

SENATE BILL NO. 694

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(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.

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

32 **§ 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.**

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

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

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

49 D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to  
50 acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit  
51 pursuant to Chapter 3 (§ 25.1-300 et seq.) or § 33.2-1019, shall (i) conduct or cause to be conducted an  
52 examination of title to the property in order to ascertain the identity of each owner of such property and  
53 to determine the nature and extent of such owner's interests in the property ~~and~~, which examination of

54 title shall be for at least 60 years; (ii) provide to such owner or owners a copy of the report of status of  
55 title showing the examination of title; and (iii) provide to such owner or owners a copy of all recorded  
56 instruments within the 60-year title history of such property, including all deeds of trust, releases, liens,  
57 deeds, or other instruments identified in the report.

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

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

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

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

90           **§ 25.1-237. Payment of compensation and damages into court; vesting of title.**

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

99           **§ 25.1-245.1. Costs.**

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

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

105           C. If an owner whose property is taken by condemnation under this title or under Title 33.2 is  
106 awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25

107 percent or more greater than the amount of the condemnor's initial written offer made pursuant to § 25.1-  
 108 204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than attorney  
 109 fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees incurred  
 110 by the owner, for up to three experts or as many experts as are called by the condemnor, whichever is  
 111 greater, who testified at trial.

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

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

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

121 **§ 25.1-307. Content of certificates; recordation of certificates.**

122 A. A certificate shall set forth the description of the property being taken or damaged, and the  
 123 owner or owners, if known, of such property. If a temporary construction easement is being acquired, the  
 124 certificate shall set forth the calendar date on which it shall expire.

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

129 **§ 25.1-308. Effect of recordation of certificate; transfer of title or interest in property.**

130 A. Upon recordation of a certificate:

- 131 1. The interest or estate of the owner of the property described therein shall terminate;
- 132 2. The title to such property shall be vested in the authorized condemnor;

133 3. The owner shall have such interest or estate in the funds deposited with the court or represented  
134 by the certificate of deposit as the owner had in the property taken or damaged; and

135 4. All liens by deed of trust, judgment or otherwise upon such property shall be transferred to such  
136 funds.

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

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

142 **§ 25.1-315. Awards in greater amounts than deposit; interest.**

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

147 B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set  
148 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid  
149 into court for the person or persons entitled thereto. However, any interest that accrued before July 1,  
150 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981,  
151 shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall  
152 be paid at the rate of eight percent.

153 **§ 25.1-318. Petition by owner for determination of just compensation.**

154 A. The owner of property that an authorized condemnor has entered and taken possession of, or  
155 taken defeasible title of, pursuant to the provisions of this chapter may petition the circuit court of the  
156 locality in which the greater portion of the property lies for the appointment of commissioners or the  
157 empanelment of a jury to determine just compensation for the property taken and damages done, if any,  
158 to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) if (i) the owner and the authorized

159 condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized  
160 condemnor:

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

163 2. Has not instituted condemnation proceedings within:

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

166 b. One hundred eighty days after the authorized condemnor has entered upon and taken possession  
167 of the property, regardless of whether the construction of the contemplated improvements has been  
168 completed; or

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

170 B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before  
171 it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the  
172 filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided  
173 in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the  
174 owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages  
175 done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§  
176 25.1-200 et seq.) insofar as the same may be applicable, except that the owner shall have the burden of  
177 proceeding with the evidence as to just compensation. The authorized condemnor shall reimburse the  
178 owner for his fees and costs charged by a lienholder, including filing fees and attorney fees, incurred in  
179 filing the owner's petition.

180 **§ 25.1-319. Certificates of completion.**

181 Upon completion of construction of any public use project for which a portion of private property  
182 was acquired by certificate, the condemnor shall, within 90 days of completion of construction, record a  
183 certificate of completion in the clerk's office of the court where deeds are recorded. Such certificate of  
184 completion shall state that construction of the public use project for which the property was taken is  
185 complete and any temporary acquisitions have terminated. The clerk shall record the certificate of

186 completion in the deed book and index in it the names of both (i) the person or persons who own the land  
187 at the time of the recordation of the certificate of completion and (ii) the condemnor.

188 **§ 33.2-1016. Procedure in general; suits in name of Commissioner of Highways; survival;**  
189 **validation of suits; notice of filing.**

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

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

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

204 **§ 33.2-1018. Authority to take possession and title to property before or during**  
205 **condemnation; purpose and intent of provisions.**

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

211 It is the intention of this article to provide that such property and rights-of-way may, in the  
212 discretion of the Commissioner of Highways, be condemned during or after the construction of the



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

220 **§ 33.2-1019. Payments into court or filing certificate of deposit before entering upon land.**

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

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

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

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

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

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

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

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

253 **§ 33.2-1022. Certificates to describe land and list owner.**

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

257 **§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.**

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

262 B. Interest shall accrue on the excess amount at not less than the judgment rate of interest as set  
263 forth in § 8.01-382, computed from the date of such deposit to the date of payment into court, and shall  
264 be paid into court for the person or persons entitled thereto. However, any (i) interest accruing after June  
265 30, 1970, and prior to July 1, 1981, shall be paid at the rate of six percent; (ii) interest accruing after June  
266 30, 1981, and prior to July 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing

267 after June 30, 1994, and prior to July 1, 2003, shall be paid at the general account composite rate, compiled  
268 by the Department of the Treasury for the month in which the award is rendered.

269 C. If the amount of an award in a condemnation proceeding is less than that deposited with the  
270 court or represented by a certificate of deposit, and the person or persons entitled thereto have received a  
271 distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the  
272 amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to §  
273 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater sum  
274 than that to which he is entitled as determined by the award, judgment shall be entered for the  
275 Commissioner of Highways against such person for the amount of such excess and interest. However, the  
276 Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in the  
277 event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land  
278 containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of  
279 initiation of negotiations for the acquisition of such property.

280 **§ 33.2-1029.1. Petition by owner for determination of just compensation.**

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

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

290 2. Has not instituted condemnation proceedings within:

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

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

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

297 B. A copy of such petition shall be served on the Commissioner of Highways at least 10 days  
298 before it is filed in the court. The Commissioner of Highways shall file an answer within five days after  
299 the filing of the petition. If the courts finds that the conditions prerequisite for such appointment as  
300 provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as  
301 requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken  
302 and damages done, if any. The proceedings shall thereafter be governed by the procedures prescribed in  
303 Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as they may be applicable, except that the owner shall  
304 have the burden of proceeding with the evidence as to just compensation. The Commissioner of Highways  
305 shall reimburse the owner for his fees and costs, including filing fees and attorney fees, incurred in filing  
306 the owner's petition.

307 **2. That § 33.2-1029 of the Code of Virginia is repealed.**

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