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SENATE BILL NO. 1039

Offered January 9, 2019

Prefiled November 15, 2018

A BILL to amend and reenact §§ 15.2-1906, 25.1-100, 25.1-209, 25.1-211, 25.1-213, 25.1-214, 25.1-219, 25.1-220, 25.1-235, 25.1-318, 33.2-1029, and 62.1-98 of the Code of Virginia and to repeal Article 4 (§§ 25.1-227.1 and 25.1-227.2) of Chapter 2 of Title 25.1 of the Code of Virginia, relating to eminent domain; commissioners.

Patron—Peake

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1906, 25.1-100, 25.1-209, 25.1-211, 25.1-213, 25.1-214, 25.1-219, 25.1-220, 25.1-235, 25.1-318, 33.2-1029, and 62.1-98 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1906. Condemnation of existing water or sewage disposal systems.

Condemnation of existing water or sewage disposal systems shall be governed by the provisions of Chapter 19.1 (§ 15.2-1908 et seq.) of this title so far as applicable. The provisions of § 25.1-102 shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety. The circuit court for the city or county wherein the property proposed to be condemned, or any part thereof, is located, shall have jurisdiction of the condemnation proceedings. It shall not be necessary to file with the petition for the condemnation of an existing water or sewage system, in its entirety, a minute inventory and description of the property sought to be condemned, provided the property is described therein generally and with reasonable particularity and in such manner as to disclose the intention of the petitioner that such existing water or sewage system be condemned in its entirety. The court having jurisdiction of the condemnation proceedings shall, as the occasion arises and prior to the filing of the report of the commissioners appointed jurors empaneled to determine a just compensation for the property sought to be condemned in its entirety, take such steps as may be necessary and proper to cause to be included in an inventory of the property sought to be condemned full descriptions of any and all such property whenever the exigencies of the case or the ends of justice will be promoted thereby. Such inventory shall be made a part of the record in the proceedings and referred to the commissioners jurors.

§ 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 empaneled 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 not empaneled, the court.

"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.

"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, as defined in § 25.1-230.1, that is suffered as a result of a taking of the property on which a business or farm operation is located, 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 later of (i) the date of valuation or (ii) the date the state agency or its contractor prevents the owner from using the land or any of the owner's other property rights are taken. The person claiming lost profits is entitled to compensation whether part of the

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59 property or the entire parcel of property is taken. In order to qualify for an award of lost profits, one of
 60 the following conditions shall be met: (a) the business is owned by the owner of the property taken, or
 61 by a tenant whose leasehold interest grants the tenant exclusive possession of substantially all the
 62 property taken, or (b) the farm operation is operated by the owner of the property taken, or by a tenant
 63 using for a farm operation the property taken, to the extent that the loss is determined and proven
 64 pursuant to subsection C of § 25.1-230.1. This definition of the term "lost profits" shall not create any
 65 new right or remedy or diminish any existing right or remedy other than to allow the body determining
 66 just compensation to consider lost profits in awarding just compensation if a person asserts a right to
 67 lost profits in a claim for compensation.

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

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

80 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of
 81 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a
 82 state agency.

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

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

90 "State institution" means any (i) institution enumerated in § 23.1-1100 or (ii) state hospital or state
 91 training center operated by the Department of Behavioral Health and Developmental Services.

92 **§ 25.1-209. Notice of filing of petition.**

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

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

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

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

108 E. In addition to any other notice required to be served pursuant to this section, in any proceeding
 109 instituted by the Commissioner of Highways under this title or Title 33.2, a copy of the notice of the
 110 filing of the petition also shall be served, in the same manner as such notice is served upon owners,
 111 upon any person owning structures or improvements for which an outdoor advertising permit has been
 112 issued by the Commissioner of Highways pursuant to § 33.2-1208.

