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SENATE BILL NO. 478

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 7, 2016)

(Patron Prior to Substitute—Senator Obenshain)

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 25.1-245.1, relating to eminent domain; reimbursement of costs.

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 25.1-245.1 as follows:

§ 25.1-245. Costs; public service company, etc.

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 initiated by a public service company, public service corporation, railroad pursuant to the delegation of the power of eminent domain granted in Title 56, or government utility corporation, as defined in § 1-219.1, under this title or under Title 33.2 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 receipt by the petitioner of a complete copy of the owner's written self contained or summary appraisal report, as referenced in the Uniform Standards of Professional Appraisal Practice, provided it is the same type of report furnished to the landowner 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, 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 33.2, 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.

§ 25.1-245.1. 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 condemnor.

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 33.2 is awarded at trial, as compensation for the taking of or damage to his real property, an amount that is 25 percent or more greater than the amount of the condemnor's initial written offer made pursuant to § 25.1-204, the court may order the condemnor to pay to the owner those (i) reasonable costs, other than attorney fees, and (ii) reasonable fees and travel costs, including reasonable appraisal and engineering fees incurred by the owner, for up to three experts or as many experts as are called by the condemnor, whichever is greater, who testified at trial at trial.

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.

E. The requirements of this section shall not apply to those condemnation actions initiated by a public service company, public service corporation, railroad pursuant to the delegation of the power of eminent domain granted in Title 56, or government utility corporation, as defined by § 1-219.1, which shall be governed by § 25.1-245.

2. That the provisions of this act shall not apply to condemnation proceedings in which the petitioner filed, prior to July 1, 2016, (i) a petition in condemnation pursuant to Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 of the Code of Virginia or (ii) a certificate of take or deposit pursuant to Title 33.2 or Chapter 3 (§ 25.1-300 et seq.) of Title 25.1 of the Code of Virginia. Any condemnation proceedings in which the petitioner filed a petition or certificate described in clause

60 (i) or (ii) on or after July 1, 2005, and prior to July 1, 2016, shall be governed by the provisions of
61 § 25.1-245 of the Code of Virginia in effect prior to July 1, 2016.