

Department of Planning and Budget

2014 Fiscal Impact Statement

1. Bill Number: SB 194 (Revised)

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Black

3. Committee: Courts of Justice

4. Title: Eminent domain; date of valuation; inverse condemnation proceeding

5. Summary: Expands the definition for the "date of valuation" in an eminent domain proceeding to include "the date on which an action is taken by the petitioner which substantially affects the use and enjoyment of the property owner" as a possible date. The bill also adds the language "or damage" to the provision of the Code directing the court to reimburse a plaintiff for the costs of an inverse condemnation proceeding if a judgment is entered for the plaintiff to correspond with the language of the amendment to Article 1, Section 11 of the Constitution of Virginia, which became effective on January 1, 2013.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary. See item 8.

8. Fiscal Implications: This bill amends the "date of valuation" for a property by adding a new condition regarding the use and enjoyment of property. Currently, the "date of valuation" is the time of the lawful taking by the petitioner or the date of the filing of the petition pursuant to §25.1-205, Code of Virginia.

Including this new provision regarding the use and enjoyment of the property by the owner moves away from a definite date, documented in the clerk's office, to a very subjective date, that is not officially documented. Using the revised definition, the "date of valuation" could occur prior to an actual decision to acquire property for a public purpose and before an offer is made to acquire the property. This proposal appears to allow the compensation of property owners for the potential effect on their property caused by public knowledge of a transportation project.

According to the Virginia Department of Transportation (VDOT), in FY2012-2013, it acquired 985 properties for transportation projects at a cost of \$70 million. It is estimated that if this bill were enacted, attorneys would aggressively seek out property owners who are either directly or indirectly impacted by a project. Of the 985 properties that were acquired within the last fiscal year, it is estimated that approximately 30 percent of the property owners would have sought to file an inverse action to have a court establish a taking of their property if this statute was in effect. There is potential impact attributable to attorney's fees, based on an estimate that 295 (985 x 30 percent) property owners may file an inverse action

prior to VDOT being able to extend a bona fide offer to them to acquire property rights. Reimbursement for property owner's legal and expert witness expenses in inverse condemnation cases typically range from \$35,000 to \$85,000, with an average of \$55,000. Based on these assumptions, the potential increase in expenses to the state for legal fees and expert witness expenses in these situations is estimated to be \$16.2 million per year.

In addition, damages relating to the value of what appears to be a newly legislated and undefined property right (use and enjoyment) could be awarded. While difficult to estimate due to the vast differences in land values and the ambiguous nature of the term "use and enjoyment", a conservative estimate of the fiscal impact associated with the new form of property damage is approximately 10 percent of the total acquisition value per year or \$7 million (\$70,000,000 x 10 percent).

This estimated annual additional cost of \$23.2 million per year would have to be incorporated into each project's budget, reducing the availability of funding for additional transportation projects.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Department of Transportation and other state agencies, localities, railroads, and utilities with eminent domain authority

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This fiscal impact statement was revised to account for a better estimate of legal costs associated with this proposal.

Date: 02/05/14

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