

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB485

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: DeSteph

3. Committee: Judiciary

4. Title: Eminent domain; remnants and remainders.

5. Summary: Repeals the provision of the Code of Virginia declaring that the acquisition of residual parcels when acquiring land for highway rights-of-way is in the public interest and is a public use. The bill provides a property owner with the ability to decide whether acquisition would create an uneconomic remnant or whether the damage to the remainder of a piece of acquired property would equal or exceed the fair market value of the remaining land.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary. See item 8.

8. Fiscal Implications: The bill proposes changes to both the general provisions of property acquisition through eminent domain as well as changes to property acquisition for highway purposes.

The bill would allow the property owner to determine if the acquisition of only part of a property would create an uneconomic remnant, which would then require the state agency acquiring the land through eminent domain to offer to acquire the entire property. Existing statute maintains that a state agency is required to offer to acquire the entire property if an uneconomic remnant would be created, but currently the determination that an uneconomic remnant would be created is dictated by the state agency acquiring the partial property. Allowing property owners to make the determination on the creation of an uneconomic remnant could result in state agencies being required to acquire additional land per the owner's determination. The amount of additional land which would need to be acquired, and the costs of such acquisition and subsequent maintenance, is indeterminate. Additionally, any state agency engaged in eminent domain proceedings could face additional costs for appraisals and/or project delays if the agency and property owner disagree over the creation of an uneconomic remnant; these costs are also indeterminate.

Currently, federal statute assigns the identification of the uneconomic remnant to state agencies in eminent domain proceedings related to federal or federally-assisted projects. It is possible that this bill would create a conflict with federal law and potentially jeopardize federal funding. The total amount of such funding is currently indeterminate.

The Virginia Department of Transportation (VDOT) currently has authority to acquire all or parts of tracts of land to be used as rights-of-way or other purposes incidental to highway projects when: the remainder of the tract can no longer be utilized for the purpose for which it is currently being utilized; or, the resulting damages to the remainder of the tract or portion of the tract outside the proposed right-of-way or area needed for incidental purposes would equal or exceed the fair market value of the remaining land. In both cases, VDOT currently makes the determination on utilization or damage costs. This bill would allow the property owner to make both types of determination. Allowing property owners to make these determinations could result in state agencies being required to acquire additional land per the owner's determination. The amount of additional land which would need to be acquired, and the costs of such acquisition and subsequent maintenance, is indeterminate.

The bill would prohibit VDOT from acquiring the remaining portions of tracts of land not being used for rights-of-way or other purposes incidental to highway projects if the owner objects to the acquisition of that land. Current statute limits such acquisitions based only on the size of the parcel. The bill also repeals the provision of statute that declares that the acquisition of residual parcels when acquiring land for highway rights-of-way is in the public interest and is a public use. These provisions of the bill could make it more difficult and possibly more expensive for VDOT to acquire remaining portions of land which could reduce the amount of additional land acquired.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Transportation; any state agency utilizing eminent domain

10. Technical Amendment Necessary: No.

11. Other Comments: None.