113 **§ 25.1-211. Form of notice by publication.**

114 A. The form of the notice by publication pursuant to § 25.1-210, to which shall be attached the
 115 signature of the clerk, or the deputy clerk for and on behalf of the clerk, shall be substantially as
 116 follows:

117 Virginia: In the (here insert the name of the court)

118 Name of petitioner

119 v.At Law.....

120 Name of one or more defendants, et al.,

121 and (.....) acres, more or less, of land in
122 (city or county), Virginia.

123 To Whom It May Concern:

124 Pursuant to an order entered on the..day of....., 20...., this notice is hereby given:

125 In this proceeding the petitioner seeks to acquire by condemnation... (here state the estate, interest, or
126 right to be acquired) to certain pieces or parcels of land situated in.....(county or city), Virginia, for
127 the uses and purposes of the petitioner.....(here state briefly the uses and purposes and nature of the
128 works and improvements to be made), all of which are described more particularly in the petition and
129 exhibits attached thereto on file in the office of the clerk of his court, to which reference is hereby made
130 for a full and accurate description thereof; and for the ~~appointment of commissioners or~~ the
131 empanelment of a jury to ascertain just compensation to the owners of any estate or interest in the
132 property to be taken or affected as a result of the taking and use thereof by the petitioner.

133 For such purposes, the petitioner will apply to the court, sitting at....., Virginia, on the.. day of.....,
134 20...., at.. o'clock....m., or as soon thereafter as petitioner may be heard, for the ~~appointment of~~
135 ~~commissioners or~~ the empanelment of a jury to ascertain just compensation as aforesaid.

136 And it appearing by affidavit filed according to law that the following owners are not residents of
137 the Commonwealth of Virginia, or their names and addresses are not known and that diligence has been
138 used by and on behalf of the petitioner to ascertain such names and addresses without effect: (here set
139 out the names of such owners or classes of owners and addresses where known), it is ordered that the
140 aforesaid owners do appear within 10 days after due publication of this order in the clerk's office of the
141 (here insert the name of the court) and do what is necessary to protect their interests; and it is further
142 ordered that if any of the above named owners desires to assert any objection or defense to the taking or
143 damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the
144 ~~appointment of commissioners or~~ the empanelment of a jury he shall file his answer and grounds of
145 defense designating the property in which he claims to be interested, the grounds of any objection or
146 defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and
147 to proceed with the ~~appointment of commissioners or~~ the empanelment of a jury for the determination of
148 just compensation. Should any such owner fail to file his answer and grounds of defense as hereinabove
149 provided, such failure shall not preclude the owner from appearing on the date set for the ~~appointment~~
150 ~~of commissioners or~~ the empanelment of a jury nor from presenting evidence as to valuation and
151 damage nor from sharing in the award of just compensation according to his interest therein or
152 otherwise protecting his rights, but such failure shall preclude such owner from any other defense by
153 way of pleas in bar, abatement or otherwise.

154 An extract, Teste:

155 Clerk

156 (Here state name and address of counsel for petitioner)

157 B. Such notice by publication may also include notice of the petitioner's application for the right of
158 entry as provided in § 25.1-223, whenever such application is included in the petition.

159 **§ 25.1-213. Filing an answer and grounds of defense; election of jury.**

160 Within 21 days of the service thereof any such owner who desires to assert any objection or defense
161 to the taking or damaging of his property or to the jurisdiction of the court to hear the case, and to
162 make his election to proceed with ~~either the appointment of commissioners or~~ the empanelment of a
163 jury, shall file (i) his answer and grounds of defense designating the property in which he claims to be
164 interested, (ii) the grounds of any objection or defense to the taking or damaging of his property or to
165 the jurisdiction of the court to hear the case, and (iii) his election to proceed with ~~either the appointment~~
166 ~~of commissioners or~~ the empanelment of a jury for the determination of just compensation.

