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HOUSE BILL NO. 291

Offered January 9, 2002

Prefiled January 7, 2002

A BILL to amend and reenact § 25-46.20 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 25-46.19:1 and 25-46.19:2, relating to eminent domain; just compensation; lost profits and goodwill.

Patron—McDonnell

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 25-46.20 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 25-46.19:1 and 25-46.19:2, as follows:

§ 25-46.19:1. Loss of goodwill.

A. In addition to other elements of damages for which the owner of property taken pursuant to this chapter is entitled to be compensated, the owner of a business conducted on property taken pursuant to this chapter, or on the remainder if there is a partial taking, shall be compensated for loss of goodwill if the owner proves that the loss (i) is caused by the taking of the property or the injury to the remainder; (ii) cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill; (iii) will not be included in relocation payments under Chapter 6 (§ 25-235 et seq.) of this title; and (iv) will not be duplicated in the compensation awarded to the owner.

B. As used in this section, "goodwill" consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill, or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

§ 25-26.19:2. When damages include lost profits.

Without limiting the generality of the term, the damages to which the owner of property taken pursuant to this chapter is entitled shall include lost profits of an established business with a proven earning capacity operated thereon, if the owner produces sufficient evidence to permit the trier of fact to estimate the lost profits with reasonable certainty.

§ 25-46.20. Appointment and oath of commissioners; commissioners to fix value of property and damages.

If the issue of just compensation is to be determined by a commission, the parties to the eminent domain proceeding may agree upon five or nine disinterested freeholders to act as commissioners, or if the parties cannot agree upon the names of commissioners to be summoned, then each party shall present to the court a list containing the names of at least six freeholders from which lists the court shall select the names of nine persons and two alternates who shall at least one week prior to their service be summoned to serve as commissioners. However, no person shall serve as such commissioner for more than one full week within any three-month period, unless agreed to by the parties, all of whom shall be residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. If any party fails to submit a list containing six or more names as provided in this section, the judge may, in his discretion, submit such a list in such party's behalf. If a defendant has filed no answer to the petition, and the attorney for the petitioner certifies that he believes the defendant is unrepresented by counsel the judge may, in his discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners. Once nine qualified persons are selected, the petitioner and the owners shall each have two peremptory challenges and the remaining five, or the original five if only five are summoned, shall be appointed, any three or more of whom may act. Such commissioners shall fix the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the petitioner. Before executing their duties the commissioners shall take an oath before some officer authorized by the laws of this Commonwealth to administer an oath, that they will faithfully and impartially ascertain what will be the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property, by reason of such taking and use by the petitioner. *The just compensation to be determined by the commissioners shall also include, if a business is located upon the property, (i) goodwill calculated as provided in § 25-46.19:1 and (ii) lost profits calculated as provided in § 25-46.19:2.*

INTRODUCED

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