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SENATE BILL NO. 1421

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 1, 2017)

(Patron Prior to Substitute—Senator Mason)

*A BILL to amend and reenact §§ 25.1-244, 25.1-315, and 33.2-1026 of the Code of Virginia, relating to interest on the amount of award; condemnation proceeding.***Be it enacted by the General Assembly of Virginia:****1. That §§ 25.1-244, 25.1-315, and 33.2-1026 of the Code of Virginia are amended and reenacted as follows:****§ 25.1-244. Interest on award; entry of judgment for award and interest.**

A. If the petitioner has exercised pendente lite the right to enter into and take possession of the land or other property, in the manner provided by this chapter, upon the payment into court of the sum ascertained in the report of just compensation as provided in § 25.1-238, the owner thereof shall receive interest upon the difference between (i) the amount of just compensation as finally determined and awarded to such owner and (ii) the amount, if any, that such owner received or was entitled to receive from the fund so paid into court. Such interest shall be paid for the period from the time of such entry by the petitioner until the time the fund paid into court on account of the final award of just compensation to such owner is available for distribution. Interest accruing prior to July 1, 1970, shall be paid at the rate of five percent annually; interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent annually; interest accruing thereafter and prior to July 1, 2003, shall be paid at the rate of eight percent annually; and interest accruing thereafter shall be paid at the general account's primary liquidity portfolio rate, compiled by the Department of the Treasury not less than the judgment rate of interest as set forth in § 8.01-382. No interest shall be payable upon any amount that was withheld from such owner on account of questions involving his right, title, interest or estate in the land or other property taken or damaged.

B. If the petitioner has exercised the right pendente lite to enter into and take possession of the land or other property to be taken or damaged as provided in § 25.1-224, the owner thereof shall receive, in addition to the amount that he is entitled to receive under subsection A, interest at the general account's primary liquidity portfolio rate annually upon the difference between (i) the amount of the award of just compensation as finally determined and (ii) the amount previously paid into court as required under § 25.1-224. Such interest shall be paid for the period from the time of such entry until payment into court of the sum ascertained in the report of just compensation as provided in § 25.1-237.

C. No interest shall be allowed during the time any distribution of the fund paid into court was delayed in the trial court or upon appeal, or thereafter, occasioned by any exceptions made by such owner that are not sustained in whole or in part.

D. If the petitioner fails to pay into court any sum necessary for paying the total award that has been confirmed finally or the interest to which the owner is entitled under this section for a period of 30 days after the time for noting an appeal, the court shall enter judgment therefor against the petitioner, unless the proceedings have been dismissed in accordance with the provisions of Article 8 (§ 25.1-248 et seq.) of this chapter.

E. Interest allowable under the provisions of this section shall be reduced to the extent the fund has accrued interest during the pendency of the suit in the account required by § 25.1-224.

§ 25.1-315. Awards in greater amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person or persons entitled thereto.

B. Interest shall accrue on the excess amount at the general account's primary liquidity portfolio rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered not less than the judgment rate of interest as set forth in § 8.01-382, computed from the date of such deposit to the date of payment into court and be paid into court for the person or persons entitled thereto. However, any interest that accrued before July 1, 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent, and any interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight percent.

§ 33.2-1026. Awards in greater or lesser amounts than deposit; interest.

A. If the amount of an award in a condemnation proceeding is greater than that deposited with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person entitled thereto.

B. Interest shall accrue on the excess amount at *not less than* the judgment rate of interest established

60 pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended, compiled by the
61 Department for the month in which the award is rendered *as set forth in § 8.01-328*, computed from the
62 date of such deposit to the date of payment into court, and shall be paid into court for the person or
63 persons entitled thereto. However, any (i) interest accruing after June 30, 1970, and prior to July 1,
64 1981, shall be paid at the rate of six percent; (ii) interest accruing after June 30, 1981, and prior to July
65 1, 1994, shall be paid at the rate of eight percent; and (iii) interest accruing after June 30, 1994, and
66 prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department
67 of the Treasury for the month in which the award is rendered.

68 C. If the amount of an award in a condemnation proceeding is less than that deposited with the court
69 or represented by a certificate of deposit, and the person or persons entitled thereto have received a
70 distribution of the funds pursuant to § 33.2-1023, the Commissioner of Highways shall recover (i) the
71 amount of such excess and (ii) interest on such excess at the rate of interest established pursuant to
72 § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. If any person has been paid a greater
73 sum than that to which he is entitled as determined by the award, judgment shall be entered for the
74 Commissioner of Highways against such person for the amount of such excess and interest. However,
75 the Commissioner of Highways shall not be entitled to recover the amount of such excess and interest in
76 the event the Commissioner of Highways acquired, by virtue of the certificate, an entire parcel of land
77 containing a dwelling, multiple-family dwelling, or building used for commercial purposes at the time of
78 initiation of negotiations for the acquisition of such property.