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SENATE BILL NO. 485

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 25.1-417 and 33.2-1007 of the Code of Virginia, and to repeal § 33.2-1009 of the Code of Virginia, relating to eminent domain; remnants and remainders.

Patrons—DeSteph and Chase

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-417 and 33.2-1007 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-417. General provisions for conduct of acquisition.

A. If a state agency acquires real property in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

2. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; however, the requirements of this subdivision shall not apply if the state agency's official who is responsible for the acquisition determines that the value of the property being acquired is less than \$25,000, based on assessment records or other objective evidence. Whenever the value of the property being acquired is determined to be between \$10,000 and \$25,000, the state agency, at the time an offer is made initiating negotiations, shall disclose to the owner or his designated representative that the offer has been established based on assessment records or other objective evidence and not an appraisal and that he may request that an appraisal be prepared and used as the basis for establishing just compensation pursuant to this section.

3. Before making an offer to acquire or initiating any related negotiations for real property, the state agency shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The state agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation and, if an appraisal is required or obtained, such written statement and summary shall include a complete copy of all appraisals of the real property to be acquired that the state agency obtained prior to making an offer to acquire or initiating any related negotiations for the real property. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

4. No owner shall be required to surrender possession of real property before the state agency pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater, or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

5. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90-days' written notice from the state agency, of the date by which such move is

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59 required.

60 6. If the state agency permits an owner or tenant to occupy the real property acquired on a rental
61 basis for a short term for a period subject to termination by the state agency on a short notice, the
62 amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

63 7. In no event shall the state agency either advance the time of condemnation, or defer negotiations
64 or condemnation and the deposit of funds in court for the use of the owner, or take any other action
65 coercive in nature, in order to compel an agreement on the price to be paid for the property.

66 8. If any interest in real property is to be acquired by exercise of the power of eminent domain, the
67 state agency shall institute formal condemnation proceedings. No state agency shall intentionally make it
68 necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

69 9. If the acquisition of only part of a property would ~~leave its owner with~~, *in the judgement of the*
70 *property owner, create* an uneconomic remnant, the state agency concerned shall offer to acquire the
71 entire property.

72 10. A person whose real property is being acquired in accordance with this article may, after the
73 person has been fully informed of his right to receive just compensation for such property, donate such
74 property, and part thereof, any interest therein, or any compensation paid therefor to a state agency, as
75 such person shall determine.

76 B. The provisions of this section create no rights or liabilities and shall not affect the validity of any
77 property acquisitions by purchase or condemnation.

78 C. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an
79 eminent domain proceeding.

80 **§ 33.2-1007. Authority to acquire entire tract of land, or parcel thereof, when only part to be**
81 **utilized for highway purposes.**

82 In acquiring rights-of-way for highway construction, reconstruction, or improvement, and lands
83 incidental to such construction, reconstruction, or improvement, the Commissioner of Highways is
84 authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way or a
85 purpose incidental to the construction, reconstruction, or improvement of a public highway, to acquire
86 by purchase, gift, or the exercise of the power of eminent domain the entire tract of land or any part
87 thereof whenever (i) *in the judgement of the owner* the remainder of such tract or part thereof can no
88 longer be utilized for the purpose for which the entire tract is then being utilized; (ii) a portion of a
89 building is to be taken; (iii) the cost of removal or relocation of the buildings or other improvements on
90 the remaining portion necessitated by the taking would exceed the cost of destroying such buildings or
91 other improvements; (iv) the highway project will leave the remaining portions without a means of
92 access to a public highway; or (v) in the judgment of the ~~Commissioner of Highways~~ *property owner*
93 the resulting damages to the remainder of such tract or part thereof lying outside the proposed
94 right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction, or
95 improvement of a public highway, will approximate or equal the fair market value of such remaining
96 lands. However, the Commissioner of Highways shall not acquire the remainder of such tracts ~~by~~
97 ~~purchase where the remaining portion is in excess of 10 acres or by condemnation where the remaining~~
98 ~~portion is in excess of two acres if the owner objects to the acquisition thereof.~~ Nothing contained in
99 this section shall be construed as preventing the Commissioner of Highways from complying, where
100 applicable, with the provisions of § 25.1-417.

101 **2. That § 33.2-1009 of the Code of Virginia is repealed.**