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SENATE BILL NO. 694

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 11, 2022)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-307, 25.1-308, 25.1-315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 25.1 a section numbered 25.1-319 and by adding a section numbered 33.2-1029.1; and to repeal § 33.2-1029 of the Code of Virginia, relating to eminent domain.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1901, 25.1-100, 25.1-204, 25.1-230.1, 25.1-237, 25.1-245.1, 25.1-307, 25.1-308, 25.1-315, 25.1-318, 33.2-1016, 33.2-1018, 33.2-1019, 33.2-1022, and 33.2-1026 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 25.1 a section numbered 25.1-319 and by adding a section numbered 33.2-1029.1 as follows:

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection B.

B. A locality may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.

C. Notwithstanding any other provision of law, general or special, no locality shall condition or delay the timely consideration, *advancement, or approval* of any application for or grant of any permit or other approval for any real property over which it enjoys jurisdiction for the purpose, expressed or implied, of allowing the locality to ~~condemn~~ *condemnation* or otherwise acquire acquisition of the property or to commence any process to consider whether to undertake condemnation or acquisition of the property.

§ 25.1-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Body determining just compensation" means a panel of commissioners empaneled pursuant to § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empaneled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Lost access" means a ~~material impairment of direct change of vehicular or pedestrian~~ access to property, a portion of which has been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost access" shall not diminish any existing right or remedy, and shall not create any new right or remedy other than to allow the body determining just compensation to consider a change in access in awarding just compensation that is caused by a public use project for which the eminent domain power has been exercised against the property and which results in a diminution in the value of the property.

"Lost profits" means a loss of business profits, as defined in § 25.1-230.1, that is suffered as a result of a taking of the property on which a business or farm operation is located, subject to adjustment using generally accepted accounting principles consistently applied, from a business or farm operation for a

60 period not to exceed three years from the later of (i) the date of valuation or (ii) the date the state
61 agency or its contractor prevents the owner from using the land or any of the owner's other property
62 rights are taken. The person claiming lost profits is entitled to compensation whether part of the
63 property or the entire parcel of property is taken. In order to qualify for an award of lost profits, one of
64 the following conditions shall be met: (a) the business is owned by the owner of the property taken, or
65 by a tenant whose leasehold interest grants the tenant exclusive possession of substantially all the
66 property taken, or (b) the farm operation is operated by the owner of the property taken, or by a tenant
67 using for a farm operation the property taken, to the extent that the loss is determined and proven
68 pursuant to subsection C of § 25.1-230.1. This definition of the term "lost profits" shall not create any
69 new right or remedy or diminish any existing right or remedy other than to allow the body determining
70 just compensation to consider lost profits in awarding just compensation if a person asserts a right to
71 lost profits in a claim for compensation.

72 "Owner" means any person who owns property, provided that the person's ownership of the property
73 is of record in the land records of the clerk's office of the circuit court of the county or city where the
74 property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,
75 any person with a security interest in the property, or any person with a judgment or lien against the
76 property. This definition of the term "owner" shall not affect in any way the valuation of property.

77 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;
78 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in
79 bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a
80 court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or
81 any department, agency or instrumentality thereof; any city, county, town, or other political subdivision
82 or any department, agency or instrumentality thereof; or any interstate body to which the
83 Commonwealth is a party.

84 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of
85 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a
86 state agency.

87 "Property" means land and personal property, and any right, title, interest, estate or claim in or to
88 such property.

89 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public
90 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth
91 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire
92 property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out
93 projects that cause persons to be displaced.

94 "State institution" means any (i) institution enumerated in § 23.1-1100 or (ii) state hospital or state
95 training center operated by the Department of Behavioral Health and Developmental Services.

96 **§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.**

97 A. A condemnor shall not institute proceedings to condemn property until a bona fide but ineffectual
98 effort to purchase from the owner the property sought to be condemned has been made. However, such
99 effort shall not be required if the consent cannot be obtained because one or more of the owners (i) is a
100 person under a disability or is otherwise unable to convey legal title to such property, (ii) is unknown,
101 or (iii) cannot with reasonable diligence be found within this Commonwealth.

