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HOUSE BILL NO. 651

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 8.01-187, 25.1-100, 25.1-209, 25.1-213, 25.1-214, 25.1-219, 25.1-220, 25.1-235, 25.1-318, and 62.1-98 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 2 of Title 25.1 sections numbered 25.1-227.1 and 25.1-227.2, relating to use of commissioners in eminent domain cases.*

Patron—Armstrong

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-187, 25.1-100, 25.1-209, 25.1-213, 25.1-214, 25.1-219, 25.1-220, 25.1-235, 25.1-318, and 62.1-98 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 2 of Title 25.1 sections numbered 25.1-227.1 and 25.1-227.2 as follows:

§ 8.01-187. Commissioners or condemnation jurors to determine compensation for property taken or damaged.

Whenever it is determined in a declaratory judgment proceeding that a person's property has been taken or damaged within the meaning of Article I, Section 11 of the Constitution of Virginia and compensation has not been paid or any action taken to determine the compensation within ~~sixty~~ 60 days following the entry of such judgment order or decree, the court which entered the order or decree may, upon motion of such person after reasonable notice to the adverse party, enter a further order appointing *commissioners or* condemnation jurors to determine the compensation. The appointment of *commissioners or* condemnation jurors and all proceedings thereafter shall be governed by the procedure prescribed for the condemning authority.

§ 25.1-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Body determining just compensation" means a *panel of commissioners empanelled pursuant to* § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if *neither a panel of commissioners nor a* jury ~~is not~~ appointed or empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Owner" means any person who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. This definition of the term "owner" shall not affect in any way the valuation of property.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other political subdivision or any department, agency or instrumentality thereof; or any interstate body to which the Commonwealth is a party.

"Petitioner" or "condemnor" means any person who possesses the power to exercise the right of eminent domain and who seeks to exercise such power under this chapter. The term "petitioner" or "condemnor" includes any person required to make an effort to purchase property as provided in § 25.1-204.

"Property" means land and personal property, and any right, title, interest, estate or claim in or to such property.

"State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital or

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59 state training center for individuals with mental retardation operated by the Department of Behavioral
60 Health and Developmental Services.

61 § 25.1-209. Notice of filing of petition.

62 A. Upon the filing of a petition for condemnation, the petitioner shall give the owners 21 days'
63 notice of the filing of such petition and of its intention to apply to the court to ascertain just
64 compensation for the property to be taken or affected as a result of the taking and use by the petitioner
65 of the property to be so acquired.

66 B. The notice, along with a copy of the petition, shall be served on the owners. In such notice, the
67 petitioner shall give notice that an answer and grounds of defense shall be filed setting forth any
68 objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear
69 the case and to elect to proceed with *either the appointment of commissioners or* empanelment of a jury
70 for the determination of such just compensation.

71 C. The notice may also include notice of the petitioner's application for the right of entry as provided
72 in § 25.1-223, if such application is included in the petition as authorized by § 25.1-207.

73 D. A copy of the notice required to be served on the owners by this section also shall be served in
74 the same manner upon any tenant entitled to participate in the proceeding pursuant to § 25.1-234, whose
75 lease has been duly recorded or whose tenancy is actually known to the petitioner. However, a tenant so
76 notified may participate in the proceeding only as permitted by § 25.1-234.

77 E. In addition to any other notice required to be served pursuant to this section, in any proceeding
78 instituted by the Commonwealth Transportation Commissioner under this title or Title 33.1, a copy of
79 the notice of the filing of the petition also shall be served, in the same manner as such notice is served
80 upon owners, upon any person owning structures or improvements for which an outdoor advertising
81 permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360.

82 § 25.1-213. Filing an answer and grounds of defense; election of commissioners or jury.

