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SENATE BILL NO. 781

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 5, 2007)

(Patrons Prior to Substitute—Senators Cuccinelli, O'Brien [1037], and Obernshain [1096])

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 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 as the (i) ownership, possession, occupation and enjoyment of property by the public or public agencies; (ii) creation or functioning of any public service corporation or public service company, or on behalf 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; (v) construction, maintenance or operation of facilities by an agency of the Commonwealth, and the facilities and infrastructure directly related thereto; (vi) construction, maintenance or operation of facilities by a local government or political subdivision, including but not limited to facilities for airports; education; hospitals; parks and recreation; public safety; sanitary sewer, water or stormwater, and such facilities directly related thereto; or (vii) elimination of blight, provided that the property endangers or is detrimental to the public's health or safety because the structure or improvement upon the property is dilapidated or violates minimum health and safety standards.

B. Except for entities regulated as public service companies or public service corporations, and railroads, possessing the power of eminent domain, the power of eminent domain shall not be exercised when the primary purpose of the taking or damaging private property is to transfer ownership to a private party for (i) a private financial gain; (ii) an increase in tax revenues; or (iii) an increase in employment.

C. The limitations contained in this section shall not abrogate any other provision of law that authorizes a condemnor from disposing of property taken for a public use, following a determination by the condemnor that the property is not necessary or appropriate for the provision of the service or benefit for which it was taken or, if the property was acquired for the purpose of removing an immediate threat to public health or safety, that the condition of the property no longer poses such threat.

D. Nothing herein shall be construed as abrogating the power of eminent domain delegated independently of this section, provided however that the provisions of this section shall control if, and to the extent, there are any inconsistencies between this section and any public uses that are authorized by the General Assembly in general or special law.

E. The provisions of this section shall not apply to the forfeiture of property under Chapters 22 (§ 19.2-369 et seq.), 22.1 (§ 19.2-386.1 et seq.), and 22.2 (§ 19.2-386.15 et seq.) of Title 19.2.

F. The provisions of this section shall not apply to the acquisition of real property that is subject to a certificate of take or a certificate of deposit recorded prior to July 1, 2007, in the circuit clerk's office for the circuit where the real property is located or real property that is the subject of a petition for condemnation filed prior to July 1, 2007.

§ 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

60 otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided
61 for in § 15.2-2030) which may be subdivided and conveyed separate from the subjacent land surface,
62 provided that no such real property, whether improved or unimproved, shall be disposed of until the
63 governing body has held a public hearing concerning such disposal. However, the holding of a public
64 hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or
65 authority of the Commonwealth or (ii) conveyance of site development easements across public property,
66 including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm
67 water management, and other similar conveyances, that are consistent with the local capital improvement
68 program, involving improvement of property owned by the locality. The provisions of this section shall
69 not apply to the vacation of public interests in real property under the provisions of Articles 6
70 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

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

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

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

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

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

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

88 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

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

91 § 25.1-417. General provisions for conduct of acquisition.

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

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

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

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

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

120 5. The construction or development of a public improvement shall be so scheduled that, to the
121 greatest extent practicable, no person lawfully occupying real property shall be required to move from a

dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90-days' written notice from the state agency, of the date by which such move is required.

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

7. In no event shall the state agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action 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.