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HOUSE BILL NO. 446
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Transportation
on _____)
(Patron Prior to Substitute—Delegate Simon)

A BILL to amend and reenact §§ 25.1-108, 25.1-109, 28.2-628, 33.2-291, and 33.2-293 of the Code of Virginia, relating to Virginia Passenger Rail Authority; eminent domain.

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-108, 25.1-109, 28.2-628, 33.2-291, and 33.2-293 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-108. Offer to sell to former owner.

A. If a condemnor has acquired a fee simple interest in property by exercise of its power of eminent domain and subsequently declares that the property is surplus, the condemnor shall offer, within 30 days following such determination, to sell such property to the former owner or his heirs or other successors or assigns. If (i) the work or improvements described in any written statement required by law or in the petition for condemnation made pursuant to § 25.1-206 have not been let to contract or construction commenced within a period of 20 years from the date that the fee simple interest in the property vested in the condemnor, and the property is not being used for other public uses that are within the limitations set forth in § 1-219.1 or (ii) at any time the property is no longer used or needed for the public use for which the property was taken as may be described in any written statement required by law or in the petition for condemnation or for another specific public use that is within the limitations set forth in § 1-219.1, the condemnor shall declare its fee simple interest in the property to be surplus and offer to sell the property to the former owner or his heirs or other successors or assigns. Additionally, if the conditions described in clause (i) or (ii) occur, the former property owner or his heirs or other successors or assigns may make a written demand that the condemnor (a) declare its fee simple interest in the property to be surplus and (b) offer to sell the property to the former owner or his heirs or other successors or assigns. Any contractual provision or agreement by the former owner waiving the right to receive an offer to sell from the condemnor is void and unenforceable. The offer to sell shall be made in writing by the condemnor at the price paid by the condemnor to the former owner plus interest at the annual rate of six percent, provided that the condemnor may increase the price by the fair market value of the condemnor's improvements, determined at the time the offer to sell is made. In no case shall the price established by the condemnor exceed the fair market value of the property at the time the offer to sell is made. The offer to sell shall comply with the requirements of subsection B. If the former owner or

33 his heirs or other successors or assigns do not accept in writing an offer to sell that complies with the
34 requirements of this section within six months after the offer to sell has been made as provided in subsection
35 B, the former owner or his heirs or other successors or assigns shall have no further right to purchase the
36 property pursuant to this section. An offer to sell that satisfies the requirements of this subsection and
37 subsection B shall be deemed a valid offer to sell under this section.

38 B. The condemnor shall (i) send the offer to sell to the former owner by certified mail, return receipt
39 requested, to (a) the last known address of the former owner and (b) the address of the former owner as it
40 appears in the tax records of the treasurer for the locality in which the property is located and (ii) publish the
41 offer to sell in a newspaper having general circulation in the locality in which the property is located. The
42 offer to sell shall be published once a week for two successive weeks, shall identify the former owner from
43 whom the condemnor acquired the property, shall briefly describe the property and the date title vested in the
44 condemnor, shall state the offer is made pursuant to this section, and shall state that the offer is open to any
45 heirs, successors, or assigns of the former owner, who shall be named in the offer as parties unknown.

46 C. This section shall apply only to a fee simple interest in real property acquired by a condemnor in the
47 exercise of its power of eminent domain. This section shall not apply to property acquired by the
48 Commissioner of Highways pursuant to Title 33.2. Further, this section shall not apply to property acquired
49 by a locality *or the Virginia Passenger Rail Authority* for transportation projects, including for bond-funded
50 transportation projects or for future transportation improvements, regardless of whether such projects are
51 undertaken in conjunction with the Commonwealth Transportation Board, provided that as to any such
52 acquisitions by a locality *or the Virginia Passenger Rail Authority* the provisions of § 33.2-1005 shall apply
53 mutatis mutandis to the property and any disposition thereof. Also, this section shall not apply to property
54 that is acquired by the owner of a railroad for actual operating purposes if the property is unsuitable for
55 independent development.

