

LAWS RELATING TO EMINENT DOMAIN

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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LAWS RELATING TO EMINENT DOMAIN

Report of The
Virginia Advisory Legislative Council

Richmond, Virginia
December 17, 1971

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its 1970 Regular Session adopted Senate Joint Resolution No. 55, directing the Virginia Advisory Legislative Council to make a study and report on the Eminent Domain Laws of the State. The text of this Resolution follows:

“Directing the Virginia Advisory Legislative Council to make a study and report on the eminent domain laws of the Commonwealth.

“Whereas, with the expansion of the State road system, and the growth of other State corporations, institutions, and authorities, the number of eminent domain cases is ever increasing; and

“Whereas, the procedures respecting pretrial negotiations and the trial of such cases should be thoroughly studied, in order that the rights of all parties to such cases should be further safeguarded; now, therefore, be it

“Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to make a study and report on the eminent domain laws of the Commonwealth. The Council shall study all aspects of the problem, including, but not limited to, the methods of procedure, both in the pretrial and trial stages of such cases; how and what evidence may be presented; whether discovery procedures should be utilized in such cases; whether or not attorney’s fees should be assessed against either party to such cases when the award is disproportionate to the amounts offered in settlement; and any other matters the Council may deem relevant. All agencies of the State shall assist the Council in its study upon request. The Council shall complete its study and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-one.”

Willard J. Moody, of Portsmouth, a member of the Senate of Virginia, and a member of the Council and an Attorney at Law, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons, all attorneys at law, were chosen to serve as members of the Committee with Senator Moody: Adelard L. Brault, Fairfax, Edward T. Caton, III, Virginia Beach, J. Harry Michael, Jr., Charlottesville, and James C. Turk, Radford, all members of the Senate of Virginia; Edgar Bacon, Jonesville, Russell M. Carneal, Williamsburg, Edward E. Lane, Richmond, and Lester E. Schlitz, Portsmouth, all members of the House of Delegates; and Louis B. Fine, Norfolk, Francis C. Lee, Richmond, William A. Perkins, Jr., Charlottesville, F. Bert Pulley, Courtland, Beverly H. Randolph, Jr., a former member of the House of Delegates, Richmond, William Rosenberger, Jr., Lynchburg, and Hugh A. West, Suffolk.

The Committee met and organized, and elected Senator Michael Vice-Chairman.

The Division of Statutory Research and Drafting served as Secretariat for the Committee.

The Committee held two public hearings in the State Capitol Building. Many suggestions for changes in the Eminent Domain Laws were advanced by the speakers at these hearings, and the Committee also received suggestions in writing from persons who did not attend either hearing.

After considering the suggestions which had been made to the Committee, Subcommittees were appointed. The reports of the Subcommittees were thoroughly considered by the Committee.

After completing its deliberations, conducted during the course of six meetings, the Committee made its Report to the Council. This Report has been considered by the Council, which now makes its Report.

Before setting forth our recommendations, we mention several matters which were discussed but on which no recommendations are being made, as follows:

- (1) Whether there should be special commissioners to sit for the trial judge in condemnation cases;
- (2) Governmental immunity for peripheral damages; and
- (3) Whether attorneys' fees should be included as part of the closing costs to be awarded in condemnation cases.

We make the following recommendations:

RECOMMENDATIONS

(All section, article and chapter references are to the Code of Virginia.)

1. That eminent domain cases be tried, in accordance with procedure relating to such cases, by a jury selected in the same manner as in civil cases, instead of by commissioners appointed in accordance with presently prescribed procedure. We further recommend that such jurors shall be freeholders, and that no one be permitted to serve as a juror in condemnation cases oftener than during one term of court in any one calendar year.

Such jury is to be drawn from the regular venire, thus making it unnecessary for the clerk of court to keep a separate list of freeholders for juries in condemnation cases. The number of jurors will be the same as used in civil cases. Also, such jurors will receive the same pay and allowances as jurors in civil cases, rather than the compensation presently paid to commissioners.

However, we are recommending that the jurors' award may be determined by a majority, as is presently the situation with commissioners, rather than requiring the award to be unanimous.

2. That all procedural sections in Article 7, relating to exercise of the power of eminent domain by the State Highway Commissioner, of Chapter 1 of Title 33.1 be repealed, with the exception of §§ 33.1-119 through 33.1-132, relating to that Commissioner's method of taking both possession and title, either before or during condemnation proceedings; and that otherwise the procedure in condemnation cases instituted by the Commissioner be that prescribed by Chapter 1.1, relating to condemnation generally, of Title 25.

