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SENATE BILL NO. 1390

Offered January 19, 2007

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.

Patron—Saslaw

Referred to Committee for Courts of Justice

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 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 for (i) possession, occupation and enjoyment of property by the public, including but not limited to construction, maintenance or operation of sanitary sewer, water and stormwater facilities; (ii) creation or functioning of any public service corporation or public service company, as otherwise provided by law; (iii) construction, maintenance or operation of public highways or other public transportation facilities by the Commonwealth, a locality or political subdivision, or a private entity; (iv) construction, maintenance or operation of public facilities pursuant to a public-private partnership agreement between a public agency and a private entity; or (v) the purposes of agencies or political subdivisions of the Commonwealth, local governments or redevelopment and housing authorities.

B. However, no local government or redevelopment and housing authority shall exercise the power of eminent domain to take property that serves as the primary residence of the owner of such property, and within a period of five years from the date of such taking, transfer the fee interest in such property to another private person, except as authorized by the General Assembly in general or special law.

C. Public use 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, or (ii) enhancing tax revenues.

D. During condemnation proceedings, a property owner shall have the right to rebut the presumption that the taking is for a public use including that such taking is a pretext for the primary purpose of conferring private financial gain or the primary purpose of enhancement of tax revenues.

E. Provided that a public use exists under this section, nothing contained herein shall be construed as abrogating the power of eminent domain conferred independently of this section.

§ 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

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59 may acquire real property for a public use outside its boundaries when expressly authorized by law.

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

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

64 Notwithstanding any contrary provision of law, general or special, no locality providing access and
65 opportunity to use its real property, whether improved or unimproved, may deny equal access or a fair
66 opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America
67 or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any locality to
68 sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from
69 local policies governing access to and use of a locality's real property. The provisions of this paragraph
70 applicable to a locality shall also apply equally to any local governmental entity, including a department,
71 agency, or authority.

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

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

75 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

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

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