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SENATE BILL NO. 781

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 24, 2007)

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

A BILL to amend and reenact §§ 15.2-1800, 15.2-1814, and 25.1-108 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 25.1-108 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. 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 to embrace only the acquisition of property where: (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation; (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public; (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad; (iv) the property is taken for the provision of any authorized utility service by a government utility corporation; (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition.

B. For purposes of this section:

"Blighted property" means any property that endangers the public health and safety in its condition at the time of the filing of the petition for condemnation and is (i) vacant and constitutes a public nuisance or (ii) an individual commercial, industrial, or residential structure or improvement that is beyond repair or unfit for human habitation or use.

"Government utility corporation" means any county or municipality, or entity or agency thereof, which provides or operates one or more of the following authorized utility services: gas, pipeline, electric light, heat, power, water supply, sewer, telephone, or telegraph.

"Public corporation" means the Commonwealth of Virginia or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein.

"Public facilities" means (i) airports, landing fields, and air navigation facilities; (ii) educational facilities; (iii) flood control, bank and shore protection, watershed protection, and dams; (iv) hospital facilities; (v) judicial and court facilities; (vi) correctional facilities, including jails and penitentiaries; (vii) library facilities; (viii) military installations; (ix) parks so designated by the Commonwealth or by the locality in its comprehensive plan; (x) properties of historical significance so designated by the Commonwealth; (xi) law enforcement, fire, emergency medical, and rescue facilities; (xii) sanitary sewer, water or stormwater facilities; (xiii) transportation facilities including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities; (xiv) waste management facilities for hazardous, radioactive, or other waste; (xv) office facilities occupied by a public corporation; and (xvi) such other facilities that are necessary to the construction, maintenance, or operation of a public facility as listed in clauses (i) through (xv) and directly related thereto.

C. No more private property may be taken than that which is necessary to achieve the stated public use.

D. Except where property is taken (i) for the creation or functioning of a public service corporation, public service company, or railroad; or (ii) for the provision of any authorized utility service by a government utility corporation, property can only be taken where: (a) the public interest dominates the private gain and (b) the primary purpose is not private financial gain, private benefit, an increase in tax base or tax revenues, or an increase in employment.

E. During condemnation proceedings, the property owner may challenge whether the taking or damaging is for a public use, the stated public use is a pretext for an unauthorized use, or the taking or damaging of property is a violation of subsection D. Nothing in this section shall be construed as abrogating any defenses or rights otherwise available to the property owner independently of this

60 *section.*

61 *F. Subject to the provisions of subsection D, the limitations contained in this section shall not*
62 *abrogate any other provision of law that authorizes a condemnor to dispose of property taken for a*
63 *public use as surplus property, as otherwise provided by law.*

64 *G. If the acquisition of only part of a property would leave its owner with an uneconomic remnant,*
65 *the condemnor shall offer to acquire the entire property for its fair market value as otherwise provided*
66 *by law, but the condemnor shall not acquire an uneconomic remnant if the owner objects and desires to*
67 *maintain ownership of the excess property.*

68 *H. The provisions of this section shall control to the extent there are any inconsistencies between this*
69 *section and any other general or special law; otherwise, nothing herein shall be construed as*
70 *abrogating the power of eminent domain delegated independently of this section.*

71 *I. The provisions of this section shall not apply to the forfeiture of property under Chapters 22*
72 *(§ 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.*

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

77 § 15.2-1800. Purchase, sale, use, etc., of real property.

78 A. A locality may acquire by purchase, gift, devise, bequest, exchange, lease as lessee, or otherwise,
79 title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction,
80 for any public use. Acquisition of any interest in real property by condemnation is governed by Chapter
81 19 (~~§ 15.2-1900~~ 15.2-1901 et seq.). The acquisition of a leasehold or other interest in a
82 telecommunications tower, owned by a nongovernmental source, for the operation of a locality's wireless
83 radio communications systems shall be governed by this chapter.

84 B. Subject to any applicable requirements of Article VII, Section 9 of the Constitution, any locality
85 may sell, at public or private sale, exchange, lease as lessor, mortgage, pledge, subordinate interest in or
86 otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided
87 for in § 15.2-2030) which may be subdivided and conveyed separate from the subjacent land surface,
88 provided that no such real property, whether improved or unimproved, shall be disposed of until the
89 governing body has held a public hearing concerning such disposal. However, the holding of a public
90 hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or
91 authority of the Commonwealth or (ii) conveyance of site development easements across public property,
92 including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm
93 water management, and other similar conveyances, that are consistent with the local capital improvement
94 program, involving improvement of property owned by the locality. The provisions of this section shall
95 not apply to the vacation of public interests in real property under the provisions of Articles 6
96 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

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

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

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

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

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

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

114 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

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

117 § 25.1-108. Offer of repurchase to former owner.

118 A. If a condemnor has acquired a fee simple interest in property by exercise of its power of eminent
119 domain and subsequently declares that the property is surplus ~~within 15 years of being vested with the~~
120 ~~title to such property~~, the condemnor shall offer, within 30 days following such determination, to sell
121 such property to the former owner or his heirs or other successors or assigns of record. *Upon completion*

of the stated public use or where the stated public use has been abandoned, the condemnor shall provide written notice, pursuant to subsection B, of such completion or abandonment to the former property owner or his heirs or other successors or assigns of record. Upon completion of the stated public use or where the stated public use has been abandoned, the former property owner or his heirs or other successors or assigns of record may make a written demand that the condemnor declare any excess property as surplus. The right to the offer of repurchase cannot be waived and any contractual provision or agreement waiving such right is void and unenforceable. The offer to sell shall be made by the condemnor at the price paid by the condemnor to the former owner plus interest at the annual rate of six percent; provided that the condemnor may increase the price by the fair market value of the condemnor's improvements, determined at the time the offer to sell is made. In no case shall the price established by the condemnor exceed the fair market value of the property at the time the offer to sell is made. If no written response is received by the condemnor from the former owner within 90 days after the offer to sell has been made, the former owner shall be deemed to have waived his right to the offer of repurchase.

Nothing in this section shall be construed to require a condemnor to offer to sell property the condemnor has acquired by the exercise of its eminent domain to a former owner after 15 years from the date that the condemnor is vested with the title to such property.

B. Notice of the offer to repurchase shall be sent by certified mail to (i) the last known address of the former owner and (ii) the address of the last owner of record as it appears in the tax records of the local treasurer.

C. This section shall not apply to property acquired by the Commonwealth Transportation Commissioner pursuant to Title 33.1.

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

3. That, until July 1, 2010, the provisions of this act shall not affect the ability of a redevelopment and housing authority organized pursuant to Title 36 of the Code of Virginia to acquire property pursuant to any redevelopment or conservation plan adopted prior to January 1, 2007. However, the provisions of this act shall be applicable to all redevelopment and conservation plans adopted after January 1, 2007.