the public would be
124 served best by abandoning the section of road or the railroad crossing as a public road or public railroad
125 crossing, the governing body shall (i) within four months of the 30-day period during which notice was
126 posted where no petition for a public hearing was filed or (ii) within four months after the public hearing
127 adopt an ordinance or resolution abandoning the section of road as a public road or the railroad crossing as a
128 public railroad crossing, and with that ordinance or resolution the section of road shall cease to be a public
129 road. If the governing body is not so satisfied, it shall dismiss the application within the applicable four
130 months provided in this section. *For any section of road in Planning District 8, in determining whether*
131 *public necessity exists for the continuance of the section of road as a public road, the governing body shall*
132 *give due consideration to the potential uses of such road for purposes of (i) hiking or bicycle trails and paths*
133 *or other nonvehicular transportation and recreation; (ii) greenway corridors for resource protection and*
134 *biodiversity enhancement, with or without public ingress and egress; and (iii) access to historic, cultural, and*
135 *educational sites.*