

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 940

An Act to amend and reenact §§ 2.2-2286, 5.1-2.5, 5.1-34, 5.1-160, 10.1-114, 10.1-201, 10.1-635, 10.1-649, 10.1-1127.1, 10.1-1402, 10.1-1432, 10.1-1446, 15.2-729, 15.2-1902, 15.2-1904, 15.2-1905, 15.2-1906, 15.2-2109, 15.2-2115, 15.2-2140, 15.2-2146, 15.2-3221, 15.2-4518, 15.2-5114, 15.2-5343, 15.2-5367, 15.2-5425, 15.2-5807, 16.1-319, 21-118, 21-248, 22.1-126.1, 22.1-127, 23-50.16:12, 23-288, 23-298, 28.2-628, 32.1-193, 33.1-89, 33.1-91, 33.1-95, 33.1-95.1, 33.1-98, 33.1-120, 33.1-121, 33.1-124, 33.1-128, 33.1-132, 33.1-134, 33.1-238, 33.1-422, 33.1-443, 36-27, 36-49.1:1, 45.1-161.320, 55-201.1, 56-49, 56-347, 62.1-98, 62.1-136, and 62.1-150 of the Code of Virginia; to amend the Code of Virginia by adding in Title 15.2 sections numbered 15.2-1901.1 and 15.2-1907 and a chapter numbered 19.1, consisting of sections numbered 15.2-1908 through 15.2-1916, and by adding a title numbered 25.1, consisting of chapters 1 through 4, containing sections numbered 25.1-100 through 25.1-421, and to repeal Title 25 (§§ 25-46.1 through 25-254) of the Code of Virginia, revising and recodifying law pertaining to the condemnation of property and the exercise of the power of eminent domain.

[S 1007]

Approved March 24, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2286, 5.1-2.5, 5.1-34, 5.1-160, 10.1-114, 10.1-201, 10.1-635, 10.1-649, 10.1-1127.1, 10.1-1402, 10.1-1432, 10.1-1446, 15.2-729, 15.2-1902, 15.2-1904, 15.2-1905, 15.2-1906, 15.2-2109, 15.2-2115, 15.2-2140, 15.2-2146, 15.2-3221, 15.2-4518, 15.2-5114, 15.2-5343, 15.2-5367, 15.2-5425, 15.2-5807, 16.1-319, 21-118, 21-248, 22.1-126.1, 22.1-127, 23-50.16:12, 23-288, 23-298, 28.2-628, 32.1-193, 33.1-89, 33.1-91, 33.1-95, 33.1-95.1, 33.1-98, 33.1-120, 33.1-121, 33.1-124, 33.1-128, 33.1-132, 33.1-134, 33.1-238, 33.1-422, 33.1-443, 36-27, 36-49.1:1, 45.1-161.320, 55-201.1, 56-49, 56-347, 62.1-98, 62.1-136, and 62.1-150 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 sections numbered 15.2-1901.1 and 15.2-1907 and a chapter numbered 19.1, consisting of sections numbered 15.2-1908 through 15.2-1916, and by adding a title numbered 25.1, consisting of chapters 1 through 4, containing sections numbered 25.1-100 through 25.1-421, as follows:

§ 2.2-2286. Power to condemn.

The Authority may condemn property in furtherance of its purposes; provided, that any such condemnation shall be approved by the governing body of the municipality having jurisdiction over the property so condemned. Any property condemned by the Authority shall not be sold or leased by the Authority unless the Authority, preceding the consummation of any such sale or lease, finds and determines that such sale or lease is in furtherance of, or incidental to, the main purposes of the Authority under this article or that such property is no longer needed in furtherance of, or incidental to, such purposes. Any exercise of the power to condemn as authorized by this section shall be in accordance with the provisions of *Chapter 2 (§ 25.1-200 et seq.) of Title 25 (§ 25-46.1 et seq.) 25.1.*

§ 5.1-2.5. Eminent domain; right of entry.

The Board is hereby vested with the power of eminent domain and may exercise the same for the purposes set forth in subdivision 3 of § 5.1-2.2:1 in the manner *set forth in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1* and to the extent permitted to railroads by *Title 25 § 56-347*; provided, however, such power of eminent domain shall not extend to the taking of any radio or television towers or installation in existence on June 27, 1958. If the owner, lessee or occupier of any property to be condemned or otherwise acquired shall refuse to remove his property therefrom or give up possession thereof, the Board may proceed to obtain possession in any manner provided by law. The authorized agents and employees may enter upon any lands, waters, and premises in the Commonwealth for the purpose of making surveys, soundings, drillings, and examinations as they may deem necessary or convenient for the purposes of this chapter, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings ~~which~~ *that* may be then pending. The Board shall make reimbursement for any actual damage resulting to such lands, waters, and premises as a result of such activities.

§ 5.1-34. Acquisition of property; exercise of right of eminent domain.

Private property needed by any city, incorporated town or county for an airport or landing field shall be acquired by purchase, if the city, town or county is able to agree with the owners on the terms thereof. The cities, incorporated towns or counties are hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements and privileges ~~which~~ *that* are necessary for airport and landing field purposes. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of such county, city or town,

and the procedure shall be mutatis mutandis the same as in the acquisition of land by condemnation proceedings instituted by railroads and may acquire in like manner, for a term of years or perpetually, the right of easement to remove and control the growth of any tree or vegetation standing or growing in said land outside the boundaries of any airport or landing field and the right of easement to place and maintain suitable signs or markers or lights to adequately locate and mark objects or structures ~~which~~ *that* are hazardous to aircraft using such airports or landing fields, of ingress and egress to and from such airport hazards for the purpose of maintaining and repairing such signs, markers and lights and cutting of trees or other growing vegetation penetrating the approach and departure slope easement. The right of condemnation granted herein shall be subject to the same provisions as are provided in § ~~25-233~~ *25.1-102* concerning the condemnation of property belonging to a corporation possessing the power of eminent domain by another public service corporation.

§ 5.1-160. Acquisition of property; eminent domain.

A. The Authority is hereby authorized to acquire by purchase, lease or grant such additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for construction and operation of the airports, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

B. Any political subdivision of the Commonwealth, all or a part of which is located within ~~sixty~~ *60* miles of Authority Facilities, is authorized to provide services, to donate real or personal property and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority Facilities. Any such political subdivision is hereby authorized to issue its bonds in the manner provided in the Public Finance Act or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority. The Authority may agree to assume, or reimburse such a political subdivision for, any indebtedness incurred by such political subdivision with respect to facilities conveyed by it to the Authority. With the consent of the governing body of the political subdivision, any such agreement may be made subordinate to the Authority's indebtedness to others.

C. The Authority established hereunder is hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements, privileges or other property interests ~~which~~ *that* are necessary for airport and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though such aviation easement be inconsistent with the continued use of such land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of such acquisition. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with *Chapter 2 (§ 25.1-200 et seq.) of Title 25 of the Code of Virginia 25.1.*

§ 10.1-114. Commemorative facilities and historic sites management; duties of Director.

In order to further public understanding and appreciation of the persons, places and events that contributed substantially to the development and enhancement of our Commonwealth's and nation's democratic and social values and ideals and in order to encourage, stimulate and support the identification, protection, preservation and rehabilitation of the Department's significant historic, architectural and archaeological sites, the Director has the following duties:

1. To ensure that Departmental historical and cultural facilities are suitable for public, patriotic, educational and recreational assemblies and events;
2. To plan, establish, construct, operate, maintain and manage historic museums, commemorative memorials and other facilities as directed by acts of the General Assembly;
3. To acquire lands, property and structures deemed necessary to the purposes of this chapter by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Director may proceed in the manner provided in §§ ~~33.1-89 through 33.1-132~~ *Chapter 3 (§ 25.1-300 et seq.) of Title 25.1;* and
4. To lease acquired property to any person, association, firm or corporation for terms and conditions determined by the Director with the Governor's consent.

§ 10.1-201. Acquisition of lands of scenic beauty, recreational utility or historical interest.

A. The Director is authorized to acquire by gift or purchase or by the exercise of the power of eminent domain, areas, properties, lands or any estate or interest therein, of scenic beauty, recreational utility, historical interest, biological significance or any other unusual features which in his judgment should be acquired, preserved and maintained for the use, observation, education, health and pleasure of the people of Virginia. Any acquisition shall be within the limits of any appropriation made by the General Assembly for the purchase of such properties, or of voluntary gifts or contributions placed at the disposal of the Department for such purposes.

B. The Director is authorized to institute and prosecute any proceedings in the exercise of the power of eminent domain for the acquisition of such properties for public use in accordance with ~~Chapter 4-1~~ *2*

(§ ~~25-46.1~~ 25.1-200 et seq.) of Title 25 25.1.

C. Before any property is purchased or acquired by condemnation, the Director may request the Attorney General to examine and report upon the title of the property, and it shall be the duty of the Attorney General to make such examination and report.

D. When any property is acquired by the Director under the provisions of this section without the aid of any appropriation made by the General Assembly and exclusively with the aid of gifts or contributions placed at the disposal of the Department for that purpose, he may place the property in the custody of the person or association making such gifts or contributions, or lease the property to such person or association, for a period not to exceed ~~ninety-nine~~ 99 years, upon terms and conditions approved by the Governor, which will best preserve and maintain such property for the use, observation, education, health or pleasure of the people of Virginia.

§ 10.1-635. Power of eminent domain.

In addition to any other powers conferred on it by law, any watershed improvement district organized under the provisions of this article shall be authorized to acquire by eminent domain any lands, property rights, franchises, rights-of-way, easements or other property deemed necessary or convenient for the efficient operation of the district. Such proceedings shall be in accordance with and subject to the provisions of the laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of a public service company and subject to the provisions of ~~Chapters 1-1 Chapter 2~~ (§ ~~25-46.1~~ 25.1-200 et seq.) and 5 (§ ~~25-232.01~~ et seq.) of Title 25 25.1.

§ 10.1-649. Sale to Board of property and rights-of-way acquired by condemnation.

For the purpose of § 10.1-638 B the Board is authorized to purchase property and rights-of-way condemned for ~~watershed maintaining, protecting, or providing supplies of water and for water storage~~ purposes under §§ ~~25-232.01~~, 15.2-1904, ~~21-118~~ and, 15.2-1907, 15.2-5114, and 21-118 and the condemnor is authorized to sell any such property or rights-of-way to the Board.

§ 10.1-1127.1. Tree conservation ordinance; civil penalties.

A. The governing body of any county, city or town may adopt a tree conservation ordinance regulating the preservation and removal of heritage, specimen, memorial and street trees, as defined under subsection B of this section, when such preservation and removal are not commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops. Such ordinance shall consider planned land use by the property owner, may include reasonable fees for the administration and enforcement of the ordinance and may provide for the appointment by the local governing body of an administrator of the ordinance.

B. Any ordinance enacted pursuant to this authority may contain reasonable provisions for the preservation and removal of heritage, specimen, memorial and street trees. For the purpose of this section the following definitions shall apply:

"Arborist" or "urban forester" ~~shall mean~~ *means* a person trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of native and ornamental trees.

"Heritage tree" means any tree ~~which~~ *that* has been individually designated by the local governing body to have notable historic or cultural interest.

"Memorial tree" means any tree ~~which~~ *that* has been individually designated by the local governing body to be a special commemorating memorial.

"Specimen tree" means any tree ~~which~~ *that* has been individually designated by the local governing body to be notable by virtue of its outstanding size and quality for its particular species.

"Street tree" means any tree ~~which~~ *that* has been individually designated by the local governing body and which grows in the street right-of-way or on private property as authorized by the owner and placed or planted there by the local government.

The designation of such trees shall be by an arborist or urban forester and shall be made by ordinance. The individual property owner of such trees shall be notified prior to the hearing on the adoption of such ordinance by certified mail.

C. The provisions of a tree conservation ordinance enacted pursuant to this section shall not apply: (i) to work conducted on federal or state property; (ii) to emergency work to protect life, limb or property; (iii) to routine installation, maintenance and repair of cable and wires used to provide cable television, electric, gas or telephone service; (iv) to activities with minor effects on trees, including but not limited to, home gardening and landscaping of individual homes; and (v) commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops.

D. In the event that the application of any ordinance regulating the removal of heritage, specimen, memorial or street trees results in any taking of private property for a public purpose or use, the governing body shall compensate by fee or other consideration the property owner for such taking and the ordinance shall so state thereby notifying the owner of his right to seek such fee or other compensation. The provisions of Chapter ~~1-1~~ 2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title 25 25.1 shall apply to the taking of private property for a public purpose pursuant to such local ordinance.

E. Violations of such local ordinance shall be punishable by civil penalties not to exceed \$2,500 for each violation.

F. Nothing in this section shall be construed to be in derogation of the authority granted to any county, city or town by the provision of any charter or other provision of law.

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.
7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.
8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste ~~which~~ that it deems to be hazardous.
9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.
10. Apply for federal funds and transmit such funds to appropriate persons.
11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.
12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter ~~4-4~~ 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.
13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.
14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.
15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.
16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue such permits. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.
17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.
18. Make separate orders and regulations it deems necessary to meet any emergency to protect public

health, natural resources and the environment from the release or imminent threat of release of waste.

19. Take actions to contain or clean up sites or to issue orders to require cleanup of sites where solid or hazardous waste, or other substances within the jurisdiction of the Board, have been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites ~~which~~ *that* have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

§ 10.1-1432. Further powers of Board.

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter ~~4-1~~ 2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title 25 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas. In all instances lands ~~which~~ *that* are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease if the grantee or lessee ceases to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article. However, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;

3. To assume responsibility for perpetual custody and maintenance of radioactive waste held for custodial purposes at any publicly or privately operated facility located within the Commonwealth if the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive waste for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake. The fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations; and

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used as custodial sites for radioactive waste.

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause under procedures and regulations prescribed by the Board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the Board that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon termination of the hazardous waste facility permit by the Director or the EPA Administrator; or (iv) upon a finding by the Board that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the Board of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions of § 25-232.4 25.1-203.

G. The governing body of the host community shall have the authority to enforce local regulations and ordinances to the extent provided by subsection A of this section and the terms of the siting agreement. The local governing body may be authorized by the Board to enforce specified provisions of the certification.

§ 15.2-729. Relocation assistance programs.

The board shall provide by local ordinance for the application of Chapter 6 4 (§ 25-235 25.1-400 et seq.) of Title 25 25.1 to displaced persons as defined in § 25-238 25.1-400, in cases of acquisition of real property for use in projects or programs in which only local funds are used.

§ 15.2-1901.1. Condemnation by localities authorized.

The governing body of any locality may acquire by condemnation title to (i) land, buildings and structures, (ii) any easement thereover or (iii) any sand, earth, gravel, water or other necessary material for the purpose of opening, constructing, repairing or maintaining a road or for any other authorized public undertaking if the terms of purchase cannot be agreed upon or the owner (a) is unknown, (b) cannot with reasonable diligence be found in the Commonwealth or (c) due to incapacity cannot negotiate an agreement. Condemnation proceedings shall be conducted under the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 insofar as applicable.

§ 15.2-1902. Condemnation proceedings generally.

Except where otherwise authorized by any applicable charter provision, a locality shall exercise the power of eminent domain in the manner, and in accordance with the procedures, set out in Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.) of Title 25 or §§ 33.1-91 through 33.1-94, § 33.1-96, and §§ 33.1-98 through 33.1-132 25.1, except that (i):

1. Only lands or easements for (i) streets and roads, (ii) drainage facilities, (iii) water supply and sewage disposal systems (, including pipes and lines), and (iv) water, sewer and governmentally owned gas and utility lines and pipes and related facilities may be condemned using the procedures in §§ 33.1-98 through 33.1-132 Chapter 3 of Title 25.1, as provided in by the applicable provisions of §§ 15.2-1904 and 15.2-1905, as applicable;

(ii) 2. Existing water and sewage disposal systems in their entirety shall be condemned in accordance with the procedures in § 15.2-1906; and

(iii) 3. Oyster bottoms and grounds may be condemned utilizing the procedures in §§ 33.1-98 through 33.1-132 Chapter 3 of Title 25.1, as required by § 28.2-628; and

4. The provisions of §§ 33.1-91 through 33.1-94, 33.1-96, and 33.1-117 shall be applicable, *mutatis mutandis*, with respect to any condemnation by a locality of property for highway purposes.

§ 15.2-1904. Possession of property prior to condemnation; authority to utilize expedited acquisition procedure conferred.

A. When a condemnation is authorized by § 15.2-1901, a locality may enter upon and take possession of property before the conclusion of condemnation proceedings, using the procedures in §§ 33.1-119 through 33.1-132 Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, for public purposes of (i) streets and roads, (ii) drainage facilities, (iii) water supply and sewage disposal systems (, including pipes and lines) and, (iv) oyster beds and grounds, and for any of the purposes set out in § 25-232.01, and 15.2-1901.1. In such proceedings, the procedure may be, when the necessary changes have been made, the same as is prescribed in Article 7 (§ 33.1-89 et seq.) of Chapter 33.1 for condemnation proceedings by the Commonwealth Transportation Commissioner in the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth or § 33.1-229, 2 (§ 25.1-200 et seq.) of Title 25.1 or the same as prescribed in Chapter 1-1 3 (§ 25-46.1 et seq.) of Title 25 25.1. It is the intention of this section to provide that Property may be condemned after the construction of a project, as well as prior thereto, and. The provisions of Chapter 3 of Title 25.1 shall be used to identify the fund out of which the judgment of the court in condemnation proceedings shall be paid. However, no property of any public service corporation shall be condemned except in accordance with §§ 15.2-1906, 15.2-2146 through 15.2-2148 and 25-233 25.1-102.

B. In all other condemnation proceedings authorized by § 15.2-1901, property shall be acquired by condemnation proceedings in accordance with the procedure provided in Chapter 2 of Title 25 25.1.

C. Before entering and taking possession of any property, the locality shall pay into court or to the clerk thereof, for the property owner's benefit, such sum as the governing body estimates to be the fair value of the property taken and damage, if any, done to the residue. Such payment shall not limit the amount to be allowed under proper proceedings.

D. When a locality enters upon and takes possession of property before the conclusion of condemnation proceedings pursuant to the procedures in §§ 33.1-119 through 33.1-132 Chapter 3 of Title 25.1, a certificate in lieu of payment may be issued by the governing body through its authorized designee, which certificate shall be countersigned by the locality's director of finance or authorized agent

for availability of funds.

§ 15.2-1905. Special provisions for counties.

A. When a county ~~elects~~ *is authorized by subsection A of § 15.2-1904* to use the procedures set forth in §§ ~~33.1-119 through 33.1-132~~, as ~~authorized by § 15.2-1904~~ *A Chapter 3 (§ 25.1-300 et seq.) of Title 25.1*, it shall comply *either* with the requirements of ~~this section~~ *subsection B or subsection C*.

B. 1. No property shall be entered upon and taken by any county before the conclusion of condemnation proceedings unless, prior to entering upon and taking possession of such property or right-of-way, the governing body of the county notifies the owners of the property by certified mail, that it intends to enter upon and take the property. Such notice shall be sent by the date specified in the resolution or ordinance required by § 15.2-1903 and shall set forth the compensation and damages offered by the county to each property owner;

§ 2. Any property owner given notice as provided in ~~subsection B~~ *subdivision 1* may, within 30 days following the sending of the notice, institute a proceeding in the circuit court of the county, wherein the condemnation proceedings are to be instituted, to determine whether such taking is of such necessity as to justify resort to entry upon the property prior to an agreement between the county and the property owner as to compensation and damages to be paid therefor. Any other property owner affected may intervene. The county shall be served notice as provided by law and shall be made a party defendant. The proceedings shall be placed upon the privileged docket of the court and shall take precedence over all other civil matters pending therein and shall be speedily heard and disposed of. The issue in any such proceeding shall be whether the circumstances are such as to justify an entry upon and taking possession by the county of the property involved prior to an agreement or award upon compensation and damages therefor. If the court is of the opinion that no such necessity exists, and that such manner of taking would work an undue hardship upon any such owner, it shall enter an order requiring the county to proceed by methods of condemnation providing for the determination of compensation and damages for property to be taken prior to such taking, if the county deems it necessary to proceed with the project for which the property is sought; *and*

§ 3. At any time after the giving of the notice as provided in ~~subsection B~~ *subdivision 1*, upon the filing of an application by the landowner to such effect in the court having jurisdiction, and, in any event, within 120 days after the completion of the project for which the entry and taking of possession prior to condemnation was undertaken, if the county and the owner of such property have been unable to agree as to compensation and damages, if any, caused thereby, the county shall institute condemnation proceedings, and the amount of such compensation and damages, if any, awarded to the owner in such proceeding shall be paid by the county. ~~But~~ The authorities constructing such project under the authority of this section shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation is resorted to.

