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**HOUSE BILL NO. 597**

Offered January 11, 2012

Prefiled January 10, 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.*

Patron—Crockett-Stark

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 rights or remedies or diminish any existing rights or remedies other than to allow the body determining just compensation to consider lost profits in awarding just 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.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company;

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

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

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

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

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

78 § 25.1-230.1. *Lost access and lost profits.*

79 A. *The body determining just compensation shall consider an injury or benefit that is peculiar to the*  
80 *property owner and that relates to the property owner's ownership, use, or enjoyment of the particular*  
81 *parcel of real property, including any material impairment of direct access on or off the remaining*  
82 *property that affects the market value of the remaining property. The body determining just*  
83 *compensation may not consider an injury or benefit that the property owner experiences in common with*  
84 *the general community, including circuitry of travel and diversion of traffic. As used in this subsection,*  
85 *"direct access" means ingress or egress on or off a public road, street, or highway at a location where*  
86 *the remaining property adjoins that road, street, or highway.*

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

- 91 1. *The loss is caused by the taking of the property or damage to the residue;*
- 92 2. *The loss cannot be reasonably prevented by a relocation of the business or farm operation, or by*  
93 *taking steps and adopting procedures that a reasonable prudent person would take and adopt;*
- 94 3. *The loss will not be included in relocation assistance provided pursuant to Chapter 4 (§ 25.1-400*  
95 *et seq.); and*
- 96 4. *Compensation for the loss will not be duplicated in the compensation otherwise awarded to the*  
97 *owner of the property taken or damaged.*

98 C. *Nothing in this section is intended to address compensation for inverse condemnation claims for*  
99 *temporary interference with or interruption of a business or farm operation.*

100 § 25.1-400. Definitions.

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

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

- 103 1. ~~For the purchase, sale, lease and rental of personal and of real property, and for the manufacture,~~  
104 ~~processing, or marketing of products, commodities, or any other personal property;~~
- 105 2. ~~For the sale of services to the public;~~
- 106 3. ~~By a nonprofit organization; or~~
- 107 4. ~~Solely for the purposes of § 25.1-406, for assisting in the purchase, sale, resale, manufacture,~~  
108 ~~processing, or marketing of products, commodities, personal property, or services by the erection and~~  
109 ~~maintenance of an outdoor advertising display or displays, whether or not such display or displays are~~  
110 ~~located on the premises on which any of the above activities are conducted.~~

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

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

- 117 1. Is structurally sound, weather tight and in good repair;
- 118 2. Has a safe electrical wiring system adequate for lighting and appliances;
- 119 3. Contains a heating system capable of maintaining a healthful temperature;
- 120 4. Is adequate in size with respect to the number of rooms and area of living space needed to

121 accommodate the displaced household;

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

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

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

128 "Displaced person" means:

129 1. Any person who moves from real property, or moves his personal property from real property (i)  
130 as a direct result of a written notice of intent to acquire or the acquisition of such real property, in  
131 whole or in part, for any program or project undertaken by a state agency or (ii) on which such person  
132 is a residential tenant or conducts a small business, a farm operation or a business described in clause 4  
133 of the definition of "business" in ~~this section~~ § 25.1-100 as a direct result of rehabilitation, demolition,  
134 or other displacing activity as the state agency may prescribe, under a program or project undertaken by  
135 the state agency in any case in which the state agency determines that such displacement is permanent;

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

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

148 The term "displaced person" does not include (i) a person who has been determined, according to  
149 criteria established by the state agency, to be either in unlawful occupancy of the displacement dwelling  
150 or to have occupied such dwelling for the purpose of obtaining assistance under this chapter or (ii) in  
151 any case where the state agency acquires property for a program or project, any person, other than a  
152 person who was an occupant of the property at the time it was acquired, who occupies such property on  
153 a rental basis for a short term or a period subject to termination when the property is needed for the  
154 program or project.

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

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

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

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

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

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

172 **2. That this act shall become effective January 1, 2013, contingent upon the passage of an**  
173 **amendment to the Constitution of Virginia on the Tuesday after the first Monday in November**  
174 **2012 amending Section 11 of Article I of the Constitution of Virginia.**