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SENATE BILL NO. 485

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 29, 2020)

(Patron Prior to Substitute—Senator DeSteph)

*A BILL to amend and reenact §§ 25.1-400, 25.1-417, and 33.2-1007 of the Code of Virginia, relating to eminent domain; remnants and remainders.***Be it enacted by the General Assembly of Virginia:****1. That §§ 25.1-400, 25.1-417, and 33.2-1007 of the Code of Virginia are amended and reenacted as follows:****§ 25.1-400. Definitions.**

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

"Business" means any lawful activity, except a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and of real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25.1-406, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is (i) decent, safe and sanitary; (ii) adequate in size to accommodate the occupants; (iii) within the financial means of the displaced person; (iv) functionally equivalent; (v) in an area not subject to unreasonable adverse environmental conditions; and (vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Decent, safe, and sanitary dwelling" means a dwelling that:

1. Is structurally sound, weather tight and in good repair;

2. Has a safe electrical wiring system adequate for lighting and appliances;

3. Contains a heating system capable of maintaining a healthful temperature;

4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;

5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;

6. Provides unobstructed egress to safe open space at ground level. If the unit is above the first floor and served by a common corridor, there must be two means of egress; and

7. Is free of barriers to egress, ingress and use by a displaced person who is handicapped.

"Displaced person" means:

1. Any person who moves from real property, or moves his personal property from real property (i) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (ii) on which such person is a residential tenant or conducts a small business, a farm operation or a business described in clause 4 of the definition of "business" in this section as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent;

2. Solely for the purposes of §§ 25.1-406, 25.1-407, and 25.1-411, any person who moves from real property, or moves his personal property from real property: (i) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a state agency or (ii) as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, of other real property on which such person conducts a business or farm operation, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and

3. Any person who moves or discontinues his business or moves other personal property, or moves from his dwelling, as the direct result of (i) federally assisted activities for the enforcement of a building code or other similar code or (ii) a program of rehabilitation or demolition of buildings conducted pursuant to a federally assisted governmental program.

The term "displaced person" does not include (i) a person who has been determined, according to

60 criteria established by the state agency, to be either in unlawful occupancy of the displacement dwelling
61 or to have occupied such dwelling for the purpose of obtaining assistance under this chapter or (ii) in
62 any case where the state agency acquires property for a program or project, any person, other than a
63 person who was an occupant of the property at the time it was acquired, who occupies such property on
64 a rental basis for a short term or a period subject to termination when the property is needed for the
65 program or project.

66 "Dwelling" means the place of permanent or customary and usual residence of a person, according to
67 local custom or law, including a single-family house, a single family unit in a two-family, multi-family,
68 or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping
69 unit; a mobile home; or any other residential unit.

70 "Farm operation" means any activity conducted solely or primarily for the production of one or more
71 agricultural products or commodities, including timber, for sale or home use, and customarily producing
72 such products or commodities in sufficient quantity to be capable of contributing materially to the
73 operator's support.

74 "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid
75 purchase price of, real property, together with the credit instruments, if any, secured thereby.

76 "Nonprofit organization" means an organization that is exempt from paying federal income taxes
77 under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

78 "Person" means any (i) individual or (ii) partnership, corporation, limited liability company,
79 association, or other business entity.

80 "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest
81 after the partial acquisition of the owner's property and which the state agency has determined that has
82 little or no value or utility to the owner.

83 **§ 25.1-417. General provisions for conduct of acquisition.**

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

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

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

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

117 4. No owner shall be required to surrender possession of real property before the state agency pays
118 the agreed purchase price, or deposits with the state court in accordance with applicable law, for the
119 benefit of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market
120 value of such property, if such an appraisal is required, or the current assessed value of such property
121 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 required.

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

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

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

9. If the acquisition of only part of a property ~~would leave its owner with an~~ *causes an owner or the condemnor to believe that the remaining property is an uneconomic remnant, the state agency concerned the court may determine the issue on petition of either party and upon presentation of evidence prior to the setting of the matter for trial on just compensation. If the condemnor determines an uneconomic remnant is created, it shall offer to acquire the entire property within two months of making such determination. If the court rules in favor of the owner, then the court may award the owner such sum as will, in the opinion of the court, reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable appraisal, engineering, and attorney fees that are actually incurred due to the proceeding. The award of such sums shall be paid by the state agency that sought to condemn the property.*

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

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

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

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

In acquiring rights-of-way for highway construction, reconstruction, or improvement, and lands incidental to such construction, reconstruction, or improvement, the Commissioner of Highways is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way or a purpose incidental to the construction, reconstruction, or improvement of a public highway, to acquire by purchase, gift, or the exercise of the power of eminent domain the entire tract of land or any part thereof whenever *the Commissioner of Highways and the owner agree that* (i) the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized; (ii) a portion of a building is to be taken; (iii) the cost of removal or relocation of the buildings or other improvements on the remaining portion necessitated by the taking would exceed the cost of destroying such buildings or other improvements; (iv) the highway project will leave the remaining portions without a means of access to a public highway; or (v) ~~in the judgment of the Commissioner of Highways~~ the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction, or improvement of a public highway, will approximate or equal the fair market value of such remaining lands. However, the Commissioner of Highways shall not acquire the remainder of such tracts by purchase ~~where the remaining portion is in excess of 10 acres or by condemnation where the remaining portion is in excess of two acres if the owner objects to the acquisition thereof.~~ Nothing contained in this section shall be construed as preventing the Commissioner of Highways from complying, where applicable, with the provisions of § 25.1-417. *If there is no such agreement between the Commissioner of Highways and the owner, then the court may determine the issue on petition of either party and upon the presentation of evidence prior to the setting of the matter for trial on just compensation.*

If the court rules in favor of the owner, then the court may award the owner such sum as will, in the opinion of the court, reimburse such owner for his reasonable costs, disbursements, and expenses,

183 *including reasonable appraisal, engineering, and attorney fees that are actually incurred due to the*
184 *proceeding. The award of such sums shall be paid by the state agency that sought to condemn the*
185 *property.*