~~E C. The provisions of~~ *As an alternative to the procedure set forth in subsection B and C of this section and, any other laws to the contrary notwithstanding, upon the passage of an ordinance or resolution following a public hearing by the board of supervisors of any county declaring its intent to enter and take certain specified properties for any of the purposes set out in subsection A of § 15.2-1904 A, with such which ordinance or resolution shall also setting forth state the compensation and damages, if any, offered each property owner by the county, and declaring declare the necessity to enter upon and take such property prior to or during the condemnation proceedings, the county, for such purposes set forth in the resolution or ordinance, shall be vested with those powers granted the Commonwealth Transportation Commissioner pursuant authorized to §§ 33.1-119 through 33.1-132. institute and conduct condemnation proceedings in accordance with the procedure in eminent domain suits brought under this section shall be as described in § 33.1-98, except that suits set forth in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, except that (i) the county may institute and conduct condemnation proceedings in accordance with the procedure set forth in Chapter 3 (§ 35.1-300 et seq.) of Title 25.1 and (ii) such proceedings shall be instituted by and conducted in the name of the governing body of the county.*

§ 15.2-1906. Condemnation of existing water or sewage disposal systems.

Condemnation of existing water or sewage disposal systems shall be governed by the provisions of Chapter ~~2~~ *19.1 (§ 25-47 15.2-1908 et seq.) of Title 25 this title* so far as applicable; ~~however,~~ The provisions of § ~~25-233~~ *25.1-102* shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety. The circuit court for the city or county wherein the property proposed to be condemned, or any part thereof, is located, shall have jurisdiction of the condemnation proceedings. It shall not be necessary to file with the petition for the condemnation of an existing water or sewage system, in its entirety, a minute inventory and description of the property sought to be condemned, provided the property is described therein generally and with reasonable particularity and in such manner as to disclose the intention of the petitioner that such existing water or sewage system be condemned in its entirety. The court having jurisdiction of the condemnation proceedings shall, as the occasion arises and prior to the filing of the report of the commissioners appointed to determine a just compensation for the property sought to be condemned in its entirety, take such steps as may be necessary and proper to cause to be included in an inventory of the property sought to be condemned

full descriptions of any and all such property whenever the exigencies of the case or the ends of justice will be promoted thereby. Such inventory shall be made a part of the record in the proceedings and referred to the commissioners.

§ 15.2-1907. Condemnation for water supplies and water lines.

Upon compliance with the applicable provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, cities and towns may acquire by condemnation any lands or rights-of-way necessary for maintaining, protecting, or providing supplies of water for public use or for laying water pipes, and counties may so acquire such lands or rights-of-way within their borders. Any interest acquired under this section by a county, city or town shall be subject to the provisions of § 25.1-102.

CHAPTER 19.1.

ACQUISITION OF WATERWORKS SYSTEMS.

§ 15.2-1908. Council or other governing body to file copy of resolution.

In any proceedings instituted by any city or county to acquire a waterworks system by condemnation pursuant to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, as authorized by § 15.2-1906 and §§ 15.2-2146, 15.2-2147, and 15.2-2148, after the body determining just compensation, as defined in § 25.1-100, has filed its report as provided by § 25.1-232, it shall be the duty of its council or other governing body, within such time as may be fixed and allowed by the court, to file in the proceedings a certified copy of a resolution of such council or other governing body stating whether the council or other governing body is of the opinion that it is in the best interest of the city or county to take the property sought to be condemned at the amount fixed by the body determining just compensation as compensation or damages on account of the taking of same. If such copy of the resolution be not filed within the time allowed by the court, or within any extension of such time which may be allowed, the proceedings shall be dismissed on motion of any party thereto.

§ 15.2-1909. Such resolution to contain statement as to issuance of bonds.

If in order to pay the amount fixed by the body determining just compensation it will be necessary for the city or county to issue and sell its bonds, such resolution filed shall so state, and shall further state that the council or other governing body proposes promptly to take the necessary and appropriate action required by law to issue and sell such bonds whenever authorized by § 15.2-1910.

§ 15.2-1910. Prerequisite to issuance and sale of bonds.

The necessary and appropriate action for the issuance and sale of such bonds may be taken: (i) whenever an order, decree or judgment of the court confirming the report of the body determining just compensation has become final and not subject to review by writ of error or appeal; (ii) if appealed, whenever the report shall be finally confirmed by any final appellate court; or (iii) whenever a sole defendant, if there be but one, or all of the defendants, if there be more than one, shall file in the proceedings a statement or statements that such defendant or defendants will accept the report of the body determining just compensation and will not dispute or contest in any manner the amount therein fixed or the legality of the proceedings.

§ 15.2-1911. Statement by defendant precludes appeal.

If a statement, as provided for in § 15.2-1910, is filed by each defendant, no appeal or writ of error shall thereafter be allowed such defendant.

§ 15.2-1912. Time for sale of bonds or payment fixed by court.

When such report is finally confirmed or when such defendant or defendants have filed in such proceedings the statement or statements as provided by § 15.2-1910, the court shall, upon motion of any party to the proceedings, after notice to all other parties thereto, fix a reasonable time within which the city or county must complete the issuance and sale of its bonds, if the sale of bonds is necessary, or pay the money to the party or parties entitled thereto, or pay the same into the court. Such time so fixed may be extended by the court for good cause shown.

§ 15.2-1913. Time for holding election if revenue bonds are to be issued.

If the bonds that any such city or county proposes to issue in order to raise the money necessary to pay the amount fixed in the report of the body determining just compensation will be revenue bonds requiring approval by the affirmative vote of a majority of the qualified voters in a referendum election as provided in Article VII, Section 10 of the Constitution of Virginia, the court shall allow a reasonable time for the holding of the required election.

§ 15.2-1914. Proceedings dismissed if issuance defeated or bonds cannot be sold; resolution of approval of report not deemed contract to purchase.

In the event that such an election is held and the proposed bond issue is not approved therein, or if approved and for any reason the bonds proposed to be issued by any such city or county cannot be sold upon terms which, in the opinion of the city council or other governing body, are reasonably advantageous to such city or county, then, upon motion of such city or county, the proceedings shall be dismissed and there shall be no obligation upon such city or county to take the property or pay the amount fixed by the report of the body determining just compensation, notwithstanding the fact that the council or other governing body may have filed the resolution of approval of the report of the body determining just compensation as provided by § 15.2-1908, nor shall the filing of any such resolution approving the award of the body determining just compensation be deemed to be a contract on the part

of any such city or county to purchase or take the property sought to be condemned, or to render any such city or county liable in damages for failure to take same.

§ 15.2-1915. *Proceedings dismissed on failure to pay compensation; judgment for fees and costs.*

In the event that any such city or county fails to pay the amount fixed and ascertained by the report of the body determining just compensation, as directed by the court and within the time, or any extension thereof, allowed by the court as provided by § 15.2-1912, the proceedings shall be dismissed on motion of any party thereto. If such proceedings be so dismissed, judgment shall be entered against such city or county for all costs and the attorneys' fee or fees actually incurred by the defendant or defendants; provided, however, that the fee or fees shall be so paid only to the extent they are reasonable in the opinion of the court.

§ 15.2-1916. *Right to pay compensation into court and take possession and operate.*

A. Notwithstanding any exceptions that may be filed to the report of the body determining just compensation or the pendency of proceedings on the exceptions, or any appeal or writ of error that may be contemplated or may be pending, or the pendency of any other matters in such proceedings, any such city or county shall have the right at any time pending such proceedings, after the filing of the report of the body determining just compensation, to pay into court the amount of the award fixed by the report and take possession of and operate the property sought to be condemned and embraced in such report, and to enlarge the works taken and construct additional works on any property taken and to make any needed repairs to or replacements, or substitutions with respect to the works or any part thereof. No court or judge shall enter any order or decree restraining, prohibiting or enjoining any such city or county from taking such possession of any such waterworks or other property embraced in the report of the body determining just compensation, or from operating same or making replacements, repairs, betterments or additions thereto.

B. If such money is paid and possession taken within 90 days of the time of the filing of the report of the body determining just compensation, no interest on the amount of the award, or any part thereof, shall be allowable to the defendant or defendants, and if such money is paid and possession taken after the lapse of more than 90 days from the date of the filing of the report of the body determining just compensation, the court, upon hearing after due notice, shall adjudicate all claims made by the defendant or defendants for damages claimed to have been sustained and for interest on the value of the property taken, and for additions thereto or replacements during or for the time elapsed since the expiration of the 90 days. If the property taken, or any part thereof, be income producing the court shall take into consideration any income accruing to the property owner during such period, and shall also take into consideration depreciation of an operating water system as well as the cost of additions, betterments, and replacements made by the city or county. If the court finds that the property owner is entitled to receive any additional payment by reason of such matters, it shall render judgment against the city or county for the amount thereof.

§ 15.2-2109. *Powers of localities as to public utilities and computer services; prevention of pollution of certain water.*

A. Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities within or outside the limits of the locality and may acquire within or outside its limits in accordance with § 15.2-1800 whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities, and the rights-of-way, rails, pipes, poles, conduits or wires connected therewith, or any of the fixtures or appurtenances thereof. As required by subsection C of § 15.2-1800, this section expressly authorizes a county to acquire real property for a public use outside its boundaries.

The locality may also prevent the pollution of water and injury to waterworks for which purpose its jurisdiction shall extend to five miles beyond the locality. It may make, erect and construct, within or near its boundaries, drains, sewers and public ducts and acquire within or outside the locality in accordance with § 15.2-1800 so much land as may be necessary to make, erect, construct, operate and maintain any of the works or plants mentioned in this section.

In the exercise of the powers granted by this section and by § 15.2-2115, localities shall be subject to the provisions of § 25-233 25.1-102 to the same extent as are corporations. The provisions of this section shall not be construed to confer upon any locality the power of eminent domain with respect to any public utility owned or operated by any other political subdivision of this Commonwealth. The provisions of this section shall not be construed to exempt localities from the provisions of Chapters 20 (§ 46.2-2000 et seq.), 22 (§ 46.2-2200 et seq.) and 23 (§ 46.2-2300 et seq.) of Title 46.2.

B. A locality may not (i) acquire all of a public utility's facilities, equipment or appurtenances for the production, transmission or distribution of natural or manufactured gas, or of electric power, within the limits of such locality or (ii) take over or displace, in whole or in part, the utility services provided by such gas or electric public utility to customers within the limits of such locality until after the acquisition is authorized by a majority of the voters voting in a referendum held in accordance with the

provisions of Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2 in such locality on the question of whether or not such facilities, equipment or appurtenances should be acquired or such services should be taken over or displaced; however, the provisions of this subsection shall not apply to the use of energy generated from landfill gas in any city with a population between 64,000 and 69,000 or in any county with a population of at least 500,000. In no event, however, shall a locality be required to hold a referendum in order to provide gas or electric service to its own facilities. Notwithstanding any provision of this subsection, a locality may acquire public utility facilities or provide services to customers of a public utility with the consent of the public utility. No city or town which provided electric service as of January 1, 1994, shall be required to hold such a referendum prior to the acquisition of a public utility's facilities, equipment or appurtenances used for the production, transmission or distribution of electric power or to the provision of services to customers of a public utility. Nothing in this subsection shall be deemed to (i *a*) create a property right or property interest or (ii *b*) affect or impair any existing property right or property interest of a public utility.

C. Any city with a population between 18,000 and 18,500 shall be authorized to provide computer services as defined in § 18.2-152.2. "Computer services" as used in this section shall specifically not include the communications link between the host computer and any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities.

§ 15.2-2115. Purchase of gas, electric and water plants operating in contiguous territory.

Whenever a locality leases or purchases any gas, electric or water plant operating within territory contiguous to the locality, the locality so leasing or purchasing shall have all of the rights, privileges and franchises of the person from which the property was leased or purchased and the power to operate, maintain and extend service lines in all the territory which the plant so leased or purchased had the right to do. Any locality leasing or purchasing any property hereunder shall be obligated to furnish, from the property so leased or purchased, or from any other source, an adequate supply of gas, electricity or water to the consumers of any person whose plant was leased or purchased. *In the exercise of the powers granted by this section, localities shall be subject to the provisions of § 25.1-102 to the same extent as are corporations.*

§ 15.2-2140. Dispute between jurisdictions; appeals.

A. An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to any party from the judgment of the special court, and the appeal shall be heard and determined without reference to the principles of demurrer to evidence. The special court shall certify the facts in the case to the Supreme Court, and the evidence shall be considered as on appeal in proceedings under Chapter 4-2 (§ 25.1-200 et seq.) of Title 25 (~~§ 25-46.1 et seq.~~) 25.1. In any case, by consent of all parties of record, a motion to dismiss may be made at any time before final judgment on appeal.

B. If the judgment of the special court is reversed on appeal, or if the judgment is modified, the Supreme Court shall enter such order as the special court should have entered, and the order shall be final.

§ 15.2-2146. Powers of localities to acquire certain waterworks system.

For the purpose of providing an adequate water supply or of acquiring, maintaining or enlarging a waterworks system, any locality, in addition to other powers conferred by law, may acquire, as provided in § 15.2-1800, within or outside or partly within and partly outside the limits of the locality, the property, in whole or in part, whensoever acquired, of any private or public service corporation operating a waterworks system or chartered for the purpose of acquiring or operating such a system. Such property shall include its lands, plants, works, buildings, machinery, pipes, mains, wells, basins, reservoirs and all appurtenances thereto and its contracts, easements, rights and franchises, including its franchise to be a corporation, whether such property, or any part thereof, is essential to the purposes of the corporation or not. However, any locality condemning property hereunder shall furnish water, at appropriate rates, to the customers of any water company whose property is condemned. *The provisions of § 25.1-102 shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety.*

§ 15.2-3221. Appeals; how heard.

An appeal may be granted by the Supreme Court, or any justice thereof. The special court shall certify the facts in the case to the Supreme Court, and the evidence shall be considered as on appeal in proceedings under Chapter 4-2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title 25 25.1. In any case, by consent of all parties of record, the motion to annex may be dismissed at any time before final judgment on appeal.

§ 15.2-4518. Additional powers.

Without limiting or restricting the general powers created by this chapter, the commission may:

1. Adopt and have a common seal and alter the seal at pleasure;
2. Sue and be sued;
3. Make regulations for the conduct of its business;
4. Make and enter into all contracts or agreements, as the commission may determine, which are

necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter;

5. Apply for and accept loans and grants of money or materials or property at any time from the United States of America or the Commonwealth or any agency or instrumentality thereof, for itself or as an agent on behalf of the component governments or any one or more of them; and in connection therewith, purchase or lease as lessor or lessee, any transit facilities required under the terms of any such grant made to enable the commission to exercise its powers under § 15.2-4515 B 5;

6. In the name of the commission, and on its behalf, acquire, hold and dispose of its contract or other revenues;

7. Exercise any power usually possessed by private corporations, including the right to expend, solely from funds provided under this chapter, such funds as may be considered by the commission to be advisable or necessary in the performance of its duties and functions;

8. Employ engineers, attorneys, other professional experts and consultants, and general and clerical employees deemed necessary, and prescribe their powers and duties and fix their compensation;

9. Do anything authorized by this chapter under, through or by its own officers, agents and employees, or by contracts with any persons;

10. Execute instruments and do anything necessary, convenient or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter;

11. Institute and prosecute any eminent domain proceedings to acquire any property authorized to be acquired under this title in accordance with the provisions of Chapter 4-1 2 (§ ~~25-46-1~~ 25.1-200 et seq.) of Title ~~25~~ 25.1, and subject to the approval of the State Corporation Commission, and of § ~~25-233~~ pursuant to § 25.1-102;

12. Invest in if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies ~~which~~ that insure railroad operations, provided this power is available only to those commissions ~~which~~ that provide rail services;

13. Notwithstanding the provisions of § 8.01-195.3, contract to indemnify, and to obtain liability insurance to cover such indemnity, any person who is liable, or who may be subjected to liability, regardless of the character of the liability, as a result of the exercise by a commission of any of the powers conferred by this chapter. No obligation of a commission to indemnify any such person shall exceed the combined maximum limits of all liability policies, as defined in § 15.2-4526 C, maintained by the commission; *and*

14. Notwithstanding any other provision of law to the contrary, regulate traffic signals and other vehicle control devices within its jurisdiction, through the use of computers and other electronic communication and control devices, so as to effect the orderly flow of traffic and to improve transportation services within its jurisdiction; however, an agreement concerning the operation of traffic control devices acceptable to all parties shall be entered into between the commission and the Virginia Department of Transportation, and all the counties and cities within the transportation district prior to the commencement of such regulation.

§ 15.2-5114. Powers of authority.

Each authority is an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each authority may:

1. Exist for a term of ~~forty~~ 50 years as a corporation, and for such further period or periods as may from time to time be provided by appropriate resolutions of the political subdivisions which are members of the authority; however, the term of an authority shall not be extended beyond a date ~~forty~~ 50 years from the date of the adoption of such resolutions;

2. Adopt, amend or repeal bylaws, rules and regulations, not inconsistent with this chapter or the general laws of the Commonwealth, for the regulation of its affairs and the conduct of its business and to carry into effect its powers and purposes;

3. Adopt an official seal and alter the same at pleasure;

4. Maintain an office at such place or places as it may designate;

5. Sue and be sued;

6. Acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain any stormwater control system or water or waste system or any combination of such systems within, outside, or partly within and partly outside one or more of the localities which created the authority, or which after February 27, 1962, joined such authority; acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith, within, outside, or partly within and partly outside one or more of the localities which created the authority, or which after February 27, 1962, joined such authority; and sell, lease as lessor, transfer or dispose of all or any part of any property, real, personal or mixed, or interest therein, acquired by it; however, in the exercise of the right of eminent domain the provisions of § ~~25-233~~ 25.1-102 shall apply. In addition, the authority in any county or city to which §§ 15.2-1906 and 15.2-2146 and ~~15.2-1906~~ are applicable shall have the same power of eminent domain and shall follow the same procedure provided in §§ 15.2-1906 and 15.2-2146 and ~~15.2-1906~~. No property or any interest or estate owned by any political subdivision shall be acquired by an authority by the exercise of the power of eminent domain without the consent of

the governing body of such political subdivision. Except as otherwise provided in this section, each authority is hereby vested with the same authority to exercise the power of eminent domain as is vested in the Commonwealth Transportation Commissioner;

7. Issue revenue bonds of the authority, such bonds to be payable solely from revenues to pay all or a part of the cost of a stormwater control system or water or waste system;

8. Combine any stormwater control system or water or waste system as a single system for the purpose of operation and financing;

9. Borrow at such rates of interest as authorized by the general law for authorities and as the authority may determine and issue its notes, bonds or other obligations therefor. Any political subdivision ~~which~~ *that* is a member of an authority may lend, advance or give money to such authority;

10. Fix, charge and collect rates, fees and charges for the use of or for the services furnished by or for the benefit from any system operated by the authority. Such rates, fees, rents and charges shall be charged to and collected from any person contracting for the services or the lessee or tenant who uses or occupies any real estate which is served by or benefits from any such system. Water and sewer connection fees established by any authority shall be fair and reasonable. Such fees shall be reviewed by the authority periodically and shall be adjusted, if necessary, to assure that they continue to be fair and reasonable. Nothing herein shall affect existing contracts with bondholders ~~which~~ *that* are in conflict with any of the foregoing provisions;

11. Enter into contracts with the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person. Such contracts may provide for or relate to the furnishing of services and facilities of any stormwater control system or water or waste system of the authority or in connection with the services and facilities rendered by any like system owned or controlled by the federal government, the Commonwealth, the District of Columbia or any adjoining state or any agency or instrumentality thereof, any unit or any person, and may include contracts providing for or relating to the right of an authority, created for such purpose, to receive and use and dispose of all or any portion of the refuse generated or collected by or within the jurisdiction or under the control of any one or more of them. In the implementation of any such contract, an authority may exercise the powers set forth in §§ 15.2-927 and 15.2-928. The power granted authorities under this chapter to enter into contracts with private entities includes the authority to enter into public-private partnerships for the establishment and operation of water and sewage systems, including the authority to contract for, and contract to provide, meter reading, billing and collections, leak detection, meter replacement and any related customer service functions;

12. Contract with the federal government, the Commonwealth, the District of Columbia, any adjoining state, any person, any locality or any public authority or unit thereof, on such terms as the authority deems proper, for the construction, operation or use of any project which is located partly or wholly outside the Commonwealth;

13. Enter upon, use, occupy, and dig up any street, road, highway or private or public lands in connection with the acquisition, construction or improvement, maintenance or operation of a stormwater control system or water or waste system, or streetlight system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census, subject, however, to such reasonable local police regulation as may be established by the governing body of any unit having jurisdiction; *and*

14. Contract with any person, political subdivision, federal agency, or any public authority or unit, on such terms as the authority deems proper, for the purpose of acting as a billing and collecting agent for sewer service or sewage disposal service fees, rents or charges imposed by any such body.