167 **§ 25.1-214. Failure of owner to file answer and grounds of defense.**

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

175 B. If the owner fails to file an answer and grounds of defense, or if the owner files an answer and
176 grounds of defense that fails to elect to have the determination of just compensation made by ~~either~~
177 ~~commissioners or~~ a jury, then the petitioner may elect to have the issue of just compensation determined
178 by ~~either commissioners or~~ a jury; or by the court as provided in § 25.1-220.

179 **§ 25.1-219. Pretrial settlement conference; determination of preliminary issues; fixing date of**
180 **trial on issue of just compensation.**

181 A. The owner or the petitioner in any condemnation proceeding may request and, if requested, the

182 court shall order a pretrial settlement conference. Such conference shall be conducted by a neutral third
 183 party, if available. Such conference may be requested at any time by either the owner or the petitioner.
 184 If requested, such conference shall be held within the 30 days preceding the scheduled trial date. If such
 185 a conference is ordered, the court shall order both parties to appear with counsel, if any, and the parties
 186 shall appear with settlement authority. All settlement conferences conducted pursuant to this provision
 187 shall be nonbinding. If settlement is not reached, the matter shall proceed to trial as set upon the docket.

188 B. At the hearing upon the petition and application for ~~either the appointment of commissioners or~~
 189 the empanelment of a jury made in accordance with § 25.1-209, if no answer and grounds of defense
 190 has been filed objecting to the jurisdiction of the court to hear the case and to proceed with the
 191 ~~appointment of commissioners or the empanelment of a jury~~, the court shall enter an order fixing a date
 192 for the trial of the issue of just compensation and stating that such issue shall be determined by a
 193 ~~commission~~, by a jury or by the court, as provided in § 25.1-220. If any answer and grounds of defense
 194 has been filed objecting to the jurisdiction of the court, the court shall determine such issues or other
 195 matters in controversy, excepting the issue of just compensation or matters relating to the ownership of
 196 any land or other property or the interests of any party in such land or other property before fixing a
 197 date for the trial of the issue of just compensation.

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

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

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

209 **§ 25.1-220. Who determines issue of just compensation.**

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

216 **§ 25.1-235. Compensation of jurors.**

217 The ~~commissioners or~~ jurors summoned shall, for every day or portion thereof they may be
 218 employed in the performance of their duties, receive an allowance in the amount prescribed in
 219 § 17.1-618 as compensation for their attendance, travel and other costs, to be paid by the petitioner.

220 **§ 25.1-318. Petition by owner for determination of just compensation.**

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

228 1. Has not completed the construction of the contemplated improvements upon the property after a
 229 reasonable time for such construction has elapsed; or

230 2. Has not instituted condemnation proceedings within:

231 a. Sixty days after completion of the construction of the contemplated improvements upon the
 232 property;

233 b. One hundred eighty days after the authorized condemnor has entered upon and taken possession of
 234 the property, regardless of whether the construction of the contemplated improvements has been
 235 completed; or

236 c. One hundred eighty days after the recordation of a certificate.

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

244 **§ 33.2-1029. Remedy of landowners under certain conditions.**

245 Whenever the Commissioner of Highways enters upon and takes possession of property pursuant to
246 §§ 33.2-1018, 33.2-1019, and 33.2-1020 and has not instituted condemnation proceedings within 180
247 days after the recordation of a certificate as required by § 33.2-1025, whether the construction of the
248 highway project has been completed or not, the property owner may, if no agreement has been made
249 with the Commissioner of Highways as to compensation and damage, if any, petition the circuit court of
250 the county or the court of the city in which such cases are tried and in which the greater portion of the
251 property lies for the ~~appointment of commissioners or~~ *empanelment of* a jury to determine just
252 compensation for the property taken and damages done, if any. A copy of such petition shall be served
253 upon the Commissioner of Highways at least 10 days before it is presented to the court, and the
254 Commissioner of Highways shall file an answer thereto within five days after the petition is so
255 presented. If the court finds that a reasonable time has elapsed for the completion of the construction of
256 the highway project or that 60 days have elapsed since the completion of the construction of the
257 highway project or that more than 180 days have elapsed since the Commissioner of Highways entered
258 upon and took possession of the property, without condemnation proceedings being instituted and
259 without an agreement having been made between the property owner and the Commissioner of
260 Highways as to compensation and damages, if any, ~~commissioners or~~ a jury shall be ~~appointed~~
261 *empaneled* to ascertain the amount of compensation to be paid for the property taken and damages done,
262 if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2
263 (§ 25.1-200 et seq.) of Title 25.1 insofar as the same may be applicable.

