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SENATE BILL NO. 781

Offered January 10, 2007

Prefiled December 22, 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; voter referendum.

Patrons—Cuccinelli and Hanger

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 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. However, 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 (§ 36-1 et seq.) of Title 36 generally known as the Housing Authorities Law;

2. Pursuant to § 56-49, 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;

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 construction, operation, or maintenance of 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 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;

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.

B. 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.

C. 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 otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided

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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 in § ~~15.2-1900~~-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~~-237.1.

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 That § 15.2-1900 of the Code of Virginia is repealed.

3. 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.

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 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 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.

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 That § 15.2-1900 of the Code of Virginia is repealed.

5. That the provisions of this act shall become effective as provided in this enactment clause 5.

It shall be the duty of the officers conducting the November 6, 2007, election, at the places appointed for holding the election, to conduct a referendum and take the sense of the qualified voters on the question set out below.

The voting equipment and ballots used at the referendum shall pose the question in substantially the following form:

Question: Which one of the following three options do you approve concerning the exercise of eminent domain and the taking of private property for public uses?

(1) Amend the present law to define public uses and specify those instances in which the condemnation of real property may be used by a public entity to convey such property to a nongovernmental person or entity.

(2) Amend the present law to define public uses as embracing only the ownership, possession, occupation, and enjoyment of land by the public, public agencies, public corporations, and public service companies.

(3) Do not amend the present law.

The voting equipment and ballots used at the referendum shall carry the instruction to vote for only one of the three options.

The ballots shall be prepared, distributed, and voted, and the results of the election shall be ascertained and certified, in the manner prescribed in Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia. The State Board of Elections shall provide an explanation of the referendum in accordance with § 30-19.10 of the Code of Virginia.

The electoral board of each county and city shall make out, certify, and forward an abstract of the votes cast for each of the three options contained in the question in the manner now prescribed by law in relation to votes cast in general elections.

The State Board of Elections shall open and canvass such abstracts and examine and report the whole number of votes cast at the election for each of the three options in the manner now prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record a certified copy of such report in its office, and without delay make out and transmit to the Governor an official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for each option.

If a majority of those voting vote in favor of option (1), enactment clauses 1 and 2 of this act shall become effective on January 1, 2008.

If a majority of those voting vote in favor of option (2), enactment clauses 3 and 4 of this act shall become effective on January 1, 2008.

The provisions of this enactment clause 5 shall take effect July 1, 2007.

The expenses incurred in conducting this election shall be defrayed as in the case of election of members of the General Assembly.