§ 15.2-5343. Eminent domain.

The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this chapter after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of *Chapter 2 (§ 25.1-200 et seq.) of Title 25 25.1* and any applicable statutory provisions in force or hereafter enacted for the exercise of the power of eminent domain by cities.

Property already devoted to a public use may be acquired. No property belonging to any locality, government or religious or charitable corporation may be acquired without its consent.

§ 15.2-5367. Appeal.

An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to either the authority or the city from the judgment of the court, and the appeal shall be heard and determined without reference to the principles of demurrer to evidence. The trial court shall certify the facts in the case to the Supreme Court and the evidence shall be considered as on appeal in proceedings under ~~Chapter 4-1 2~~ *(§ 25-46.1 25.1-200 et seq.) of Title 25 25.1*. By consent of both parties of record, the petition may be dismissed at any time before final judgment on the appeal.

§ 15.2-5425. Eminent domain.

An authority created under the provisions of this chapter is hereby vested with the power of eminent domain and the same authority to exercise the power of eminent domain as is granted in ~~Chapter 4-1 2~~ *(§ 25-46.1 25.1-200 et seq.) of Title 25 25.1* and, *mutatis mutandis*, as is granted to the Commonwealth

~~Transportation Board in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1,~~ subject to the provisions of § ~~25-233~~ 25.1-102, provided that this power shall not be used to acquire existing power supply facilities or plants held for future use. Furthermore, no authority may condemn property outside of the territorial limits of its member governmental units without obtaining the consent of the governing body of the locality in which such property is located; however, in any case in which the approval by such locality is withheld, the authority seeking such approval may petition for the convening of a special court, pursuant to §§ 15.2-2135 through 15.2-2141.

§ 15.2-5807. Acquisition of property.

A. The Authority may acquire in its own name, by gift or purchase, any real or personal property, or interests in property, necessary or convenient to construct or operate any facility.

B. In any jurisdiction where planning, zoning, and development regulations may apply, the Authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

C. This section does not affect the right of the Authority to acquire an option for acquisition of the property, prior to 2000, once the approval required by this section is obtained.

D. Any locality shall have the power to acquire by eminent domain, in the manner and in accordance with the procedure provided in *Chapter 2 (§ 25.1-200 et seq.) of Title 25 of the Code of Virginia 25.1*, any real property, including fixtures and improvements, and personal property, including any interest, right, easement, or estate therein, located within such locality for public purposes. For purposes of this section, public purpose means the construction and operation of any facility, as defined in § 15.2-5800, when determined by the governing body of such locality that the construction and operation of such a facility would enhance the economic development, resources, or advantages of the locality. In furtherance of this public purpose, the locality may convey any such real property, including fixtures and improvements, and personal property acquired pursuant to this section to the Authority, by sale, gift or lease, upon terms mutually agreed upon by the Authority and the locality. The Authority and locality may enter into agreements regarding the initiation and prosecution of such condemnation proceedings, including payment and reimbursement of any costs, fees, expenses, or awards resulting from the proceedings. Upon the written request of the Authority, the locality in which the stadium site is proposed may, by majority vote, exercise its power of eminent domain as provided herein.

§ 16.1-319. Acquisition of property by commission.

The commission shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article, after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use; provided, however, that no such real property shall be so acquired or such facility established within the territorial limits of such political subdivision without the approval, after public hearing, of the governing body of such political subdivision.

Subject to the provisions of § ~~25-233~~ 25.1-102, property already devoted to a public use may be acquired, provided, that no property belonging to any county or city or to any religious or charitable corporation may be acquired without its consent.

§ 21-118. Powers and duties of governing body.

After the entry of such order creating a sanitary district in such county, the governing body thereof shall have the following powers and duties, subject to the conditions and limitations hereinafter prescribed:

(1). To construct, maintain and operate water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks for the use and benefit of the public in such sanitary districts.

(2). To acquire by gift, condemnation, purchase, lease, or otherwise, and to maintain and operate any such water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks in such district and to acquire by gift, condemnation, purchase, lease, or otherwise, rights, title, interest, or easements therefor in and to real estate in such district; and to sell, lease as lessor, transfer or dispose of any part of any such property, real, personal or mixed, so acquired in such manner and upon such terms as the governing body of the district may determine to be in the best interests of the district; provided a public hearing is first held with respect to such disposition at which inhabitants of the district shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing and a brief description of the property to be disposed shall be published in a newspaper of general circulation in the district. Such public hearing may be adjourned from time to time.

(3). To contract with any person, firm, corporation or municipality to construct, establish, maintain and operate any such water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks in such district.

(4). To require owners or tenants of any property in the district to connect with any such system or systems, and to contract with the owners or tenants for such connections. The owners or tenants shall have the right of appeal to the circuit court or the judge thereof in vacation within ~~ten~~ 10 days from action by the governing body.

(5). To fix and prescribe or change the rates of charge for the use of any such system or systems after a public hearing upon notice as provided in § 21-118.4 (d), and to provide for the collection of such charges. In fixing such rates the sanitary district may seek the advice of the State Corporation Commission.

(6). To levy and collect an annual tax upon all the property in such sanitary district subject to local taxation to pay, either in whole or in part, the expenses and charges incident to constructing, maintaining and operating water supply, sewerage, garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks for the use and benefit of the public in such sanitary district. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the district, notwithstanding any special use value assessment of property within the sanitary district for land preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent.

(7). To employ and fix the compensation of any technical, clerical or other force and help which from time to time, in their judgment, may be deemed necessary for the construction, operation or maintenance of any such system or systems and sidewalks.

(8). To negotiate and contract with any person, firm, corporation or municipality with regard to the connections of any such system or systems with any other system or systems now in operation or hereafter established, and with regard to any other matter necessary and proper for the construction or operation and maintenance of any such system within the sanitary district.

(9). The governing body shall have the same power and authority for the abatement of nuisances in such sanitary district as is vested by law in councils of cities and towns for the abatement of nuisances therein, and it shall be the duty of the governing body to exercise such power when any such nuisance shall be shown to exist.

(10). Proceedings for the acquisition of rights, title, interest or easements in and to real estate, by such sanitary districts in all cases in which they now have or may hereafter be given the right of eminent domain, may be instituted and conducted in the name of such sanitary district ~~and. If the property proposed to be condemned is:~~

a. ~~For a waterworks system, the procedure shall be in the manner and under the restrictions prescribed by Title 25, Chapter 2 19.1 (§ 25-47 15.2-1908 et seq.) of Title 15.2, or and by other general statutes of this Commonwealth relative to the condemnation of lands, or, (a) in the case of lands proposed to be condemned for Chapter 2 (§ 25.1-200 et seq.) of Title 25.1;~~

b. ~~For the purpose of constructing water or sewer lines, the proceedings shall be instituted and conducted in accordance with the procedures prescribed either by such method Chapter 2 of Title 25.1 or in the manner provided for the condemnation of land by the Commonwealth Transportation Commissioner in §§ 33.1-119 through 33.1-129, Chapter 3 (§ 25.1-300 et seq.) of Title 25.1; or, (b) in the case of lands proposed to be condemned~~

c. ~~For the purpose of constructing water and sewage treatment plants and facilities and improvements reasonably necessary to the construction and operation thereof, in the manner the proceedings shall be instituted and conducted in accordance with the procedures provided for the condemnation of land by the Commonwealth Transportation Commissioner in § 33.1-98 Chapter 3 of Title 25.1.~~

(11). To appoint, employ and compensate out of the funds of the district as many persons as special policemen as may be deemed necessary to maintain order and enforce the criminal and police laws of the Commonwealth and of the county within such district. Such special policemen shall have, within such district and within one-half mile thereof, all of the powers vested in policemen appointed under the provisions of Article 1 (§ 15.2-1700 et seq.) of Chapter 17 of Title 15.2.

§ 21-248. Enumeration of powers of commission.

Every commission shall have the following powers:

(1). To adopt and have a common seal and to alter the same at pleasure;

(2). To sue and to be sued;

(3). In the name of the commission and on its behalf, to acquire, hold and dispose of its fees, rents and charges and other revenues;

(4). In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire, hold, and dispose of other personal property for the purposes of the commission;

(5). In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire by purchase, gift, condemnation or otherwise, real property or rights or easements therein, necessary or convenient for the purposes of the commission, subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the commission; provided that the right of condemnation granted herein shall be subject to the same provisions as are provided in § 25-233 25.1-102 concerning the condemnation of any property belonging to a corporation possessing the power of eminent domain by another public service corporation;

(6). To borrow money for the purposes of the commission and to issue therefor its bonds, and to

provide for and secure the payment of its bonds and the rights of the holders thereof, and to fund or refund its bonds by the issuance of bonds hereunder;

(7). To accept gifts or grants or real or personal property, money, material, labor or supplies for the purposes of the commission and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants;

(8). To enter on any lands, waters and premises for purpose of making surveys, borings, soundings and examinations for the purposes of the commission;

(9). To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of its facilities and properties, and to amend the same;

(10). To do and perform any acts and things authorized by this chapter under, through or by means of its own officers, agents and employees, or by contracts with any person; and

(11). To execute any and all instruments and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the commission or to carry out the powers expressly given in this chapter.

§ 22.1-126.1. Acquisition of property for educational purposes by counties, cities and towns.

Any county, city or town or any combination thereof acting jointly may acquire for educational purposes by gift, purchase, condemnation or otherwise, real property and any improvements thereon within the county, city, town or combination thereof acquiring the property or within any county or city adjacent to any such county, city or town and may construct buildings thereon to be used for educational purposes. The powers of condemnation granted by this section shall be subject to the provisions of § ~~25-233~~ 25.1-102 to the same extent as though such county, city or town were a corporation possessing the power of eminent domain. Whenever the property is not within a county, city or town acquiring the property, not more than ~~forty~~ 50 acres may be acquired. Property acquired pursuant to this section shall be under the control of the school board of the county, city or town acquiring it, or, in the case of joint action by two or more counties, cities or towns or combinations thereof, control of such property shall be under a board chosen in the manner and for the term provided in § 22.1-53. Such property may be leased on such terms as may be agreed upon to any state-supported institution of higher learning to provide for education beyond high school of residents in the general region of such political subdivisions, or the property may, with the approval of the governing body of each such participating political subdivision, be conveyed to any such institution of higher learning upon such terms and conditions as shall be agreed upon by such governing bodies and the governing body of the institution and approved by the Governor.

§ 22.1-127. Condemnation of land for school purposes; right of entry; location of school outside boundaries of school division.

A school board shall have the power to exercise the right of eminent domain and may condemn land or other property or any interest or estate therein, including dwellings, yards, gardens or orchards, necessary for public school purposes pursuant to the provisions of Chapter ~~4-1~~ 2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title 25 25.1 and in the manner provided by law for the Commonwealth Transportation Commissioner in Article 7 (§ ~~33.1-89~~ et seq.) of Chapter ~~4~~ 3 (25.1-300 et seq.) of Title ~~33.1~~ 25.1. To determine the suitability of the land for school purposes, a school board shall have the same right of entry under the same conditions as a county, city, or town pursuant to § ~~25-232.1~~ 25.1-203. A school board shall have no authority to locate any school which was not begun prior to January 1, 1978, on property outside the boundaries of the school division unless the school board first obtains the approval of the governing body of the county, city or town in which a proposed school will be located.

§ 23-50.16:12. Eminent domain.

The Authority may exercise the power of eminent domain pursuant to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25 (§ ~~25-46.1~~ et seq.) 25.1 to acquire by condemnation any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this chapter, upon its adoption of a resolution declaring that the acquisition of such property is in the public interest and necessary for public use and upon the approval of the Governor. The Authority may acquire property already devoted to a public use, provided that no property belonging to any city, town or county or to any government or to any religious or charitable corporation may be acquired without its consent.

§ 23-288. Powers and duties.

The Foundation shall have the power and duty to:

1. Do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers and their American Indian neighbors of Virginia and the United States to the building of our Commonwealth and nation, to commemorate the winning of American independence on the battlefield at Yorktown, and to enhance our understanding of the making of the United States Constitution and Bill of Rights, including Virginia's role in shaping the fundamental principles of the American constitutional system.

2. Administer, develop and maintain at Jamestown and Yorktown permanent commemorative shrines and historical museums.

3. Adopt names, flags, seals and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth.

4. Enter into contracts to further the purposes of the Foundation, which have been approved by the Attorney General.

5. Establish nonprofit corporations as instrumentalities to assist in administering the affairs of the Foundation.

6. With the consent of the Governor, acquire lands, property and structures deemed necessary for the purposes of the Foundation by purchase, lease, gift, devise or condemnation proceedings. The title to the land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Foundation may proceed in the manner provided by law for the Commonwealth Transportation Commissioner in §§ 33.1-89 through 33.1-132 Chapter 3 (§ 25.1-300 et seq.) of Title 25.1.

7. With the consent of the Governor, convey by lease land to any person, association, firm or corporation for such term and on such conditions as the Foundation may determine.

8. Receive and expend gifts, grants and donations from whatever source derived for the purposes of the Foundation.

9. Employ an executive director and such deputies and assistants as may be required.

10. To elect any past chairman of the Board of Trustees to the honorary position of Chairman Emeritus. Chairmen emeriti shall serve as honorary members for life and shall not have voting privileges. Chairmen emeriti shall be elected in addition to the at-large positions defined in § 23-287.

11. With the consent of the Governor, to enter into agreements or contracts with private entities for the promotion of tourism through marketing without competitive sealed bidding or competitive negotiation provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

12. To determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired by purchase, gift, or loan, and to exchange or sell the same if not inconsistent with the terms of such purchase, gift, loan, or other acquisition.

13. To change the form of investment of any funds, securities, or other property, real or personal, provided the same are not inconsistent with the terms of the instrument under which the same were acquired, and to sell, grant, or convey any such property, except that any transfers of real property may be made only with the consent of the Governor.

§ 23-298. Powers of Board of Trustees; donation.

A. The Board of Trustees shall:

1. Establish, operate, and maintain the Frontier Culture Museum of Virginia to commemorate the contributions which the pioneers and colonial frontiersmen and frontierswomen made to the creation of this nation;

2. Employ an executive director and such assistants as may be required and confer such duties and responsibilities as determined necessary;

3. Adopt a flag, seal, and other emblems for use in connection with the Museum;

4. Establish a nonprofit corporation to develop and maintain public awareness of the Frontier Culture Museum of Virginia;

5. Receive and expend gifts, grants, and donations of any kind from whatever sources determined;

6. Adopt regulations and set fees concerning the use and visitation of properties under its control;

7. Acquire, with the consent of the Governor, lands, property and structures deemed necessary to the purpose of the Museum by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Museum may proceed in the manner provided by law for the Commonwealth Transportation Commissioner in Article 7 (§ 33.1-89 et seq.) of Chapter 3 (§ 25.1-300 et seq.) of Title 25.1;

8. Convey by lease land to any person, association, firm or corporation, with the consent of the Governor, for such terms and on such conditions as the Museum may determine;

9. Enter into contracts to further the purpose of the Museum, which have been approved by the Attorney General; and

10. Elect any past member of the Board of Trustees to the honorary position of trustee emeritus. Trustees emeriti shall serve as honorary members for life, shall not have voting privileges and shall be elected in addition to those positions set forth in § 23-297.

B. In addition to the powers granted by subsection A, the Board may, from time to time, evaluate the significance or suitability of the furnishings, household items, and other objects heretofore and hereinafter acquired by purchase, gift or donations with or for the Museum, for the purpose of accurately presenting the tastes and lifestyles of the people living during the era the Museum depicts and within the limitations of the furnishings, household items, and other objects that would have been available to and within the means of such persons. The Board may dispose of those furnishings, household items, and other objects determined by the Board to be of little or no significance or suitability for achieving the purposes or mission of the Museum by exchange or sale, so long as such

disposition is not inconsistent with the terms of the acquisition of the relevant property. At the discretion of the Board, sales of these items may be conducted by auction houses recognized for their expertise in the sale of such property.

C. Any furnishings, household goods, and other objects previously acquired by donation or purchase and the net proceeds of any sale of these items as provided in subsection B shall constitute a discrete fund of the Frontier Culture Museum of Virginia and shall be used solely for the acquisition of period furnishings, household goods, and other objects consistent with the purpose and mission of the Museum.

Donations to the Museum of any funds, securities, and any other property, real or personal, for use in accordance with its purpose and mission, shall constitute endowments or unrestricted gifts within the meaning of § 23-9.2. The Board may change the form of investment of any such funds, securities, or other property, real or personal, if the change in such form is not inconsistent with the terms of the instrument under which such property was acquired, and may sell, grant, or convey any such property; however, any transfers of real property may be made only with the consent of the Governor.

TITLE 25.1.

EMINENT DOMAIN.

CHAPTER 1.

GENERAL PROVISIONS.

§ 25.1-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Body determining just compensation" means a panel of commissioners empanelled pursuant to § 25.1-227, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empanelled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Owner" means any person who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. This definition of the term "owner" shall not affect in any way the valuation of property.

"Person" means any individual; firm; cooperative; association; corporation; limited liability corporation; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other political subdivision or any department, agency or instrumentality thereof; or any interstate body to which the Commonwealth is a party.

"Petitioner" or "condemnor" means any person that possesses the power to exercise the right of eminent domain and that seeks to exercise such power under this chapter. The term "petitioner" or "condemnor" includes any person required to make an effort to purchase property as provided in § 25.1-204.

"Property" means land and personal property, and any right, title, interest, estate or claim in or to such property.

"State institution" means any (i) educational institution enumerated in § 23-14 or (ii) state hospital, state training school or state training center for the mentally retarded operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

§ 25.1-101. Condemnation by state institutions.

A. Any state institution may acquire by condemnation title to (i) land, (ii) any easement thereover or (iii) any sand, earth, gravel, water or other necessary material for the purpose of opening, constructing, repairing or maintaining a road or for any other authorized public undertaking; however, such acquisition by condemnation shall only be commenced if the terms of purchase cannot be agreed upon or the owner (a) is unknown, (b) cannot with reasonable diligence be found within this Commonwealth or (c) cannot negotiate an agreement or convey legal title to the property because the owner is a person under a disability.

B. Condemnation proceedings authorized by subsection A shall be conducted under the provisions of Chapter 2 (§ 25.1-200 et seq.) of this title insofar as applicable.

§ 25.1-102. Condemnation of property of corporations possessing power of eminent domain.

A. Except as provided in §§ 15.2-1906 and 15.2-2146, no (i) corporation or (ii) electric authority created under the provisions of Chapter 54 (§ 15.2-5400 et seq.) of Title 15.2 shall file a petition to take

by condemnation proceedings any property belonging to any other corporation possessing the power of eminent domain, unless, after notice to all parties in interest and an opportunity for a hearing, the State Corporation Commission shall certify that a public necessity or that an essential public convenience shall so require, and shall give its permission thereto; and in no event shall one corporation take by condemnation proceedings any property owned by and essential to the purposes of another corporation possessing the power of eminent domain. Notwithstanding anything herein to the contrary, a locality exercising the powers granted by § 15.2-2109 or § 15.2-2115 shall be subject to the provisions of this section to the same extent as are corporations, unless otherwise provided in § 15.2-1906 or § 15.2-2146.