83 Within 21 days of the service thereof any such owner who desires to assert any objection or defense
84 to the taking or damaging of his property or to the jurisdiction of the court to hear the case, *and to*
85 *make his election to proceed with either the appointment of commissioners or the empanelment of a*
86 *jury*, shall file (i) his answer and grounds of defense designating the property in which he claims to be
87 interested, (ii) the grounds of any objection or defense to the taking or damaging of his property or to
88 the jurisdiction of the court to hear the case, and (iii) his election to proceed with *either the appointment*
89 *of commissioners or* the empanelment of a jury for the determination of just compensation.

90 § 25.1-214. Failure of owner to file answer and grounds of defense.

91 A. The failure of any owner to file an answer and grounds of defense as provided in § 25.1-213 shall
92 not preclude the owner from (i) appearing on the date set for the *appointment of commissioners or the*
93 empanelment of a jury, (ii) presenting evidence as to valuation and damage, or (iii) sharing in the award
94 of just compensation according to his interest therein or otherwise protecting his rights. However, such
95 failure shall preclude the owner from any other defense by way of pleas in bar or otherwise, except that
96 for good cause shown the time for filing such answer and grounds of defense may be extended by the
97 court.

98 B. If the owner fails to *file an answer and grounds of defense, or if the owner files an answer and*
99 *grounds of defense that fails to* elect to have the determination of just compensation made by *either*
100 *commissioners or* a jury, then the petitioner may elect to have the issue of just compensation determined
101 by *either commissioners or* a jury, or by the court as provided in § 25.1-220.

102 § 25.1-219. Pretrial settlement conference; determination of preliminary issues; fixing date of trial on
103 issue of just compensation.

104 A. The owner or the petitioner in any condemnation proceeding may request and, if requested, the
105 court shall order a pretrial settlement conference. Such conference shall be conducted by a neutral third
106 party, if available. Such conference may be requested at any time by either the owner or the petitioner.
107 If requested, such conference shall be held within the 30 days preceding the scheduled trial date. If such
108 a conference is ordered, the court shall order both parties to appear with counsel, if any, and the parties
109 shall appear with settlement authority. All settlement conferences conducted pursuant to this provision
110 shall be nonbinding. If settlement is not reached, the matter shall proceed to trial as set upon the docket.

111 B. At the hearing upon the petition and application for *either the appointment of commissioners or*
112 the empanelment of a jury made in accordance with § 25.1-209, if no answer and grounds of defense
113 has been filed objecting to the jurisdiction of the court to hear the case and to proceed with the
114 *appointment of commissioners or the* empanelment of a jury, the court shall enter an order fixing a date
115 for the trial of the issue of just compensation and stating that such issue shall be determined by *a*
116 *commission*, by a jury or by the court, as provided in § 25.1-220. If any answer and grounds of defense
117 has been filed objecting to the jurisdiction of the court, the court shall determine such issues or other
118 matters in controversy, excepting the issue of just compensation or matters relating to the ownership of
119 any land or other property or the interests of any party in such land or other property before fixing a
120 date for the trial of the issue of just compensation.

C. If the court determines all such issues or other matters involving the jurisdiction of the court in favor of the petitioner, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined *either by a commission*, by a jury or by the court, as provided in § 25.1-220.

D. An order of the court in favor of the petitioner on any of the foregoing preliminary issues or matters shall not be a final order for purposes of appeal but an order against the petitioner on such issues or matters shall be a final order for purposes of appeal, if the petitioner so elects. If the order against the petitioner does not dismiss the petition, the petitioner may elect to proceed with the case without waiving any of its objections and exceptions to the rulings of the court.

E. At such hearing the court shall also determine whether the petitioner shall be granted a right of entry as provided in § 25.1-223.

§ 25.1-220. Who determines issue of just compensation.

The issue of just compensation shall be determined by *a commission or a jury*, upon a timely election made by an owner *as provided in § 25.1-213*. However, by agreement of the petitioner and all the parties who are sui juris that have appeared or responded, or, if no owner upon proper notice has appeared or responded, or has filed an answer and grounds of defense that fails to elect to have the determination of just compensation made by *either commissioners or a jury*, then, upon motion of the petitioner, the issue of just compensation may be determined by the court.

