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**HOUSE BILL NO. 2438**

Offered January 10, 2001

Prefiled January 10, 2001

*A BILL to amend and reenact § 36-27, as it is currently effective and as it shall become effective, and § 36-51 of the Code of Virginia, relating to powers of redevelopment and housing authorities; eminent domain and redevelopment plans.*

Patrons—Drake, Almand, Bryant, Stump, Suit and Williams; Senators: Mims, Whipple and Williams

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That § 36-27, as it is currently effective and as it shall become effective, and § 36-51 of the Code of Virginia are amended and reenacted as follows:**

§ 36-27. (Effective until July 1, 2002) Eminent domain.

A. 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.

B. 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 copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, *which appraisal shall be 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.*

C. *At the time it makes its price offer, the authority may also notify the property owner of its request that the property owner and the authority participate in a dispute resolution proceeding as defined in § 8.01-576.5, to encourage the early settlement of disputes between the authority and the property owner concerning the price offer or the authority's ability to acquire the property by the exercise of the power of eminent domain. The authority's submission to the property owner of its request that the property owner participate in a dispute resolution proceeding shall bind the property owner to participate in good faith in the proceeding, and the authority shall be entitled to seek enforcement of its request by court order, if necessary. The dispute resolution proceeding shall be governed by the provisions set forth in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01 or Chapter 21.2 (§ 8.01-581.21 et seq.) of Title 8.01 where mediation is used and, where requested, shall be conducted within thirty days of the authority's delivery of its price offer. The dispute resolution proceeding shall not be binding upon the parties, but rather shall be conducted to further resolution of factual disputes, avoid unnecessary use of the courts, and facilitate settlement of the issues surrounding the authority's acquisition of the property. If the authority requests in its price offer that a dispute resolution proceeding be held, such dispute resolution proceeding shall be completed prior to the institution of condemnation proceedings by the authority,*

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59 *except where the authority can demonstrate that circumstances justify the initiation of condemnation*  
60 *proceedings prior to the date on which the dispute resolution proceeding will be conducted.*

61 *If the authority and the property owner have not participated in a dispute resolution proceeding*  
62 *prior to the institution of condemnation proceedings by the authority, either party may request, and the*  
63 *court shall order the parties to participate in, a dispute resolution proceeding, which shall be governed*  
64 *by the provisions set forth in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01 or Chapter 21.2*  
65 *(§8.01-581.21 et seq.) of Title 8.01 where mediation is used. The dispute resolution proceeding shall*  
66 *occur at least thirty days prior to any trial on the issue of just compensation and shall not be binding*  
67 *on the parties, but rather shall be conducted to further resolution of factual disputes, avoid unnecessary*  
68 *use of the courts, and facilitate settlement of the just compensation issue. In the event the dispute*  
69 *resolution proceeding does not resolve the issue, the trial on the issue shall proceed on the docket of the*  
70 *court.*

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

78 *§ 36-27. (Effective July 1, 2002) Eminent domain*

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

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

108 *C. At the time it makes its price offer, the authority may also notify the property owner of its request*  
109 *that the property owner and the authority participate in a dispute resolution proceeding as defined in*  
110 *§ 8.01-576.5, to encourage the early settlement of disputes between the authority and the property owner*  
111 *concerning the price offer or the authority's ability to acquire the property by the exercise of the power*  
112 *of eminent domain. The authority's submission to the property owner of its request that the property*  
113 *owner participate in a dispute resolution proceeding shall bind the property owner to participate in*  
114 *good faith in the proceeding, and the authority shall be entitled to seek enforcement of its request by*  
115 *court order, if necessary. The dispute resolution proceeding shall be governed by the provisions set forth*  
116 *in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01 or Chapter 21.2 (§ 8.01-581.21 et seq.) of Title 8.01*  
117 *where mediation is used and, where requested, shall be conducted within thirty days of the authority's*  
118 *delivery of its price offer. The dispute resolution proceeding shall not be binding upon the parties, but*  
119 *rather shall be conducted to further resolution of factual disputes, avoid unnecessary use of the courts,*  
120 *and facilitate settlement of the issues surrounding the authority's acquisition of the property. If the*

authority requests in its price offer that a dispute resolution proceeding be held, such dispute resolution proceeding shall be completed prior to the institution of condemnation proceedings by the authority, except where the authority can demonstrate that circumstances justify the initiation of condemnation proceedings prior to the date on which the dispute resolution proceeding will be conducted.