B. If the State Corporation Commission gives its permission to a condemnation, the Commission shall establish for use in any condemnation proceeding whether any payment for stranded investment is appropriate and, if so, the amount of such payment and any conditions thereof.

C. Any condemnor that is authorized to use the procedure set out in Chapter 3 (§ 25.1-300 et seq.) of this title by a provision that incorporates such procedure by reference shall, in using such procedure, be subject to the provisions of this section to the same extent as are corporations, unless the provision specifically provides that this section shall not apply to such condemnor's use of such procedure.

§ 25.1-103. Condemnation of lands of state institutions.

Without the consent of the General Assembly, no condemnor shall be authorized to condemn or acquire any lands belonging to, attached to the site, or used for the purposes of any state institution.

§ 25.1-104. Condemnation of lands of private educational institutions for highway purposes.

No lands of any private, nonprofit institution of higher education in the Commonwealth approved to confer degrees pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 that, at the time proceedings are instituted, (i) are located within 500 feet of any building erected and used for school purposes or (ii) surround the school buildings and are used as a campus, park, or athletic ground or field, shall be subject to condemnation for the purposes of public highways.

§ 25.1-105. Condemnation of cemeteries.

Nothing in this title shall be construed to authorize the condemnation of property of any cemetery or burial ground, or any part thereof. The authority to condemn any cemetery or burial ground shall be specifically as provided by law.

§ 25.1-106. Condemnation of lands within agricultural and forestal districts.

No property that is within an agricultural and forestal district as provided by Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2 shall be condemned except in accordance with §§ 15.2-4312 and 15.2-4313.

CHAPTER 2. CONDEMNATION PROCEDURES.

Article 1.

General Provisions.

§ 25.1-200. Chapter controls condemnation proceedings.

Unless otherwise specifically provided by law, all proceedings for the condemnation of property under the power of eminent domain shall be brought and conducted according to the provisions of this chapter.

§ 25.1-201. Jurisdiction of condemnation proceedings.

Jurisdiction of proceedings to condemn property under this chapter shall be in the circuit court of the county or city wherein such property, or the greater portion thereof proposed to be condemned is situated, unless otherwise specifically provided by law.

§ 25.1-202. Nature of proceedings.

Condemnation proceedings shall be conducted as actions at law.

§ 25.1-203. Authority of certain condemnors to inspect property; reimbursement for damages; notice prior to entry.

A. In connection with any project wherein the power of eminent domain may be exercised, any locality or any petitioner exercising the procedure set forth in Chapter 3 (§ 25.1-300 et seq.) of this title, acting through its duly authorized officers, agents or employees, may enter upon any property without the written permission of its owner if (i) the petitioner has requested the owner's permission to inspect the property as provided in subsection B, (ii) the owner's written permission is not received prior to the date entry is proposed, and (iii) the petitioner has given the owner notice of intent to enter as provided in subsection C.

B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth the date such inspection is proposed to be made, and (iii) be made not less than 15 days prior to the date of the proposed inspection.

C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of the intended entry, and (iii) be made not less than 15 days prior to the date of mailing of the notice of intent to enter.

D. Any entry authorized by this section (i) shall be for the purpose of making surveys, appraisals or examinations thereof in order to determine the suitability of such property for the project, and (ii) shall not be deemed a trespass. The petitioner shall make reimbursement for any actual damages resulting

from such entry.

§ 25.1-204. *Effort to purchase required; prerequisite to effort to purchase or filing certificate.*

A. A condemnor shall not institute proceedings to condemn property until a bona fide but ineffectual effort to purchase from the owner the property sought to be condemned has been made. However, such effort shall not be required if the consent cannot be obtained because one or more of the owners (i) is a person under a disability or is otherwise unable to convey legal title to such property, (ii) is unknown or (iii) cannot with reasonable diligence be found within this Commonwealth.

B. Such bona fide effort shall include delivery of, or attempt to deliver, a written statement to the owner that explains the factual basis for the condemnor's offer.

C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417, such written statement shall include a copy of the appraisal of the property upon which such offer is based.

D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit pursuant to Chapter 3 (§ 25.1-300 et seq.) of this title or § 33.1-120, shall conduct or cause to be conducted an examination of title to the property in order to ascertain the identity of each owner of such property and to determine the nature and extent of such owner's interests in the property.

Article 2.

Condemnation Proceedings.

§ 25.1-205. *Commencement of proceedings.*

A. Proceedings for condemnation shall be initiated by filing a petition complying with the requirements of § 25.1-206 in the court.

B. A public utility shall not be required, as a prerequisite to its filing of its petition for the condemnation of property necessary for ordinary extensions or improvements of its facilities within the territory in which it is lawfully authorized to operate, for use in public utility service, to obtain a certificate from the State Corporation Commission under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56. This subsection shall not be construed to exempt a public utility from the requirements of § 25.1-102 when the condemnation would take property of another corporation possessing the power of eminent domain.

§ 25.1-206. *Petition for condemnation.*

The petition for condemnation shall contain:

1. A caption wherein the person vested by law with power to exercise the right of eminent domain shall be the petitioner, and the named defendants shall be at least one of the owners of some part of or an interest in the property to be taken or damaged, and the property to be taken designated generally by kind, quantity and location.

2. Short and plain statements of the following:

a. The authority for the taking;

b. The necessity for the work or improvements to be made;

c. The public uses for which the property is to be taken;

d. A description of the work or improvements to be made; and if (i) only a portion of the property is to be taken or (ii) any other property will or is likely to be damaged as the result of the taking, a plat, drawing or plan, in sufficient detail to disclose fairly the nature of such work or improvements, including specifications, elevations and grade changes, if any, so as to enable the owner of such property to be reasonably informed of the nature, extent and effect of such taking and the construction and operation of such works and improvements, shall be attached as an exhibit to the petition;

e. The estate, interest or rights in the property to be taken;

f. A description of the property to be taken sufficient for its identification and a plan or plat of the land to be taken shall be attached as an exhibit to the petition;

g. As to each separate piece of property to be taken or damaged, the names and residences, so far as known by petitioner, of the defendants who are joined as owners of the property, or of some interest therein, if their names have been ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, or if their names have otherwise been learned; and if the names of other persons or classes of persons to be joined as owners of the property are unknown, such persons may be made defendants under the designation of "Unknown Owners";

h. Compliance with the provisions of § 25.1-204 and the manner of such compliance; and

i. Where applicable, compliance with the provisions of § 25.1-102 and the manner of such compliance.

3. A prayer asking for judgment (i) that the property or the estate, interest or rights therein be condemned and the title thereto vested in the petitioner, (ii) that just compensation be ascertained as provided in § 25.1-230 and awarded, and (iii) for such other relief as may be lawful and proper.

4. The petition shall be verified by affidavit of a duly authorized officer, agent or attorney for the petitioner.

5. The petitioner shall furnish the clerk one copy of the petition and all exhibits thereto and such

additional copies of the petition as may reasonably be needed by the clerk or any defendant.

§ 25.1-207. Inclusion in petition of request for right of entry.

The petition may also include (i) facts and circumstances on the basis of which the petitioner desires to obtain the right of entry as provided in § 25.1-223 or as provided in any charter and (ii) a prayer asking for such right of entry.

§ 25.1-208. Joinder of separate parcels.

The same petition may join one or more separate pieces, tracts, parcels or lots of land, whether in the same or different ownership and whether or not sought for the same use; however, the court, on its own motion or on motion of any party in furtherance of convenience or to avoid prejudice, may order a severance and separate trial of any claim or claims or of any issue or issues.

§ 25.1-209. Notice of filing of petition.

A. Upon the filing of a petition for condemnation, the petitioner shall give the owners 21 days' notice of the filing of such petition and of its intention to apply to the court to ascertain just compensation for the property to be taken or affected as a result of the taking and use by the petitioner of the property to be so acquired.

B. The notice, along with a copy of the petition, shall be served on the owners. In such notice, the petitioner shall give notice that an answer and grounds of defense shall be filed setting forth any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to elect to proceed with either the appointment of commissioners or empanelment of a jury for the determination of such just compensation.

C. The notice may also include notice of the petitioner's application for the right of entry as provided in § 25.1-223, if such application is included in the petition as authorized by § 25.1-207.

D. A copy of the notice required to be served on the owners by this section also shall be served in the same manner upon any tenant entitled to participate in the proceeding pursuant to § 25.1-234, whose lease has been duly recorded or whose tenancy is actually known to the petitioner. However, a tenant so notified may participate in the proceeding only as permitted by § 25.1-234.

E. In addition to any other notice required to be served pursuant to this section, in any proceeding instituted by the Commonwealth Transportation Commissioner under this title or Title 33.1, a copy of the notice of the filing of the petition also shall be served, in the same manner as such notice is served upon owners, upon any person owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360.

§ 25.1-210. Service of notice by order of publication; mailing copy of notice by publication.

A. Upon the filing of an affidavit by a duly authorized officer, agent or attorney for the petitioner stating that he believes any owner cannot be personally served because after diligent inquiry within the Commonwealth such owner's place of residence cannot be ascertained or, if ascertained, that it is not within this Commonwealth, service of the notice may be made on such owner by an order of publication. Such order shall be published in a newspaper published in the county or city where the property or major portion thereof is located, or if there is no such newspaper then in a newspaper having a general circulation in such city or county, once a week for not less than two successive calendar weeks and shall be posted on the front door of the courthouse within 10 days after the entry of the order of publication. Unknown owners who may have an interest in the property may be served by order of publication in like manner addressed to "Unknown Owners." The clerk shall mail a copy of the notice by publication to any owner who cannot be personally served but whose place of residence is then known.

B. The provisions of this section and § 25.1-211 shall apply only to orders of publication in condemnation actions.

§ 25.1-211. Form of notice by publication.

A. The form of the notice by publication pursuant to § 25.1-210, to which shall be attached the signature of the clerk, or the deputy clerk for and on behalf of the clerk, shall be substantially as follows:

Virginia: In the (here insert the name of the court)

Name of petitioner

v. At Law

Name of one or more defendants, et al.,

and (.) acres, more or less, of land in

(city or county), Virginia.

To Whom It May Concern:

Pursuant to an order entered on the day of, 20, this notice is hereby given:

In this proceeding the petitioner seeks to acquire by condemnation

. (here state the estate, interest, or right to be acquired) to certain pieces or parcels of land situated in (county or

city), Virginia, for the uses and purposes of the petitioner

. . . (here state briefly the uses and purposes and nature of the works and improvements to be made), all of which are described more particularly in the petition and exhibits attached thereto on file in the office of the clerk of his court, to which reference is hereby made for a full and accurate description thereof; and for the appointment of commissioners or the empanelment of a jury to ascertain just compensation to the owners of any estate or interest in the property to be taken or affected as a result of the taking and use thereof by the petitioner.

For such purposes, the petitioner will apply to the court, sitting at, Virginia, on the day of, 20., at o'clockm., or as soon thereafter as petitioner may be heard, for the appointment of commissioners or the empanelment of a jury to ascertain just compensation as aforesaid.

And it appearing by affidavit filed according to law that the following owners are not residents of the Commonwealth of Virginia, or their names and addresses are not known and that diligence has been used by and on behalf of the petitioner to ascertain such names and addresses without effect: (here set out the names of such owners or classes of owners and addresses where known), it is ordered that the aforesaid owners do appear within 10 days after due publication of this order in the clerk's office of the (here insert the name of the court) and do what is necessary to protect their interests; and it is further ordered that if any of the above named owners desires to assert any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners or the empanelment of a jury he shall file his answer and grounds of defense designating the property in which he claims to be interested, the grounds of any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners or the empanelment of a jury for the determination of just compensation.

Should any such owner fail to file his answer and grounds of defense as hereinabove provided, such failure shall not preclude the owner from appearing on the date set for the appointment of commissioners or the empanelment of a jury nor from presenting evidence as to valuation and damage nor from sharing in the award of just compensation according to his interest therein or otherwise protecting his rights, but such failure shall preclude such owner from any other defense by way of pleas in bar, abatement or otherwise.

An extract, Teste:

.....Clerk

(Here state name and address of counsel for petitioner)

B. Such notice by publication may also include notice of the petitioner's application for the right of entry as provided in § 25.1-223, whenever such application is included in the petition.

§ 25.1-212. Personal service of notice on nonresident owner.

Personal service of the notice of the filing of a petition may be made by any person, not a party to or otherwise interested in the subject matter in controversy, on a nonresident owner out of this Commonwealth. Such service shall have the same effect, and no other, as an order of publication duly executed, or the publication of notice under this chapter, as the case may be. In such case the return shall be made under oath, and shall show the time and place of such service, that the party serving the same is not a party to or otherwise interested in the subject matter in controversy, and that the person so served is a nonresident of this Commonwealth.

§ 25.1-213. Filing an answer and grounds of defense; election of commissioners or jury.

Within 21 days of the service thereof any such owner who desires to assert any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case, and to make his election to proceed with either the appointment of commissioners or the empanelment of a jury, shall file (i) his answer and grounds of defense designating the property in which he claims to be interested, (ii) the grounds of any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case, and (iii) his election to proceed with either the appointment of commissioners or the empanelment of a jury for the determination of just compensation.

§ 25.1-214. Failure of owner to file answer and grounds of defense.

A. The failure of any owner to file an answer and grounds of defense as provided in § 25.1-213 shall not preclude the owner from (i) appearing on the date set for the appointment of commissioners or the empanelment of a jury, (ii) presenting evidence as to valuation and damage, or (iii) sharing in the award of just compensation according to his interest therein or otherwise protecting his rights. However, such failure shall preclude the owner from any other defense by way of pleas in bar or otherwise, except that for good cause shown the time for filing such answer and grounds of defense may be extended by the court.

B. If the owner fails to file an answer and grounds of defense, or if the owner files an answer and grounds of defense that fails to elect to have the determination of just compensation made by either commissioners or a jury, then the petitioner may elect to have the issue of just compensation determined by either commissioners or a jury, or by the court as provided in § 25.1-220.

§ 25.1-215. No notice required where owner is a person under a disability; appointment of guardian ad litem.

If any owner is a person under a disability and has no guardian, conservator or committee in this Commonwealth, (i) no notice need be issued for or served upon such owner and (ii) a guardian ad litem for such owner shall be appointed in the manner prescribed in § 8.01-9.

§ 25.1-216. Amendments to pleadings.

A. No amendments shall be made to the petition or other pleading after it is filed, except by leave of court.

B. Leave to amend for the addition of new parties and for other purposes shall be liberally granted in furtherance of the ends of justice.

C. In granting leave to amend, the court may make such provision for notice and opportunity to make response as the court deems reasonable and proper.

§ 25.1-217. Substitution of party where owner becomes incapable of defending.

A. If an owner becomes incapable of defending because of death, insanity, conviction of felony, removal from office, or other cause, his successor in interest may be substituted as a party in his place. Substitution shall be made on motion of the successor or of any party to the proceedings.

B. If the successor does not make or consent to the motion, the party making the motion shall file it with the court and the procedure thereon and the service of notice of such motion, if any, shall be in whatever manner the court may require as reasonable and proper in the circumstances involved but in no event shall the period of time required for any notice be greater than that which is prescribed for the notice in § 25.1-209 or § 25.1-210.

§ 25.1-218. Intervention in proceedings.

Any person not already a party to the proceedings whose property, or any interest or estate therein, is to be taken or damaged, or who claims that his other property, or any interest therein will be damaged as a result of the taking and use by the petitioner, may be made a party to the proceeding upon filing a petition for intervention by leave of court (i) at any time prior to the beginning of the trial of the issue of just compensation, or (ii) in the discretion of the court, at such other times during the pendency of the proceeding upon such terms and conditions as the court deems proper, considering all the circumstances at that time. Such a person intervening in the proceeding shall be permitted to assert any claim or defense then germane to the proceeding upon such terms and conditions as the court deems reasonable and proper.

§ 25.1-219. Pretrial settlement conference; determination of preliminary issues; fixing date of trial on issue of just compensation.

A. The owner or the petitioner in any condemnation proceeding may request and, if requested, the court shall order a pre-trial settlement conference. Such conference shall be conducted by a neutral third party, if available. Such conference may be requested at any time by either the owner or the petitioner. If requested, such conference shall be held within the 30 days preceding the scheduled trial date. If such a conference is ordered, the court shall order both parties to appear with counsel, if any, and the parties shall appear with settlement authority. All settlement conferences conducted pursuant to this provision shall be nonbinding. If settlement is not reached, the matter shall proceed to trial as set upon the docket.

B. At the hearing upon the petition and application for either the appointment of commissioners or the empanelment of a jury made in accordance with § 25.1-209, if no answer and grounds of defense has been filed objecting to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners or the empanelment of a jury, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined by a commission, by a jury or by the court, as provided in § 25.1-220. If any answer and grounds of defense has been filed objecting to the jurisdiction of the court, the court shall determine such issues or other matters in controversy, excepting the issue of just compensation or matters relating to the ownership of any land or other property or the interests of any party in such land or other property.

C. If the court determines all such issues or other matters involving the jurisdiction of the court in favor of the petitioner, the court shall enter an order fixing a date for the trial of the issue of just

compensation and stating that such issue shall be determined by either a commission, by a jury or by the court, as provided in § 25.1-220.

D. An order of the court in favor of the petitioner on any of the foregoing preliminary issues or matters shall not be a final order for purposes of appeal but an order against the petitioner on such issues or matters shall be a final order for purposes of appeal, if the petitioner so elects. If the order against the petitioner does not dismiss the petition, the petitioner may elect to proceed with the case without waiving any of its objections and exceptions to the rulings of the court.

E. At such hearing the court shall also determine whether the petitioner shall be granted a right of entry as provided in § 25.1-223.

§ 25.1-220. Who determines issue of just compensation.

The issue of just compensation shall be determined by a commission or a jury, upon a timely election made by an owner as provided in § 25.1-213. However, by agreement of the petitioner and all the parties who are sui juris that have appeared or responded, or, if no owner upon proper notice has appeared or responded, or has filed an answer and grounds of defense that fails to elect to have the determination of just compensation made by either commissioners or a jury, then, upon motion of the petitioner, the issue of just compensation may be determined by the court.

§ 25.1-221. Consolidation of petitions for trial.

Unless any party demands a separate hearing on the issue of just compensation, the court may consolidate for trial two or more petitions.

§ 25.1-222. Proceedings not to be delayed by claims with respect to ownership of property.

No delay in the proceeding for the determination of just compensation shall be occasioned by the claims of the parties with respect to the ownership of any land or other property or to the interest therein of the respective parties. In such cases the court shall require the retention of the deposit of the award for the whole property, or the part in dispute, until the rights of the respective parties have been determined in the manner hereinafter provided in § 25.1-241; provided, however, the court shall permit any such claimants to intervene as parties to the proceedings as provided in § 25.1-218.

Article 3.

Right of Entry After Filing Petition.

§ 25.1-223. Right to enter upon property.

A. Unless otherwise provided by law, any petitioner may enter upon the property to be condemned at any time after the filing of its petition for condemnation, for the purpose of constructing its works or improvements thereon in the manner proposed by the petitioner upon approval of the petitioner's application for entry as provided in this article.

B. Notice of the petitioner's application for entry shall be served on the owners in the same manner as is provided in this chapter for service of notice of the filing of a petition.

§ 25.1-224. Conditions upon entry; bonding; withdrawal of share by owner.

A. The court, after 21 days following service of the petitioner's application, and after a hearing thereon, may approve the petitioner's application if it finds that:

1. A public necessity or an essential public convenience requires such entry for such purposes;
2. An emergency exists justifying such entry before the time when just compensation can be determined and the amount so determined paid into court; and

3. The interests of the owners of such property will be adequately protected by (i) the payment into court for the benefit of the owners of the amount of the offer made in accordance with § 25.1-204 or (ii) if no offer is required by that section, by the payment into the court of the amount of a good faith estimate of the value of the property.

B. In addition, the court may require the petitioner to give a surety bond in an amount and with such surety as the court may determine.

