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SENATE BILL NO. 1404

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 25.1-310, 33.2-1021, and 33.2-1023 of the Code of Virginia, relating to eminent domain; costs for petition for distribution of funds; interest rate; recordation of certificate.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 25.1-310, 33.2-1021, and 33.2-1023 of the Code of Virginia are amended and reenacted as follows:

§ 25.1-310. Proceedings for distribution of funds.

A. Any person shown by a certificate to be entitled to funds deposited with the court or represented by a certificate of deposit may petition the court for the distribution of all or any part of the funds. *Any costs of filing such petition or otherwise withdrawing the funds, including the release of any liens attaching to the funds, shall be taxed against the condemnor.*

B. A copy of such petition shall be served on either (i) the attorney of record for the petitioner, if a condemnation proceeding is pending, or (ii) if such a proceeding is not pending, an officer or agent of the authorized condemnor who is authorized to accept service of process in any court proceeding on behalf of the authorized condemnor.

C. The copy of the petition shall be served with a notice returnable to the court not less than 21 days after such service, to show cause, if the authorized condemnor can, why such amount should not be distributed in accordance with the petition.

D. If the authorized condemnor does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution.

E. If funds have been deposited with the court pursuant to subdivision A 1 of § 25.1-305, any interest that has accrued on the funds shall be payable to the person or persons entitled to receive such funds.

F. If funds are not then on deposit with the court but are represented by a certificate of deposit pursuant to subdivision A 2 of § 25.1-305, a certified copy of such order shall forthwith be sent to the authorized condemnor by the clerk. The authorized condemnor shall deposit such funds with the court within 30 days of the date of such order.

G. Interest shall be payable on funds represented by a certificate of deposit from the date of filing of the certificate of deposit until the funds are paid into court at the general account's primary liquidity portfolio rate for the month in which the order pursuant to this section is entered *no less than the judgment rate of interest as set forth in § 8.01-382.* However, interest shall not accrue if an injunction is filed against the authorized condemnor that enjoins the taking of the property described in the certificate.

H. If the authorized condemnor shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § 25.1-241 for the distribution of awards.

I. All funds due and owing pursuant to this section shall be payable promptly to the owner or, if the owner consents, to the owner's attorney. Nothing in this subsection shall be construed to alter the priority of liens or any obligation to satisfy or release any outstanding liens on the property or the funds.

§ 33.2-1021. Recordation of certificates; transfer of title or interest; land situated in two or more counties or cities.

~~The certificate of the Commissioner of Highways shall be recorded in the clerk's office of the court where deeds are recorded.~~

A. Upon such recordation, ~~the~~ of a certificate:

1. The interest or estate of the owner of such the property described therein shall terminate and the;

2. The title to such property or interest or estate of the owner shall be vested in the Commonwealth. Such;

3. The owner shall have such interest or estate in the funds held on deposit by virtue of the

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59 ~~certificate deposited with the court or represented by the certificate of deposit as he the owner had in~~
60 ~~the property taken or damaged; and~~

61 4. All liens by deed of trust, judgment, or otherwise upon such property ~~or interest~~ shall be
62 transferred to such funds.

63 B. The title in the Commonwealth shall be defeasible until (i) the ~~reaching of Commonwealth and~~
64 ~~such owner reach~~ an agreement between the Commissioner of Highways and such owner, as provided in
65 § 33.2-1027, or (ii) the compensation for the taking or damage to the property is determined by
66 condemnation proceedings as provided in §§ 33.2-1022 through 33.2-1028.

67 C. If the land affected by the certificate is situated in two or more counties or cities, the clerk of the
68 court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court
69 of the counties or cities in which any portion of the land lies, who shall record the same in his deed
70 book and index it in the name of the person who had the land before and also in the name of the
71 Commonwealth.

72 **§ 33.2-1023. Proceedings for distribution of funds; effect of acceptance of payments; evidence as**
73 **to amount of deposit or certificate.**

74 A. Any person or persons shown by a certificate to be entitled thereto may petition the court for the
75 distribution of all or any part of the funds deposited with the court pursuant to subdivision A 1 of
76 § 33.2-1019 or represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.2-1019.
77 *Any costs of filing such petition or otherwise withdrawing the funds, including the release of any liens*
78 *attaching to the funds, shall be taxed against the Commissioner of Highways.*

79 B. A copy of such petition shall be served on the Commissioner of Highways, his deputy, or any
80 attorney authorized to accept service with a notice, returnable to the court or judge not less than 21 days
81 after such service, to show cause, if any, why such amount should not be distributed in accordance with
82 the prayers of the petition.

83 C. If the Commissioner of Highways does not, on or before the return day of the petition, show such
84 cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto,
85 the court shall enter an order directing the distribution of such amount in accordance with the prayers of
86 the petition. However, in the case of a nonresident petitioner the court may require a bond before
87 ordering the distribution.

88 D. If funds have been deposited with the court pursuant to subdivision A 1 of § 33.2-1019, any
89 interest that has accrued on the funds shall be payable to the person or persons entitled to receive such
90 funds.

91 E. If funds are not then on deposit with the court but are represented by a certificate of deposit filed
92 pursuant to subdivision A 2 of § 33.2-1019, a certified copy of such order shall forthwith be sent to the
93 Commissioner of Highways by the clerk. It shall be the duty of the Commissioner of Highways to
94 deposit such funds with the court within 21 days of the date of such order.

95 F. Interest shall be payable on funds represented by a certificate of deposit from the date of filing of
96 the certificate of deposit until the funds are paid into court at the rate of interest established pursuant to
97 ~~§ 6621(a)(2) of the Internal Revenue Code of 1954, as amended, for the month in which the order~~
98 ~~pursuant to this section is entered~~ *no less than the judgment rate of interest as set forth in § 8.01-382.*
99 However, interest shall not accrue if an injunction is filed against the Department that enjoins the taking
100 of the property described in the certificate.

101 G. If the Commissioner of Highways shows such cause, or if the record in the proceeding discloses
102 any denial or dispute as to the persons entitled to such distribution or to any interest or share therein,
103 the court shall direct such proceedings as are provided by § 25.1-240 for the distribution of awards.

104 H. However, the acceptance of such payment shall not limit the amount to be allowed by a
105 commissioner in a condemnation proceeding, nor limit the rights of any party or parties to the
106 proceeding to appeal from any decision therein; nor shall any party to such proceeding be entitled to
107 introduce evidence of any amount deposited with the court or represented by a certificate, nor of any
108 amount that has been accepted by any party entitled thereto pursuant to this section.

109 I. All funds due and owing pursuant to this section shall be payable promptly to the owner or, if the
110 owner consents, to the owner's attorney. Nothing in this subsection shall be construed to alter the
111 priority of liens or any obligation to satisfy or release any outstanding liens on the property or the
112 funds.