§ 25.1-227.1. *Qualifications of commissioners.*

A. *The provisions of this article shall apply in eminent domain proceedings in which the issue of just compensation is to be determined by a commission.*

B. *All commissioners shall be disinterested freeholders and residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. No person shall serve as a commissioner for more than one full week within any three-month period, unless agreed to by the parties.*

§ 25.1-227.2. *Empanelment of commissioners.*

A. *The parties to the eminent domain proceeding may agree upon five or nine persons qualified to act as commissioners, as provided in subsection B of § 25.1-227.1.*

B. *If the parties cannot agree upon five or nine qualified persons to act as commissioners, then each party shall present to the court a list containing the names of at least six qualified persons. If any party fails to submit such a list of names, the court may, in its discretion, submit such a list on such party's behalf.*

C. *From the lists submitted pursuant to subsection B, the court shall select the names of nine potential commissioners and at least two alternates. At least one week prior to their service, such persons shall be summoned to appear.*

D. *If nine qualified persons are selected, the petitioner and the owners shall each have two peremptory challenges and the remaining five shall serve as commissioners. If five qualified persons are agreed upon as provided in subsection A, they shall serve as commissioners.*

E. *If an owner has filed no answer to the petition, and the court finds that the owner is not represented by counsel, the court may, in its discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners.*

F. *Any three or more of the five commissioners may act.*

G. *In condemnation proceedings instituted by the Commonwealth Transportation Commissioner, a person owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360 shall be deemed to be an "owner" for purposes of this section.*

§ 25.1-235. Compensation of commissioners or jurors.

The *commissioners appointed or jurors empanelled* shall, for every day or portion thereof they may be employed in the performance of their duties, receive an allowance in the amount of \$60 as compensation for their attendance, travel and other costs, regardless of the number of cases heard on any particular day, to be paid by the petitioner. The persons summoned who appear, but are not *appointed to serve as commissioners or empanelled to serve as jurors*, shall be allowed \$30 for each day they are summoned to appear.

§ 25.1-318. Petition by owner for determination of just compensation.

A. The owner of property that an authorized condemnor has entered and taken possession of pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the *appointment of commissioners or the empanelment of a jury* to determine just compensation for the property taken and damages done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) ~~of this title~~ if (i) the owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized condemnor:

1. Has not completed the construction of the contemplated improvements upon the property after a

182 reasonable time for such construction has elapsed; or

183 2. Has not instituted condemnation proceedings within:

184 a. Sixty days after completion of the construction of the contemplated improvements upon the
185 property; or

186 b. One year after the authorized condemnor has entered upon and taken possession of the property,
187 regardless of whether the construction of the contemplated improvements has been completed.

188 B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before it
189 is filed in the court. The authorized condemnor shall file an answer thereto within five days after the
190 filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided
191 in subsection A are satisfied, the court shall *appoint commissioners or* empanel a jury, as requested in
192 the owner's petition, to ascertain the amount of compensation to be paid for the property taken and
193 damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by
194 Chapter 2 (§ 25.1-200 et seq.) ~~of this title~~ insofar as the same may be applicable.

195 § 62.1-98. Right of eminent domain of public service corporations.

196 In addition to any right or power of eminent domain that it may have under existing law, every
197 public service corporation engaged in the development of waterpower in this Commonwealth for the
198 production, sale and supply of hydroelectric power and energy to the public shall be vested with the
199 right of eminent domain to the full extent requisite for the acquisition of all lands, property and rights
200 necessary for the purpose of the construction, enlargement, maintenance or operation of any dam,
201 reservoir, power station and/or other structures of any such water-power development, subject to the
202 following provisions:

203 (a) 1. Such corporation may, by the exercise of such right for such purpose, acquire all necessary
204 lands, property and rights of whatsoever nature, whether or not such lands, property or rights have been
205 theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but
206 not restricted to, the lands, property and rights necessary for any storage, diversion, regulation, detention,
207 or interference with the flow of any water and for any waterway and including also, but not restricted
208 to, any lands, structures, property or rights owned, used or held by or for public or private, religious,
209 charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and
210 bridges, and any other property, public or private, when necessary for such purpose; provided, however,
211 that the right of eminent domain under this section shall not be available against existing public-carrier
212 railroads; and provided further that, in the event of the condemnation under this chapter of any roads or
213 bridges, the *commissioners or* jurors in assessing the compensation and damages therefor, shall consider
214 the cost of relocating and constructing such roads or bridges upon other reasonable convenient locations,
215 and the damage, if any, to persons and corporations because of relocation and construction. No such
216 corporation shall impair the drinking water supply of any city or town or acquire any municipal electric
217 light and power or water plant by virtue of any additional powers conferred by this chapter; provided
218 further that the provisions of this section shall not be construed to authorize the acquisition by
219 condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

220 (b) 2. When, in the operation of any dam, power station or other structure of a water-power
221 development, any such public service corporation interferes, to an extent beyond its common-law
222 riparian rights, with the flow of water downstream from such structure and by reason of such
223 interference any property or riparian right, or any part thereof or interest therein, is destroyed or
224 damaged, such corporation may exercise the right of eminent domain for the purpose of acquiring such
225 property, right or interest so destroyed or of ascertaining and paying just compensation for any such
226 damage.

227 (c) 3. In connection with the exercise of the right of eminent domain over public and private
228 cemeteries, such corporation shall also have the right to acquire by condemnation proceedings other
229 lands to which to remove the bodies and monuments or other structures from such public or private
230 cemeteries. All the rights of the owners, including the Commonwealth, in and to the lands in such
231 cemeteries shall pass to and vest in such corporation and the title to the lands acquired for the removal
232 of such cemeteries shall vest in the former owners and such others as may have rights therein of such
233 cemeteries so removed. However, before such corporation may flood or otherwise utilize any such
234 cemetery, it shall remove the bodies and monuments or other structures to the lands acquired for such
235 purpose and reinter the bodies and reset the monuments, under the direction and to the satisfaction of
236 the court in which such condemnation proceedings are brought. If the parties in interest fail to agree as
237 to the location and area of the additional lands to be acquired in which to reinter the bodies and on
238 which to rest the monuments and other structures, the same shall be determined by the court.

239 (d) 4. For the purpose of relocating any railway, pipeline, wire line, road or bridge occupying the
240 area on which any such water-power development or enlargement thereof is to be located, such
241 corporation may acquire by the exercise of the right of eminent domain, any needful additional lands or
242 other property, whether within or without the area upon such water-power development or enlargement
243 thereof is to be located, and shall have the right for such purpose and shall convey such lands or other

property or rights to the owner of such railway, pipeline, wire line, road or bridge.

(e) 5. In all cases of the exercise of such right of eminent domain just compensation shall be paid to the owners and tenants of the property taken or damaged, in the manner provided by law for all property taken or damaged. The proceedings for this purpose shall be in accordance with Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and other provisions of law. As to any part of the real estate sought to be taken for any of the purposes authorized in this chapter, such corporation may describe in its application for condemnation an estate or interest therein of a fee or less than a fee and, upon payment therefor, such estate or interest as is stated and described in such application shall vest in such corporation; but when less than a fee is taken, the *commissioners or* jurors in assessing damages shall take into consideration the actual damage that is done or that may be done to the fee by such taking, including the use to which the property so taken will be put by such corporation. However, nothing contained in § 62.1-97 shall deprive any owner of property of any right to receive just compensation and damages as provided by law, upon the exercise of the right of eminent domain by any licensee under this chapter.

(f) 6. Any public service corporation that shall exercise any of the additional powers of eminent domain granted in this chapter and not existing under the law in effect January 1, 1928, shall thereby be conclusively deemed to have agreed, as a condition precedent to the exercise of such powers, to be bound by all of the provisions of this chapter.