56 **§ 25.1-109. Condemnation of lands for compensatory mitigation of wetlands.**

57 When authorization is required by federal or state law for any project affecting wetlands and the
58 authorization is conditioned upon compensatory mitigation for adverse impacts to wetlands, no condemnor
59 shall acquire through exercise of the power of eminent domain any property to satisfy such condition unless:
60 (i) the property sought to be acquired is located within the same locality as the project affecting wetlands, or
61 (ii) the governing body of the locality where the property sought to be acquired consents to its acquisition for
62 such purpose. This section shall not apply to property acquired by the Commissioner of Highways *or the*
63 *Virginia Passenger Rail Authority* pursuant to Title 33.2.

64 **§ 28.2-628. Condemnation of oyster bottoms and grounds.**

65 The Department of Transportation, *the Virginia Passenger Rail Authority*, and any locality shall have the
66 right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms,
67 oyster-planting grounds, or interest therein necessary for the purpose of such Department, *Authority*, or
68 locality. The procedure in such cases shall conform to the provisions of Chapter 3 (§ 25.1-300 et seq.) of Title
69 25.1. However, a locality shall not exercise the right by eminent domain to acquire any right or interest,
70 partial or complete, in and to any oyster-planting grounds leased pursuant to Article 1 (§ 28.2-600 et seq.) or
71 2 (§ 28.2-603 et seq.) of Chapter 6, other than a water-dependent linear wastewater project where there is no
72 practical alternative and the project is subject to permitting under the State Water Control Law (§ 62.1-44.2 et
73 seq.).

74 The Department of Conservation and Recreation shall have the same right of eminent domain against the
75 same properties as previously described, where the purpose of the condemnation is to provide for a
76 navigational improvement benefiting the Commonwealth and not limited to purposes of any particular
77 locality.

78 **§ 33.2-291. Local authorities subordinate to Authority.**

79 Any conflict between any authority granted to localities or other entities of the Commonwealth, other than
80 the Transportation Board and the Department, with respect to the ownership or use of rail facilities or the
81 provision of passenger rail service, or the exercise of that authority, and the exercise of the authority granted
82 by the Board under this article shall be resolved in favor of the exercise of such authority by the Board.
83 Rights-of-way transferred to the Authority ~~from a railroad~~ shall not be subject to the requirements of any
84 local ordinances enacted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

85 **§ 33.2-293. Acquisition, possession, and disposition of rail facilities; eminent domain.**

86 A. The Authority shall have the right to acquire by purchase, lease, or grant rail facilities and other lands,
87 structures, property, both real and personal, tangible and intangible, rights, rights-of-way, franchises,
88 easements, and other interests therein, whether located within or not within the geographic boundaries of the
89 Commonwealth, for the construction, operation, maintenance, and use of rail facilities.

90 B. The Authority shall have the right to hold and dispose of rail facilities and other lands, structures,
91 property, both real and personal, tangible and intangible, rights, rights-of-way, franchises, easements, and
92 other interests therein in the exercise of its powers and the performance of its duties under this article,
93 including but not limited to the sale, exchange, lease, mortgage, or pledge of such property or interest therein,

94 provided that any such disposition that involves property or interests with a fair market value in excess of \$5
95 million shall require the consent of the Transportation Board.

96 C. The Commonwealth and any agencies or political subdivisions thereof may provide services, donate,
97 lease, sell, convey, or otherwise transfer, with or without consideration or for minimal consideration, real or
98 personal property and make appropriations to the Authority for the design, acquisition, construction,
99 equipping, maintenance, and operation of rail facilities and may issue bonds in the manner provided in the
100 Public Finance Act (§ 15.2-2600 et seq.) or in its municipal charter for the purpose of providing funds to be
101 appropriated to the Authority; the Authority may agree to assume, or reimburse such a political subdivision
102 for, any indebtedness incurred by such political subdivision with respect to facilities conveyed by it to the
103 Authority.

