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SENATE BILL NO. 665

Offered January 17, 2014

A BILL to amend and reenact § 1-219.1 of the Code of Virginia, relating to limitations on eminent domain; right of quiet and peaceful enjoyment.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 1-219.1 of the Code of Virginia is amended and reenacted as follows:

§ 1-219.1. 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 or the acquisition is by agreement of all the owners.

B. For purposes of this section:

"Blighted property" means any property that endangers the public health or safety in its condition at the time of the filing of the petition for condemnation and is (i) a public nuisance or (ii) an individual commercial, industrial, or residential structure or improvement that is beyond repair or unfit for human occupancy 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; (ii) for the provision of any authorized utility service by a government utility corporation; or (iii) for sanitary sewer, water or stormwater facilities, or 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, by a public 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, an increase in employment, or economic development.

E. During condemnation proceedings, the property owner may challenge whether the taking or

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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 section.

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

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

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

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

J. The provisions of this section shall not apply to real property that is subject to a certificate of take or a certificate of deposit recorded prior to July 1, 2007, in the circuit court 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.

K. For the purposes of any taking of private property in accordance with Article I, Section 11 of the Constitution of Virginia, a government utility corporation shall be considered to be acting as a public service corporation or public service company where the property is taken for the provision of an authorized utility service only; provided, however, that nothing in this subsection shall modify or affect the jurisdiction of the State Corporation Commission.

L. The right of quiet and peaceful enjoyment is a property right for which just compensation is owed when a condemnor takes or damages this property right.