

SB694

Virginia Municipal League Comments House Courts Committee, 2 March 2022 Mark Flynn, on behalf of VML

[SB 694](#) (Obenshain) was dramatically altered Monday in the House Courts Subcommittee, with the result that taking or affecting land for road, water, sewer and other public projects can become significantly more expensive. It overturns years of Supreme Court decisions and creates an imbalance of the rights of the public and individual landowners.

The subcommittee substitute does these things:

1. Overturns decades of case law on when a landowner can sue for loss of access. Since at least the 1970s, the Virginia Supreme Court has ruled that a landowner is not entitled to payment for a change in access to his property, so long as the landowner retains reasonable access. The rule and current law require the action to cause a “material impairment of direct access”. Line 48 strikes 50 years of court decisions, by allowing a suit for any “change of vehicular access” where there is **ANY** decrease in value.
2. The current law only protects direct access to a road. The bill does away with that limit so that property not adjoining a road can sue for damages. Lines 157-158 and line 48.
3. Requires a landowner to be paid for loss of access or profits even if the benefits to the landowner are greater than those losses. Example: a small shop on a rural road with little traffic. New road installed that increases business tenfold. The substitute does not require any offset for benefits from the amount owed the landowner. Further, under current law, if the landowner is impacted in the same way as all other property owners in the area of a project, there is no compensation. The substitute does away with that limit. Lines 163-170.
4. Allows a landowner to be paid for damages where no land is taken – such as a street festival, parade, or temporary water line project that closes a street for a few days. This same provision was in SB666, but the patron of that bill agreed to change it.

VML asks the House Courts Committee by Wednesday to:

1. Reject the House Courts Subcommittee substitute, and
2. **INCLUDE** an amendment to provide that the government must certify the end date of a temporary construction easement **IF** the government knows that date.

Contact: Mark Flynn markkflynn@gmail.com or 804-400-1321