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HOUSE BILL NO. 3199

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 2007)

(Patron Prior to Substitute—Delegate Athey)

A BILL to amend and reenact § 25.1-245 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 25.1-417.1, relating to the owner receiving costs in condemnation actions; written appraisal report, and to provide for partial reimbursement of owners for the some of the costs of obtaining a written appraisal if no agreement as to the price of property needed for public purposes is reached with the Department of Transportation in certain circumstances and conditions.

Be it enacted by the General Assembly of Virginia:

1. That § 25.1-245 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 25.1-417.1 as follows:

§ 25.1-245. Costs.

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

B. The court may in its discretion tax as a cost a fee, not to exceed \$1,000, for a survey for the landowner.

C. If an owner whose property is taken by condemnation under this title or under Title 33.1 is awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 30 percent or more greater than the amount of the petitioner's final written offer made not later than 60 days after the respondent has filed responsive pleadings, receipt by the petitioner of a complete copy of the owner's written self contained appraisal report that complies with the requirements of the Uniform Standards of Professional Appraisal Practice in effect as of the date of such report on which the owner intends to rely to support the amount of just compensation to which he claims to be entitled, the court may order the petitioner to pay to the owner those (i) reasonable costs, as authorized pursuant to § 25.1-419, other than attorney fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees, for no more than three experts testifying at trial, that the owner incurs. The requirements of this subsection shall not apply to those condemnation actions:

1. Involving easements valued at less than \$10,000.

2. In which the petitioner filed, prior to July 1, 2005: (i) a petition in condemnation pursuant to Chapter 2 (§ 25.1-205 et seq.) of this title; or (ii) a certificate of take or deposit pursuant to Title 33.1, or Chapter 3 (§ 25.1-300 et seq.) of this title.

3. In which the owner does not provide the report described herein.

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

§ 25.1-417.1. Partial Reimbursement of costs of an owner obtaining a written appraisal report if no agreement as to the price of property needed for public purposes is reached with the Department of Transportation in certain circumstances and subject to certain conditions .

A. Whenever the Department of Transportation and the owner do not reach an agreement for the acquisition of private property and the Department of Transportation lawfully files a Certificate of Deposit/Certificate of Take, if authorized to do so, or files a Petition in Condemnation, the owner shall be entitled to be partially reimbursed according to the provisions set out herein for the cost of preparation of one written self contained appraisal report that complies with the requirements of the Uniform Standards of Professional Appraisal Practice at that time whenever (i) the offer by the Department of Transportation exceeds \$250,000.00 or (ii) the owner contends, in a responsive pleading filed by the owner, or other written form, that just compensation for the land and interests described in said Certificate or Petition in Condemnation exceeds \$250,000.00. However, the owner shall only be entitled to be reimbursed if the owner provides to the Department of Transportation a complete and accurate copy of such written appraisal report, which must relate to the type of acquisition sought by the Virginia Department of Transportation, at least 90 days prior to trial.

B. The amount of reimbursement shall depend on the type of appraisal provided and shall not exceed \$10,000.00. The amount of reimbursement shall be based upon a schedule developed by the Department of Transportation, taking into consideration factors it deems appropriate including, but not limited to the type of acquisition—whole or partial; the complexity of the appraisal (residential, commercial, industrial, agricultural or other); the location of the property within the Commonwealth; the zoning of the property, or its reasonably probable and imminent potential for rezoning.

C. Reimbursement shall be provided within 90 days of the receipt of such written appraisal report

60 *by the Department of Transportation according to the Schedule of Reimbursement. Any disputes about*
61 *the amount of reimbursement shall be resolved by the court.*

62 *D. The amount of reimbursement or fact of reimbursement shall not be admissible in any subsequent*
63 *trial on valuation of the property acquired.*

64 **2. That the provision of § 25.1-417.1 shall only apply to all acquisitions made by the Department**
65 **of Transportation by Certificate of Deposit/Certificate of Take or Petition in Condemnation filed**
66 **after July 1, 2007.**

67 **3. That the Department of Transportation shall promulgate the Schedule of Reimbursement**
68 **described in § 25.1-417.1 by October 1, 2007 to become effective that day.**

69 **4. That the Department of Transportation shall not be subject to the requirements of the**
70 **Administrative Process Act (2.2-4000 et seq.) as may be necessary to carry out the provisions of**
71 **the third enactment of this act, but that public participation must be utilized by the Department of**
72 **Transportation to receive comments and suggestions before the Department of Transportation**
73 **adopts the Schedule.**

74 **5. That the provisions of § 25.1-417.1 shall expire on July 1, 2009.**

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