

2002 RECONVENED SESSION

HOUSE SUBSTITUTE

024778748

HOUSE BILL NO. 918

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on April 8, 2002)

(Patron Prior to Substitute—Delegate Griffith)

A BILL to amend and reenact §§ 25-46.3, 25-238, and 33.1-89 of the Code of Virginia, relating to owners of fee interest, buildings and improvements.

Be it enacted by the General Assembly of Virginia:

That §§ 25-46.3, 25-238, and 33.1-89 of the Code of Virginia are amended and reenacted as follows:

§ 25-46.3. Definitions.

As used in this chapter, unless otherwise clearly indicated herein or required by the context:

"Court" means the court having jurisdiction and the judge or judges thereof in vacation.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means land, lands and real estate and all rights and appurtenances thereto, together with the buildings and other improvements thereon, and any right, title, interest, estate or claim in or to land, lands or real estate.

"Law" means any statute, general, special, private or local, of this Commonwealth, including, but not limited to, the Code of Virginia or any section thereof.

"Owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. Owner shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commonwealth Transportation Commissioner under this title or Title 33.1, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.

"Person" may extend and be applied to bodies politic and corporate as well as individuals.

"Petitioner" means any person or public or private entity possessing the power to exercise the right of eminent domain seeking to exercise such power under this chapter.

"Property" means real and personal property, and land, and any right, title, interest, estate or claim in or to such property.

"State" or "Commonwealth" means the Commonwealth of Virginia.

§ 25-238. Definitions.

As used in this chapter the term:

"Business" means any lawful activity, excepting a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25-239 A for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is decent, safe and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Displaced person" means any person who moves (i) from real property, or moves his personal property from real property, (a) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (b) on which such person is a residential tenant, or conducts a small business, or a farm operation or a business defined in this article as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the

HOUSE
SUBSTITUTE

HB918H2

60 state agency in any case in which the state agency determines that such displacement is permanent; and
61 (ii) solely for the purposes of §§ 25-239 A and B and 25-242, as a direct result of a written notice of
62 intent to acquire or the acquisition of real property on which such person conducts a business or farm
63 operation, for such program or project; or as a direct result of rehabilitation, demolition, or such other
64 displacing activity as the state agency may prescribe, under a program or project undertaken by the state
65 agency in any case in which the state agency determines that such displacement is permanent.

66 The term "displaced person" does not include (i) a person who has been determined, according to
67 criteria established by the state agency to be either in unlawful occupancy of the displacement dwelling
68 or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in
69 any case which the state agency acquires property for a program or project, any person, other than a
70 person who was an occupant of the property at the time it was acquired, who occupies such property on
71 a rental basis for a short term or a period subject to termination when the property is needed for the
72 program or project.

73 "Farm operation" means any activity conducted solely or primarily for the production of one or more
74 agricultural products or commodities, including timber, for sale or home use, and customarily producing
75 such products or commodities in sufficient quantity to be capable of contributing materially to the
76 operator's support.

77 "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid
78 purchase price of, real property, together with the credit instruments, if any, secured thereby.

79 "Nonprofit organization" means an organization that is exempt from paying federal income taxes
80 under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

81 "Owner" means any person owning land, buildings, structures or improvements upon land where
82 such ownership is of record in the land records of the clerk's office of the circuit court of the county or
83 city where the property is located. Owner shall not include trustees or beneficiaries under a deed of
84 trust, any person with a security interest in the property, or any person with a judgment or lien against
85 the property. In proceedings instituted by the Commonwealth Transportation Commissioner under this
86 title or Title 33.1, owner also includes persons owning structures or improvements for which an outdoor
87 advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to
88 § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings,
89 structures or improvements under existing law.

90 "Person" means any individual, partnership, corporation or association.

91 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public
92 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth
93 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire
94 property by eminent domain under state law; or (iv) two or more of the aforementioned, which carries
95 out projects that cause people to be displaced.

96 § 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to
97 municipality after acquisition; property owners to be informed and briefed.

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

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

119 Any offer by the Commissioner to a property owner with respect to payment of compensation for the
120 prospective taking of property and damage to property not taken incident to the purposes of this section
121 shall separately state (i) the property to be taken and the amount of compensation offered therefor and

(ii) the nature of the prospective damage or damages and the amount of compensation offered for each such prospective damage.

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~~ *includes*: (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~~ *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.

For the purposes of this article, "owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. Owner shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commonwealth Transportation Commissioner under Title 25 or this title, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.

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