102 B. Such bona fide effort shall include delivery of, or attempt to deliver, a written offer to acquire
103 accompanied by a written statement to the owner that explains the factual basis for the condemnor's
104 offer. The written statement shall include a description of the public use for which it is necessary to
105 acquire the owner's property and shall contain a certification that the acquisition has been reviewed by
106 the condemnor for purposes of complying with § 1-219.1. The written offer shall be made upon the state
107 agency's letterhead and shall be signed by an authorized employee of such state agency.

108 C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417,
109 such written statement shall include a complete copy of the appraisal of the property upon which such
110 offer is based. If the condemnor obtains more than one appraisal, such written statement shall include a
111 copy of all appraisals obtained prior to making an offer to acquire or initiating negotiations for the real
112 property.

113 D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to
114 acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of
115 deposit pursuant to Chapter 3 (§ 25.1-300 et seq.) or § 33.2-1019, shall (i) conduct or cause to be
116 conducted an examination of title to the property in order to ascertain the identity of each owner of such
117 property and to determine the nature and extent of such owner's interests in the property ~~and~~, *which*
118 *examination of title shall be for at least 60 years;* (ii) provide to such owner or owners a copy of the
119 ~~report of status of title showing the examination of title; and~~ *provide to such owner or owners a*
120 *copy of all recorded instruments within the 60-year title history of such property, including all deeds of*
121 *trust, releases, liens, deeds, or other instruments identified in the report.*

E. A state agency's acquisition of real property in connection with any programs or projects pursuant to this title or Title 33.2 shall be conducted in accordance with the following provisions:

1. Before making an offer to acquire or initiating any related negotiations for real property, the state agency shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The state agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation, and, if an appraisal is required or obtained, such written statement and summary shall include a complete copy of all appraisals of the real property to be acquired that the state agency obtained prior to making an offer to acquire or initiating negotiations for the real property. The state agency shall provide its written statement of the amount it established as just compensation on its letterhead, which shall be signed by an authorized employee of such state agency. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

2. No owner shall be required to surrender possession of real property before the state agency pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, (i) an amount not less than the state agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or the current assessed value of such property for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment is made is to be acquired, whichever is greater, or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 25.1-230.1. Lost access and lost profits.

A. For purposes of this section:

"Business" shall have the same meaning as set forth in § 25.1-400.

"Business profit" means the average net income for federal income tax purposes for the three years immediately prior to the later of (i) the date of valuation or (ii) the date the state agency or its contractor prevents the owner from using the land or any of the owner's other property rights are taken, for a business or farm operation located on the property taken.

"Direct access" means ingress or egress on or off a public road, street, or highway at a location where the property adjoins that road, street, or highway.

"Farm operation" shall have the same meaning as set forth in § 25.1-400.

B. The body determining just compensation shall include in its determination of damage to the residue any loss in market value of the remaining property from lost access caused by the taking or damaging of the property. The body determining just compensation shall ascertain any reduction in value for lost access, if any, that may accrue to the residue as provided in subsection A of § 25.1-230, by reason of the taking and use by the petitioner. If such peculiar benefit or enhancement in value shall exceed the reduction in value, there shall be no recovery against the landowner for such excess. The body determining just compensation may not consider an injury or benefit that the property owner experiences in common with the general community, including off-site circuity of travel and diversion of traffic, arising from an exercise of the police power. The body determining just compensation shall ensure that any compensation awarded for lost access shall not be duplicated in the compensation otherwise awarded to the owner of the property taken or damaged.

C. The body determining just compensation shall include in its determination of just compensation lost profits to the owner of a business or farm operation conducted on the property taken only if the owner proves with reasonable certainty the amount of the loss and that the loss is directly and proximately caused by the taking of the property through the exercise of eminent domain and the following conditions are met:

1. The loss cannot be reasonably prevented by a relocation of the business or farm operation, or by taking steps and adopting procedures that a reasonably prudent person would take and adopt;

183 2. The loss will not be included in relocation assistance provided pursuant to Chapter 4 (§ 25.1-400
184 et seq.);

185 3. Compensation for the loss will not be duplicated in the compensation otherwise awarded to the
186 owner of the property taken or damaged; and

187 4. The loss shall be determined in accordance with generally accepted accounting principles applied
188 on a consistent basis.

