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HOUSE BILL NO. 1035

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 25.1-100 and 25.1-400 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 25.1-230.1, relating to eminent domain; lost profits and access.

Patrons—Joannou, Cole, Crockett-Stark, O'Bannon, Ware, R.L. and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-100 and 25.1-400 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 25.1-230.1 as follows:

§ 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 empanelled 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 empanelled.

"Business" means any lawful activity, except for 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.

"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.

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

"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 change in access that occurs to property that has been taken or damaged as set out in subsection A of § 25.1-230.1. This definition of the term "lost access" shall not create any new right or remedy or diminish any existing 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 the usual profits from a business or farm operation that is suffered as a result of a taking or damaging of the property on which the business or farm operation is located to the extent that the loss is proven pursuant to subsection B of § 25.1-230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any existing right or remedy other than to allow the body determining just compensation to consider lost profits in awarding just compensation if a person asserts a right to lost profits as an element of damage in a claim for compensation.

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

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

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

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

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

76 "State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital or
77 state training center for individuals with mental retardation operated by the Department of Behavioral
78 Health and Developmental Services.

79 § 25.1-230.1. *Lost access and lost profits.*

80 A. *The body determining just compensation shall consider an injury or benefit that is peculiar to the*
81 *property owner and that relates to the property owner's ownership, use, or enjoyment of the particular*
82 *parcel of real property, including a substantial and material impairment of direct access on or off the*
83 *remaining property that affects the market value of the remaining property. The body determining just*
84 *compensation shall ascertain damages for lost access, if any, that may accrue to the residue beyond the*
85 *enhancement in value, if any, to such residue by reason of the taking and use by the petitioner. If such*
86 *enhancement in value shall exceed the damage, there shall be no recovery against the landowner for*
87 *such excess. The body determining just compensation may not consider an injury or benefit that the*
88 *property owner experiences in common with the general community, including circuity of travel and*
89 *diversion of traffic through an exercise of the police power. The body determining just compensation*
90 *shall ensure that any compensation awarded for lost access shall not be duplicated in the compensation*
91 *otherwise awarded to the owner of the property taken or damaged. As used in this subsection, "direct*
92 *access" means ingress or egress on or off a public road, street, or highway at a location where the*
93 *remaining property adjoins that road, street, or highway.*

94 B. *The body determining just compensation shall include in its determination compensation for lost*
95 *profits to the owner of a business or farm operation conducted on the property taken or damaged only*
96 *if the owner proves with reasonable certainty the amount of the loss and the following conditions are*
97 *met:*

98 1. *The loss is directly caused by the taking of the property or damage to the residue;*

99 2. *The loss cannot be reasonably prevented by a relocation of the business or farm operation, or by*
100 *taking steps and adopting procedures that a reasonably prudent person would take and adopt;*

101 3. *The loss will not be included in relocation assistance provided pursuant to Chapter 4 (§ 25.1-400*
102 *et seq.); and*

103 4. *Compensation for the loss will not be duplicated in the compensation otherwise awarded to the*
104 *owner of the property taken or damaged.*

105 C. *Any and all liability for lost profits shall be established and made a part of the award of just*
106 *compensation by the conclusion of the condemnation proceeding.*

107 D. *Nothing in this section is intended to provide for compensation for inverse condemnation claims*
108 *for temporary interference with or interruption of a business or farm operation other than that which is*
109 *directly and proximately caused by a taking or damaging of property through the exercise of eminent*
110 *domain.*

111 § 25.1-400. Definitions.

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

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

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

116 2. *For the sale of services to the public;*

117 3. *By a nonprofit organization; or*

118 4. *Solely for the purposes of § 25.1-406, for assisting in the purchase, sale, resale, manufacture,*
119 *processing, or marketing of products, commodities, personal property, or services by the erection and*
120 *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 subdivision 4~~ of the definition of "business" in ~~this section~~ § 25.1-100 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 criteria established by the state agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter or (ii) in any case where the state agency acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

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

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

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

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

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

"Uneconomic remnant" means a parcel of real property in which the owner is left with an interest

182 after the partial acquisition of the owner's property and which the state agency has determined has little
183 or no value or utility to the owner.
184 **2. That this act shall become effective January 1, 2013, contingent upon the passage of an**
185 **amendment to the Constitution of Virginia on the Tuesday after the first Monday in November**
186 **2012 amending Section 11 of Article I of the Constitution of Virginia.**