264 **§ 62.1-98. Right of eminent domain of public service corporations.**

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

272 1. Such corporation may, by the exercise of such right for such purpose, acquire all necessary lands,
273 property and rights of whatsoever nature, whether or not such lands, property or rights have been
274 theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but
275 not restricted to, the lands, property and rights necessary for any storage, diversion, regulation, detention,
276 or interference with the flow of any water and for any waterway and including also, but not restricted
277 to, any lands, structures, property or rights owned, used or held by or for public or private, religious,
278 charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and
279 bridges, and any other property, public or private, when necessary for such purpose; provided, however,
280 that the right of eminent domain under this section shall not be available against existing public-carrier
281 railroads; and provided further that, in the event of the condemnation under this chapter of any roads or
282 bridges, the ~~commissioners or~~ jurors in assessing the compensation and damages therefor, shall consider
283 the cost of relocating and constructing such roads or bridges upon other reasonable convenient locations;
284 and the damage, if any, to persons and corporations because of relocation and construction. No such
285 corporation shall impair the drinking water supply of any city or town or acquire any municipal electric
286 light and power or water plant by virtue of any additional powers conferred by this chapter; provided
287 further that the provisions of this section shall not be construed to authorize the acquisition by
288 condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

289 2. When, in the operation of any dam, power station or other structure of a water-power
290 development, any such public service corporation interferes, to an extent beyond its common-law
291 riparian rights, with the flow of water downstream from such structure and by reason of such
292 interference any property or riparian right, or any part thereof or interest therein, is destroyed or
293 damaged, such corporation may exercise the right of eminent domain for the purpose of acquiring such
294 property, right or interest so destroyed or of ascertaining and paying just compensation for any such
295 damage.

296 3. In connection with the exercise of the right of eminent domain over public and private cemeteries,
297 such corporation shall also have the right to acquire by condemnation proceedings other lands to which
298 to remove the bodies and monuments or other structures from such public or private cemeteries. All the
299 rights of the owners, including the Commonwealth, in and to the lands in such cemeteries shall pass to
300 and vest in such corporation and the title to the lands acquired for the removal of such cemeteries shall
301 vest in the former owners and such others as may have rights therein of such cemeteries so removed.
302 However, before such corporation may flood or otherwise utilize any such cemetery, it shall remove the
303 bodies and monuments or other structures to the lands acquired for such purpose and reinter the bodies
304 and reset the monuments, under the direction and to the satisfaction of the court in which such

305 condemnation proceedings are brought. If the parties in interest fail to agree as to the location and area
306 of the additional lands to be acquired in which to reinter the bodies and on which to rest the monuments
307 and other structures, the same shall be determined by the court.

308 4. For the purpose of relocating any railway, pipeline, wire line, road or bridge occupying the area
309 on which any such water-power development or enlargement thereof is to be located, such corporation
310 may acquire by the exercise of the right of eminent domain, any needful additional lands or other
311 property, whether within or without the area upon such water-power development or enlargement thereof
312 is to be located, and shall have the right for such purpose and shall convey such lands or other property
313 or rights to the owner of such railway, pipeline, wire line, road or bridge.

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

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

330 **2. That Article 4 (§§ 25.1-227.1 and 25.1-227.2) of Chapter 2 of Title 25.1 of the Code of Virginia**
331 **is repealed.**