3. That Chapter 4, known as the "Public Park Condemnation Act," of Title 25, be repealed.

4. That a study of charters, special acts, and other statutory enactments be undertaken by the Virginia Code Commission, looking toward the repeal of all enactments which are inconsistent with the procedure prescribed in Chapter 1.1 of Title 25.

5. That there be full discovery, including experts, in condemnation proceedings.

6. That condemnation proceedings be on the law side of the court.

7. That when a condemnation suit has been dismissed at the condemnor's request made before the trial on the issue of just compensation has begun, the court be permitted, in its discretion, to provide for payment by the condemnor to the landowner of compensation for reasonable expenses incurred by the landowner in preparing for such trial.

8. That when two or more parcels of land in different ownership are joined in the same petition, the clerk of court be required to index the petition in the names of the respective owner or owners of all such parcels.

9. That two or more petitions may be consolidated for trial unless any party demands a separate hearing on the issue of just compensation.

SUMMARY OF RECOMMENDATIONS

1. The present method of appointing commissioners to ascertain just compensation for the property to be taken was the subject of the most often voiced and most vigorous complaints at the public hearings. It is significant that this complaint was mutually voiced by representatives of both condemnors and landowners. Many expressed the opinion that it is well nigh impossible to have a commission that is not weighted in favor of either the condemnor or the landowner. The best solution seems to us to be that of having the ascertainment of just compensation made by a jury selected as in civil cases. Such jurors should have some idea of and appreciation for the value of land and, therefore, should be freeholders. Our proposed amendment of § 25-46.3 adds a definition of the word "freeholder" for this purpose. Limiting the number of times any person may serve as such juror to one term of court in any calendar year would prevent the building up of a body of "condemnation case jurors."

2, 3, and 4. We strongly believe that prescribed procedure for condemnation cases should be uniform and should be found in one place only in the Code of Virginia. The only reason for which we do not recommend the repeal of §§ 33.1-119 through 33.1-132, and the incorporation of the provisions thereof into new sections in Chapter 1.1 of Title 25, is that many city and town charters, special acts, and sections throughout the Code, through incorporation by reference to such sections, confer the power of "quick" taking of possession and title exercised by the Highway Commissioner. Once all such charter provisions, special acts and Code sections have been ascertained, §§ 33.1-119 through 33.1-132 can be repealed and the provisions thereof incorporated in Chapter 1.1 of Title 25 by the addition of new sections. Then such charters, special acts and Code sections can be amended so as to refer to such new Title 25 sections rather than to §§ 33.1-119 through 33.1-132. Also, any procedural provisions inconsistent with the procedure prescribed in Chapter 1.1 of Title 25 can be amended so as to require compliance with such procedure.

The Public Park Condemnation Act contains 112 sections and provides for a complicated and lengthy procedure. Although this Act has been in the Code since 1928, it has very seldom been used. There is no reason why the procedure for such condemnation should not be that prescribed in Chapter 1.1 of Title 25.

Our suggested bill for repeal of these Code sections also contains a provision that such repeal shall not be construed as prohibiting the condemnation of land for public parks whenever the power to condemn for such purpose has been, or hereafter may be, granted.

5. The major issue in eminent domain cases is determination of what amount shall be awarded a landowner for land taken and damages, if any, to his remaining property because of the take. The law requires the condemnor to make a "bona fide" offer of purchase before commencement of condemnation proceedings, and too often this is perfunctory and meaningless.

At trial the condemnor, through witnesses, may take the position the value of the land taken is less or more than the landowner was offered before trial and, notwithstanding prior negotiations, the condemnor may or may not deny any damage to landowner's remaining lands. Not until the trial does the landowner know the facts and reasoning upon which the condemnor's valuations or conclusions are based. Until the moment the condemnor rests his case, the landowner does not know where he stands. At this point, the landowner then has the burden of producing evidence to rebut that which he was not aware of until the time of trial. It is equally true that the condemnor does not know what evidence of the landowner it must rebut until the landowner rests his case.

The prohibition of discovery makes condemnation cases blind man's bluff. The adversaries reveal at trial only such facts and opinions obtained prior to trial as may be expedient to their respective causes and without discovery the facts and opinions withheld are forever hidden.

We believe the issue of "just compensation" may better be determined if each party had the opportunity to discover the facts and opinions of his adversary's witnesses before trial and thus be prepared to meet the issues at time of trial through presentation of properly prepared evidence rather than evidence produced on an instant mix basis.

The weight of authority in the United States indicates that discovery is not prohibited in condemnation cases; and we are advised full discovery has resulted in a higher incidence of pretrial settlements in jurisdictions where such is allowed, thereby making the requirement of a bona fide offer more than perfunctory and meaningless.