189 D. Any and all liability for lost access shall be established and made a part of the award of just
190 compensation for damage to the residue of the property taken or damaged, and any and all liability for
191 lost profits shall be set forth specifically in the award. In a partial acquisition, in the event that the
192 owner of the property being condemned and the owner of the business or farm operation claiming lost
193 profits are the same, then any enhancement or peculiar benefit shall be offset against both damage to the
194 residue and lost profits.

195 E. It shall not be a requirement of any bona fide effort to purchase the property pursuant to
196 § 25.1-204 or 33.2-1001 that the petitioner include any liability for lost profits in a written offer to
197 purchase the property.

198 F. In any proceeding in which the owner of a business or farm operation seeks to recover lost
199 profits, the owner shall provide the condemning authority with all federal income tax returns, if any,
200 relating to the business or farm operation for which the owner seeks lost profits for a period of three
201 years prior to the later of (i) the valuation date or (ii) the date the state agency or its contractor prevents
202 the owner from using the land or any of the owner's other property rights are taken, and for each year
203 thereafter during the pendency of the condemnation proceeding. The condemning authority shall not
204 divulge the information provided pursuant to this subsection except in connection with the condemnation
205 proceeding. Additionally, unless already named in the petition for condemnation, the owner may
206 intervene in the proceeding by filing a motion to intervene accompanied by a petition for intervention
207 setting forth the basis for the lost profits claim under this chapter. Proceedings to adjudicate lost profits
208 may be bifurcated from the other proceedings to determine just compensation if the lost profits claim
209 period will not expire until one year or later from the date of the filing of the petition for condemnation,
210 but such bifurcation shall not prevent the entry of an order confirming infeasible title to the land
211 interests acquired by the condemning authority.

212 G. Nothing in this section is intended to provide for compensation for inverse condemnation claims
213 for lost profits or lost access for temporary interference with or interruption of a business or farm
214 operation other than that which is directly and proximately caused by a taking or damaging of property
215 through the exercise of eminent domain where the impact to the property is for a period of fewer than
216 seven days.

217 **§ 25.1-237. Payment of compensation and damages into court; vesting of title.**

218 Upon the return of the report of the body determining just compensation, and the confirmation,
219 alteration, or modification thereof in the manner provided in this chapter, the sum so ascertained by the
220 court as compensation and damages, if any, to the property owners may be paid into court. *The clerk*
221 *shall deposit such funds to the credit of the court in an account of a type that bears interest.* Upon
222 paying such sum into court, title to the property and rights condemned shall vest in the petitioner to the
223 extent prayed for in the petition, unless such title shall have already vested in the petitioner in a manner
224 otherwise provided by law. The petitioner or its agent shall have the right to enter and construct its
225 works or improvements upon or through the property described in its petition.

226 **§ 25.1-245.1. Costs.**

227 A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that are
228 fixed by statute shall be taxed against the condemnor.

229 B. The court ~~may in its discretion tax as a cost a fee, not to exceed \$1,000, shall order the~~
230 ~~condemnor to pay to the owner reasonable costs and fees, not to exceed \$7,500, unless the court~~
231 ~~approves a higher amount,~~ for a survey for the ~~landowner~~ owner.

232 C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is
233 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25
234 percent or more greater than the amount of the condemnor's initial written offer made pursuant to
235 § 25.1-204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than
236 attorney fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering
237 fees incurred by the owner, for up to three experts or as many experts as are called by the condemnor,
238 whichever is greater, who testified at trial.

239 D. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules
240 of Court as in other civil cases.

241 E. The requirements of this section shall not apply to those condemnation actions initiated by a
242 public service company, public service corporation, railroad pursuant to the delegation of the power of
243 eminent domain granted in Title 56, or government utility corporation, as defined by § 1-219.1,
244 involving easements adjudged at less than \$10,000.

F. This section is to be liberally construed to effect its purpose of ensuring that owners receive the full measure of just compensation to which they are constitutionally entitled, without that amount being reduced by the costs of asserting their constitutional right to just compensation.

§ 25.1-307. Content of certificates; recordation of certificates.