C. Upon such findings and payment and the giving of such bond, if any is required, with surety in the office of the clerk or with the court, conditioned as required by law and to the effect that the petitioner and its surety or sureties are bound to the owners of the property to be taken or damaged to secure to each of them payment of just compensation therefor as finally determined in the condemnation proceedings, the petitioner shall have the right to enter and construct its works or improvements upon or through the property as described in its petition.

D. At any time after such payment into court, a party whose property or interest therein is to be taken or damaged may apply to the court for the withdrawal of his share thereof in the manner provided in § 25.1-243.

E. The clerk shall deposit the funds so paid to the credit of the court in an account of a type that bears interest.

F. At any time during the condemnation proceedings, if it appears necessary to do so in order to protect the owners of the property or estate or interest therein to be condemned and assure unto them the payment of just compensation to which they are entitled, the court may require the petitioner to give a new and additional bond in an amount and with sureties satisfactory to the court.

§ 25.1-225. Abandonment of proceedings after entry upon property.

If the petitioner enters upon the property under this section and does any work thereon, or causes

any injury or damage to such property, it shall not thereafter be entitled, without the consent of the owner, to abandon the proceedings for the condemnation thereof, but shall conduct the condemnation proceedings with reasonable dispatch to final judgment.

Article 4.

Determination of Just Compensation by Commissioners.

§ 25.1-226. Qualification of commissioners.

A. The provisions of this article shall apply in eminent domain proceedings in which the issue of just compensation is to be determined by a commission.

B. All commissioners shall be disinterested freeholders and residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. No person shall serve as a commissioner for more than one full week within any three-month period, unless agreed to by the parties.

§ 25.1-227. Empanelment of commissioners.

A. The parties to the eminent domain proceeding may agree upon five or nine persons qualified to act as commissioners, as provided in subsection B of § 25.1-226.

B. If the parties cannot agree upon five or nine qualified persons to act as commissioners, then each party shall present to the court a list containing the names of at least six qualified persons. If any party fails to submit such a list of names, the court may, in its discretion, submit such a list on such party's behalf.

C. From the lists submitted pursuant to subsection B, the court shall select the names of nine potential commissioners and at least two alternates. At least one week prior to their service, such persons shall be summoned to appear.

D. If nine qualified persons are selected, the petitioner and the owners shall each have two peremptory challenges and the remaining five shall serve as commissioners. If five qualified persons are agreed upon as provided in subsection A, they shall serve as commissioners.

E. If an owner has filed no answer to the petition, and the court finds that the owner is not represented by counsel, the court may, in its discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners.

F. Any three or more of the five commissioners may act.

G. In condemnation proceedings instituted by the Commonwealth Transportation Commissioner, a person owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360 shall be deemed to be an "owner" for purposes of this section.

Article 5.

Determination of Just Compensation by Jurors.

§ 25.1-228. Qualification of jurors.

A. The provisions of this article shall apply in eminent domain proceedings in which the issue of just compensation is to be determined by a jury.

B. Persons selected as condemnation jurors shall be residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror 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 jurors. A majority of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction.

§ 25.1-229. Selection of jurors.

A. The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall select condemnation jurors. Except as otherwise provided in this subsection, the provisions of §§ 8.01-345, 8.01-346, 8.01-347, 8.01-356, and 8.01-358 relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and voir dire examination shall apply to condemnation jurors, mutatis mutandis.

B. The condemnation jury shall be comprised of five members. The members of the condemnation jury shall be drawn from the list submitted by the jury commission. The clerk shall, in the presence of the judge, after thoroughly mixing the ballots in the box, openly draw nine names therefrom. At the same time, the names of at least two additional persons shall be drawn to act as alternate jurors in the event of the death, absence, or disability of any acting juror. However, a majority of the nine names drawn as acting jurors, and at least one half of the names drawn for alternate jurors, shall be freeholders of property within the jurisdiction. As soon as practicable thereafter, the clerk shall serve notice on the jurors so drawn to appear in court on the date set for trial. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.

C. After each ballot containing a juror's name has been drawn, it shall be placed in a secure envelope maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot box. No drawn ballot shall be returned to the pool of undrawn ballots until the pool has been exhausted, except as may be required to ensure that the required number of names drawn are freeholders of property within the jurisdiction. However, the clerk shall immediately return to the pool of undrawn ballots the ballot of any juror who was drawn but was excused by the court from appearing

or was not required to appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.

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

E. The court shall have the discretionary power to excuse a juror's attendance on any given day or for any specific case upon request of the juror for good cause shown. If a juror is so excused seven or more days prior to trial, a replacement juror shall be drawn and notified under the procedures provided in this section. However, if a juror is so excused within six days prior to trial, an alternate juror will be designated to serve as juror.

F. On the day set for trial, jurors who appear shall be called in such a manner as the judge may direct to be sworn on their voir dire until a disinterested and impartial panel is obtained. In addition, a juror may be stricken for cause. If all nine jurors and two alternates appear and none are stricken for cause, each party shall be entitled to exercise two peremptory strikes. However, if, because of strikes for cause and unexpected failure to appear, fewer than nine but more than five jurors remain before the court, the number of peremptory strikes for each party shall be equally reduced, and the judge shall, if necessary, strike by lot an additional name in order to reduce the jury to five members; however, the judge shall not strike a freeholder if the striking of such name would result in freeholders constituting less than a majority of the members of the jury. If fewer than seven jurors remain before the court prior to the exercise of peremptory strikes, the trial may proceed and be heard by less than five jurors provided the parties agree. However, no trial shall proceed with fewer than three jurors.

G. The conclusion of the jurors need not be unanimous, and a majority of the jurors may act in the name of the jury.

H. In condemnation proceedings instituted by the Commonwealth Transportation Commissioner, a person owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360 shall be deemed to be an "owner" for purposes of this section.

Article 6.

Provisions Applicable to Determinations of Just Compensation.

§ 25.1-230. Measure of just compensation; oaths of members of body determining just compensation.

A. The body determining just compensation shall in each case ascertain the amount of just compensation to which a party is entitled as follows:

1. If the condemnation proceeding is brought utilizing the procedure set forth in Chapter 3 (§ 25.1-300 et seq.) of this title or §§ 33.1-119 through 33.1-132, the body determining just compensation shall ascertain the value of the property to be taken and the damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of such taking and use by the petitioner, however, (i) such enhancement in value shall not be offset against the value of the property taken, and (ii) if such enhancement in value shall exceed the damage, there shall be no recovery against the landowner for such excess; and

2. In any other condemnation proceeding, the body determining just compensation shall ascertain 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. Before executing their duties, each member of the body determining just compensation shall take an oath before an officer authorized by the laws of this Commonwealth to administer an oath that he will faithfully and impartially ascertain the amount of just compensation to which a party is entitled.

§ 25.2-231. View of property.

The court shall direct the body determining just compensation, in the custody of the sheriff or sergeant or one of his deputies, to view the property described in the petition with the owner and the petitioner, or any representative of either party, and none other, unless otherwise directed by the court. Upon motion of either party, the judge shall accompany the body determining just compensation upon such view. Such view shall not be considered by the body determining just compensation as the sole evidence in the case.

§ 25.1-232. Testimony on issues; report on just compensation.

A. Upon completion of the view, the court shall hear the testimony in open court on the issues joined.

B. When the body determining just compensation shall have arrived at its conclusion, it shall make its report in writing to the court.

§ 25.1-233. Confirmation of report; exceptions to report.

A. The report of the body determining just compensation may be confirmed or set aside forthwith by the court.

B. However, when the report is so filed and before the court passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than 10 days after the

rendering of the report by the body determining just compensation. The court shall have the same power over the reports of the body determining just compensation as it now has over verdicts of juries in civil actions.

C. Upon hearing of exceptions to the report the court shall not recall and question the members of the body determining just compensation as to the manner in which their report was determined unless there be an allegation in such written exceptions that fraud, collusion, corruption or improper conduct entered into the report. If such allegation is made, the judge shall summon the members of the body determining just compensation to appear and he alone shall question them concerning their actions. If the court be satisfied that fraud, collusion, corruption or improper conduct entered into the report of the body determining just compensation, the report shall be set aside and a new body to determine just compensation shall be empanelled to rehear the case.

D. If the court be satisfied that no such fraud, collusion, corruption or improper conduct entered into the report of the body determining just compensation, or no other cause exists that would justify setting aside or modifying a jury verdict in civil actions, the report shall be confirmed.

§ 25.1-234. Participation by certain tenants in proceedings to determine just compensation.

A. Any tenant under a lease with a term of 12 months or longer may participate in the proceedings to determine just compensation to the same extent as his landlord or the owner, if, not less than 10 days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention, in the manner provided in § 25.1-221. Such petition for intervention shall include (i) a verified copy of the lease under which he is in possession and (ii) an affidavit by the tenant or his duly authorized agent or attorney, stating:

1. That he claims an interest in the award; and
2. That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

B. For the purposes of this section, the term of a tenant's lease shall include any renewals or extensions for which the tenant has an enforceable written option. The term "tenant" shall include the assignee of the original tenant, as well as any sublessee of the entire demised premises of the owner for the full unexpired term of the sublessor.

C. Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings to determine just compensation concerning the value of his leasehold interest in the property involved therein or as authorizing the body determining just compensation to make any such determination in formulating its report.

D. As used in this section, "proceedings to determine just compensation" means proceedings described in §§ 25.1-231, 25.1-232, and 25.1-233.

§ 25.1-235. Compensation of commissioners or jurors.

The commissioners appointed or jurors empanelled, as the case may be, shall, for every day or portion thereof they may be employed in the performance of their duties, receive an allowance in the amount of \$60 as compensation for their attendance, travel and other costs, regardless of the number of cases heard on any particular day, to be paid by the petitioner. The persons summoned who appear, but are not appointed to serve as commissioners or empanelled to serve as jurors, shall be allowed \$30 for each day they are summoned to appear.

§ 25.1-236. Contracts made part of report.

If the petitioner and the person whose property is being condemned under the provisions of this chapter shall, before the report of just compensation is made, (i) enter into any contract in relation to building, operating, or maintaining the proposed work, or in relation to fencing, culverts, depots, stations, crossings, sidings, cattle guards, damage from fire, injury to or destruction of property, real or personal, or like matters, and (ii) introduce such contract at the trial of the issue of just compensation, such contract shall be accepted and made a part of the report of the award of just compensation. Upon confirmation of such report, the contract shall thereafter run as a covenant with the land or with the interest or estate therein taken.

Article 7.

Judgment and Post-judgment Procedure.

§ 25.1-237. Payment of compensation and damages into court; vesting of title.

Upon the return of the report of the body determining just compensation, and the confirmation, alteration or modification thereof in the manner provided in this chapter, the sum so ascertained by the court as compensation and damages, if any, to the property owners may be paid into court. Upon paying such sum into court, title to the property and rights condemned shall vest in the petitioner to the extent prayed for in the petition, unless such title shall have already vested in the petitioner in a manner otherwise provided by law. The petitioner or its agent shall have the right to enter and construct its works or improvements upon or through the property described in its petition.

§ 25.1-238. Petitioner may begin work during pendency of proceedings; injunction prohibited.

A. Upon the return of the report of the body determining just compensation and upon payment into court of the sum ascertained therein, the petitioner or its agents may enter and construct its works or improvements upon or through the property as described in its petition, notwithstanding the pendency of

proceedings on any objections to such report in the trial court, or upon an appeal of the case, or the ordering of a new trial of the issue of just compensation or otherwise.

B. No order shall be made nor any injunction awarded by any court to stay the petitioner in the prosecution of its work unless it is manifest that the petitioner or its agents are transcending their authority and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

§ 25.1-239. Finality of order confirming, altering or modifying report; appeal.

A. The order confirming, altering or modifying the report of just compensation shall be final.

B. Any party aggrieved thereby may apply for an appeal to the Supreme Court and a supersedeas may be granted in the same manner as is now provided by law and the Rules of Court applicable to civil cases. An order setting aside the report and awarding a new trial of the issue of just compensation shall not be a final order for the purposes of appeal.

§ 25.1-240. Distribution of money paid into court.

A. Upon the award being paid into court and the confirmation of the report in the manner provided in § 25.1-237, the interest or estate of the owner or owners in the property taken or damaged shall terminate and they shall have such interest or estate in the fund and any interest accrued thereon so paid into court as they had in the property so taken or damaged. All liens by a deed of trust, judgment or otherwise upon such property or any interest therein shall be transferred to the fund so paid into court. If the court is satisfied that the persons having an interest therein are before the court, the court shall make such distribution of such money and any interest accrued thereon as to it may seem proper, having due regard to the interest of all persons therein, and in what proportions such money is properly payable.

B. If it appears from the record in the proceedings or otherwise that the person or persons or classes of persons in the proceedings are vested with the superior right or claim of title in the land or estate or interest therein condemned, or in the proceeds of the award of just compensation, and that the record does not disclose any denial or dispute thereof, by any person or party in interest, the court may direct that the fund and any interest accrued thereon, after the payment therefrom of any taxes, be disbursed and distributed accordingly among the persons entitled thereto or to such person who they may by writing direct.

C. Notwithstanding the provisions of subsection B, the court may inquire into the rights or claims of any persons appearing to be infants, incapacitated or under any other legal incapacity, independent of any statement in the record.

D. Any order for distribution shall conserve and protect the rights of such parties in and to the fund and any interest accrued thereon.

E. The cost of a commissioner in chancery appointed by the court to assist in making the proper distribution in cases of legal disability as herein set forth may be taxed as a cost of the proceedings, to be paid by the petitioner.

§ 25.1-241. Hearing on controversy among claimants to money paid into court.

A. If it appears to the court that there exists a controversy among claimants to the fund and any interest accrued thereon, or to the ownership of the property subject to the condemnation, the court shall enter an order setting a time for hearing the case and determining the rights and claims of all persons entitled to the fund or to any interest or share therein.

B. In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court may appoint a commissioner in chancery to take evidence upon the conflicting claims. If the fund, exclusive of interest, is \$500 or more, the costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund and any interest accrued thereon or the distribution thereof shall not be taxed against the petitioner. If the fund, exclusive of interest, is less than \$500, such costs shall be taxed against the petitioner.

C. Upon a determination by the court of the rights and claims of the persons entitled to the fund and any interest accrued thereon, an order shall be entered directing the disbursement among the persons entitled thereto or to whomsoever they may by writing direct. Any party aggrieved thereby may apply for an appeal as provided in subsection B of § 25.1-239.

§ 25.1-242. Appointment of other body to determine just compensation when new trial ordered; costs of new trial.

A. If (i) the body determining just compensation fails to report its award of just compensation within a reasonable time after the issue of just compensation is submitted to it; (ii) the body determining just compensation reports that it is unable to make such award; (iii) the body's report is set aside; or (iv) a final order upon its report has been set aside upon appeal and a new trial ordered, the court shall, without further notice, as often as seems to it proper, appoint another body to determine just compensation of the same type as the preceding body, and the matter shall proceed as prescribed in this chapter.

B. If a new trial of the issue of just compensation is ordered, either in the trial court or upon appeal, upon an exception by an owner with respect to the insufficiency of the award of just compensation, and the subsequent report of the award of just compensation, which is confirmed, is for

the same or a lesser total amount, the court shall (i) tax all the costs of the new trial against the owner making such exception and (ii) order repayment to the petitioner of any sum paid to such owner out of the fund paid into court by the petitioner in excess of the total sum ascertained by the second report with interest thereon from the date the original payment was made to such owner until the date such excess is repaid to the petitioner. Interest accruing thereon 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 for the month in which the original payment was made to such owner.

C. If such owner fails to make such repayment within 30 days from the date of the entry of such order, the court shall enter judgment therefor against such owner.

§ 25.1-243. Withdrawal pendente lite of money paid into court.

A. At any time after payment into court of the sum ascertained in the report of the award of just compensation, notwithstanding the fact that another trial of the issue of just compensation has been ordered or an appeal has been taken from a final order upon the report as provided in subsection B of § 25.1-239, a party whose property or interest therein is to be taken or damaged may apply to the court, in the manner provided in this section, for the withdrawal pendente lite of all, or any portion of his pro rata share, of the amount deposited for his interest in the property to be taken or damaged, together with his pro rata share of any interest accrued thereon.

B. If such application requests withdrawal of an amount in excess of 50 percent of such owner's pro rata share of the amount deposited, exclusive of interest, the court may require the applicant, before withdrawing any of such excess, to give or file a bond with the court for the return of the amount withdrawn that exceeds the amount to which the owner is entitled as finally determined in the condemnation proceeding, together with interest from the date of the withdrawal of the amount in excess of 50 percent of such owner's pro rata share of such amount deposited. Such bond shall be with surety approved by the court or clerk, conditioned as required by law to the effect that they are bound to the petitioner in such amount as fixed by the court, but not to exceed double the amount of such excess. 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.

C. Such application shall be verified and shall set forth the owner's interest in the property to be taken or damaged and request withdrawal of a stated amount. A copy of such application for withdrawal shall be served upon the petitioner or its counsel of record. No order permitting such withdrawal shall be entered until at least 21 days after service of such application upon the petitioner without its consent. Within such 21-day period the petitioner may object to such withdrawal by filing written objections thereto with the court on the grounds that the amount of, or the sureties upon the proposed bond are insufficient or that other persons are known or believed to have interests in such property. A copy of any such objections shall be served upon the applicant and such other persons as have appeared or answered, or their attorneys of record.

D. If any person appears and objects to the proposed withdrawal, or if the petitioner so requests, the court shall determine the amount to be withdrawn, if any, and the persons entitled thereto. Upon such determination, no other person so served shall have any claim against the petitioner to the extent of the amount so withdrawn. The court may follow the procedure prescribed in § 25.1-241 for the determination of any controversy among any claimants to the funds or to the ownership of the property subject to the condemnation, and may tax the costs thereof as therein provided.

E. If the award that is confirmed finally is for a lesser amount than the amount paid into court, the petitioner shall recover the amount of such excess and, if any person has been paid a greater sum than that to which he is entitled, judgment shall be entered for the petitioner against such person for the amount of such excess and any interest thereon.

F. The amount of the petitioner's deposit under § 25.1-224 or § 25.1-237 and the amount of such deposit withdrawn by any party in accordance with the provisions of this section shall not be given in evidence or referred to in the trial of the issue of just compensation or be considered by the court or upon appeal in determining whether the award is inadequate or excessive, nor limit the rights of any party to appeal from any decision therein.

§ 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. 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 § 25.1-223. 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 § 25.1-223.

§ 25.1-245. Costs.

A. Except as otherwise provided in this chapter, all costs of the proceeding in the trial court that are fixed by statute shall be taxed against the petitioner.

B. The court may in its discretion tax as a cost a fee, not to exceed \$1,000, for a survey for the landowner.

C. All costs on appeal shall be assessed and assessable in the manner provided by law and the Rules of Court as in other civil cases.

§ 25.1-246. When sheriff to remove forcible resistance to entry.

In any case in which the petitioner may be entitled under the laws of this Commonwealth to enter upon property for purposes of making examinations or surveys as are authorized by law, to enter upon property in accordance with the provisions of this chapter, or to condemn any property, the sheriff, whenever required, shall attend and remove, if necessary, any forcible resistance to any such entry or taking.

§ 25.1-247. Recordation of orders, judgments and proceedings; costs.

A. The clerk of the court shall make and certify a copy of so much of the orders, judgments and proceedings in the case as shall show such condemnation, including a plat and description of the property condemned, and any such contract, if any there be, as is mentioned in § 25.1-236. The clerk shall record such material in the land records in his office, and index it in the names of the parties.

B. If any portion of the land lies in two or more localities, the clerk shall certify a copy of the proceedings to the clerk of the court of each locality. The clerks shall record and index the copy as provided in subsection A.

C. The fees of the clerk for recording shall be the same as for recording a deed. The fees shall be paid by the petitioner.

Article 8.

Dismissal of Proceedings.

§ 25.1-248. Dismissal of proceedings prior to trial on issue of just compensation.

If a hearing has not begun in the trial of the issue of just compensation for the taking or damaging of property 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. Such order shall also provide, except as may be provided otherwise in a settlement by agreement of the parties, that the petitioner shall pay such owner or owners their reasonable expenses that 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.

§ 25.1-249. Dismissal of proceedings after commencement of trial on issue of just compensation.

