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SENATE BILL NO. 1171

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend the Code of Virginia by adding a section numbered 25-46.32:1, relating to eminent domain; payment of litigation expenses.

Patrons—Marye, Colgan and Norment; Delegates: Ingram, Marshall, Moran and Shuler

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 25-46.32:1 as follows:**

§ 25-46.32:1. Litigation expenses.

A. As used in this section, "litigation expenses" means the costs, disbursements, and expenses, including attorney fees, appraisal fees, and fees for expert testimony, necessary to prepare for anticipated, or to participate in, court proceedings incurred by the condemnee in connection with an action to determine the issue of just compensation for a taking or damaging of property under exercise of the power of eminent domain.

B. If the amount of just compensation, awarded to the condemnee by the judgment, exclusive of interest and costs, exceeds the amount specified in the highest written offer of settlement made by the condemnor by fifteen percent or more, the condemnee may apply for an order for the condemnor to pay the condemnee's reasonable litigation expenses actually incurred because of the court proceedings on the issue of just compensation, by serving on the condemnor and filing with the clerk of the court a verified application therefor within fifteen days after the court's confirmation of the jury's decision. The application shall show cause why the condemnee is entitled to an award of litigation expenses pursuant to this section; state the amount sought; and include an itemized statement under oath from an attorney, appraiser, or expert witness representing or appearing at trial on behalf of the condemnee stating the fee charged, the basis therefor, the actual time expended and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded.

C. In any proceeding to determine the amount of litigation expenses to be awarded, the court shall consider, among such other factors as the court deems relevant, the benefit provided to the condemnee by any of the professionals or the expert witness for whom the litigation expenses were incurred. Litigation expenses may be awarded to such of the attorneys, appraisers, or expert witnesses representing or appearing at trial on behalf of the condemnee, and in such amounts, if any, as the court deems in the best interests of justice. In making its determination of whether to make an award pursuant to this section, the court may consider (i) the extent that the condemnee, during the course of the proceeding, engaged in conduct that unduly and unreasonably protracted the final resolution of the action; (ii) whether the position of the condemnor was substantially justified; and (iii) whether special circumstances make an award of litigation expenses unjust. In no event shall the amount of the expenses awarded pursuant to this subsection exceed the amount awarded as just compensation.

D. Any litigation expenses awarded by the court pursuant to this subsection shall be paid within thirty days of the court's final order.

INTRODUCED

SB1171