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HOUSE BILL NO. 826

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 25.1-303 and 25.1-417 of the Code of Virginia, relating to acquisition of property by the Commonwealth.*

Patron—Drake

Referred to Committee for Courts of Justice

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

**1. That §§ 25.1-303 and 25.1-417 of the Code of Virginia are amended and reenacted as follows:**

§ 25.1-303. Effort to acquire property by purchase.

An authorized condemnor shall comply with the applicable provisions of §§ 25.1-204 and subdivision A ~~1~~ of § 25.1-417 before exercising its authority to acquire property by condemnation under the procedure set forth in this chapter.

§ 25.1-417. General provisions for conduct of acquisition.

~~A.~~ If a state agency acquires ~~real~~ property in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire expeditiously ~~real~~ property by negotiation.

2. ~~Real property~~ 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; however, the requirements of this subdivision shall not apply if the state agency's official who is responsible for the acquisition determines that the value of the property being acquired is less than \$10,000, based on assessment records or other objective evidence.

3. Before initiating negotiations for ~~real~~ property, the state agency 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 approved appraisal of the fair market value of such property, if such an appraisal is required. Any decrease or increase in the fair market value of ~~real~~ property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The agency concerned shall provide the owner of ~~real~~ property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation, together with a copy of the agency's approved appraisal of the fair market value of such property upon which the agency has based the amount offered for the property, if such an appraisal is required. Where appropriate, the just compensation for the ~~real~~ property acquired and for damages to remaining ~~real~~ property shall be separately stated.

4. No owner shall be required to surrender possession of ~~real~~ property before the state agency pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, (i) an amount not less than the agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

5. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying ~~real~~ property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90-days' written notice from the state agency, of the date by which such move is required.

6. If the state agency permits an owner or tenant to occupy the ~~real~~ property acquired on a rental basis for a short term for a period subject to termination by the state agency on a short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier. *The fair rental value of the property to a short-term occupier is less than the fair rental value to a long-term occupier.*

7. In no event shall the state agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property. *The agency shall not offer or introduce a lower appraisal at trial than the appraisal provided to the owner in*

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HB826

59 *conjunction with its offer as required by this section.*

60 8. If any interest in ~~real~~ property is to be acquired by exercise of the power of eminent domain, the  
61 state agency shall institute formal condemnation proceedings. No state agency shall intentionally make it  
62 necessary for an owner to institute legal proceedings to prove the fact of the taking of his ~~real~~ property.

63 9. If the acquisition of only part of a property would leave its owner with an uneconomic remnant,  
64 the agency concerned shall offer to acquire the entire property.

65 10. A person whose ~~real~~ property is being acquired in accordance with this article may, after the  
66 person has been fully informed of his right to receive just compensation for such property, donate such  
67 property, and part thereof, any interest therein, or any compensation paid therefor to a state agency, as  
68 such person shall determine.

69 11. *Any owner whose property is taken pursuant to the power of eminent domain and who recovers*  
70 *at trial more than 15 percent above the value of the condemning authority's initial offer shall receive all*  
71 *reasonable costs and experts' fees, excluding attorneys' fees, expended in the owner's behalf.*

72 12. *All condemnation cases shall be given priority on the civil docket.*

73 13. *After depositing funds into court pursuant to § 25.1-305 and § 33.1-120 and after depositing*  
74 *funds into court after the award of just compensation in a condemnation trial, the condemnor shall*  
75 *prepare an order permitting the owner to withdraw such funds and shall perform all work necessary to*  
76 *prepare and provide such order. This section is binding on all condemnors regardless of the statutory*  
77 *authority under which a condemnor proceeds.*

78 ~~B. The provisions of this section create no rights or liabilities and shall not affect the validity of any~~  
79 ~~property acquisitions by purchase or condemnation.~~