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Virginia's Eminent Domain Question

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Last week, Governor McDonnell signed House and Senate bills providing for a referendum on a constitutional amendment to expand property owner rights in Virginia eminent domain proceedings (the **amendment**).

If passed, the amendment will affect current Virginia condemnation law in four key respects:

First, the amendment clarifies and solidifies the **public use** that will justify government taking of private property. The amendment specifically states that takings for the primary purposes of **private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance on the property,** will not satisfy the Public Use Clause of Article I, Section 11 of the Virginia Constitution.

Second, the amendment prohibits government acquisition of more private property than necessary to achieve the stated public use.

Third, the amendment states that the condemnor bears the burden of proving that the use is public, without a presumption that it is.

Fourth, the amendment adds **lost profits** and **lost access** into the just compensation equation. The lost access provision allows for **a material impairment of direct access to property, a portion of which has been taken or damaged** to be compensable. The lost profits language allows compensation for a loss of business profits for up to three years from the date of taking.

If voters approve the amendment, these changes will almost certainly result in larger just compensation awards to property owners as well as an increase in costs for many government funded projects. Though this increase was acknowledged by the Governor and the Attorney General, both stated that the legislation is necessary to protect property rights and ensure that the cost of Virginia's growth and development does not disproportionately fall to the landowner subject to the taking.

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