6. Since our recommendations have the effect of making condemnation proceedings so nearly similar to civil proceedings at law, we believe it should be specifically provided that condemnation proceedings shall be on the law side of the court. This provision is included in proposed new section 25-46.4:1. The proposed amendment of § 25-46.11 includes a change in conformity with this provision.

7. § 25-46.34 provides that a condemnor may dismiss a condemnation suit as a matter of right (a) if no hearing has begun in the trial of the issue of just compensation and (b) at any time after a hearing has begun but before the expiration of the appeal period after the fixing of just compensation. In the latter instance, the statute provides that the condemnor must pay the landowner certain expenses actually incurred by reason of the condemnation suit which the court determines just and reasonable. In the first instance, the statute is silent on the payment of such expenses.

There are, of course, instances where a condemnation proceeding is brought and because of bona fide reasons must be dismissed prior to trial. In some such cases, the landowner may have been put to no expense whatever; but the statute leaves the door open for the incurring of considerable noncompensable expenses by the landowner through no fault of his own.

A condemnor may, for any of a number of reasons, only a day or two before the trial is to be commenced, move that the suit be dismissed, thus leaving the landowner to pay his expenses incurred, which by that time may include the cost of expensive appraisals as well as legal fees.

Although there is case law from other states allowing compensation under similar circumstances, the law is not clear. This statute should be amended to expressly give the court discretion in allowing compensation to a landowner for expenses incurred in the preparation for trial when the condemnor voluntarily dismisses the suit prior to a hearing on just compensation.

Our proposed amendment of § 25-46.34 includes a provision to remedy this situation.

8. When separate parcels of land in different ownership are joined in the same petition, clerks of court often do not index such petition in the names of all the respective owners involved. The requirement that the petition be indexed in all such names will insure that notice of pendency of the condemnation suit is given to all prospective bona fide purchasers of such parcels. Our proposed amendment of § 25-46.7 includes a requirement for such indexing.

9. Permitting the consolidation of two or more petitions for trial will expedite the disposition of condemnation cases, but making such consolidation subject to the demand of any party for a separate hearing on the issue of just compensation will insure protection of the interests of all parties involved. This provision is embodied in our proposed new section numbered 25-46.17:1.

CONCLUSION

We express our appreciation to the members of the Committee for the time which they gave to the study of this subject and for affording the Council the benefit of their considerable experience in condemnation cases.

Included in this Report are drafts of proposed legislation for implementation of our recommendations, and we urge enactment thereof by the General Assembly at its 1972 Regular Session.

Respectfully submitted,

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A B I L L

To amend and reenact §§ 25-46.3, 25-46.7, 25-46.9, 25-46.11, 25-46.17, 25-46.19, 25-46.20, 25-46.21, 25-46.21:1, 25-46.22 through 25-46.31, and 25-46.34, as severally amended, of the Code of Virginia, relating to condemnation generally and procedure therefor, so as to provide that just compensation be ascertained by a jury rather than commissioners.

Be it enacted by the General Assembly of Virginia:

1. That §§ 25-46.3, 25-46.7, 25-46.9, 25-46.11, 25-46.17, 25-46.19, 25-46.20, 25-46.21, 25-46.21:1, 25-46.22 through 25-46.31, and 25-46.34, as severally amended, of the Code of Virginia be amended and reenacted, as follows:

§ 25-46.3. **Definitions.**—As used in this chapter, unless otherwise clearly indicated herein or required by the context, the term:

(a) “*Court*” means the court having jurisdiction and the judge or judges thereof in vacation.

(b) “*Date of valuation*” means the time of the lawful taking by the petitioner, or the date of the filing of the petition, whichever occurs first.

(c) “*Land*” means land, lands and real estate and all rights and appurtenances thereto, together with the buildings and other improvements thereon, and any right, title, interest, estate or claim in or to land, lands or real estate.

(d) “*Law*” means any statute, general, special, private or local, of this State, including, but not limited to, the Code of Virginia or any section thereof.

(e) “*Person*” may extend and be applied to bodies politic and corporate as well as individuals.

(f) “*Petitioner*” means any person or public or private entity possessing the power to exercise the right of eminent domain seeking to exercise such power under this chapter.

(g) “*Property*” means real and personal property, and land, and any right, title, interest, estate or claim in or to such property.

(h) “*State*” or “*Commonwealth*” means the Commonwealth of Virginia.

(i) “*Freeholder*” means any person owning an interest in land other than a lessee.

