

Department of Planning and Budget 2015 Fiscal Impact Statement

1. **Bill Number:** SB1435

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Deeds

3. **Committee:** Appropriations

4. **Title:** Eminent domain; lost profits and just compensation.

5. **Summary:** Requires any and all liability for lost profits claimed in an action for compensation pursuant to a taking under eminent domain to be set forth specifically in the award for just compensation. Current language speaks about lost profits as an element of damage for a residue property. A residue property may only exist when a partial acquisition of a property occurs. The proposed bill will revise the current language so that lost profit claims will be allowed for both partial and total property acquisitions. It clarifies that lost profits are an element of just compensation that will be specifically set forth in the award. An amendment was made to this bill that will allow enhancements (an increase in value to a property owner's remaining real estate) to offset lost profits for partial acquisitions when the owner of the condemned property and business or farm operation claiming lost profits are the same. Finally a second enactment was added to this legislation stating that the provisions of this Act shall not apply to any condemnation in which a certificate of take or certificate of deposit was recorded prior to July 1, 2007 or in which a petition for condemnation was filed prior to July 1, 2007.

6. **Budget Amendment Necessary:** No

7. **Fiscal Impact Estimates:** Preliminary. See Item 8.

8. **Fiscal Implications:** This proposed legislation would allow lost profits to be claimed on total property acquisitions and allow tenants whose businesses are impacted to also claim lost profits. The modification could impact property acquisition costs for the Virginia Department of Transportation (VDOT) associated with road construction/improvement projects. Looking at previous years' data, VDOT estimates that the potential for additional payment for lost profits on total acquisition projects could average \$585,000 per year. Higher property acquisition costs will lower the total number of projects VDOT can implement given the finite amount of transportation revenues.

The amendment to allow enhancements to offset lost profits if the ownership of the business and condemned property is the same is likely to have little fiscal impact. According to VDOT, it is rare for enhancements to the residue to occur and more rare to have the same ownership for a business and for the property.

It is not clear if an incorrect retroactive date was included in the second enactment for this bill. According to VDOT, absent the July 1, 2007, date being changed to reflect July 1, 2015, or the second enactment being stricken, a greater possibility exists for increased financial costs to VDOT to occur, albeit a large impact is unlikely.

9. Specific Agency or Political Subdivisions Affected: VDOT and all other state and local entities with eminent domain authority.

10. Technical Amendment Necessary: No

11. Other Comments: None