

Department of Planning and Budget 2016 Fiscal Impact Statement

1. Bill Number: SB478

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

2. Patron: Obenshain

3. Committee: Courts of Justice

4. Title: Relating to eminent domain, reimbursement of costs.

5. Summary: Provides that costs and fees may be awarded in condemnation actions where the amount the owner is awarded at trial as compensation for the taking of or damage to his property is 25 percent or more greater than the amount of the condemnor's initial written offer. Under current law, such costs and fees may be awarded if the amount awarded as compensation at trial is 30 percent or more greater than the petitioner's final offer. The bill removes an exception for meeting the requirements for payment of costs and fees for condemnation actions involving easements valued at less than \$10,000 and adds an exception for public service companies, public service corporations, and railroads that have been delegated the power of eminent domain.

The bill also replaces the word "petitioner" with "condemnor" in the provision of the Code allowing the court to award costs and fees and allows the court to order the condemnor to pay to the owner reasonable fees and travel costs incurred by the owner for up to three experts, or as many as called by the condemnor, whichever is greater, who testified at trial.

The provisions of the bill do not apply to condemnation proceedings in which the petitioner filed, prior to July 1, 2016, a petition in condemnation or a certificate of take or deposit.

6. Budget Amendment Necessary: No

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

8. Fiscal Implications: According to the Virginia Department of Transportation (VDOT), the bill in its current form could have a fiscal impact to the agency estimated at \$123,200 per year, which would need to be redirected from other priorities within the agency's budget. This number is derived by looking at historical data and extrapolating forward.

Over the last five years there have been 14 cases statewide where VDOT has produced expert witnesses in eminent domain proceedings where the award at trial exceeded VDOT's initial offer by 25 percent or greater. Although the costs vary by region, the average cost to have three experts present evidence in each case has been \$44,000 per case, resulting in costs of approximately \$616,000 over the last 5 years. The annualized amount is \$123,200 for each year. For purposes of this analysis, the agency assumed that a landowner's costs for expert

appraisals would be substantially similar. This estimate could be impacted by the number of cases in higher cost areas, the complexity of each case and a variety of other factors.

The agency also notes this measure may encourage litigation, which is in direct conflict with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Specifically, 49 CFR, Part 24.1(a) states that the purpose of the Act is “. . .to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;”.

For the reasons noted below, the Federal Highway Administration may choose not to fund awards it considers excessive, placing further pressures on state transportation revenues. Typically, approximately 80 percent of funding on VDOT projects comes from the Federal Highway Administration:

- Basing the award of costs on a percentage above the original offer instead of the Petitioner’s Final Written Offer could discourage negotiated settlements. At the point the Initial Offer is made, the negotiation phase begins. It is during the negotiation phase that VDOT hears the demands of the landowner and their justifications for any increases. This measure would discourage that process from occurring;
- These changes, as they apply to acquisitions under \$10,000, leave virtually no room for normal variances of appraiser opinions of value;
- The average costs of three or more experts could easily exceed the amount awarded for the acquisition. The bill does not include a provision that fees are to be reasonable. As a result, it is probable that the costs of fees would greatly increase; and,
- By not requiring the landowner to provide an appraisal in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as is required by the Condemnor, there is no uniform measure of valuation comparison. This could further impede settlement discussions.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Transportation

10. Technical Amendment Necessary: No

11. Other Comments: None