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**SENATE BILL NO. 908**

Offered January 14, 2009

Prefiled January 5, 2009

*A BILL to amend and reenact § 56-49 of the Code of Virginia, relating to the eminent domain powers of public service corporations.*

Patrons—Stuart and Vogel; Delegate: Pollard

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 56-49 of the Code of Virginia is amended and reenacted as follows:****§ 56-49. Powers.**

A. In addition to the powers conferred by Title 13.1, each public service corporation of this Commonwealth organized to conduct a public service business other than a railroad shall have the power:

1. To cause to be made such examinations and surveys for its proposed line or location of its works as are necessary to the selection of the most advantageous location or route or for the improvement or straightening of its line or works, or changes of location or construction, or providing additional facilities, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person but subject to responsibility for all damages that are done thereto, and subject to permission from, or notice to, the landowner as provided in § 25.1-203.

2. To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. However, the corporation shall not take by condemnation proceedings a:

a. A strip of land for a right-of-way within 60 feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways; or

b. Any land or right-of-way or similar interest therein that is subject to a conservation easement, as such term is defined in § 10.1-1009. If the public service corporation owns a right-of-way or similar interest in land that is subject to a conservation easement, upon which right-of-way or other interest the corporation has existing lines, facilities, or works for its use in serving the public, then the corporation shall not expand its easement or other interest by acquiring, by the exercise of the right of eminent domain, any interest in adjacent land that is subject to a conservation easement; however, the corporation shall not be prohibited in such instance from acquiring the right to install, operate, and maintain additional lines, facilities, or works within the area of its existing right-of-way or similar interest.

A public service corporation ~~which~~ that has not been (i) allotted territory for public utility service by the State Corporation Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required

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59 for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) of this title.

60 ~~And provided, further, that notwithstanding~~ *B. Notwithstanding* the foregoing nor any other provision  
61 of the law the right of eminent domain shall not be exercised for the purpose of acquiring any lands or  
62 estates or interests therein nor any other property for the construction, reconstruction, maintenance or  
63 operation of any pipeline for the transportation of coal.

64 C. For the purposes of this section, the words "public service corporation" shall include any Virginia  
65 limited liability company as defined in § 56-1 that has been issued a certificate of public convenience  
66 and necessity authorizing it to furnish telecommunications services of a public utility set forth in  
67 subdivision (b) of § 56-265.1 and that seeks to construct or acquire facilities for use in providing the  
68 certificated telecommunications service.