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HOUSE BILL NO. 408

Offered January 11, 2006

Prefiled January 6, 2006

A BILL to amend and reenact §§ 15.2-1800 and 15.2-1814 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 1-237.1, and to repeal § 15.2-1900 of the Code of Virginia, relating to eminent domain; definition of public uses.

Patrons—Marshall, R.G., Albo, Athey, Gear and Gilbert

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1800 and 15.2-1814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 1-237.1 as follows:

§ 1-237.1. Public uses.

A. Except as provided in this section, the term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to include any uses necessary for public purposes where a governmental entity is the owner of the private real property acquired by the use of eminent domain; except the term shall not include any condemnation of property by a locality that is made with the intent of increasing or enhancing tax revenues unless such increased or enhanced tax revenues are merely incidental when compared to the benefits that will accrue to the public.

B. Where any private real property is acquired through the exercise of the power of eminent domain for public purposes and is conveyed to a nongovernmental person or entity, the power of eminent domain shall only be used where the property being condemned is acquired:

1. Pursuant to Chapter 1 of Title 36 generally known as the Housing Authorities Law;

2. By a local government for the purpose of conveyance to a public service corporation or company that is authorized to exercise the power of eminent domain pursuant to § 56-49;

3. Pursuant to § 33.1-96 by the Transportation Commissioner for the purpose of relocation of utilities or other facilities located in the highway rights-of-way;

4. For the purpose of constructing, maintaining or operating public highways or other transportation facilities of the Commonwealth or a locality;

5. For the purpose of being used as a qualifying project as defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.);

6. For the purpose of construction, operation or maintenance of local government facilities or infrastructure as designated in the capital improvement program of the locality pursuant to § 15.2-2239 or required as part of a land-use approval under Title 15.2, including but not limited to sanitary sewer, water, and stormwater management facilities;

7. Pursuant to Chapter 51 of Title 15.2 under the Virginia Water and Waste Authorities Act for water or waste facilities;

8. Pursuant to § 15.2-2306 A 4 for preservation of historic sites and architectural areas;

9. For the purpose of being used as a qualifying project as defined in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.);

10. Pursuant to § 15.2-1801 for acquisition of land adjacent to public parks;

11. For the purpose of acquiring clear title if one or more of the landowners consents in writing to the use of eminent domain; or

12. Pursuant to other general law expressly granted by the General Assembly.

C. Nothing herein shall be construed to prevent a governmental entity from conveying surplus property to a nongovernmental person or entity as otherwise provided by law.

D. Nothing in this section shall be construed to affect the power of eminent domain referenced in subdivisions A 1 through A 11.

§ 15.2-1800. Purchase, sale, etc., of real property.

A. A locality may acquire by purchase, gift, devise, bequest, exchange, lease as lessee, or otherwise, title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction, for any public use. Acquisition of any interest in real property by condemnation is governed by Chapter 19 (§ ~~15.2-1900~~ 15.2-1901 et seq.). The acquisition of a leasehold or other interest in a telecommunications tower, owned by a nongovernmental source, for the operation of a locality's wireless radio communications systems shall be governed by this chapter.

B. Subject to any applicable requirements of Article VII, Section 9 of the Constitution, any locality may sell, at public or private sale, exchange, lease as lessor, mortgage, pledge, subordinate interest in or

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59 otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided
60 for in § 15.2-2030) which may be subdivided and conveyed separate from the subjacent land surface,
61 provided that no such real property, whether improved or unimproved, shall be disposed of until the
62 governing body has held a public hearing concerning such disposal. However, the holding of a public
63 hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or
64 authority of the Commonwealth or (ii) conveyance of site development easements across public property,
65 including but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm
66 water management, and other similar conveyances, that are consistent with the local capital improvement
67 program, involving improvement of property owned by the locality. The provisions of this section shall
68 not apply to the vacation of public interests in real property under the provisions of Articles 6
69 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

70 C. A city or town may also acquire real property for a public use outside its boundaries; a county
71 may acquire real property for a public use outside its boundaries when expressly authorized by law.

72 D. A locality may construct, insure and equip buildings, structures and other improvements on real
73 property owned or leased by it.

74 E. A locality may operate, maintain and regulate the use of its real property or may contract with
75 other persons to do so.

76 F. This section shall not be construed to deprive the resident judge or judges of the right to control
77 the use of the courthouse.

78 G. "Public use" as used in this section shall have the same meaning as in § ~~15.2-1900~~1-237.1.

79 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

80 Any acquisition of property authorized by any provision of this chapter is hereby declared to be for a
81 public use as the term "public uses" is used in § ~~15.2-1900~~1-237.1.

82 **2. That § 15.2-1900 of the Code of Virginia is repealed.**