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HOUSE BILL NO. 94**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice)

(Patrons Prior to Substitute—Delegates Suit, Armstrong [HB 515], Bell [HB 1341], Iaquinto [HB 1278],

Landes [HB 924], Marshall, R.G. [HB 190 and HB 408] and Purkey [HB 746])

House Amendments in [] - February 13, 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.

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. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses that are necessary for the use, possession, or occupation by the public or a governmental entity, or the use of land for the creation or functioning of any public service corporation or public service company, including but not limited to railroad companies, which have been granted or delegated the power of eminent domain. Public uses shall not include the taking or damage of private property through the exercise of the power of eminent domain if the primary purpose is the enhancement of tax revenues.

B. Where any private property is taken or damaged through the exercise of the power of eminent domain for public uses and is not for the primary purpose of enhancement of tax revenues, such property may thereafter be conveyed to a nongovernmental person or entity only when the property being condemned is acquired:

1. Pursuant to Chapter 1 (§ 36-1 et seq.) 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 right-of-way;

4. For the purpose of constructing, maintaining, or operating public highways or other transportation facilities of the Commonwealth or a locality, or by a locality for purposes of establishing right-of-way for a highway operated under the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.);

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 improvements 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 (§ 15.2-5100 et seq.) of Title 15.2 under the Virginia Water and Waste Authorities Act for water or waste facilities;

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

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.).

C. Except as provided in subsection A of this section, nothing in this section shall be construed to expand or limit the power of eminent domain referenced in subdivisions B 1 through B 9; however, public uses for the purposes of this section shall include those public uses set forth in the statutes referenced in subdivisions B 1 through B 9.

D. Nothing herein shall be construed to alter the presumption of correctness that attaches to any condemnor's exercise of the power of eminent domain. However, the property owner may rebut the presumption that the taking is for public uses.

E. Nothing herein shall be construed as affecting the term "public uses" as the term may be used in the Code of Virginia relating to matters other than the exercise of eminent domain.

F. Nothing herein shall be construed to prevent a governmental entity, or other condemnor, from conveying surplus property to a nongovernmental person or entity, or any rights of reversion the property may have, as otherwise provided by law. The right to private property being a fundamental right, the term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby

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defined in all instances to embrace only the ownership, possession, occupation, and enjoyment of land by the public or by public agencies, the use of land for the creation or functioning of any public service corporation or public service company, including but not limited to railroad companies, which has been granted or delegated the power of eminent domain, or the use of land for any entity that owns, operates, or maintains a road that is open to and services the public generally. In determining whether a use constitutes a public use, public benefits or potential public benefits including economic development or private development, an increase in the tax base, tax revenues, employment or general economic health and welfare shall not be considered. Any taking of private property must be necessary to achieve the public use, and the public interest must dominate the private gain. Except as stated herein, the taking of private property for the primary purpose of transferring or leasing to private parties shall not constitute a public use. Any taking under the pretext of an alleged public use shall be impermissible when the primary purpose is to bestow a private benefit.

The property owner whose property is subject to taking shall have the right to rebut the presumption that the taking is for a public use or is necessary for the public use or is necessary for the public use by a preponderance of the evidence.

Nothing contained herein shall be construed as granting or delegating the power of eminent domain not conferred independently of this section.]

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

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

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

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

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

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

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

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

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