A. A certificate shall set forth the description of the property being taken or damaged, and the owner or owners, if known, of such property. *If a temporary construction easement is being acquired, the certificate shall set forth the calendar date on which it shall expire if that date is known to the condemnor. If the condemnor certifies that such date is not known, at such time the condemnor ascertains the date, the condemnor shall file certification of the information as provided by subsection B and shall simultaneously provide the landowner or the landowner's counsel, if any, a copy of such certification.*

B. The authorized condemnor shall record a certificate of take or a certificate of deposit in the clerk's office of the court where deeds are recorded. The clerk shall record the certificate in the deed book and index it in the names of both (i) the person or persons who owned the land before the recordation of the certificate and (ii) the authorized condemnor.

§ 25.1-308. Effect of recordation of certificate; transfer of title or interest in property.

A. Upon recordation of a certificate:

1. The interest or estate of the owner of the property described therein shall terminate;
2. The title to such property shall be vested in the authorized condemnor;
3. The owner shall have such interest or estate in the funds deposited with the court or represented by the certificate of deposit as the owner had in the property taken or damaged; and
4. All liens by deed of trust, judgment or otherwise upon such property shall be transferred to such funds.

B. The title in the authorized condemnor shall be defeasible until (i) the authorized condemnor and such owner reach an agreement as provided in § 25.1-317, or (ii) the compensation for the taking or damage to the property is determined by condemnation proceedings as provided in § 25.1-313.

C. If funds have been deposited with the court under a certificate of take, the clerk shall deposit the funds so paid to the credit of the court in an account of a type that bears interest.

§ 25.1-315. Awards in greater amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person or persons entitled thereto. *The clerk shall deposit such funds to the credit of the court in an account of a type that bears interest.*

B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid into court for the person or persons entitled thereto. However, any interest that accrued before July 1, 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight percent.

§ 25.1-318. Petition by owner for determination of just compensation.

A. The owner of property that an authorized condemnor has entered and taken possession of, or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the appointment of commissioners or the empanelment of a jury to determine just compensation for the property taken and damages done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) if (i) the owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized condemnor:

1. Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or
2. Has not instituted condemnation proceedings within:
 - a. Sixty days after completion of the construction of the contemplated improvements upon the property;
 - b. One hundred eighty days after the authorized condemnor has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has been completed; or
 - c. One hundred eighty days after the recordation of a certificate.

B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken and

damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§ 25.1-200 et seq.) insofar as the same may be applicable, *except that the owner shall have the burden of proceeding with the evidence as to just compensation. The authorized condemnor shall reimburse the owner for his fees and costs charged by a lienholder, including filing fees and attorney fees, incurred in filing the owner's petition.*

§ 25.1-319. Certificates of completion.

Upon completion of construction of any public use project for which a portion of private property was acquired by certificate, the condemnor shall, within 90 days of completion of construction, record a certificate of completion in the clerk's office of the court where deeds are recorded. Such certificate of completion shall state that construction of the public use project for which the property was taken is complete and any temporary acquisitions have terminated. The clerk shall record the certificate of completion in the deed book and index in it the names of both (i) the person or persons who own the land at the time of the recordation of the certificate of completion and (ii) the condemnor.

§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival; validation of suits; notice of filing.

A. Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except that the provisions of §§ 33.2-1018 through ~~33.2-1029~~ 33.2-1029.1 shall be applicable to such proceedings.

B. All suits shall be instituted and conducted in the name of the Commissioner of Highways as petitioner without naming the individual who may be such Commissioner of Highways or acting Commissioner of Highways. In the event of the death, removal, retirement, or resignation of the Commissioner of Highways or acting Commissioner of Highways, the suit shall automatically survive to a successor Commissioner of Highways or acting Commissioner of Highways. All suits heretofore filed in accordance with the provisions of this section are hereby ratified, validated, and confirmed.

C. In addition to any other notices required to be served pursuant to this section, in any proceeding instituted by the Commissioner of Highways under this title, a copy of the notice of the filing of the petition also shall be served, in the same manner as such notice is served upon owners, upon any person owning structures or improvements for which an outdoor advertising permit has been issued by the Commissioner of Highways pursuant to § 33.2-1208.

§ 33.2-1018. Authority to take possession and title to property before or during condemnation; purpose and intent of provisions.

In addition to the exercise of the power of eminent domain prior to the entry upon land being condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and to enter upon and take possession of such property and rights-of-way, for the purposes set out in § 33.2-1001, as the Commissioner of Highways may deem necessary, and proceed with the construction of such highway, such taking to be made pursuant to §§ 33.2-1019 through ~~33.2-1029~~ 33.2-1029.1.