§ 25-46.7. **Petition for condemnation.**—The petition for condemnation shall contain:

(a) A caption wherein the person or entity 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.

(b) Short and plain statements of the following:

1. The authority for the taking; provided, however, no public utility shall

be required to obtain, 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, a certificate from the State Corporation Commission under the Utility Facilities Act, chapter 10.1 (§ 56-265.1 et seq.) of Title 56;

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

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

4. A description of the work or improvements to be made; and where only a portion of the property is to be taken or where 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;

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

6. 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;

7. 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 thereof, or of some interest therein, whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned; other persons or classes of persons, where the names are unknown, may be made defendants under the designation of "Unknown Owners". *The clerk of court shall have the petition indexed in the names of all such parties as to each piece, tract, parcel or lot of land when two or more separate pieces, tracts, parcels or lots of land in different ownership are joined in the same petition;*

8. Compliance with the provisions of § 25-46.5 and the manner of such compliance; and

9. Where applicable, compliance with the provisions of § 25-233 and the manner of such compliance.

(c) A prayer asking for judgment that the property or the estate, interest or rights therein be condemned and the title thereto vested in the petitioner, and that just compensation for the property to be taken and the damages, if any, as a result of the taking and use by the petitioner, beyond the ~~peculiar~~ *benefits, enhancement in value*, if any, by reason of such taking and use by the petitioner, be ascertained and awarded, and for such other relief as may be lawful and proper.

(d) Where applicable, there may be included in the petition facts and circumstances on the basis of which the petitioner desires to obtain the right of entry as provided in § 25-46.8 or as provided in any charter and a prayer asking for such right of entry.

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

(f) There may be joined in the same petition 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, provided, 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.

(g) 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.

§ 25-46.9. Commencement of proceedings; notice; filing of answer and grounds of defense.—Proceedings for condemnation shall be initiated by filing the petition referred to in § 25-46.7 in the court, or in the clerk’s office thereof, having jurisdiction under § 25-46.4. Upon the filing of such petition, the petitioner shall give the owners twenty-one days’ notice of the filing of such petition and of its intention to apply to the court for the ~~appointment of commissioners~~ *selection of a jury* 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 estate, interest or rights to be so acquired. In such notice, the petitioner may also 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 proceed with the ~~appointment of commissioners~~ *selection of a jury* for the determination of such just compensation.

Such notice may also include notice of the petitioner’s application for the right of entry as provided in § 25-46.8, whenever such application is included in the petition.

Such notice shall be served on the owners, and within twenty-one 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 proceed with the ~~appointment of commissioners~~ *selection of a jury* 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~~ *selection of a jury* for the determination of just compensation.

Should any such owner fail to file an 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~~ *selection 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. Provided, however, for good cause shown the time for filing such answer and grounds of defense may be extended by the court.

§ 25-46.11. Form of notice by publication.—The form of the notice by publication, 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.

Case No. ~~In Chancery~~

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 , 19 , 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 this court, to which reference is hereby made for a full and accurate description thereof; and for the ~~appointment of commissioners~~ *selection 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 , 19 , at o'clock . . m., or as soon thereafter as petitioner may be heard, for the ~~appointment of commissioners~~ *selection 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 State 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 ten (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~~ *selection 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~~ *selection 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~~ *selection 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)

Such notice by publication may also include notice of the petitioner's application for the right of entry as provided in § 25-46.8, whenever such application is included in the petition.

§ 25-46.17. Determination of preliminary issues; fixing date of trial on issue of just compensation.—At the hearing upon the petition and application for the ~~appointment of commissioners~~ *selection of a jury* made in accordance

with § 25-46.9 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~~, *selection 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~~ *jury* or by the court, as provided in § 25-46.19. 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, and 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 a ~~commission~~ *jury* or by the court, as provided in § 25-46.19.

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.

At such hearing the court may also determine whether the petitioner shall have the right of entry as provided in § 25-46.8.

§ 25-46.19. How issue of just compensation to be determined.—If the statute granting the power of eminent domain does not specifically provide that a specially constituted tribunal shall determine the issue of just compensation, such issue shall be determined by a ~~commission~~ *jury* selected in the manner hereinafter provided in § 25-46.20. By agreement of the petitioner and all the parties who are sui juris that have appeared or answered, the issue of just compensation may be determined by the court.

