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SENATE BILL NO. 781

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 19, 2007)

(Patron Prior to Substitute—Senator Cuccinelli)

A BILL to amend and reenact §§ 15.2-1800, 15.2-1814, and 25.1-417 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, 15.2-1814, and 25.1-417 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 1-237.1 as follows:

§ 1-237.1. Limitations on eminent domain.

A. The right to private property being a fundamental right, the General Assembly shall pass no law whereby private property may be taken, except for public uses and only after payment of just compensation to the owner from whom the property is taken. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined to embrace only the acquisition of property where:

1. The property is taken for the possession, occupation, and enjoyment by the public, public agencies, or political subdivisions of the Commonwealth;

2. The property taken is used for the creation or functioning of any public service corporation or public service company, including but not limited to railroad companies, that have been granted or delegated the power of eminent domain;

3. The property is taken for the construction, maintenance, or operation of public highways or other public transportation facilities by the Commonwealth, a locality or political subdivision, or a private entity; or

4. The property taken is blighted and the taking eliminates a direct threat to public health or safety caused by the property in its current condition by (i) removing a public nuisance, (ii) removing a structure that is beyond repair or unfit for human habitation or use, or (iii) acquiring abandoned property.

B. No other uses shall be deemed public uses justifying the taking of private property, and increases in the tax base, tax revenues, employment, or general economic health and welfare shall not constitute public uses. Property shall not be taken for private commercial enterprise, for economic development, or for any other private use, except with the consent of the owner from whom the property is taken.

C. Any taking of private property must be necessary to achieve the alleged public use. The public interest must dominate the private gain, and any taking under the pretext of an alleged public use shall be impermissible when the actual purpose is to bestow a private benefit. Any taking for the purpose of conferring a private benefit on a particular class of identifiable individuals or private party is not a taking for public uses. Whenever an attempt is made to take property for a use that is alleged to be a public use, the question of whether the contemplated use is a public use shall be determined by a circuit court in a cause of action for condemnation without regard to any assertion by a condemnor that the contemplated use is a public use.

§ 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

60 not apply to the vacation of public interests in real property under the provisions of Articles 6
61 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

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

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

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

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

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 § 25.1-417. General provisions for conduct of acquisition.

83 A. If a state agency acquires real property in connection with any programs or projects, such
84 acquisition shall be conducted, to the greatest extent practicable, in accordance with the following
85 provisions:

86 1. The state agency shall make every reasonable effort to acquire expeditiously real property by
87 negotiation.

88 2. Real property shall be appraised before the initiation of negotiations, and the owner or his
89 designated representative shall be given an opportunity to accompany the appraiser during his inspection
90 of the property; however, the requirements of this subdivision shall not apply if the state agency's
91 official who is responsible for the acquisition determines that the value of the property being acquired is
92 less than \$10,000, based on assessment records or other objective evidence.

93 3. Before initiating negotiations for real property, the state agency shall establish an amount which it
94 believes to be just compensation therefor and shall make a prompt offer to acquire the property for the
95 full amount so established. In no event shall such amount be less than the agency's approved appraisal
96 of the fair market value of such property, if such an appraisal is required. Any decrease or increase in
97 the fair market value of real property prior to the date of valuation caused by the public improvement
98 for which such property is acquired, or by the likelihood that the property would be acquired for such
99 improvement, other than that due to physical deterioration within the reasonable control of the owner,
100 shall be disregarded in determining the compensation for the property. The agency concerned shall
101 provide the owner of real property to be acquired with a written statement of, and summary of the basis
102 for, the amount it established as just compensation, together with a copy of the agency's approved
103 appraisal of the fair market value of such property upon which the agency has based the amount offered
104 for the property, if such an appraisal is required. Where appropriate, the just compensation for the real
105 property acquired and for damages to remaining real property shall be separately stated.

106 4. No owner shall be required to surrender possession of real property before the state agency pays
107 the agreed purchase price, or deposits with the state court in accordance with applicable law, for the
108 benefit of the owner, (i) an amount not less than the agency's approved appraisal of the fair market
109 value of such property, if such an appraisal is required, or (ii) the amount of the award of compensation
110 in the condemnation proceeding for such property.

111 5. The construction or development of a public improvement shall be so scheduled that, to the
112 greatest extent practicable, no person lawfully occupying real property shall be required to move from a
113 dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation,
114 without at least 90-days' written notice from the state agency, of the date by which such move is
115 required.

116 6. If the state agency permits an owner or tenant to occupy the real property acquired on a rental
117 basis for a short term for a period subject to termination by the state agency on a short notice, the
118 amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

119 7. In no event shall the state agency either advance the time of condemnation, or defer negotiations
120 or condemnation and the deposit of funds in court for the use of the owner, or take any other action
121 coercive in nature, in order to compel an agreement on the price to be paid for the property.

8. If any interest in real property is to be acquired by exercise of the power of eminent domain, the state agency shall institute formal condemnation proceedings. No state agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

9. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property, *but the agency shall not acquire an uneconomic remnant if the owner desires to maintain ownership of the property.*

10. A person whose real property is being acquired in accordance with this article may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a state agency, as such person shall determine.

B. The provisions of this section create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

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