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, if the petitioner has not already acquired title or a lesser interest 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. Such order shall also provide that the petitioner shall pay such owner or owners for the following expenses that have been actually incurred by them in such amounts as the court deems just and reasonable: (i) an attorney's fee; (ii) witness fees, including reasonable fees of not more than three expert witnesses; and (iii) other reasonable expenses and compensation for time spent as a result of the condemnation proceedings. If any such expenses are not paid within 30 days of the entry of such order, judgment therefor shall be entered against the petitioner.

§ 25.1-250. Effect of failure of petitioner to pay award; expenses.

If 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 damaged may, upon motion, obtain as a matter of right an order dismissing the proceeding as to such property. Such order shall also provide that the petitioner shall pay such owner or owners his expenses as provided in § 25.1-249. If any such expenses are not paid within 30 days of the entry of such order, judgment therefor shall be entered against the petitioner.

§ 25.1-251. Dismissal of proceedings by stipulation of parties; effect of dismissal; dropping parties.

A. Before the vesting of title, or a lesser interest therein in any property 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. If such parties so stipulate, the court may vacate any order that has been entered.

B. Except as otherwise provided in a stipulation of dismissal or order of the court, any dismissal is without prejudice.

C. The court may at any time drop a defendant unnecessarily or improperly joined.

CHAPTER 3.

TRANSFERRING DEFEASIBLE TITLE BY CERTIFICATE.

§ 25.1-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authorized condemnor" means a condemnor that is specifically authorized by law to acquire property through the use of the procedure set forth in this chapter.

"Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by an authorized condemnor, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the authorized condemnor. "Certificate" includes a certificate of deposit and a certificate of take.

"Certificate of deposit" means a certificate filed by an authorized condemnor with the court wherein condemnation proceedings are pending or are to be instituted, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed in lieu of the payment of funds into court as provided in subdivision A 2 of § 25.1-305.

"Certificate of take" means a certificate recorded by an authorized condemnor with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the authorized condemnor has deposited funds with the court as provided in subdivision A 1 of § 25.1-305.

§ 25.1-301. Applicability of chapter; purpose.

A. The procedure established by this chapter shall be available for use, at the election of an authorized condemnor, in connection with the acquisition of property by condemnation if the use of the procedure is specifically authorized by law.

B. It is the intention of this chapter to provide that property may, in the discretion of the authorized condemnor, be condemned as provided in this chapter before, during or after the construction of improvements thereon.

§ 25.1-302. Protection of property.

Authorized condemnors constructing improvements under the authority of this chapter shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken.

§ 25.1-303. Effort to acquire property by purchase.

An authorized condemnor shall comply with the applicable provisions of § 25.1-204 and subdivision A 1 of § 25.1-417 before exercising its authority to acquire property by condemnation under the procedure set forth in this chapter.

§ 25.1-304. Authority to take possession and title to property.

In addition to any authority it has to exercise the power of eminent domain prior to entering upon property being condemned, an authorized condemnor is authorized to acquire title to and to enter upon and take possession of such property for the purposes for which such condemnor is authorized to condemn such property, and proceed with the construction of improvements upon such property, in accordance with the procedures set forth in this chapter.

§ 25.1-305. Authorized condemnor to make payment into court or file certificate of deposit before entering upon land.

A. Before entering upon or taking possession of property, the authorized condemnor shall either:

1. Pay into the court wherein condemnation proceedings are pending, or are to be instituted, such

sum as is required by subsection B; or

2. File with the court wherein condemnation proceedings are pending, or are to be instituted, a certificate of deposit issued by the authorized condemnor for such sum as is required by subsection B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such court.

B. The amount to be paid into the court as provided in subdivision A 1 or represented by a certificate of deposit as provided in subdivision A 2 shall be the amount that the authorized condemnor estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by § 25.1-417.

C. If the condemning authority makes a payment into court as provided in subdivision A 1, it shall also record a certificate of take as provided in § 25.1-307.

D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid by the authorized condemnor.

§ 25.1-306. Notice of intent to file certificate.

The authorized condemnor shall give notice to the owner or tenant of the freehold by registered mail, if known, that a certificate will be filed with respect to such person's property.

§ 25.1-307. Content of certificates; recordation of certificates.

A. A certificate shall set forth the description of the property being taken or damaged, and the owner or owners, if known, of such property.

B. The authorized condemnor shall record a certificate of take or a certificate of deposit in the clerk's office of the court where deeds are recorded. The clerk shall record the certificate in the deed book and index it in the names of both (i) the person or persons who owned the land before the recordation of the certificate and (ii) the authorized condemnor.

§ 25.1-308. Effect of recordation of certificate; transfer of title or interest in property.

A. Upon recordation of a certificate:

1. The interest or estate of the owner of the property described therein shall terminate;
2. The title to such property shall be vested in the authorized condemnor;
3. The owner shall have such interest or estate in the funds deposited with the court or represented by the certificate of deposit as the owner had in the property taken or damaged; and
4. All liens by deed of trust, judgment or otherwise upon such property shall be transferred to such funds.

B. The title in the authorized condemnor shall be defeasible until (i) the authorized condemnor and such owner reach an agreement as provided in § 25.1-317, or (ii) the compensation for the taking or damage to the property is determined by condemnation proceedings as provided in § 25.1-313.

§ 25.1-309. Property situated in two or more localities.

If the property affected by the certificate is situated in two or more localities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the locality in which any portion of the property lies. The clerk shall record the same in the deed book and index it in the manner prescribed in subsection B of § 25.1-307.

§ 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.

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. 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.

§ 25.1-311. Effect of acceptance of payments; evidence as to amount of deposit or certificate.

A. The acceptance of payment as provided in § 25.1-310 shall not limit the amount to be allowed by the body determining just compensation in a condemnation proceeding, nor limit the rights of any party or parties to the proceeding to appeal from any decision therein.

B. A party to a condemnation proceeding shall not be entitled to introduce evidence of any amount deposited with the court or represented by a certificate, nor of any amount that has been accepted by any party entitled thereto pursuant to § 25.1-310.

§ 25.1-312. Reformation, alteration, revision, amendment or invalidation of certificate.

A. No reformation, alteration, revision, amendment or invalidation shall be made to a recorded certificate for any purpose without the prior consent of the court wherein such certificate is recorded.

B. The court shall have jurisdiction to:

1. Reform, alter, revise, amend or invalidate, in whole or in part, any certificate; and
2. Correct mistakes in the description of the property affected by such certificate, the name or names of the owner or owners in the certificate, or any other error that may exist with respect to such certificate for any other purpose.

C. A petition filed by the authorized condemnor with the court setting forth any error made in such certificate, or the necessity of any change therein, shall be deemed sufficient basis for the reformation, alteration, revision, amendment or invalidation in whole or in part of such certificate.

D. The court may enter an order permitting the reformation, alteration, revision, amendment or invalidation, in whole or in part, of the certificate. Such order, together with any revised certificate that may be necessary, shall be recorded in the clerk's office in the same manner required for the recordation of a certificate. The filing of any certificate pursuant to the provisions of this section shall not alter the date of taking as established by the recordation of the original certificate pursuant to § 25.1-307 as to any property that is included in the amended certificate. An amended certificate shall not include any property not included in the original certificate.

E. Nothing in this section shall be construed to prohibit or preclude any person damaged by reason of a mistake in, or the invalidation of, a certificate from showing the damage suffered by reason of such mistake or invalidation in a condemnation proceeding.

§ 25.1-313. Institution of condemnation proceedings.

The authorized condemnor shall institute condemnation proceedings with respect to property described in a certificate any time after the recordation of the certificate, but within 60 days after the completion of the construction of the improvements upon the property described in the certificate, if (i) the authorized condemnor and the owner or owners of property taken or damaged by the authorized condemnor are unable to agree as to the compensation, if any, attributable to such taking or damage, or (ii) such agreement cannot be obtained because the owners or one or more of them are under a disability, are unknown or cannot with reasonable diligence be found within this Commonwealth. However, this section shall not require the institution of condemnation proceedings if they have been instituted prior to the recordation of such certificate.

§ 25.1-314. Order confirming award; recordation.

The final order of the court confirming an award of compensation to the owner or owners of property shall confirm in the authorized condemnor absolute and indefeasible title to the property that is the subject of the condemnation proceeding. Such order shall be recorded in the current land records in the office of each clerk of court in which the certificate was recorded.

§ 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, 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.

§ 25.1-316. Awards in lesser amounts than deposit; interest.

If the amount of an award in a condemnation proceeding is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution pursuant to § 25.1-310 of such funds, the authorized condemnor shall recover (i) the amount of such excess and (ii) interest on such excess at the general account's primary liquidity portfolio rate. If any person has been paid a greater sum than that to which he is entitled as determined by the award,

judgment shall be entered for the authorized condemnor against such person for the amount of such excess and interest.

§ 25.1-317. Agreements as to compensation; petition and order of court thereon; disposition of funds.

A. At any time after the recordation of a certificate, but prior to the institution of condemnation proceedings, if the authorized condemnor and the owner of the property taken or damaged agree as to compensation for the property taken and damages, if any, caused by such taking, the authorized condemnor shall file with the court a petition so stating. A copy of the agreement shall be attached to the petition. If condemnation proceedings are already pending at the time such agreement is reached, the authorized condemnor shall not be required to file a petition, but shall file a motion to dismiss the condemnation proceedings containing an averment that such agreement has been reached. Upon the filing of such a petition or a motion to dismiss, the court shall enter an order confirming absolute and indefeasible title to the property in the condemning authority, or in the Commonwealth if the condemning authority is an agency of the Commonwealth. Such order shall be recorded in the clerk's office of each court in which the certificate is recorded. Upon entry of such order, the condemning authority shall be relieved of further obligation by virtue of having filed a certificate of deposit with the court.

B. If it shall appear from such petition and agreement, or motion to dismiss a pending suit, that no person other than those executing such agreement are entitled to the funds deposited with the court or represented by a certificate of deposit, the court shall direct that such funds, after payment therefrom of any taxes that may be charged against the property taken, be disbursed and distributed in accordance with the provisions stated in the petition, or motion, among the parties or persons entitled thereto. If it shall appear that a controversy exists as to the persons entitled to such funds, such distribution shall be made in accordance with the provisions of § 25.1-310.

§ 25.1-318. Petition by owner for determination of just compensation.

A. The owner of property that an authorized condemnor has entered and taken possession of pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the appointment of commissioners or a jury to determine just compensation for the property taken and damages done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of this title if (i) the owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized condemnor:

1. Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or

2. Has not instituted condemnation proceedings within:

a. Sixty days after completion of the construction of the contemplated improvements upon the property; or

b. One year after the authorized condemnor has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has been completed.

B. A copy of such petition shall be served upon the authorized condemnor at least 10 days before it is filed in the court. The authorized condemnor shall file an answer thereto within five days after the filing of the petition. If the court finds that the conditions prerequisite for such appointment as provided in subsection A are satisfied, the court shall appoint commissioners or empanel a jury, as requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 2 (§ 25.1-200 et seq.) of this title insofar as the same may be applicable.

CHAPTER 4.

RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES.

Article 1.

General Provisions.

§ 25.1-400. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Business" means any lawful activity, except a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and of real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25.1-406, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is (i) decent, safe and sanitary; (ii) adequate in size to accommodate the occupants; (iii) within the financial means of the displaced person;

(iv) functionally equivalent; (v) in an area not subject to unreasonable adverse environmental conditions; and (vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Decent, safe, and sanitary dwelling" means a dwelling that:

1. *Is structurally sound, weather tight and in good repair;*
2. *Has a safe electrical wiring system adequate for lighting and appliances;*
3. *Contains a heating system capable of maintaining a healthful temperature;*
4. *Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;*
5. *Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;*
6. *Provides unobstructed egress to safe open space at ground level. If the unit is above the first floor and served by a common corridor, there must be two means of egress; and*
7. *Is free of barriers to egress, ingress and use by a displaced person who is handicapped.*

"Displaced person" means:

1. *Any person who moves from real property, or moves his personal property from real property (i) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (ii) on which such person is a residential tenant or conducts a small business, a farm operation or a business described in clause 4 of the definition of "business" in this section as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent;*
2. *Solely for the purposes of §§ 25.1-406, 25.1-407, and 25.1-411, any person who moves from real property, or moves his personal property from real property: (i) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by a state agency or (ii) as a direct result of rehabilitation, demolition, or other displacing activity as the state agency may prescribe, of other real property on which such person conducts a business or farm operation, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and*
3. *Any person who moves or discontinues his business or moves other personal property, or moves from his dwelling, as the direct result of (i) federally assisted activities for the enforcement of a building code or other similar code or (ii) a program of rehabilitation or demolition of buildings conducted pursuant to a federally assisted governmental program.*

The term "displaced person" does not include (i) a person who has been determined, according to criteria established by the state agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in any case where the state agency acquires property for a program or project, any person, other than a person who was an occupant of the property at the time it was acquired, who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

"Dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house, a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

"Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

"Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

"Nonprofit organization" means an organization that is exempt from paying federal income taxes under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

"Person" means any (i) individual or (ii) partnership, corporation, limited liability company, association, or other business entity.

"State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire property by eminent domain under state law; or (iv) any two or more of the aforementioned, which carries out projects that cause persons to be displaced.

"Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the state agency has determined has little

or no value or utility to the owner.

§ 25.1-401. Scope of chapter.

A. The provisions of this chapter shall be applicable to the acquisition of real property by any locality defined as a state agency for purposes of this chapter, notwithstanding the provisions of the locality's charter.

B. Unless compliance with the provisions of this chapter is a prerequisite to the receipt and expenditure of federal funds on the projects for which property is acquired, this chapter shall not apply to acquisitions by a state agency (i) that are voluntarily initiated or negotiated by the seller under no threat of condemnation, (ii) where property is dedicated pursuant to the provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, or (iii) where property is voluntarily dedicated or donated for no consideration.

§ 25.1-402. Rules and regulations.

All state agencies are hereby authorized to promulgate such rules and regulations as are necessary to carry out the provisions of this chapter.

§ 25.1-403. Payments not considered income or resources.

No payment received by a displaced person under this chapter shall be considered as income or resources for the purposes of determining the eligibility or extent of eligibility of any person for assistance under any state law, or for the purposes of this Commonwealth's personal income tax law, corporation tax law, or other tax laws. Such payments shall not be considered as income or resources of any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

§ 25.1-404. Administrative payments; construction.

Nothing in this chapter shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or damage not in existence immediately prior to April 10, 1972.

§ 25.1-405. Funds for implementing provisions of chapter.

Funds appropriated or otherwise available to any state agency for the acquisition of real property or any interest therein for a particular program or project shall be available also to fund any payment required to implement the provisions of this chapter as applied to that program or project.

Article 2.

Relocation Assistance.

§ 25.1-406. Moving and related expenses.

Whenever the acquisition of real property for a program or project undertaken by a state agency will result in the displacement of any person, the state agency shall make fair and reasonable relocation payments to the displaced person for:

- 1. Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;*
- 2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, which payments shall not exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;*
- 3. Actual reasonable expenses in searching for a replacement business or farm; and*
- 4. Actual reasonable expenses necessarily incurred in reestablishing a displaced farm, nonprofit organization or small business at its new site, in accordance with criteria established by the state agency but not to exceed \$25,000.*

§ 25.1-407. Optional moving expense allowance for persons displaced from dwelling.

Any displaced person eligible for payments under § 25.1-406 who is displaced from a dwelling may elect to accept the payments authorized by this section in lieu of the payments authorized by § 25.1-406, which displaced person so electing shall receive a moving expense allowance of an amount determined according to a schedule established by the state agency. The acceptance of the payment authorized by this section shall be in lieu of any payment under § 25.1-406.

§ 25.1-408. Optional payment for persons displaced from a place of business or farm operation.

Any displaced person eligible for payments under § 25.1-406 who is displaced from his place of business or farm operation and who is eligible under criteria established by the state agency may elect to accept the payment authorized by this section in lieu of the payment authorized by § 25.1-406. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the state agency, except that such payment shall not be less than \$1,000 nor more than \$50,000. A person whose sole business at the displacement site is the rental of such property to others shall not qualify for a payment under this section. The acceptance of the payment authorized by this section shall be in lieu of any payment under § 25.1-406.

§ 25.1-409. Replacement housing for homeowners.

A. In addition to payments otherwise authorized by this chapter, the state agency shall make an additional payment not to exceed \$22,500 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following

elements:

1. The amount, if any, that when added to the acquisition cost of the dwelling acquired by the state agency, equals the reasonable cost of a comparable replacement dwelling;

2. The amount, if any, that will compensate the displaced person for any increased interest costs and other debt service costs that such person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount for any increased interest or debt service costs shall be (i) determined in accordance with the criteria established by the state agency and (ii) paid only if the dwelling acquired by the state agency was encumbered by a bona fide mortgage that was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling; and

3. Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the comparable replacement dwelling, but not including prepaid expenses.

B. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling not later than the end of the one-year period beginning on the later of (i) the date on which he receives final payment of all costs for the acquired dwelling or (ii) the date on which the state agency obligation under § 25.1-414 is met. However, the state agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the cost of relocating the person to a comparable replacement dwelling within one year of such date.

§ 25.1-410. Replacement housing for tenants and certain homeowners.

A. In addition to amounts otherwise authorized by this article, a state agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 25.1-409 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (i) the initiation of negotiations for acquisition of the dwelling or (ii) if the displacement is not a direct result of acquisition, such other event as the agency shall prescribe. Such payment shall consist of the amount necessary to enable such displaced person to lease or rent, for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

B. Any person eligible for a payment under subsection A may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. Any such person may, at the discretion of the state agency, be eligible under this subsection for the maximum payment allowed under subsection A, except that if the displaced homeowner has owned and occupied the dwelling from which he is displaced for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under subsection A of § 25.1-409 had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

§ 25.1-411. Relocation planning, assistance coordination, and advisory services.

A. Programs or projects undertaken by a state agency shall be planned in a manner that (i) recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and (ii) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

B. The state agency shall ensure that the relocation assistance advisory services described in subsection C are made available to all persons displaced by such agency. If the state agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer such person relocation advisory services under such program.

C. Each relocation assistance advisory program required by subsections A and B shall include such measures, facilities, or services as may be necessary or appropriate in order to:

1. Determine, and make timely recommendations on, the need and preferences, if any, of displaced persons for relocation assistance;

2. Provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

3. Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of (i) a major disaster declared by the Governor; (ii) a national emergency declared by the President of the United States; or (iii) any other emergency that requires the person to move immediately from the dwelling because continued occupancy of such dwelling by such person constitutes a substantial danger

to the health or safety of such person;

4. Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

5. Supply information concerning federal and state housing programs, disaster loan programs, and other federal or state programs offering assistance to displaced persons; and

6. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

D. The head of a state agency shall coordinate the relocation activities performed by such agency with other project activities and other planned or proposed governmental actions in the community or nearby areas that may affect the efficient and effective delivery of relocation assistance and related services.

§ 25.1-412. Administration of relocation assistance programs.

In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, a state agency may enter into contracts with any person for services in connection with such programs, or may carry out its functions under this chapter through any federal or state agency or instrumentality having an established organization for conducting relocation assistance programs.

§ 25.1-413. Payments to certain persons displaced as the result of certain code enforcement activities.

Notwithstanding any other provision of this article, the governing body of a locality shall be authorized to make payments to any displaced person who is displaced by nonfederally assisted housing, plumbing, building, electrical, elevator, fire, food and health and sanitation code enforcement activities, in its discretion either (i) in amounts not exceeding the amounts authorized by the provisions of this chapter or (ii) in such lesser amounts as it may determine. Localities may adopt policies and procedures for payments to be made to persons displaced by such nonfederally assisted programs.

§ 25.1-414. Authority of agency where replacement housing not available; requiring person to move.

A. If a program or project undertaken by a state agency cannot proceed to actual construction on a timely basis because comparable replacement dwellings are not available, and the state agency determines that such dwellings cannot otherwise be made available, such agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The state agency may use this section to exceed the maximum amounts that may be paid under §§ 25.1-409 and 25.1-410 on a case-by-case basis for good cause as determined in accordance with such regulations as the state agency shall issue.

B. No person shall be required to move from his dwelling on account of any project, unless the head of the state agency is satisfied that comparable replacement housing is available to such person.

§ 25.1-415. Adjustments to certain benefit limits.