104 D. The Authority is authorized to acquire by the exercise of the power of eminent domain any lands,
105 property rights, rights-of-way, franchises, easements, and other property, including *lands under water*,
106 *riparian rights*, *oyster bottoms*, *oyster-planting grounds*, public lands, parks, playgrounds, reservations,
107 highways, or parkways, or parts thereof or rights therein, of any person, partnership, association, *corporation*,
108 railroad, public service *corporation*, or public utility; ~~or other corporation~~, or of any municipality, county, or
109 other political subdivision, deemed necessary for the construction or the efficient operation of rail facilities or
110 necessary in the restoration, replacement, or relocation of public or private property damaged or destroyed
111 ~~whenever a reasonable price cannot be agreed upon with the governing body of such municipality, county, or~~
112 ~~other political subdivision as to such property owned by it or whenever the Authority cannot agree on the~~
113 ~~terms of purchase or settlement with the other owners because of the incapacity of such owners, because of~~
114 ~~the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because such~~
115 ~~owners are nonresidents of the Commonwealth, are unknown, or are unable to convey valid title to such~~
116 ~~property. Such proceedings shall be in accordance with and subject to the provisions of any and all laws of~~
117 ~~the Commonwealth applicable to the exercise of the power of eminent domain and subject to the provisions~~
118 ~~of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1. Title to any property condemned by the Authority shall~~
119 ~~immediately vest in the Authority, and the Authority shall be entitled to the immediate possession of such~~
120 ~~property upon the deposit with the clerk of the court in which such condemnation proceedings are originated~~
121 ~~of the total amount of the appraised price of the property and court costs and fees as provided by law,~~
122 ~~notwithstanding that any of the parties to such proceedings may appeal from any decision in such~~
123 ~~condemnation proceedings. Whenever the Authority makes such deposit in connection with any~~
124 ~~condemnation proceedings, the making of such deposit shall not preclude the Authority from appealing any~~

125 decision rendered in such proceedings. Upon the deposit with the clerk of the court of the appraised price,
126 any person entitled thereto may, upon petition to the court, be paid his or their pro rata share of 100 percent of
127 such appraised price. The acceptance of such payment shall not preclude such person from appealing any
128 decision rendered in such proceedings. If the appraisal is greater or less than the amount finally determined
129 by the decision in such proceedings or by an appeal, the amount of the increase or decrease shall be paid or
130 refunded to the Authority. *The Authority is further authorized to acquire such property by the aforesaid*
131 *means for reconveyance so long as such property is put to a public use as specified in § 1-219.1. The*
132 *Authority shall exercise the power of eminent domain in the manner, and in accordance with, the procedures*
133 *set forth in Chapters 2 (§ 25.1-200 et seq.), 3 (§ 25.1-300 et seq.), and 4 (§ 25.1-400 et seq.) of Title 25.1. The*
134 *Authority's use of the procedures set out in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1 shall not be subject to*
135 *the provisions of § 25.1-102.*

136 E. The acquisition of any such property by condemnation or by the exercise of the power of eminent
137 domain for the purposes provided herein shall be and is declared to be a public use of such property.

138 F. ~~For purposes of this section, the terms "appraised price" and "appraisal" mean the value determined by~~
139 ~~two competent real estate appraisers appointed~~ *The provisions of § 33.2-1014 shall apply, mutatis mutandis,*
140 *to any condemnation by the Authority for such purposes.*

141 G. *The Authority is authorized to acquire by purchase or the exercise of the power of eminent domain an*
142 *entire tract of land or any part thereof when a portion of the tract is to be used for the Authority's purposes*
143 *and (i) the remainder of such tract or part thereof can no longer be utilized for the purpose for which the*
144 *entire tract is used prior to such acquisition; (ii) a portion of a building is to be taken; (iii) the cost of*
145 *removal or relocation of the buildings or other improvements on the remaining portion necessitated by the*
146 *taking would exceed the cost of destroying such buildings or other improvements; (iv) the project will leave*
147 *the remaining portions without access to a public highway; or (v) in the judgment of the Authority, the*
148 *resulting damages to the remainder of such tract or part thereof lying outside the proposed acquisition will*
149 *approximate or equal the fair market value of such remaining lands. However, the condemnor shall not*
150 *acquire an uneconomic remnant if the owner objects and desires to maintain ownership of the excess*
151 *property. Nothing in this section shall be construed as preventing the Authority from complying, where*
152 *applicable, with the provisions of §§ 1-219.1 and 25.1-417. The acquisition of such residue parcels is hereby*
153 *declared to be in the public interest and constitutes a public use as the term public use is used in Article I,*
154 *Section 11 of the Constitution of Virginia.*