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## HOUSE BILL NO. 221

Offered January 15, 1998

A *BILL to amend and reenact § 25-46.34 of the Code of Virginia, relating to eminent domain; attorneys' fees.*

Patrons—Mims, Albo and McDonnell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 25-46.34 of the Code of Virginia is amended and reenacted as follows:**

§ 25-46.34. Dismissal of proceedings; dropping defendant; attorneys' fees.

(a)A. If no hearing has begun in the trial of the issue of just compensation for the taking or damaging of property or property interest and the petitioner has not already acquired the title or a lesser interest or estate in or taken possession of such property, the petitioner may upon motion obtain, as a matter of right, an order dismissing the proceeding as to such property, which order shall also provide except in a settlement by agreement of the parties that the petitioner shall pay such owner or owners their reasonable expenses which have been actually incurred by them in preparing for the trial on the issue of just compensation, in such amounts as the court deems just and reasonable.

(b)B. At any time after a hearing has begun in the trial of the issue of just compensation for the taking or damaging of any property or property interest, the petitioner not having already acquired the title or a lesser interest or estate in or taken possession of such property, or paid the amount of just compensation into court, and before the time for noting an appeal from any final order upon a report of just compensation, the petitioner may, upon motion, obtain as a matter of right an order dismissing the proceedings as to such property, which order shall also provide that the petitioner shall pay such owner or owners for the following expenses which have been actually incurred by them in such amounts as the court deems just and reasonable: attorney's fee, witness fees including reasonable expert witness fees, not exceeding three, and other reasonable expenses and compensation for time spent as a result of the condemnation proceedings. If any such expenses are not paid within thirty days of the entry of such order, judgment therefor shall be entered against the petitioner.

(c)C. In the event the petitioner fails to pay to the parties entitled thereto, or into court, the amount of the award of just compensation before the time for noting an appeal from any final order upon the report of just compensation, the owner or owners of the property to be taken or affected may, upon motion, obtain as a matter of right an order dismissing the proceeding as to such property, which order shall also provide that the petitioner shall pay such owner or owners his expenses as provided in subsection (b) B of this section. If any such expenses are not paid within thirty days of the entry of such order, judgment therefor shall be entered against the petitioner.

D. *If the amount of the award of just compensation is greater than the amount offered by the petitioner as part of a bona fide effort to purchase the property, the court may award attorneys' fees, court and other reasonable costs to the property owner.*

(d)E. Before the vesting of title, or a lesser interest or estate in any tract or parcel of land in the manner prescribed in this chapter, the proceedings may be dismissed, in whole or in part, as to any such property upon the filing of a stipulation of dismissal by the parties affected thereby; and, if such parties so stipulate, the court may vacate any order that has been entered.

(e)F. Except as otherwise provided in a stipulation of dismissal or order of the court, any dismissal is without prejudice.

(f)G. The court may at any time drop a defendant unnecessarily or improperly joined.

INTRODUCED

HB221