

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB485

House of Origin	<input type="checkbox"/> Introduced	<input checked="" 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: Finance and Appropriations

4. Title: Eminent domain; remnants and remainders.

5. Summary: The substitute bill provides that if the acquisition of only part of a property causes an owner or the condemnor to believe that the remaining property is an uneconomic remnant (property that has little or no value or utility to the owner), 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.

6. Budget Amendment Necessary: No.

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

8. Fiscal Implications: The substitute bill defines an uneconomic remnant as “a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and that has little or no value or utility to the owner.” Under present statute, a state agency must determine that the property has little or no utility to the owner.

The substitute bill would allow the property owner or the state agency condemning the property to determine if the acquisition of only part of a property would create an uneconomic remnant. The bill would also allow a court to settle a dispute on the determination of the creation of an uneconomic remnant between the property owner and the state agency. If the state agency determined an uneconomic remnant would be created, the agency would be required to offer to acquire the entire property within two months. If the property owner and state agency disagree on the determination and a court decides in favor of the owner, the court can require the state agency to reimburse the owner for reasonable costs associated with petitioning the court.

Allowing property owners to dispute a determination on the creation of an uneconomic remnant could result in state agencies being required to acquire additional land per the owner's determination, if a court were to agree. 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, attorney costs, 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.

The substitute bill would require VDOT and the property owner to agree on both types of determination. If the property owner and VDOT do not agree on the determination, the bill would allow a court to settle a dispute on the determination upon petition of either party. If the court decides in favor of the owner, the court can require VDOT to reimburse the owner for reasonable costs associated with petitioning the court. Allowing property owners to dispute these determinations could result in VDOT being required to acquire additional land if the court rules in the owner's favor. The amount of additional land which would need to be acquired, and the costs of such acquisition and subsequent maintenance, is indeterminate. Any costs to VDOT associated with attorney costs or property owners cost reimbursements is indeterminate.

The substitute 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. This provision 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; the court system

10. Technical Amendment Necessary: No.

11. Other Comments: None.