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SENATE BILL NO. 453

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Jackson
on March 8, 2000)

(Patron Prior to Substitute—Senator Marye)

A BILL to amend and reenact §§ 25-46.5, 25-46.21:1, 25-46.32, 25-46.248, 33.1-89, and 36-27 of the Code of Virginia, relating to procedures for exercising the power of eminent domain.

Be it enacted by the General Assembly of Virginia:

1. That §§ 25-46.5, 25-46.21:1, 25-46.32, 25-46.248, 33.1-89, and 36-27 of the Code of Virginia are amended and reenacted as follows:

§ 25-46.5. Effort to purchase required; prerequisite to effort to purchase or filing certificate.

A. No proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire from the owner by purchase the property sought to be condemned, except where such consent cannot be obtained because of the incapacity of one or more of the owners or because one or more of such owners is unable to convey legal title to such property or is unknown or cannot with reasonable diligence be found within this Commonwealth.

B. Such bona fide effort shall include a written statement to the owner which explains the factual basis for the condemnor's offer, *and include a copy of the appraisal of the property prepared pursuant to § 25-248 upon which such offer is based.*

C. *Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit pursuant to § 33.1-120 or § 33.1-121, shall conduct or cause to be conducted an examination of title to the property in order to ascertain the identity of the owner or owners of such property and to determine the nature and extent of such owners' interests in the property.*

§ 25-46.21:1. Participation of certain tenants in condemnation proceedings.

~~Any tenant for a term expiring more than twelve months after the filing of the petition referred to in § 25-46.7 under a lease with a term of twelve months or longer~~ may participate in the proceedings described in § 25-46.21 to the same extent as his landlord or the owner, if, not less than ten days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention, in the manner provided in § 25-46.16, including a verified copy of the lease under which he is in possession, and an affidavit by the tenant or his duly authorized agent or attorney, stating

(1) That he claims an interest in the award; and

(2) That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

For the purposes of this section, the ~~unexpired portion of the~~ term of a tenant's lease shall include any renewals or extensions for which the tenant has an enforceable written option. The term "tenant" shall include the assignee of the original tenant, as well as any sublessee of the entire demised premises of the owner for the full unexpired term of the sublessor.

Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings described in § 25-46.21 concerning the value of his leasehold interest in the property involved therein or as authorizing the commissioners to make any such determination in formulating their report.

§ 25-46.32. Costs.

Except as otherwise provided in this chapter, all costs of the proceeding in the trial court which are fixed by statute shall be taxed against the petitioner. The court may in its discretion tax as a cost a fee for a survey for the landowner, such fee not to exceed ~~\$400~~ \$1,000. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules of Court as in other civil cases.

§ 25-248. General rules for conduct of acquisition.

Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

(a) An agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(c) Before the initiation of negotiations for real property, the state agency concerned shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's

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60 approved appraisal of the fair market value of such property. Any decrease or increase in the fair market
61 value of real property prior to the date of valuation caused by the public improvement for which such
62 property is acquired, or by the likelihood that the property would be acquired for such improvement,
63 other than that due to physical deterioration within the reasonable control of the owner, will be
64 disregarded in determining the compensation for the property. The agency concerned shall provide the
65 owner of real property to be acquired with a written statement of, and summary of the basis for the
66 amount it established as just compensation, *together with a copy of the agency's approved appraisal of*
67 *the fair market value of such property upon which the agency has based the amount offered for the*
68 *property.* Where appropriate the just compensation for the real property acquired and for damages to
69 remaining real property shall be separately stated.

70 (d) No owner shall be required to surrender possession of real property before the agency concerned
71 pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for
72 the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market
73 value of such property, or the amount of the award of compensation in the condemnation proceeding for
74 such property.

75 (e) The construction or development of a public improvement shall be so scheduled that, to the
76 greatest extent practicable, no person lawfully occupying real property shall be required to move from a
77 dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation,
78 without at least ninety days' written notice from the agency concerned, of the date by which such move
79 is required.

80 (f) If the agency permits an owner or tenant to occupy the real property acquired on a rental basis
81 for a short term for a period subject to termination by the state agency on a short notice, the amount of
82 rent required shall not exceed the fair rental value of the property to a short-term occupier.

83 (g) In no event shall the agency either advance the time of condemnation, or defer negotiations or
84 condemnation and the deposit of funds in court for the use of the owner, or take any other action
85 coercive in nature, in order to compel an agreement on the price to be paid for the property.