§ 25-46.20. If the issue of just compensation is to be determined by a *jury*, *such jury shall be selected in the manner provided in Chapter 11 of Title 8 of this Code; provided, however, the jurors selected shall be freeholders, as defined in § 25-46.3, of the county or city in which the property, or the greater portion thereof, proposed to be condemned is situated; and provided, further, that no person shall serve as such juror more often than during one term of court in any calendar year. Provided, further, the verdict of such jury need not be unanimous.* ~~commission, the parties to the eminent domain proceeding may agree upon five or nine disinterested freeholders to act as commissioners, or if the parties cannot agree upon the names of commissioners to be summonsed, then each party shall present to the court a list containing the names of at least six freeholders from which lists the court shall select the names of nine persons to be summonsed as commissioners, all of whom shall be residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. If nine are summonsed, the petitioner and the owners shall each have two peremptory challenges and the remaining five, or the original five if only five are summonsed, shall be appointed, any three or more of whom may act, and The jury shall fix the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, enhancement in value, if any, to such other property by reason of the taking and use thereof by the petitioner. Before executing their its duties the commissioners jury shall take an oath before some officer authorized by the laws of this State to administer an oath, that they it will faithfully and impartially ascertain what will be the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits~~

enhancement in value, if any, to such other property, by reason of such taking and use by the petitioner.

§ 25-46.21. Upon the selection of the ~~commissioners~~ jury, the court shall direct ~~them~~ it, 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; and, upon motion of either party, the judge shall accompany the ~~commissioners~~ jury upon such view. Such view shall not be considered by the ~~commission~~ jury or the court as the sole evidence in the case. Upon completion of the view, the court shall hear the testimony in open court on the issues joined. When the ~~commissioners~~ jury shall have arrived at its verdict, it ~~their~~ conclusion they shall make their report its verdict in writing to the court, or to the judge thereof in vacation. ~~The report may be confirmed or set aside forthwith by the court, or the judge, as the case may be, provided that when the report is so filed and before the court or judge passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ten days after the rendering of the report by the commissioners. The court or the judge, as the case may be, shall have the same power over the commissioners' reports jury's verdict as it now has over verdicts of juries in civil actions.~~

~~Upon hearing of exceptions to the commissioners' report the court shall not recall and question the commissioners 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 commissioners 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 commissioners, the report shall be set aside and new commissioners appointed to rehear the case.~~

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

§ 25-46.21:1. Participation of certain tenants in condemnation proceedings.—Any tenant for a term expiring more than twelve months after the filing of the petition referred to in § 25-46.7 may participate in the proceedings described in § 25-46.21 to the same extent as his landlord or the owner, if, not less than ten 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 § 25-46.16, including a verified copy of the lease under which he is in possession, and 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.

For the purposes of this section, the unexpired portion of 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.

Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings described in § 25-46.21 concerning the value of his leasehold interest in the property involved therein or

as authorizing the ~~commissioners~~ jury to make any such determination in ~~formulating their report arriving at its verdict.~~

§ 25-46.22. The ~~jurors~~ ~~commissioners~~ appointed shall, ~~for every day or portion thereof they may be employed in the performance of their duties, receive compensation in an amount to be fixed by the court at not more than twenty dollars per diem, regardless of the number of cases heard on any particular day, as provided in § 8-204, to be paid by the petitioner. The persons summoned who appear, but are not appointed to serve as commissioners, shall be paid an amount to be fixed by the court not to exceed five dollars for each day they are summoned to appear.~~

§ 25-46.23. If the petitioner and the person whose property is being condemned under the provisions of this chapter shall, before the ~~report~~ verdict of just compensation is ~~made, arrived at,~~ 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 introduce such contract at the trial of the issue of just compensation, such contract shall be accepted and made a part of the ~~report~~ verdict of the award of just compensation, and upon confirmation of such ~~report~~ verdict shall thereafter run as a covenant with the land or with the interest or estate therein taken.

§ 25-46.24. **Payment of compensation and damages into court; vesting of title.**— Upon the return of the ~~report of the commissioners~~ verdict of the jury or the court, as the case may be, 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 which 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, and 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.

§ 25-46.25. **When petitioner may begin work during pendency of proceedings; no injunction to be awarded.**— Upon the return of the ~~jury report of the commissioners~~ verdict of the jury or the court, as the case may be, 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. And no order shall be made nor any injunction awarded by any court or judge 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.

§ 25-46.26. The order confirming, altering or modifying the ~~report~~ verdict of just compensation shall be final. Any party aggrieved thereby may apply for an appeal to the Supreme Court of Appeals 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 ~~verdict~~ report and awarding a new trial of the issue of just compensation shall not be a final order for the purposes of appeal.

