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SENATE BILL NO. 694

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 2, 2022)

(Patron Prior to Substitute—Senator Obenshain)

A *BILL to amend and reenact §§ 15.2-1901, 25.1-204, 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, 25.1-204, 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.

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

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

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

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

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

60 to this title or Title 33.2 shall be conducted in accordance with the following provisions:

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

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

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

92 **§ 25.1-237. Payment of compensation and damages into court; vesting of title.**

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

101 **§ 25.1-245.1. Costs.**

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

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

107 C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is
108 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25
109 percent or more greater than the amount of the condemnor's initial written offer made pursuant to
110 § 25.1-204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than
111 attorney fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering
112 fees incurred by the owner, for up to three experts or as many experts as are called by the condemnor,
113 whichever is greater, who testified at trial.

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

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

120 F. *This section is to be liberally construed to effect its purpose of ensuring that owners receive the*
121 *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.*

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.

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

190 **§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival;**
191 **validation of suits; notice of filing.**

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

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

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

206 **§ 33.2-1018. Authority to take possession and title to property before or during condemnation;**
207 **purpose and intent of provisions.**

208 In addition to the exercise of the power of eminent domain prior to the entry upon land being
209 condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and
210 to enter upon and take possession of such property and rights-of-way, for the purposes set out in
211 § 33.2-1001, as the Commissioner of Highways may deem necessary, and proceed with the construction
212 of such highway, such taking to be made pursuant to §§ 33.2-1019 through ~~33.2-1029~~ 33.2-1029.1.

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

222 **§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.**

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

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

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

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

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

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

244 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.

B. *A copy of such petition shall be served on the Commissioner of Highways at least 10 days before it is filed in the court. The Commissioner of Highways shall file an answer within five days after the filing of the petition. If the courts 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 procedures*

306 *prescribed in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as they may be applicable, except that*
307 *the owner shall have the burden of proceeding with the evidence as to just compensation. The*
308 *Commissioner of Highways shall reimburse the owner for his fees and costs, including filing fees and*
309 *attorney fees, incurred in filing the owner's petition.*
310 **2. That § 33.2-1029 of the Code of Virginia is repealed.**