86 (h) If any interest in real property is to be acquired by exercise of the power of eminent domain, the
87 agency concerned shall institute formal condemnation proceedings. No agency shall intentionally make it
88 necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

89 (i) If the acquisition of only part of a property would leave its owner with an uneconomic remnant,
90 the agency concerned shall offer to acquire the entire property.

91 § 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to
92 municipality after acquisition; property owners to be informed and briefed.

93 The Commonwealth Transportation Commissioner is hereby vested with the power to acquire by
94 purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements
95 and other interest in lands, including lands under water and riparian rights, of any person, association,
96 partnership, corporation, or municipality or political subdivision, deemed to be necessary for the
97 construction, reconstruction, alteration, maintenance and repair of the public highways of the
98 Commonwealth and for these purposes and all other purposes incidental thereto may condemn property
99 in fee simple and rights-of-way of such width and on such routes and grades and locations as by the
100 Commissioner may be deemed requisite and suitable, including locations for permanent, temporary,
101 continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and
102 locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any
103 other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose
104 of this article "public highway" means highway, road and street; and when applicable, the term "public
105 highway" also includes bridge, ferry, causeway, landing and wharf.

106 The Commissioner is authorized to exercise the above power within municipalities on projects which
107 are constructed with state or federal participation, if requested by the municipality concerned. Whenever
108 the Commissioner has acquired property pursuant to a request of the municipality, he shall convey the
109 title so acquired to the municipality, except that rights-of-way or easements acquired for the relocation
110 of a railroad, public utility company, public service corporation or company, another political
111 subdivision, or cable television company in connection with said projects shall be conveyed to that
112 entity in accordance with § 33.1-96. The authority for such conveyance shall apply to acquisitions made
113 by the Commissioner pursuant to previous requests as well as any subsequent request.

114 Any offer by the Commissioner to a property owner with respect to payment of compensation for the
115 prospective taking of property and damage to property not taken incident to the purposes of this section
116 shall separately state (i) the property to be taken and the amount of compensation offered therefor and
117 (ii) the nature of the prospective damage or damages and the amount of compensation offered for each
118 such prospective damage. *The amount of the offer shall not be less than the amount of the approved*
119 *appraisal of the fair market value of such property, in accordance with the provisions of § 25-248. Any*
120 *such appraisal used by the Commissioner as the basis for an offer shall be prepared by a real estate*
121 *appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.*

The Commissioner shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition, if prepared pursuant to subsection C of § 25-46.5.

In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement. Adequate briefing will include: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. Provided, however, that the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance or to create any right to compensation or to limit the Commissioner's authority to reasonably control the use of public highways so as to promote the public health, safety and welfare.

§ 36-27. Eminent domain.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which may be necessary for the purposes of such authority under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25. The commissioners before which condemnation proceedings are conducted may hear evidence as to the value of the property including but not limited to the owner's appraisal and the effect that any pending application for a zoning change, special use permit application or variance application may have on the value of the property. The court may also determine whether there has been unreasonable delay in the institution of the proceedings after public announcement by the condemnor of a project which necessitates acquisition by the condemnor of a designated land area consisting of or including the land sought to be condemned. If the court determines that such unreasonable delay has occurred, it shall instruct the commissioners in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay. This provision shall not apply to any such public announcement made prior to July 1, 1960.

Prior to the adoption of any redevelopment plan pursuant to § 36-49 or any conservation plan pursuant to § 36-49.1, an authority shall send by certified mail, postage prepaid, to at least one of the owners of every parcel of property to be acquired pursuant to such plan a notice advising such owner that (i) the property owned by such owner is proposed to be acquired and (ii) such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking. Such notice shall not be the basis for eligibility for relocation benefits. At the time it makes its price offer, the authority shall also provide to the property owner a ~~certificate signed~~ *copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, prepared by a ~~certified general~~ real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1, which shall include a certificate* setting forth the appraiser's opinion of the fair market value, together with two comparable property sales, if available, of the property to be acquired.

In all such cases the proceedings shall be according to the provisions of Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, so far as they can be applied to the same, the term "company" as used in such chapter, and any officers of a "company" referred to therein, to be construed as meaning the authority and the commissioners thereof, respectively. An authority may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof may be acquired without its consent.