It is the intention of this article to provide that such property and rights-of-way may, in the discretion of the Commissioner of Highways, be condemned during or after the construction of the highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this article shall apply, whether the property and rights-of-way are condemned before, during, or after the construction of the highway. However, the authorities constructing such highway under the authority of this article shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation is resorted to.

§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.

A. Before entering upon or taking possession of land pursuant to § 33.2-1018, the Commissioner of Highways shall either:

1. Pay into the court wherein condemnation proceedings are pending or are to be instituted such sum as is required by subsection B; or

2. File with the court wherein condemnation proceedings are pending or are to be instituted a certificate of deposit issued by the Commissioner of Highways for such sum as is required by subsection B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such court.

B. The amount to be paid into the court as provided in subdivision A 1 or represented by a certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner of Highways estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by § 25.1-417; however, such estimate shall not be less than the current assessed value of the land for real estate tax purposes, unless the property has physically changed in a material and substantial way since the current assessment date such that the real estate tax assessment no longer represents a fair valuation of the property, when the entire parcel for which the assessment has been made is to be acquired.

C. If the Commissioner of Highways makes a payment into court as provided in subdivision A 1, the court shall also record a certificate of take pursuant to § 33.2-1021. *The clerk shall deposit such funds to the credit of the court in an account of a type that bears interest.*

D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid by the Commissioner of Highways.

E. The Commissioner of Highways shall not be permitted to force relocation on improved owner-occupied property until the owner is permitted to withdraw the funds represented by the certificate filed with the court. However, if the owner refuses to withdraw the funds represented by the certificate filed with the court or if the Commissioner of Highways reasonably believes that the owner does not possess clear title to the property being taken, that ownership of the property is disputed, or that certain owners cannot be located, the Commissioner of Highways may petition the court to establish that the owner does not possess clear title, that the ownership of the property is in dispute, that certain owners cannot be located, or that the owner has refused to withdraw the funds represented by the certificate filed with the court, and request that the Commissioner of Highways be given authority to force relocation.

F. Nothing in this section shall make evidence of tax assessments admissible as proof of value in an eminent domain proceeding.

§ 33.2-1022. Certificates to describe land and list owner.

The certificate shall set forth the description of the land or interest therein being taken or damaged and, if known, the owner. *If a temporary construction easement is being acquired, the certificate shall set forth the calendar date on which it shall expire.*

§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person entitled thereto. *The clerk shall deposit such funds to the credit of the court in an account of a type that bears interest.*

B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set forth in § 8.01-382, computed from the date of such deposit to the date of payment into court, and shall be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department of the Treasury for the month in which the award is rendered.

C. If the amount of an award in a condemnation proceeding is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner of Highways against such person for the amount of such excess and interest. However, the Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of initiation of negotiations for the acquisition of such property.

§ 33.2-1029.1. Petition by owner for determination of just compensation.

A. *The owner of property that the Commissioner of Highways has entered and taken position of, or taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the appointment of commissioners or the empanelment of a jury to determine just compensation for the property taken and damage done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 if (i) the owner and the Commissioner of Highways have not reached an agreement as to compensation and damages, if any, and (ii) the Commissioner of Highways:*

1. Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or

2. Has not instituted condemnation proceedings within:

a. Sixty days after completion of the construction of the contemplated improvements upon the property;

b. One hundred and eighty days after the Commissioner of Highways has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has been completed; or

c. One hundred and eighty days after the recordation of a certificate.

429 *B. A copy of such petition shall be served on the Commissioner of Highways at least 10 days before*
430 *it is filed in the court. The Commissioner of Highways shall file an answer within five days after the*
431 *filing of the petition. If the courts finds that the conditions prerequisite for such appointment as*
432 *provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as*
433 *requested in the owner's petition, to ascertain the amount of compensation to be paid for the property*
434 *taken and damages done, if any. The proceedings shall thereafter be governed by the procedures*
435 *prescribed in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as they may be applicable, except that*
436 *the owner shall have the burden of proceeding with the evidence as to just compensation. The*
437 *Commissioner of Highways shall reimburse the owner for his fees and costs, including filing fees and*
438 *attorney fees, incurred in filing the owner's petition.*
439 **2. That § 33.2-1029 of the Code of Virginia is repealed.**