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SENATE BILL NO. 1304

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 15.2-1800 and 15.2-1814 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 1-237.1, and to repeal § 15.2-1900 of the Code of Virginia, relating to eminent domain; definition of public uses.

Patrons—Newman and Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1800 and 15.2-1814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 1-237.1 as follows:

§ 1-237.1. Public uses.

The right to private property being a fundamental right, the term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined in all instances to embrace only the ownership, possession, occupation, and enjoyment of land by the public or public agencies, the use of land for the creation or functioning of any public service corporation or public service company, including but not limited to railroad companies, which has been granted or delegated the power of eminent domain, or the use of land for any entity that owns, operates, or maintains a road that is open to and services the public generally. In determining whether a use constitutes a public use, public benefits or potential public benefits including economic development or private development, an increase in the tax base, tax revenues, or employment, or general economic health and welfare shall not be considered. Any taking of private property shall be necessary to achieve the public use, and the public benefit shall dominate the private gain. Except as stated herein, the taking of private property for the primary purpose of transferring or leasing to private parties shall not constitute a public use. Any taking under the pretext of an alleged public use shall be impermissible when the primary purpose is to bestow a private benefit.

The property owner whose property is subject to taking shall have the right to rebut the presumption that the taking is for a public use or is necessary for the public use or is necessary for the public use by a preponderance of the evidence.

Nothing contained herein shall be construed as granting or delegating the power of eminent domain not conferred independently of this section.

§ 15.2-1800. Purchase, sale, use, etc., of real property.

A. A locality may acquire by purchase, gift, devise, bequest, exchange, lease as lessee, or otherwise, title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction, for any public use. Acquisition of any interest in real property by condemnation is governed by Chapter 19 (§ ~~15.2-1900~~ 15.2-1901 et seq.). The acquisition of a leasehold or other interest in a telecommunications tower, owned by a nongovernmental source, for the operation of a locality's wireless radio communications systems shall be governed by this chapter.

B. Subject to any applicable requirements of Article VII, Section 9 of the Constitution, any locality may sell, at public or private sale, exchange, lease as lessor, mortgage, pledge, subordinate interest in or otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided for in § 15.2-2030) which may be subdivided and conveyed separate from the subjacent land surface, provided that no such real property, whether improved or unimproved, shall be disposed of until the governing body has held a public hearing concerning such disposal. However, the holding of a public hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or authority of the Commonwealth or (ii) conveyance of site development easements across public property, including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm water management, and other similar conveyances, that are consistent with the local capital improvement program, involving improvement of property owned by the locality. The provisions of this section shall not apply to the vacation of public interests in real property under the provisions of Articles 6 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

C. A city or town may also acquire real property for a public use outside its boundaries; a county may acquire real property for a public use outside its boundaries when expressly authorized by law.

D. A locality may construct, insure, and equip buildings, structures and other improvements on real property owned or leased by it.

E. A locality may operate, maintain, and regulate the use of its real property or may contract with

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59 other persons to do so.

60 Notwithstanding any contrary provision of law, general or special, no locality providing access and
61 opportunity to use its real property, whether improved or unimproved, may deny equal access or a fair
62 opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America
63 or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any locality to
64 sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from
65 local policies governing access to and use of a locality's real property. The provisions of this paragraph
66 applicable to a locality shall also apply equally to any local governmental entity, including a department,
67 agency, or authority.

68 F. This section shall not be construed to deprive the resident judge or judges of the right to control
69 the use of the courthouse.

70 G. "Public use" as used in this section shall have the same meaning as in § ~~15.2-1900~~ 1-237.1.

71 § 15.2-1814. Acquisition authorized by chapter declared to be for public use.

72 Any acquisition of property authorized by any provision of this chapter is hereby declared to be for a
73 public use as the term "public uses" is used in § ~~15.2-1900~~ 1-237.1.

74 **2. That § 15.2-1900 of the Code of Virginia is repealed.**