§ 25-46.27. **Recordation of orders, judgments and proceedings.**— 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 land or other property, or the estate or interest in the land condemned, and any such contract, if any there be, as is mentioned in § 25-46.23, and shall have the same recorded in the deed book in the office of the clerk of the court wherein deeds are recorded in such county or city, and indexed in the names of the parties. *When such condemnation results from proceedings instituted by the State Highway Commissioner, such plat may be recorded in the State Highway Plat Book in the clerk's office, unless such plat be already of record; in either case the same shall be indexed in the names of the parties.* If any portion of the land lies in two or more counties or cities, or county and city, the clerk shall certify a copy of the proceedings above mentioned to the clerk of the court of each such county or city and such clerks shall record and index the same as above provided. The fees of the clerk for recording shall be the same as for recording a deed, and such fees shall be paid by the petitioner.

§ 25-46.28. Distribution of money paid into court.—Upon the award being paid into court and the confirmation of the ~~report~~ *verdict* in the manner provided in § 25-46.24, 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 so paid into court as they had in the property so taken or damaged, and 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 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.

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, after the payment therefrom of any taxes, be disbursed and distributed accordingly among the persons entitled thereto or to whomsoever they may by writing direct; except that with respect to any persons appearing to be infants, incompetent or under any other legal disability, the court may inquire into their rights or claims, independent of any statement in the record, and any order for distribution shall conserve and protect the rights of such parties in and to the fund. 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.

If it appears to the court that there exists a controversy among claimants to the fund, 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. In order to enable the court to determine the proper disposition of the fund, the court may appoint a commissioner in chancery to take evidence upon the conflicting claims. No 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 or the distribution thereof shall be taxed against the petitioner; provided, however, that in the event that the fund is less than five hundred dollars, such costs shall be taxed against the petitioner.

Upon a determination by the court of the rights and claims of the persons entitled to the fund, 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 § 25-46.26.

§ 25-46.29. If the ~~jury commission~~ fails to ~~report its award of just compensation reach a verdict~~ within a reasonable time after the issue of just compensation is submitted to it, or the ~~commission jury~~ reports that it is unable to ~~make such award reach a verdict~~, or the ~~commissioners' report~~ ~~jury's verdict~~ is set aside, or a final order upon its ~~verdict 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 other commissioners~~ *cause another jury to be selected*, and the matter may be proceeded in as hereinbefore prescribed in this chapter.

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 verdict~~, which is confirmed, is for the same or a lesser total amount, the court shall tax all the costs of the new trial against the owner making such exception and shall 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 verdict~~ with interest thereon at the rate of interest provided in § 6.1-318 from the date the original payment was made to such owner until the date such ~~access excess~~ is repaid to the petitioner except that any interest accruing prior to July one, nineteen hundred seventy, shall be paid at the rate of five per centum; and if such owner fails to make such repayment within thirty days from the date of the entry of such order, the court shall enter judgment therefor against such owner.

§ 25-46.30. **Withdrawal pendente lite of money paid into court.**—At any time after payment into court of the sum ascertained ~~in the report of the award of~~ *as* 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 ~~reports verdict~~ as provided in § 25-46.26, a party whose property or interest therein is to be taken or damaged may apply to the court, in the manner hereinafter provided, 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. If such application requests withdrawal of an amount in excess of fifty percent of such owner's pro rata share of the amount deposited as aforesaid, the court may require the applicant, before withdrawing any of such excess, to give or file a bond in the clerk's office 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, 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 at the rate of interest provided in § 6.1-318, except that any interest accruing prior to July one, nineteen hundred seventy, shall be paid at the rate of five per centum, from the date of the withdrawal of the amount in excess of fifty percent of such owner's pro rata share of such amount deposited as aforesaid. 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 twenty-one days after service of such application upon the petitioner without its consent. Within such twenty-one-day period the petitioner may object to such withdrawal by filing written objections thereto in the clerk's office 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, and 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.

If any person appear and object 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, whereupon 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 § 25-46.28 for the determination of any controversy among any claimants to the funds or to the ownership of the property subject to the condemnation and tax the costs thereof as therein provided.

In the event the award which 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.

The amount of the petitioner's deposit under §§ 25-46.8, 25-46.24 or 25-46.25 and the amount of such deposit withdrawn by any party in accordance with the provisions of this section may 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.

