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SENATE BILL NO. 1096

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 15.2-1800, 15.2-1814, 25.1-230, 25.1-245, 36-27, and 36-50.1 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—Obenshain and Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1800, 15.2-1814, 25.1-230, 25.1-245, 36-27, and 36-50.1 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 right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace all uses that are authorized by the General Assembly in general or special law, but shall not include the taking of private property by the Commonwealth or any political subdivision thereof for the primary purpose of (i) conferring financial gain on a private person, (ii) enhancing tax revenues, or (iii) furthering economic development or employment.

B. The determination of whether a taking of private property is for public uses shall be made independently of whether the effect of the taking will confer financial gain on a private person, enhance tax revenues, or further economic development or employment.

C. During condemnation proceedings, a property owner shall have the right to contest that the taking is for a public use, including that the alleged public use is a pretext for the primary purpose of conferring financial gain on a private person, enhancing tax revenues, or furthering economic development or employment.

§ 15.2-1800. Purchase, sale, use, 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.

Notwithstanding any contrary provision of law, general or special, no locality providing access and opportunity to use its real property, whether improved or unimproved, may deny equal access or a fair opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America

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59 or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any locality to
60 sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from
61 local policies governing access to and use of a locality's real property. The provisions of this paragraph
62 applicable to a locality shall also apply equally to any local governmental entity, including a department,
63 agency, or authority.

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

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

67 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

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

70 § 25.1-230. Measure of just compensation; oaths of members of body determining just compensation.

71 A. The body determining just compensation shall in each case ascertain the amount of just
72 compensation to which a party is entitled as follows:

73 1. If the condemnation proceeding is brought utilizing the procedure set forth in Chapter 3
74 (§ 25.1-300 et seq.) of this title or §§ 33.1-119 through 33.1-132, the body determining just
75 compensation shall ascertain the value of the property to be taken and the damages, if any, which may
76 accrue to the residue beyond the enhancement in value, if any, to such residue by reason of such taking
77 and use by the petitioner, however, (i) such enhancement in value shall not be offset against the value
78 of the property taken, and (ii) if such enhancement in value shall exceed the damage, there shall be no
79 recovery against the landowner for such excess; and

80 2. In any other condemnation proceeding, the body determining just compensation shall ascertain the
81 value of the property to be taken and the damages, if any, to any other property beyond the peculiar
82 benefits, if any, to such other property, by reason of such taking and use by the petitioner.

83 B. Before executing their duties, each member of the body determining just compensation shall take
84 an oath before an officer authorized by the laws of this Commonwealth to administer an oath that he
85 will faithfully and impartially ascertain the amount of just compensation to which a party is entitled.

86 C. *If the property to be taken is used for or in connection with the operation of a business, any*
87 *losses incurred by the business shall be included in the determination of just compensation and damages*
88 *under subsection A.*

89 § 25.1-245. Costs.

90 A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that are
91 fixed by statute shall be taxed against the petitioner.

92 B. The court may in its discretion tax as a cost a fee, not to exceed \$1,000, for a survey for the
93 landowner.

94 C. If an owner whose property is taken by condemnation under this title or under Title 33.1 is
95 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 30
96 percent or more greater than the amount of the petitioner's final written offer made not later than 60
97 days after the respondent has filed responsive pleadings, the court may order the petitioner to pay to the
98 owner those (i) reasonable costs, as authorized pursuant to § 25.1-419, other than attorney fees, and (ii)
99 reasonable fees and travel costs for no more than three experts testifying at trial, that the owner incurs.
100 The requirements of this subsection shall not apply to those condemnation actions:

101 1. Involving easements valued at less than \$10,000.

102 2. In which the petitioner filed, prior to July 1, 2005: (i) a petition in condemnation pursuant to
103 Chapter 2 (§ 25.1-205 et seq.) of this title; or (ii) a certificate of take or deposit pursuant to Title 33.1,
104 or Chapter 3 (§ 25.1-300 et seq.) of this title.

105 D. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules
106 of Court as in other civil cases.

107 § 36-27. Eminent domain.

108 A. An authority shall have the right to acquire by the exercise of the power of eminent domain any
109 real property pursuant to a duly adopted redevelopment or conservation plan, or otherwise only in
110 accordance with this chapter, after the adoption by it of a resolution declaring that the acquisition of the
111 real property described therein is necessary for such public purposes. An authority may exercise the
112 power of eminent domain in the manner provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1. *The*
113 *power of eminent domain may only be used to acquire real property that is blighted as defined in*
114 *§ 36-3.* In condemnation proceedings evidence may be presented as to the value of the property
115 including but not limited to the owner's appraisal and the effect that any pending application for a
116 zoning change, special use permit application or variance application may have on the value of the
117 property. The court may also determine whether there has been unreasonable delay in the institution of
118 the proceedings after public announcement by the condemnor of a project that necessitates acquisition by
119 the condemnor of a designated land area consisting of or including the land sought to be condemned. If
120 the court determines that such unreasonable delay has occurred, it shall instruct the commissioners or

jurors in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay.

B. Prior to the adoption of any redevelopment plan for a redevelopment area pursuant to § 36-49 or any conservation plan for a conservation area pursuant to § 36-49.1, an authority shall send by certified mail, postage prepaid, to the record owner or owners of every parcel of property to be acquired pursuant to such plan, at their last known address as contained in the records of the treasurer, the current real estate tax assessment records, or the records of such other officer responsible for collecting taxes in that locality, a notice advising such owner that (i) the property owned by such owner is proposed to be acquired, (ii) such owner will have the right to appear before the local governing body and present testimony with respect to the proposed redevelopment or conservation area, and (iii) such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking. Such notice shall not be the basis for eligibility for relocation benefits. At the time it makes its price offer, the authority shall also provide to the property owner a copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, which appraisal shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

C. In all such cases the proceedings shall be according to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, so far as they can be applied to the same. No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof may be acquired without its consent.

§ 36-50.1. Extension of general powers for actions taken pursuant to a conservation plan.

In implementing a conservation plan, an authority shall have all the rights, powers, privileges, and immunities provided in this chapter. However, the power of eminent domain shall not be exercised in connection with a conservation project except to acquire (i) properties designated for use by the public or a public agency in the conservation plan, (ii) ~~properties which are determined by the authority to be in violation of the standards for design, construction, maintenance and use of property set out in the conservation plan for the project in which such property is situate, and which have not been made to comply with such standards within one year after a written request to rehabilitate to project standards is given to the owner by the authority;~~ (iii) properties as to which voluntary conveyance cannot be effected in the course of the execution of the conservation plan because of the inability of the owners to convey marketable title, or (iv) properties which are infeasible of rehabilitation; *or* blighted properties or properties which inhibit or prevent accomplishment of the purposes of the conservation plan *as defined in § 36-3.*

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