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SENATE BILL NO. 662

Senate Amendments in [] — February 17, 1998

A *BILL to amend and reenact § 25-46.20 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 25-46.20:01 through 25-46.20:05, relating to appointment and oath of condemnation commissioners.*

Patrons—Watkins, Lambert and Stosch; Delegates: Cantor and Grayson

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 25-46.20 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 25-46.20:01 through 25-46.20:05 as follows:

§ 25-46.20. Appointment and oath of commissioners; commissioners to fix value of property and damages.

A. If the issue of just compensation is to be determined by a commission, the parties to the eminent domain proceeding may agree upon five or nine disinterested freeholders to act as commissioners, or if the parties cannot agree upon the names of commissioners to be summoned, then each party shall present to the court a list containing the names of at least six freeholders from which lists the court shall select the names of nine persons and two alternates who shall at least one week prior to their service be summoned to serve as commissioners. However, no person shall serve as such commissioner for more than one full week within any three-month period, unless agreed to by the parties, all of whom shall be residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. If any party fails to submit a list containing six or more names as provided in this section, the judge may, in his discretion, submit such a list in such party's behalf. If a defendant has filed no answer to the petition, and the attorney for the petitioner certifies that he believes the defendant is unrepresented by counsel the judge may, in his discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners. Once nine qualified persons are selected, the petitioner and the owners shall each have two peremptory challenges and the remaining five, or the original five if only five are summoned, shall be appointed, any three or more of whom may act. Such commissioners shall fix the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the petitioner. Before executing their duties the commissioners shall take an oath before some officer authorized by the laws of this Commonwealth to administer an oath, that they will faithfully and impartially ascertain what will be the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property, by reason of such taking and use by the petitioner.

B. *Condemnation commissioners shall be appointed utilizing provisions under §§ [25-36.20:01 through 25-46.20:01] through 25-46.20:05 whenever:*

1. *A county having a county manager form of government is the condemnor; or*
2. *The Commonwealth Transportation Commissioner is the condemnor in (i) any county with the urban county executive form of government, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county, or (ii) any county having a population of between 200,000 and 220,000 as determined by the 1990 census.*

§ 25-46.20:01. *Jury commission to select condemnation commissioners when Commonwealth Transportation Commissioner is condemnor; qualifications of commissioners; preparation of list.*

The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall also select condemnation commissioners when a county having a county manager form of government is the condemnor; or the Commonwealth Transportation Commissioner is the condemnor in (i) any county with the urban county executive form of government, or in a city adjacent to or completely surrounded by such a county, or in a county contiguous to any such county, or in a city adjacent to or completely surrounded by such a contiguous county, or in any town within such contiguous county or (ii) any county have a population of between 200,000 and 220,000 as determined by the 1990 census. The jury commissioners shall select as condemnation commissioners persons who are (i) residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated and (ii) disinterested [freeholders of property citizens] within the jurisdiction. No person shall be eligible as a commissioner when he, or any person for him, solicits or requests a member of the jury commission to place his name on a list of condemnation commissioners. The provisions of §§ 8.01-345, 8.01-346,

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60 8.01-347, 8.01-356 and 8.01-358 relating to procedures for preparing this list from which
61 commissioners will be chosen, penalties for failure to appear and voir dire examination shall apply to
62 condemnation commissioners, mutatis mutandis.

63 § 25-46.20:02. How names of commissioners drawn from box; numbers.

64 In any case where the issue of just compensation is to be determined by a commission, the
65 commission shall be comprised of five members, and the commissioners shall be drawn from the list
66 submitted by the jury commission. The clerk shall, in the presence of the judge, after thoroughly mixing
67 the ballots in the box, openly draw nine names therefrom. At the same time, two additional names shall
68 be drawn to act as alternate commissioners in the event of the death, absence, or disability of any
69 acting commissioner. As soon as practicable thereafter, the clerk shall serve notice on the
70 commissioners so drawn to appear in court on the date set for trial.

71 After each ballot containing a commissioner's name has been drawn, it shall be placed in a secure
72 envelope maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot
73 box. No drawn ballot shall be returned to the pool of undrawn ballots until the pool has been
74 exhausted. However, the clerk shall immediately return to the pool of undrawn ballots the ballot of any
75 commissioner who was drawn but was excused by the court from appearing or was not required to
76 appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box
77 and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic
78 techniques as provided in § 8.01-350.1 may be utilized.

79 § 25-46.20:03. Duty of the clerk to notify commissioners; excusing commissioners from attendance.

80 It shall be the duty of the clerk to notify each commissioner whose name has been drawn of the date
81 on which he is to appear to hear the case. The notice shall be in writing and shall be delivered at least
82 seven days prior to the trial. The clerk shall also promptly notify in writing the commissioners who have
83 been struck by pretrial challenge that they need not appear.

84 The court shall have the discretionary power to excuse a commissioner's attendance on any given
85 day or for any specific case upon request of the commissioner for good cause shown. If a commissioner
86 is so excused seven or more days prior to trial, a replacement commissioner shall be drawn and notified
87 under the procedures provided in § 25-46.20:02 and this section. However, if a commissioner is so
88 excused within six days prior to trial, an alternate commissioner will be designated to serve as
89 commissioner.

90 § 25-46.20:04. Peremptory strikes; strikes for cause.

91 On the day set for trial, commissioners who appear shall be called in such a manner as the judge
92 may direct to be sworn on their voir dire until a disinterested and impartial panel is obtained. In
93 addition, a commissioner may be stricken for cause for reasons civil jurors are excused. If all nine
94 commissioners and two alternates appear and none are stricken for cause, each party shall be entitled
95 to exercise two peremptory strikes. However, if because of strikes for cause and unexpected failure to
96 appear, fewer than nine but more than five commissioners remain before the court, the number of
97 peremptory strikes for each party shall be equally reduced, and the judge shall, if necessary, strike by
98 lot an additional name in order to reduce the commission to five members. If fewer than seven
99 commissioners remain before the court prior to the exercise of peremptory strikes, the trial may proceed
100 and be heard by fewer than five commissioners provided the parties agree. However, no trial shall
101 proceed with fewer than three commissioners

102 § 25-46.20:05. Oath of commissioners; commissioners to fix value of property and damage.

103 Before executing the duties of a commissioner, each commissioner drawn shall take an oath before
104 an officer, authorized by the laws of this Commonwealth to administer an oath, that he will faithfully
105 and impartially ascertain the value of the property to be taken and the damages, if any, which may
106 accrue to the residue beyond the enhancement in value, if any, to such residue by reason of such taking
107 and use by the petitioner.

108 The commissioner selected to hear the case shall fix the value of the property to be taken and the
109 damages, if any, which may accrue to the residue beyond any enhancement in value to such residue by
110 reason of the taking and use thereof by the petitioner. The conclusion of the commissioners need not be
111 unanimous, and a majority of the commissioners may act in the name of the commission.

112 **2. That the provisions of this act shall expire on July 1, 2003.**