§ 25-46.31. Interest on award; entry of judgment for award and interest.—(a) Where the petitioner has exercised pendent 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~~ as just compensation as provided in § 25-46.25, the owner thereof shall receive interest at the rate of interest provided in § 6.1-318, except that any interest accruing prior to July one, nineteen hundred seventy, shall be paid at the rate of five per centum, upon the difference between the amount of just compensation as finally determined and awarded to such owner and the amount, if any, which such owner received or was entitled to receive, from the fund so paid into court 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. No interest shall be payable upon any amount which 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 pendent lite to enter into and take possession of the land or other property to be taken or damaged as provided in § 25-46.8, the owner thereof shall receive, in addition to what he is entitled to receive under paragraph (a) of this section, interest at the rate of interest provided in § 6.1-318 upon the difference between the amount of the award of just compensation, as finally determined and the amount previously paid into court as required under § 25-46.8 from the time of such entry until payment into court of the sum ascertained ~~in the report of~~ as just compensation as provided in § 25-46.24.

(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 which 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 which has been confirmed finally or the interest to which the owner is entitled under this section for a period of thirty 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 § 25-46.34.

§ 25-46.34. Dismissal of proceedings; dropping defendant.—(a) If no hearing has begun in the trial of the issue of just compensation for the taking or damaging of property or property interest and the petitioner has not already acquired the title or a lesser interest or estate in or taken possession of such property, the petitioner may upon motion obtain, as a matter of right, an order dismissing the proceeding as to such property, *which order, in the discretion of the court, may also provide that the petitioner shall pay such owner or owners for reasonable expenses which have actually been incurred by them in preparing for the trial on the issue of just compensation, in such amounts as the court deems just and reasonable.*

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

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

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

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

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

A B I L L

To amend and reenact §§ 33.1-95, 33.1-98, 33.1-124, 33.1-127 and 33.1-132 as amended of the Code of Virginia; and to repeal §§ 33.1-99 through 33.1-115 of the Code of Virginia, the amended and repealed sections relating to highway condemnation and procedure therefor, so as to prescribe that such procedure be in accordance with Chapter 1.1 of Title 25 of such Code, excepting the procedure for acquiring title to and taking possession of property by the State Highway Commissioner, as provided in §§ 33.1-119 through 33.1-132.

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-95, 33.1-98, 33.1-124, 33.1-127 and 33.1-132 as amended of the Code of Virginia be amended and reenacted, as follows:

§ 33.1-95. Limitations in Title 25 not applicable to Commissioner.—*Except as to procedure*, the State Highway Commissioner shall not be subject to any limitations in Title 25 of this Code 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.

§ 33.1-98. Procedure in general; suits in name of Commissioner; survival; validation of suits.—Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided ~~herein~~ *in Chapter 1.1 of Title 25 of this Code, except that the provisions of §§ 33.1-119 through 33.1-132 shall be applicable to such proceedings.*

All suits shall be instituted and conducted in the name of the State Highway 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.

§ 33.1-124. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.—Any person or persons shown by such 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 § 33.1-120 or represented by a certificate recorded pursuant to § 33.1-121. A copy of such petition shall be served on the State Highway Commissioner, his deputy or any attorney authorized to accept service with a notice returnable to the court or judge thereof in vacation not less than twenty-one days after such service, to show cause, if any, the said Commissioner can, why such amount should not be distributed in accordance with the prayers of the petition. If said Commissioner shall 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; provided, however, that in the case of a nonresident petitioner the

court may in its discretion require a bond before ordering the distribution. If funds are not then on deposit with the court but are represented by a certificate pursuant to § 33.1-121, 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 days of the date of such order. Interest at the rate of ~~five per centum~~ *interest provided in § 6.1-318* shall be payable on such funds for any period in excess of twenty-one days from the date of the order directing the distribution of such funds if the court finds that the Commissioner is responsible for the delay in depositing the funds, and the order of the court directing the distribution shall be amended as shall be necessary to provide for the payment of accrued interest.

If the Commissioner shall show such cause, or if the record in the proceeding disclose 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~~ ~~33.1-115~~ for the distribution of awards.

Provided, however, that 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.

§ ~~33.1-127~~. At any time after the recordation of such certificate, but within sixty days after the completion of the construction of such highway, if the Commissioner and the owner or owners of such lands or interest therein taken or damaged by the Commissioner are unable to agree as to the compensation or damages, if any, caused thereby, or such consent cannot be obtained due to the incapacity of the owners or one or more of them, or because such owner, or owners, be unknown or cannot with reasonable diligence be found within this State, the Commissioner shall institute condemnation proceedings, as provided in this article, unless said proceedings shall have been instituted prior to the recordation of such certificate. The amount of such compensation and damages, if any, awarded to the owner or owners in such proceedings shall be paid out of the appropriations to the Virginia Department of Highways. The final order confirming the ~~commissioners' award~~ *jury's verdict* shall confirm absolute and indefeasible title to the land, or interest therein sought, in the Commonwealth and shall be spread in the current deed book and reference be made showing the book and page number recordation on the margin of the page where the certificate was spread.

