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SENATE BILL NO. 194

Offered January 8, 2014

Prefiled January 2, 2014

A BILL to amend and reenact §§ 25.1-100 and 25.1-420 of the Code of Virginia, relating to eminent domain; date of valuation; inverse condemnation proceeding.

Patrons—Black and Garrett

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 25.1-100 and 25.1-420 of the Code of Virginia are amended and reenacted as follows:****§ 25.1-100. Definitions.**

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

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"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 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, *or the date on which an action is taken by the petitioner which substantially affects the use and enjoyment of the property by the owner*, 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.

"Lost access" means a material impairment of direct access to property, a portion of which has been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost access" shall not diminish any existing right or remedy, and shall not create any new right or remedy other than to allow the body determining just compensation to consider a change in access in awarding just compensation.

"Lost profits" means a loss of business profits, subject to adjustment using generally accepted accounting principles consistently applied, from a business or farm operation for a period not to exceed three years from the date of valuation that is suffered as a result of a taking of the property on which the business or farm operation is located, provided (i) the business is owned by the owner of the property taken, or by a tenant whose leasehold interest grants the tenant exclusive possession of substantially all the property taken, or (ii) the farm operation is operated by the owner of the property taken, or by a tenant using for a farm operation the property taken, to the extent that the loss is determined and proven pursuant to subsection C of § 25.1-230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any existing right or remedy other than to allow the body determining just compensation to consider lost profits in awarding just compensation if a person asserts a right to lost profits as an element of damage in a claim for compensation.

"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. The term "petitioner" or "condemnor" includes a

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59 state agency.

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

62 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public
63 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth
64 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire
65 property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out
66 projects that cause persons to be displaced.

67 "State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital or
68 state training center operated by the Department of Behavioral Health and Developmental Services.

69 **§ 25.1-420. Reimbursement of owner for costs incurred in inverse condemnation proceeding.**

70 If a declaratory judgment proceeding is instituted pursuant to § 8.01-187 by the owner of any right,
71 title or interest in real property because of use of his property in any program or project undertaken by a
72 state agency, and either (i) the court renders a judgment for the plaintiff in such proceeding and awards
73 compensation for the taking *or damage* of property or (ii) the Attorney General effects a settlement of
74 any such proceeding in which the Commonwealth is a party, the court or Attorney General, as
75 appropriate, shall determine and award or allow to such plaintiff, as a part of such judgment or
76 settlement, such sum as will, in the opinion of the court or the Attorney General, as the case may be,
77 reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable
78 attorney, appraisal and engineering fees, actually incurred because of such proceeding.