The monetary limits provided for in §§ 25.1-406, 25.1-408, 25.1-409, and 25.1-410 shall be adjusted to conform to future revisions of corresponding monetary benefits under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646).

§ 25.1-416. Application of article.

The provisions of this article shall apply for the benefit of (i) owners and (ii) other persons who are actually and lawfully occupying the real property to be acquired and who have been occupants thereof for at least 90 days prior to the initiation of negotiations for acquisition.

Article 3.

Real Property Acquisition Policies.

§ 25.1-417. General provisions for conduct of acquisition.

A. If a state agency acquires real property in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

1. The state agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

2. Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; however, the requirements of this subdivision shall not apply if the state agency's official who is responsible for the acquisition determines that the value of the property being acquired is less than \$10,000, based on assessment records or other objective evidence.

3. Before initiating negotiations for real property, the state agency shall establish an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property, if such an appraisal is required. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The agency concerned shall

provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation, together with a copy of the agency's approved appraisal of the fair market value of such property upon which the agency has based the amount offered for the property, if such an appraisal is required. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

4. No owner shall be required to surrender possession of real property before the state agency pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, (i) an amount not less than the agency's approved appraisal of the fair market value of such property, if such an appraisal is required, or (ii) the amount of the award of compensation in the condemnation proceeding for such property.

5. The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling, assuming a replacement dwelling will be available, or to move his business or farm operation, without at least 90-days' written notice from the state agency, of the date by which such move is required.

6. If the state agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term for a period subject to termination by the state agency on a short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

7. In no event shall the state agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

8. If any interest in real property is to be acquired by exercise of the power of eminent domain, the state agency shall institute formal condemnation proceedings. No state agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

9. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property.

10. A person whose real property is being acquired in accordance with this article may, after the person has been fully informed of his right to receive just compensation for such property, donate such property, and part thereof, any interest therein, or any compensation paid therefor to a state agency, as such person shall determine.

B. The provisions of this section create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

§ 25.1-418. Reimbursement of owner for certain expenses.

Any state agency acquiring real property in connection with any program or project, as soon as practicable after the first to occur of the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, shall reimburse the owner, to the extent the state agency deems fair and reasonable, for expenses he necessarily incurred for (i) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the state agency; (ii) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and (iii) the pro rata portion of real property taxes paid that are allocable to a period subsequent to the first to occur of the date of vesting title in the state agency or the effective date of possession of such real property by the state agency.

§ 25.1-419. Reimbursement of owner for costs when condemnation proceeding is abandoned or denied.

The court having jurisdiction of a condemnation proceeding instituted by a state agency to acquire real property by condemnation shall award the owner of any right, title or interest in such real property such sum as will, in the opinion of the court, reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the state agency cannot acquire the real property by condemnation or (ii) the proceeding is abandoned by the state agency. The award of such sums will be paid by the state agency that sought to condemn the property.

§ 25.1-420. Reimbursement of owner for costs incurred in inverse condemnation proceeding.

If a declaratory judgment proceeding is instituted pursuant to § 8.01-187 by the owner of any right, title or interest in real property because of use of his property in any program or project undertaken by a state agency, and either (i) the court renders a judgment for the plaintiff in such proceeding and awards compensation for the taking of property or (ii) the Attorney General effects a settlement of any such proceeding in which the Commonwealth is a party, the court or Attorney General, as appropriate, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the Attorney General, as the case may be, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

§ 25.1-421. Buildings, structures and other improvements on real property.

A. To the greatest extent practicable, where an interest in real property is acquired by a state

agency, the state agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and that are required to be removed from such real property so acquired and that are determined to be adversely affected by the use to which such real property will be put.

B. For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired as provided in subsection A, such building, structure or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure or improvement at the expiration of his term. In such event, the tenant shall be paid an amount equal to the greater of (i) the fair market value that such building, structure or improvement contributes to the fair market value of the real property to be acquired or (ii) the fair market value of such building, structure or improvement to be removed from the real property.

C. Payment for such building, structures or improvements as set forth in subsections A and B shall not result in duplication of any payments otherwise authorized by other laws of the Commonwealth. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer and release all his right, title and interest in and to such improvements. Nothing with regard to such acquisition of buildings, structures or other improvements shall be construed to deprive the tenant of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other laws of the Commonwealth.

D. The provisions of this section create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

§ 28.2-628. Condemnation of oyster bottoms and grounds.

The Department of Transportation and any county, city, or town shall have the right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms, oyster-planting grounds, or interest therein necessary for the purpose of such Department or county, city, or town. The procedure in such cases shall conform to the provisions of ~~Article 7 (§ 33.1-89 et seq.) of Chapter 4 3 (§ 25.1-300 et seq.) of Title 33.1 25.1 relating to the exercise of the right of eminent domain by the Department of Transportation in acquiring lands for highway purposes.~~

The Department of Conservation and Recreation shall have the same right of eminent domain against the same properties as previously described, where the purpose of the condemnation is to provide for a navigational improvement benefiting the Commonwealth and not limited to purposes of any particular county, city, or town.

§ 32.1-193. Eminent domain.

Each mosquito control commission is vested with the power of eminent domain to the extent necessary to carry out the provisions of this article. Condemnation proceedings shall be instituted and conducted in the name of the mosquito control commission for the district in which such property is located or the district for which its acquisition is deemed necessary and shall be conducted as prescribed by *Chapter 2 (§ 25.1-200 et seq.) of Title 25 25.1.*

§ 33.1-89. Power to acquire lands, etc., by purchase, gift or eminent domain; conveyance to municipality after acquisition; property owners to be informed and briefed.

A. The Commonwealth Transportation Commissioner is hereby vested with the power to acquire by purchase, gift, or power of eminent domain such lands, structures, rights-of-way, franchises, easements and other interest in lands, including lands under water and riparian rights, of any person, association, partnership, corporation, or municipality or political subdivision, deemed to be necessary for the construction, reconstruction, alteration, maintenance and repair of the public highways of the Commonwealth and for these purposes and all other purposes incidental thereto may condemn property in fee simple and rights-of-way of such width and on such routes and grades and locations as the Commissioner may deem requisite and suitable, including locations for permanent, temporary, continuous, periodical or future use, and rights or easements incidental thereto and lands, quarries, and locations, with rights of ingress and egress, containing gravel, clay, sand, stone, rock, timber and any other road materials deemed useful or necessary in carrying out the purposes aforesaid. For the purpose of this article "public highway" means highway, road and street; and when applicable, the term "public highway" also includes bridge, ferry, causeway, landing and wharf.

B. The Commissioner is authorized to exercise the above power within municipalities on projects which are constructed with state or federal participation, if requested by the municipality concerned. Whenever the Commissioner has acquired property pursuant to a request of the municipality, he shall convey the title so acquired to the municipality, except that rights-of-way or easements acquired for the relocation of a railroad, public utility company, public service corporation or company, another political subdivision, or cable television company in connection with said projects shall be conveyed to that entity in accordance with § 33.1-96. The authority for such conveyance shall apply to acquisitions made by the Commissioner pursuant to previous requests as well as any subsequent request.

C. Any offer by the Commissioner to a property owner with respect to payment of compensation for the prospective taking of property and damage to property not taken incident to the purposes of this

section shall separately state (i) the property to be taken and the amount of compensation offered therefor and (ii) the nature of the prospective damage or damages and the amount of compensation offered for each such prospective damage. The amount of the offer shall not be less than the amount of the approved appraisal of the fair market value of such property, in accordance with the provisions of § ~~25-248~~ 25.1-417. Any such appraisal used by the Commissioner as the basis for an offer shall be prepared by a real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

D. The Commissioner shall also provide to a property owner a copy of any report of status of title prepared in connection with such acquisition, if prepared pursuant to subsection ~~€ D~~ of § ~~25-46.5~~ 25.1-204.

E. In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement. Adequate briefing includes: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

F. Any option or deed executed by the property owner shall contain a statement that the plans as they affect his property have been fully explained. However, the requirements of this section with respect to information and briefing and the acknowledgment thereof in options and deeds shall in no way be construed to affect the validity of any conveyance or to create any right to compensation or to limit the Commissioner's authority to reasonably control the use of public highways so as to promote the public health, safety and welfare.

G. For the purposes of this article, "owner" means any person owning land, buildings, structures or improvements upon land where such ownership is of record in the land records of the clerk's office of the circuit court of the city or county where the property is located. Owner shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. In proceedings instituted by the Commonwealth Transportation Commissioner under Title ~~25~~ 25.1 or this title, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of owner shall not alter in any way the valuation of such land, buildings, structures or improvements under existing law.

§ 33.1-91. Authority to acquire entire tract of land, or parcel thereof, when only part to be utilized for highway purposes.

In acquiring rights-of-way for highway construction, reconstruction or improvement, and lands incidental to such construction, reconstruction or improvement, the Commissioner is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way, or a purpose incidental to the construction, reconstruction or improvement of a public highway, to acquire by purchase, gift or by the exercise of the power of eminent domain the entire tract of land or any part thereof, whenever the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized, or a portion of a building is to be taken or the cost of removal or relocation of the buildings, or other improvements on the remaining portion, necessitated by the taking, would exceed the cost of destroying such buildings or other improvements, or the highway project will leave the remaining portions without a means of access to a public highway, or whenever in the judgment of the Commissioner the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction or improvement of a public highway, will approximate or equal the fair market value of such remaining lands; provided, however, that the Commissioner shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of ~~ten~~ 10 acres or, by condemnation where the remaining portion is in excess of two acres. Nothing contained herein shall be construed as preventing the Commissioner from complying, where applicable, with the provisions of § ~~25-248~~ 25.1-417.

§ 33.1-95. Limitations in Title 25.1 not applicable to Commissioner.

Except as to procedure, the Commonwealth Transportation Commissioner shall not be subject to any limitations in Title ~~25~~ 25.1 in exercising the power of eminent domain pursuant to this title. Nevertheless, the provisions of § ~~25-233~~ shall apply to every statute not in this article which purports to incorporate by reference any provision of this article and which incorporation by reference does not specifically provide that § ~~25-233~~ shall not apply thereto.

§ 33.1-95.1. Notice of exercise of eminent domain power; evidence of value.

Notwithstanding anything to the contrary contained in this chapter or in Chapter ~~1-1~~ 2 (§ ~~25-46-1~~ 25.1-200 et seq.) of Title ~~25~~ 25.1:

1. The Commonwealth Transportation Commissioner shall notify every owner of a building, structure, or other improvement, as defined in this section, if the Commissioner intends to exercise the

power of eminent domain in a manner that would result in a taking of the building, structure, or other improvement;

2. The owner of any such building, structure, or other improvement may present evidence of the fair market value of such building, structure, or other improvement in the proceedings described in § 25-46.21 25.1-233, provided such owner has filed a petition for intervention pursuant to § 25-46.16 25.1-218;

3. For purposes of this section, "owner" ~~shall mean~~ *means* any person owning an estate or interest in buildings, structures, or other improvements on real property, which estate or interest is recorded in the official records of the circuit court where the property is located, or improvements for which a permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360 and shall not include trustees or beneficiaries under a deed of trust or any person owning only a security interest in the real property;

4. For purposes of this section, "fair market value" ~~shall mean~~ *means* the price that the real property would bring if it were offered for sale by one who wanted to sell, but was under no necessity, and was bought by one who wanted to buy, but was under no necessity;

5. If the owner of such building, structure, or improvement is different from the owner of the underlying land, then such owner shall not be allowed to proffer any evidence of value ~~which~~ *that* the owner of the underlying land would not be permitted to proffer if the building, structure, or improvement were owned by the owner of the underlying land; and

6. The provisions of this section shall not apply to condemnation proceedings in which the petition for condemnation was filed prior to July 1, 2000.

§ 33.1-98. Procedure in general; suits in name of Commissioner; survival; validation of suits.

A. Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided in Chapter 1-1 2 (§ 25-46.1 25.1-200 et seq.) of Title 25 25.1, except that the provisions of §§ 33.1-119 through 33.1-132 shall be applicable to such proceedings.

B. All suits shall be instituted and conducted in the name of the Commonwealth Transportation Commissioner as petitioner without naming the individual who may be such Commissioner or acting Commissioner. In the event of the death, removal, retirement or resignation of the Commissioner or acting Commissioner, the suit shall automatically survive to a successor Commissioner or acting Commissioner, as the case may be. All suits heretofore filed in accordance with the provisions of this section are hereby ratified, validated and confirmed.

C. *In addition to any other notices required to be served pursuant to this section, in any proceeding instituted by the Commissioner under this title, a copy of the notice of the filing of the petition also shall be served, in the same manner as such notice is served upon owners, upon any person owning structures or improvements for which an outdoor advertising permit has been issued by the Commissioner pursuant to § 33.1-360.*

§ 33.1-120. Payments into court or filing certificate of deposit before entering upon land.

~~The Commissioner shall pay into court, or to the clerk thereof, such sum as he shall estimate to be the fair value of the land taken, or interest therein sought, and damage done, based on a bona fide appraisal. A. Before entering upon, or taking possession of, such land pursuant to the foregoing section (§ 33.1-119), the Commissioner shall either:~~

~~1. Pay into the court wherein condemnation proceedings are pending, or are to be instituted such sum as is required by subsection B; or~~

~~2. File with the court wherein condemnation proceedings are pending, or are to be instituted, a certificate of deposit issued by the Commissioner for such sum as is required by subsection B, which shall be deemed and held for the purpose of this chapter to be payment into the custody of such court.~~

~~B. The amount to be paid into the court as provided in subdivision A 1 or represented by a certificate of deposit as provided in subdivision A 2 shall be the amount that the Commissioner estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by § 25.1-417.~~

~~C. If the Commissioner makes a payment into court as provided in subdivision A 1, it shall also record a certificate of take pursuant to § 33.1-122.~~

~~D. Payment against a certificate of deposit, when ordered by the court named therein, shall be paid by the Commissioner.~~

~~E. As used in this article:~~

~~"Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.~~

~~"Certificate of deposit" means a certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment~~

of funds into court, as provided in subdivision A 2.

"Certificate of take" means a certificate recorded by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the Commissioner has deposited funds with the court as provided in subdivision A 1.

§ 33.1-121. Payment of certificates of deposit; notice to owner.

A. A certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums of money designated therein will be paid pursuant to the order of court, when filed with the court wherein condemnation proceedings are pending, or are to be instituted, of deposit shall be deemed and held for the purpose of this article to be payment into the custody of such court. Payment against any such certificate of deposit so issued and countersigned, when ordered by the court named therein, shall be paid by the State Treasurer on warrants of the Comptroller, issued on vouchers signed by the Commonwealth Transportation Commissioner.

B. A duplicate of each such certificate of deposit so issued and countersigned shall be kept as a record in the office of the Commonwealth Transportation Commissioner and a copy thereof shall be filed with the State Treasurer.

C. The Commissioner shall give notice to the owner or tenant of the freehold by registered mail, if known, that such a certificate of deposit will be filed.

§ 33.1-124. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.

A. Any person or persons shown by such a certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to subdivision A 1 of § 33.1-120 or represented by a certificate recorded of deposit filed pursuant to subdivision A 2 of § 33.1-121 33.1-120.

B. A copy of such petition shall be served on the Commonwealth Transportation Commissioner, his deputy or any attorney authorized to accept service with a notice returnable to the court or judge not less than ~~twenty-one~~ 21 days after such service, to show cause, if any, the Commissioner can, why such amount should not be distributed in accordance with the prayers of the petition.

C. If the Commissioner 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.

D. If funds have been deposited with the court pursuant to subdivision A 1 of § 33.1-120, any interest ~~which~~ that has accrued on the funds shall be payable to the person or persons entitled to receive such funds.

E. If funds are not then on deposit with the court but are represented by a certificate of deposit filed pursuant to subdivision A 2 of § 33.1-121 33.1-120, a certified copy of such order shall forthwith be sent to the Commissioner by the clerk. It shall be the duty of the Commissioner to deposit such funds with the court within ~~twenty-one~~ 21 days of the date of such order.

F. 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 composite~~ rate as set forth in ~~§ 33.1-128~~ shall be payable on such funds from the date of filing of such certificate if the funds are not deposited with the clerk when the certificate is filed of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code for the month in which the order pursuant to this section is entered. However, ~~no~~ interest shall not accrue if an injunction is filed against the Department of Transportation ~~for that enjoins~~ the taking of the property described in the certificate.

G. If the Commissioner 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 § 25-46.28 25.1-240 for the distribution of awards.

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

§ 33.1-128. Awards in greater or lesser amounts than deposit; interest.

~~In the event~~ A. If the amount of an award in a condemnation proceeding ~~being of a is greater amount~~ than that deposited ~~by virtue of~~ 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 composite~~ rate of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered, computed from the date of such deposit to the date of payment into court, ~~shall and~~ be paid into court for the person or persons entitled thereto, ~~except that~~. However, any (i) interest ~~which that~~ accrued before July 1, 1970, shall be paid at

the rate of five percent; ~~and~~; (ii) interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent; ~~and any~~; (iii) interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight percent; ~~and~~ (iv) *interest accruing thereafter and prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered.*

~~In the event~~ C. If the amount of an award in a condemnation proceeding ~~being of a lesser amount is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution of the funds deposited with the court pursuant to § 33.1-124, the Commissioner shall recover (i) the amount of such excess and (ii) interest on such excess at the general account composite rate of interest established pursuant to § 6621 (a) (2) of the Internal Revenue Code and.~~ If any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner against such person for the amount of such excess and interest.

§ 33.1-132. Remedy of landowners under certain conditions.

Whenever the Commissioner enters upon and takes possession of property under the provisions of §§ 33.1-119 through 33.1-121 and has not completed the construction of the highway project after a reasonable time for such purpose has elapsed or has not instituted condemnation proceedings within ~~sixty~~ 60 days after completion of the construction of the highway project, or within one year after he has entered upon and taken possession of the property, whether the construction of the highway project has been completed or not, the property owner may, if no agreement has been made with the Commissioner as to compensation and damage, if any, petition the circuit court of the county or the court of the city in which such cases are tried, and in which the greater portion of the property lies; ~~or the judge thereof in vacation, for the appointment of commissioners or a jury to determine just compensation for the property taken and damages done, if any. A copy of such petition shall be served upon the Commissioner at least ten 10 days before it is presented to the court, or the judge thereof in vacation, and the Commissioner shall file an answer thereto within five days after the petition is so presented. If it be found by the court, or the judge thereof in vacation, that a reasonable time has elapsed for the completion of the construction of the highway project or that sixty 60 days have elapsed since the completion of the construction of the highway project or that more than one year has elapsed since the Commissioner entered upon and took possession of the property, without condemnation proceedings being instituted and without an agreement having been made between the property owner and the Commissioner as to compensation and damages, if any, commissioners or a jury shall be appointed to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 4-4 2 (§ 25-46-4 25.1-200 et seq.) of Title 25 25.1 insofar as the same may be applicable.~~

§ 33.1-134. Commissioner may file petition for condemnation when no agreement can be reached; notice of condemnation proceedings.

In the event no agreement can be reached as provided hereinabove or whenever such land is a part or the whole of a cemetery or graveyard owned by persons unknown, or by any person, church, association, corporation, or other legal entity, not having legal authority to make disposition of the same, the Commonwealth Transportation Commissioner shall petition the court of the city or county in which the land is situate, and in which condemnation proceedings are instituted to acquire land, for the purpose of condemning such land and having the remains interred in such cemetery or graveyard removed to some suitable repository. To such petition the owner or owners of the land and next of kin to the persons interred therein, if known, shall be made defendants and served with notice. If such owner or owners and next of kin be unknown, or infant, insane or incompetent, or nonresident of this Commonwealth, such notice shall be served in the manner prescribed by Chapter 4-4 2 (§ 25-46-4 25.1-200 et seq.) of Title 25 25.1.

§ 33.1-238. Action of commissioners; report.