If the authority and the property owner have not participated in a dispute resolution proceeding prior to the institution of condemnation proceedings by the authority, either party may request, and the court shall order the parties to participate in, a dispute resolution proceeding, which shall be governed by the provisions set forth in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01 or Chapter 21.2 (§8.01-581.21 et seq.) of Title 8.01 where mediation is used. The dispute resolution proceeding shall occur at least thirty days prior to any trial on the issue of just compensation and shall not be binding on the parties, but rather shall be conducted to further resolution of factual disputes, avoid unnecessary use of the courts, and facilitate settlement of the just compensation issue. In the event the dispute resolution proceeding does not resolve the issue, the trial on the issue shall proceed on the docket of the court.

D. 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, and the term "company " as used in such chapter, and any officers of a "company " referred to therein, ~~to~~ shall 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.

§ 36-51. Redevelopment plans.

A. An authority shall not initiate any redevelopment project under this law until the governing body (or planning agency or other public agency designated by it or empowered by law so to act) of each city or town or county (hereinafter called "~~municipalities~~" a "municipality") in which any of the area to be covered by such project (~~hereinafter called the "redevelopment area"~~) is situated, has approved a plan (~~herein hereinafter called the "redevelopment plan"~~) which provides an outline for the development or redevelopment of the redevelopment area and is sufficiently complete ~~(1)~~ to indicate (i) its relationship to definite local objectives as to appropriate land uses and improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements; ~~(2)~~ to indicate (ii) proposed land uses and building requirements in the redevelopment area; ~~(3)~~ to indicate (iii) the land in the redevelopment area that the authority does not intend to acquire; (iv) the land in the redevelopment area that will be made available after acquisition to private enterprise for redevelopment and that land which is ~~to~~ will be made available after acquisition to public enterprise for redevelopment; and ~~(4)~~ to indicate (v) anticipated funding sources that may be sufficient to acquire all property designated for acquisition within five years of the municipality's approval; and (vi) the method for the temporary relocation of persons living in ~~such~~ the redevelopment areas; and also the method for providing (unless already available) decent, safe and sanitary dwellings in the locality substantially equal in number to the number of substandard dwellings to be cleared from the redevelopment area, at rents within the financial reach of the income groups displaced from such substandard dwellings. ~~Such municipalities are~~ Any municipality is hereby authorized to approve redevelopment plans through their governing body or agency designated for that purpose.

B. No sooner than thirty months or later than thirty-six months following the date of the municipality's approval of the redevelopment plan (hereinafter called the "approval date"), the municipality shall review and determine by resolution whether to reaffirm the redevelopment plan. Where the municipality fails to reaffirm the redevelopment plan, any real property within the redevelopment area that has not been acquired by the authority, or for which a petition in condemnation has not been filed by the authority, prior to the date of adoption of such resolution by the municipality (hereinafter called the "termination date") shall no longer be eligible for acquisition by the authority unless the authority and the property owner mutually agree to the acquisition, in which case the authority shall be specifically empowered to acquire the property. For purposes of this section, a mediation request submitted by either the authority or the property owner, in accordance with § 36-27, prior to the termination date shall preserve the authority's right to file a petition in condemnation relating to such real property for a period of six months after the termination date.

C. Where the municipality reaffirms the redevelopment plan, the authority shall continue to be authorized to acquire real property within the redevelopment area by purchase, or through the institution of eminent domain proceedings in accordance with § 36-27, until the fifth anniversary of the approval date. Any real property within the redevelopment area that has not been acquired by the authority, or for which a petition in condemnation has not been filed by the authority, prior to the fifth anniversary of the approval date, shall no longer be eligible for acquisition by the authority unless the authority and the property owner mutually agree to the acquisition, in which case the authority shall be

182 specifically empowered to acquire the property. For purposes of this section, a mediation request  
183 submitted by either the authority or the property owner, in accordance with § 36-27, prior to the fifth  
184 anniversary of the approval date, shall preserve the authority's right to file a petition in condemnation  
185 relating to the real property for a period of six months after the fifth anniversary of the approval date.

186 D. Notwithstanding the provisions of this section, a municipality shall not be precluded from  
187 adopting a new redevelopment plan, in accordance with this section, which designates a redevelopment  
188 area that includes real property that was previously included within a redevelopment area under a  
189 previously adopted redevelopment plan.

190 E. If the authority decides against acquiring real property designated for acquisition under an  
191 approved redevelopment plan after having made a written purchase offer to the owner of the property, it  
192 shall, upon the written request of the property owner given no later than one year after the date of  
193 written notice from the authority to the property owner of its decision not to acquire his property,  
194 reimburse the owner of the property his reasonable expenses incurred in connection with the proposed  
195 acquisition of his property. Reasonable expenses shall include, but are not limited to, reasonable fees of  
196 attorneys and appraisers or other experts necessary to establish the value of the property to be  
197 appraised.