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HOUSE BILL NO. 1950

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 31, 2003)

(Patron Prior to Substitute—Delegate Drake)

*A BILL to amend and reenact §§ 33.1-124 and 33.1-128 of the Code of Virginia, relating to eminent domain proceedings by the Commonwealth Transportation Commissioner; interest on awards.***Be it enacted by the General Assembly of Virginia:****1. That §§ 33.1-124 and 33.1-128 of the Code of Virginia are amended and reenacted as follows:**

§ 33.1-124. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.

Any person or persons shown by such certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to § 33.1-120 or represented by a certificate recorded pursuant to § 33.1-121. A copy of such petition shall be served on the Commonwealth Transportation Commissioner, his deputy or any attorney authorized to accept service with a notice returnable to the court or judge not less than ~~twenty-one~~ 21 days after such service, to show cause, if any, the Commissioner can, why such amount should not be distributed in accordance with the prayers of the petition. If the Commissioner does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution. If funds have been deposited with the court pursuant to § 33.1-120, any interest which has accrued on the funds shall be payable to the person or persons entitled to receive such funds. If funds are not then on deposit with the court but are represented by a certificate pursuant to § 33.1-121, a certified copy of such order shall forthwith be sent to the Commissioner by the clerk. It shall be the duty of the Commissioner to deposit such funds with the court within ~~twenty-one~~ 21 days of the date of such order. Interest at the ~~general account composite rate as set forth in § 33.1-128~~ rate of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code (as such section may be amended from time to time) shall be payable on such funds from the date of filing of such certificate if the funds are not deposited with the clerk when the certificate is filed. However, no interest shall accrue if an injunction is filed against the Department of Transportation for the taking.

If the Commissioner shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § 25-46.28 for the distribution of awards.

However, the acceptance of such payment shall not limit the amount to be allowed by a commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the proceeding to appeal from any decision therein; nor shall any party to such proceeding be entitled to introduce evidence of any amount deposited with the court or represented by a certificate, nor of any amount which has been accepted by any party entitled thereto pursuant to this section.

§ 33.1-128. Awards in greater or lesser amounts than deposit; interest.

In the event of an award in a condemnation proceeding being of a greater amount than that deposited by virtue of a certificate, the excess amount, together with interest accrued on such excess amount at the ~~general account composite rate, compiled by the Department of the Treasury of Virginia~~ rate of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code (as such section may be amended from time to time) for the month in which the award is rendered, computed from the date of such deposit to the date of payment into court, shall be paid into court for the person or persons entitled thereto, except that any interest which accrued before July 1, 1970, shall be paid at the rate of ~~five~~ 5 percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of ~~six~~ 6 percent, and any interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of ~~eight~~ 8 percent. In the event of an award in a condemnation proceeding being of a lesser amount than that deposited with the court, and the person or persons entitled thereto have received the funds deposited with the court pursuant to § 33.1-124, the Commissioner shall recover the amount of such excess and interest on such excess at the ~~general account composite rate~~ rate of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code (as such section may be amended from time to time) and, 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 against such person for the amount of such excess and interest.

2. That the provisions of this act shall be retroactive to awards rendered or certificates of deposit

60 recorded on or after October 1, 2002. In the event that the interest rate required pursuant to
61 §§ 33.1-124 and 33.1-128, as such sections existed on October 1, 2002, is greater than the interest
62 rate required under such sections as provided under the provisions of this act, the higher rate of
63 interest shall be utilized for purposes of awards rendered or certificates of deposit recorded on or
64 after October 1, 2002, but prior to the effective date of this act.
65 3. That an emergency exists and this act is in force from its passage.