The commissioners shall meet on the lands of such proprietors and tenants as may be named in the order of the board of supervisors or other governing body at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants or their agents, except only that it need not be given to one present at the time of making the order. Any one or more of the commissioners attending on the land as aforesaid may adjourn, from time to time, till the business shall be finished. The commissioners, in the discharge of their duties, shall comply in all respects with the provisions of Chapter 4-4 2 (§ 25-46-4 25.1-200 et seq.) of Title 25 25.1 so far as applicable. They shall forthwith make return of their report ~~and the certificate~~ required by § 25-46-20 25.1-232 to the board of supervisors or other governing body and, unless good cause be shown against the report, it shall be confirmed. If, however, good cause be shown against the report or the commissioners report their disagreement, or fail to report within a reasonable time, the board of supervisors or other governing body, as often as it seems proper, may appoint other commissioners for the purpose of ascertaining the compensation and damages as aforesaid. When any report is confirmed, the board of supervisors or other governing body shall establish or alter the road or bridge with or without gates, as to it may seem proper, and provide for the payment of the compensation and damages allowed.

§ 33.1-422. Approval by Commonwealth Transportation Board.

The district may not construct or improve a transportation improvement without the approval of both the Commonwealth Transportation Board and the locality in which the transportation improvement will be located. At the request of the commission, the Commonwealth Transportation Commissioner may exercise the powers of condemnation provided in ~~§§ 25-46.1 through 25-46.36~~ *Chapter 2 (§ 25.1-200 et seq.) of Title 25.1*, 33.1-89 through 33.1-132, or § 33.1-229, for the purpose of acquiring property for transportation improvements within the district.

Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take any affected public highway into the appropriate system of state highways for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a system of highways, all rights, title, and interest in the right-of-way and improvements of any affected highway shall vest in the Commonwealth. Upon completion of construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in an agency or instrumentality of the Commonwealth designated by the Commonwealth Transportation Board.

§ 33.1-443. Approval by Commonwealth Transportation Board.

The district may not construct or improve a transportation improvement without the approval of the Commonwealth Transportation Board, the county in which the transportation improvement will be located and, with respect to any improvements located within a participating town, its town council. At the request of the commission, the Commonwealth Transportation Commissioner may exercise the powers of condemnation provided in ~~25-46.1 through 25-46.36~~ *Chapter 2 (§ 25.1-200 et seq.) of Title 25.1*, §§ 33.1-89 through 33.1-132, or § 33.1-229, for the purpose of acquiring property for transportation improvements within the district.

Upon completion of such construction or improvement, the Commonwealth Transportation Board shall take any affected public highway into the appropriate system of state highways for purposes of maintenance and subsequent improvements as necessary. Upon acceptance by the Commonwealth of such highway into a system of highways, all rights, title, and interest in the right-of-way and improvements of any affected highway shall vest in the Commonwealth. Upon completion of construction or improvement of a mass transit system, all rights, title, and interest in the right-of-way and improvements of such mass transit system shall vest in an agency or instrumentality of the Commonwealth designated by the Commonwealth Transportation Board.

§ 36-27. Eminent domain.

A. An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which may be necessary for the purposes of such authority under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in ~~Chapter 1-1 2 (§ 25-46.1 25.1-200 et seq.) of Title 25 25.1~~. The commissioners before which condemnation proceedings are conducted may hear evidence as to the value of the property including but not limited to the owner's appraisal and the effect that any pending application for a zoning change, special use permit application or variance application may have on the value of the property. The court may also determine whether there has been unreasonable delay in the institution of the proceedings after public announcement by the condemnor of a project ~~which~~ *that* necessitates acquisition by the condemnor of a designated land area consisting of or including the land sought to be condemned. If the court determines that such unreasonable delay has occurred, it shall instruct the commissioners in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay. This provision shall not apply to any such public announcement made prior to July 1, 1960.

B. Prior to the adoption of any redevelopment plan pursuant to § 36-49 or any conservation plan pursuant to § 36-49.1, an authority shall send by certified mail, postage prepaid, to at least one of the owners of every parcel of property to be acquired pursuant to such plan a notice advising such owner that (i) the property owned by such owner is proposed to be acquired and (ii) such owner will have the right to appear in any condemnation proceeding instituted to acquire the property and present any defense which such owner may have to the taking. Such notice shall not be the basis for eligibility for relocation benefits. At the time it makes its price offer, the authority shall also provide to the property owner a copy of the appraisal of the fair market value of such property upon which the authority has based the amount offered for the property, which appraisal shall be prepared by a certified general real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.

C. In all such cases the proceedings shall be according to the provisions of Chapter ~~1-1 2 (§ 25-46.1 25.1-200 et seq.) of Title 25 25.1~~, so far as they can be applied to the same, ~~and the term "company" as used in such chapter, and any officers of a "company" referred to therein, shall be construed as meaning the authority and the commissioners thereof, respectively.~~ An authority may exercise the power of

eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof be acquired without its consent.

§ 36-49.1:1. Spot blight abatement authorized; procedure.

A. Notwithstanding any other provision of this article, an authority, or any locality, shall have the power to acquire or repair any blighted property, as defined in § 36-49, whether inside or outside of a conservation or redevelopment area, by exercise of the powers of eminent domain provided in *Chapter 2* (§ 25.1-200 *et seq.*) of Title 25 25.1, and, further, shall have the power to hold, clear, repair, manage or dispose of such property for purposes consistent with this title. In addition, the locality shall have the power to recover the costs of any repair or disposal of such property from the owner. This power shall be exercised only in accordance with the procedures set forth in this section.

B. The chief executive or designated agency or authority of the locality shall make a preliminary determination that a property is blighted in accordance with this article. It shall notify the owner, specifying the reasons why the property is considered blighted. The owner shall have ~~thirty~~ 30 days within which to respond with a plan to cure the blight within a reasonable time.

C. If the owner fails to respond within the ~~thirty~~ 30-day period with a plan that is acceptable to the chief executive of the agency, authority or locality, the agency, authority or locality (i) may request the local planning commission to conduct a public hearing and make findings and recommendations that shall be reported to the governing body of the locality concerning the repair or other disposition of the property in question and (ii) in the event a public hearing is scheduled, shall prepare a plan for the repair or other disposition of the property.

D. Not less than three weeks prior to the date of the public hearing before the planning commission, the commission shall provide by regular and certified mail, notice of such hearing to (i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes within the locality; (ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and (iii) the representative neighborhood association, if any, for the immediate area. The notice shall include the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than six days elapsing between the first and second publication in a newspaper published or having general circulation in the locality in which the property is located. The notice also shall be posted on the property. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six days nor more than ~~twenty-one~~ 21 days after the second publication.

E. The planning commission shall determine whether:

1. The owner has failed to cure the blight or present a reasonable plan to do so;
2. The property is blighted;
3. The plan for the repair or other disposition of the property is in accordance with the locally adopted comprehensive plan, zoning ordinances, and other applicable land use regulations; and
4. The property is located within an area listed on the National Register of Historic Places. In such instances, the planning commission shall consult with the locally established architectural review board, if any, regarding the proposed repair or other disposition of the property by the authority or governing body.

F. The planning commission shall report its findings and recommendations concerning the property to the governing body. The governing body, upon receipt of such findings and recommendations, may, after an advertised public hearing, affirm, modify, or reject the planning commission's findings and recommendations. If the repair or other disposition of the property is approved, the authority, agency or locality may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this section, and applicable law. The locality shall have a lien on all property so repaired or acquired under an approved plan to recover the cost of (i) improvements made by such locality to bring the blighted property into compliance with applicable building codes and (ii) disposal, if any. The lien authorized by this subsection shall be filed in the circuit court where the property is located and shall be subordinate to any prior liens of record. The governing body may recover its costs of repair from the owner of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner. If the property is acquired by the governing body through eminent domain, the cost of repair may be recovered when the governing body sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.

G. Notwithstanding the provisions of this section, unless otherwise provided for in Title 36, if the blighted property is occupied for personal residential purposes, the governing body, in approving the plan, shall not allow for an acquisition of such property if it would result in a displacement of the person or persons living in the premises. The provisions of this subsection shall not apply to acquisitions, under an approved plan, by any locality of property which has been condemned for human habitation for more than one year. In addition, such locality exercising the powers of eminent domain in accordance with Title 25 25.1, may provide for temporary relocation of any person living in the blighted

property provided the relocation is within the financial means of such person.

H. In lieu of the acquisition of blighted property by the exercise of the powers of eminent domain as herein provided, and in lieu of the exercise of other powers granted in subsections A through F, a locality may, by ordinance, declare any blighted property as defined in § 36-49 to constitute a nuisance, and thereupon abate the nuisance pursuant to § 15.2-900 or § 15.2-1115. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records.

I. The provisions of this section shall be cumulative and shall be in addition to any remedies for spot blight abatement that may be authorized by law.

§ 45.1-161.320. Proceedings for condemnation.

A. Proceedings for condemnation hereunder shall be instituted and conducted in the name of the Commission, and the procedure shall, except insofar as altered herein, be as provided in ~~Article 7 (§ 33.1-89 et seq.) of Chapter 1 3 (§ 25.1-300 et seq.) of Title 33.1 25.1.~~

B. The proceedings for condemnation shall be by petition to the circuit court of the county or city in which the land, property and property rights or the major portion thereof sought to be temporarily acquired are located, which petition shall set forth with reasonable particularity a description and designation of the interests, rights and property intended to be temporarily taken, the name or names of the owners of the property which is to be taken or affected, and such other facts, if any, as may be deemed necessary by the Commission, in order to give adequate information to the court and all persons in interest, which petition shall be verified by oath by a member of the Commission. Upon the filing of said petition in the office of the clerk of the circuit court to which it is addressed, together with as many copies thereof as there are defendants upon which it is to be served, and depositing with the clerk for the custody of the court, and for the benefit of the owners of the properties taken or affected, such an amount of money as the Commission shall estimate to be just compensation for the property temporarily taken and the damage done, if any, the Commission shall thereupon seize and take possession, custody and control of said property or properties. The amount of money so deposited shall not limit the amount of just compensation to be allowed to the owners of the property. Service of said petition upon the defendants shall be made in the manner prescribed by the Rules of the Supreme Court of Virginia with respect to Practice and Procedure in Actions at Law in effect at the time the petition is filed.

§ 55-201.1. Pendency of escheat proceedings no bar to condemnation proceedings.

Notwithstanding any provision contained in this chapter, the Commonwealth Transportation Commissioner or any city, town, county or other political subdivision or agency of this Commonwealth possessing the power of eminent domain may, for any public purpose and notwithstanding the pendency of any proceeding brought for the escheat of any land wanted and needed by such Commonwealth Transportation Commissioner or such city, town, county or other political subdivision or agency of this Commonwealth for such purpose, institute, maintain and conduct to final judgment condemnation proceedings to acquire in fee simple such land or such lesser estate, title or interest therein as is wanted and needed for such public purpose, provided, however, that the escheator in whose name such escheat proceedings be pending and the Commonwealth of Virginia be made codefendants to such condemnation proceedings, together with the owner or owners, if known, of the land proposed to be condemned in such proceeding; ~~and~~. The pendency of such escheat proceedings shall *not* constitute ~~no~~ a bar or defense to such condemnation proceedings, nor to any proceeding therein seeking a right of entry as provided in ~~§ 25-46.8 25.1-223, in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, or in Article 7 (§ 33.1-89 et seq.) of Chapter 1 of Title 33.1; and~~. No escheator, after being served with notice of the filing of any such condemnation proceeding, shall sell or dispose of any land sought to be acquired in such condemnation proceeding except upon order entered by the court in which such condemnation proceeding is pending. The funds paid into court as compensation and/or damages for the land so taken or damaged shall, after payment of taxes and other claims constituting valid liens against the land so taken, be ordered distributed to the party or parties entitled thereto or be ordered paid to the escheator of said land, or to the State Treasurer, as the court, in its discretion, shall direct.

§ 56-49. Powers.

In addition to the powers conferred by Title 13.1, each public service corporation of this Commonwealth organized to conduct a public service business other than a railroad shall have the power:

(1). To cause to be made such examinations and surveys for its proposed line or location of its works as are necessary to the selection of the most advantageous location or route or for the improvement or straightening of its line or works, or changes of location or construction, or providing additional facilities, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person but subject to responsibility for all damages that are done thereto, and subject to permission from, or notice to, the landowner as provided in ~~§ 25-232.1 25.1-203.~~

(2). To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for

the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter ~~1-1~~ 2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 and shall be subject to the provisions of § ~~25-233~~ 25.1-102. However, the corporation shall not take by condemnation proceedings a strip of land for a right-of-way within sixty feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ ~~25-46.9~~ 25.1-209, ~~25-46.10~~ 25.1-210, and ~~25-46.12~~ 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways. A public service corporation which has not been (i) allotted territory for public utility service by the State Corporation Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

And provided, further, that notwithstanding the foregoing nor any other provision of the law the right of eminent domain shall not be exercised for the purpose of acquiring any lands or estates or interests therein nor any other property for the construction, reconstruction, maintenance or operation of any pipeline for the transportation of coal.

§ 56-347. Power of condemnation; limitation.

In addition to the powers conferred by Title 13.1, every corporation of this Commonwealth organized to conduct a railroad business shall have the power to acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works including depots, stations, shops, yards, industrial spurs, switches and sidetracks, terminals or additional tracks or facilities, and for all other necessary railroad purposes and purposes incidental thereto, for its use in serving the public, including permanent, temporary, continuous, periodical or future use, whenever such corporation cannot agree upon the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceedings shall be conducted in the manner provided by Chapter ~~1-1~~ 2 (§ ~~25-46.1~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 and shall be subject to the provisions of § ~~25-233~~ 25.1-102. Provided, however, such corporation shall not take by condemnation proceedings a strip of land for its right-of-way within sixty feet of the dwelling house of any person except (a) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ ~~25-46.9~~ 25.1-209, ~~25-46.10~~ 25.1-210, and ~~25-46.12~~ 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; or (b) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (c) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission obtained from the authorities having jurisdiction over such highways.

§ 62.1-98. Right of eminent domain of public service corporations.

In addition to any right or power of eminent domain ~~which~~ that it may have under existing law, every public service corporation engaged in the development of waterpower in this Commonwealth for the production, sale and supply of hydroelectric power and energy to the public shall be vested with the right of eminent domain to the full extent requisite for the acquisition of all lands, property and rights necessary for the purpose of the construction, enlargement, maintenance or operation of any dam, reservoir, power station and/ or other structures of any such water-power development, subject to the following provisions:

(a) Such corporation may, by the exercise of such right for such purpose, acquire all necessary lands,

property and rights of whatsoever nature, whether or not such lands, property or rights have been theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but not restricted to, the lands, property and rights necessary for any storage, diversion, regulation or detention, and/or interference with the flow of any water and for any waterway and including also, but not restricted to, any lands, structures, property or rights owned, used or held by or for public or private, religious, charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and bridges, and any other property, public or private, when necessary for such purpose; provided, however, that the right of eminent domain under this section shall not be available against existing public-carrier railroads; and provided further that, in the event of the condemnation under this chapter of any roads or bridges, the commissioners in assessing the compensation and damages therefor, shall consider the cost of relocating and constructing such roads or bridges upon other reasonable convenient locations, and the damage, if any, to persons and corporations because of relocation and construction. No such corporation shall impair the drinking water supply of any city or town or acquire any municipal electric light and power or water plant by virtue of any additional powers conferred by this chapter; provided further that the provisions of this section shall not be construed to authorize the acquisition by condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

(b) When, in the operation of any dam, power station or other structure of a water-power development, any such public service corporation interferes, to an extent beyond its common-law riparian rights, with the flow of water downstream from such structure and by reason of such interference any property or riparian right, or any part thereof or interest therein, is destroyed or damaged, such corporation may exercise the right of eminent domain for the purpose of acquiring such property, right or interest so destroyed or of ascertaining and paying just compensation for any such damage.

(c) In connection with the exercise of the right of eminent domain over public and private cemeteries, such corporation shall also have the right to acquire by condemnation proceedings other lands to which to remove the bodies and monuments or other structures from such public or private cemeteries. All the rights of the owners, including the Commonwealth, in and to the lands in such cemeteries shall pass to and vest in such corporation and the title to the lands acquired for the removal of such cemeteries shall vest in the former owners and such others as may have rights therein of such cemeteries so removed. However, before such corporation may flood or otherwise utilize any such cemetery, it shall remove the bodies and monuments or other structures to the lands acquired for such purpose and reinter the bodies and reset the monuments, under the direction and to the satisfaction of the court in which such condemnation proceedings are brought. If the parties in interest fail to agree as to the location and area of the additional lands to be acquired in which to reinter the bodies and on which to rest the monuments and other structures, the same shall be determined by the court.

(d) For the purpose of relocating any railway, pipeline, wire line, road or bridge occupying the area on which any such water-power development or enlargement thereof is to be located, such corporation may acquire by the exercise of the right of eminent domain, any needful additional lands or other property, whether within or without the area upon such water-power development or enlargement thereof is to be located, and shall have the right for such purpose and shall convey such lands or other property or rights to the owner of such railway, pipeline, wire line, road or bridge.

(e) In all cases of the exercise of such right of eminent domain just compensation shall be paid to the owners and tenants of the property taken or damaged, in the manner provided by law for all property taken or damaged. The proceedings for this purpose shall be in accordance with *Chapter 2* (§ 25.1-200 *et seq.*) of Title 25 25.1 and other provisions of law. As to any part of the real estate sought to be taken for any of the purposes authorized in this chapter, such corporation may describe in its application for condemnation an estate or interest therein of a fee or less than a fee and, upon payment therefor, such estate or interest as is stated and described in such application shall vest in such corporation; but when less than a fee is taken, the commissioners in assessing damages shall take into consideration the actual damage that is done or that may be done to the fee by such taking, including the use to which the property so taken will be put by such corporation. ~~Provided, however, that~~ *However*, nothing contained in § 62.1-97 shall deprive any owner of property of any right to receive just compensation and damages as provided by law, upon the exercise of the right of eminent domain by any licensee under this chapter.

(f) Any public service corporation which shall exercise any of the additional powers of eminent domain granted in this chapter and not existing under the law in effect January 1, 1928, shall thereby be conclusively deemed to have agreed, as a condition precedent to the exercise of such powers, to be bound by all of the provisions of this chapter.

§ 62.1-136. Power of eminent domain.

The Authority is hereby vested with the power of eminent domain to acquire property or any interest therein, however held, but not property of the Commonwealth or its agencies, and may exercise the same for the purposes set forth in §§ 62.1-132.18 and 62.1-132.19 in the manner and to the extent set forth in, and subject to the provisions of, *Chapter 2* (§ 25.1-200 *et seq.*) of Title 25 25.1; provided that the Authority shall have no power to condemn any property belonging to any other political subdivision

of the Commonwealth, or to any common carrier, or public utility or other public service corporation which is being devoted to public use or service. Whether property is being devoted to public use or service in the case of a public service corporation, common carrier, or public utility, shall be decided by the State Corporation Commission in a proceeding under § ~~25-233~~ 25.1-102; and in the case of a political subdivision shall be decided by the court in which the proceeding is brought.

§ 62.1-150. Acquisition of lands.

For the purpose of complying with the terms of local cooperation as specified in this chapter and as stipulated in the congressional document covering the particular project involved, any city or town may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation, whether such lands are within or without the corporate limits of such city or town, and any county may acquire such lands by lease, purchase, gift or condemnation.

~~Provided, however, that~~ *However*, the provisions of § ~~25-233~~ 25.1-102, as now or hereafter in effect, shall apply to any property belonging to any corporation possessing the power of eminent domain which may be sought to be taken by condemnation hereunder.

2. That whenever any of the conditions, requirements, provisions or contents of any section or chapter of Title 25 or any other title of the Code of Virginia as such titles existed prior to July 1, 2003, are transferred in the same or modified form to a new section or chapter of Title 25.1 or any other title of the Code and whenever any such former section or chapter is given a new number in Title 25.1 or any other title, all references to any such former section or chapter of Title 25 or other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 25 or such other titles in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the codification of Title 25.1 so as to give effect to other laws enacted by the 2003 Session of the General Assembly.

5. That the repeal of Title 25 shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued or accruing on or before such date, or any proceeding, prosecution, suit or action pending on that day.

6. That any notice given, recognizance taken, or process or writ issued before July 1, 2003, shall be valid although given, taken or to be returned to a day after such date, in like manner as if Title 25.1 had been effective before the same was given, taken or issued.

7. That if any clause, sentence, paragraph, subdivision or section of Title 25.1 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 25.1 are declared severable.

8. That Title 25 (§§ 25-46.1 through 25-254) of the Code of Virginia is repealed.