§ ~~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 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~~ *selection of 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 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 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~~ *a jury* shall be ~~appointed~~ *selected* 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 ~~§§ 33.1-98 to 33.1-113~~ *Chapter 1.1 of Title 25 of this Code* insofar as the same may be applicable.

2. §§ 33.1-99 through 33.1-115 of the Code of Virginia are repealed.

A B I L L

To amend the Code of Virginia by adding in Chapter 1.1 of Title 25 thereof sections numbered 25-46.4:1 and 25-46.4:2, to prescribe that condemnation proceedings be on law side of court; and to provide for discovery in such proceedings, including discovery and interrogation of adverse party's experts.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 1.1 of Title 25 thereof sections numbered 25-46.4:1 and 25-46.4:2, as follows:

§ **25-46.4:1.** Condemnation proceedings shall be on the law side of the court in which the petition is filed and, except as otherwise provided by statute, all proceedings, including discovery, shall be the same as in other actions at law.

§ **25-46.4:2.** In addition to the evidence which a party may discover under statute, or Rules of Court as promulgated by the Supreme Court of Virginia, any party to a proceeding for condemnation may:

(1) By written interrogatory or by deposition require any other party to produce and submit for inspection, or to furnish a copy of, all written reports of experts pertaining to the value of the property sought to be condemned, or any part thereof, whether or not such expert is to be called as a witness, and whether or not such report was obtained in anticipation of litigation or in preparation for trial.

(2) By written interrogatory or by deposition require any other party to disclose the identity and location of every expert whom such other party has caused to examine the property sought to be condemned, or any part thereof, for the purpose of determining its value, whether or not such expert is to be called as a witness and whether or not such examination was procured in anticipation of litigation or in preparation for trial.

(3) By written interrogatory or by deposition require any other party to disclose the identity and location of every expert whom such other party proposes to call as a witness.

(4) By written interrogatory or by deposition, examine any expert whose identity and location are obtainable under the provisions of this section, as to such expert's findings and opinions.

An expert interrogated or examined by deposition, as provided in this section, shall be entitled to reasonable compensation therefor. Such compensation shall be paid by the party interrogating or deposing such expert.

A B I L L

To repeal Chapter 4 of Title 25 of the Code of Virginia, consisting of §§ 25-120 through 25-231, as severally amended, relating to special condemnation proceedings for State public park purposes; and to amend the Code of Virginia by adding in Chapter 1.1 of Title 25 thereof a section numbered 25-46.2:1, to continue the power of eminent domain for such purposes and prescribe that procedure therefor be in accordance with such chapter.

Be it enacted by the General Assembly of Virginia:

1. Chapter 4 of Title 25 of the Code of Virginia, consisting of §§ 25-120 through 25-231, as severally amended, is repealed.
2. That the Code of Virginia be amended by adding in Chapter 1.1 of Title 25 thereof a section numbered 25-46.2:1, as follows:

§ 25-46.2:1. The repeal of Chapter 4 of Title 25 of this Code, known as the “Public Park Condemnation Act,” shall not be construed as prohibiting the exercise of the power of eminent domain to condemn land or lands within this State for use as a public park, or for public park purposes, in any case wherein such power for such use or purposes has been, or hereafter shall be, conferred by the laws of this State. Proceedings in the condemnation of land for such use or purposes shall be in accordance with the provisions of this chapter.

A B I L L

To amend the Code of Virginia by adding in Chapter 1.1 of Title 25 thereof a section numbered 25-46.17:1, to prescribe when condemnation cases may be consolidated for trial.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 1.1 of Title 25 thereof a section numbered 25-46.17:1, as follows:

§ **25-46.17:1.** Unless any party demands a separate hearing on the issue of just compensation, the court may consolidate for trial two or more petitions.

SENATE JOINT RESOLUTION NO. —

Directing the Virginia Code Commission to make a study and report on charters, special acts and Code sections which confer the power of eminent domain, and which contain certain procedural provisions for condemnation cases.

Whereas, town and city charters, many special acts and certain sections throughout the Code of Virginia, hereinafter referred to as the "Code", contain provisions conferring the power of eminent domain; and

Whereas, many of such provisions also confer the power to take title to and possession of land, prior to the institution of or during condemnation proceedings, and such power often is conferred by cross-reference to §§ 33-70.1 through 33-70.11 (now §§ 33.1-119 through 33.1-129) of the Code, which confer such power on the State Highway Commissioner; and

Whereas, it is desirable that all procedural provisions for condemnation cases be set forth in Chapter 1.1 of Title 25 of the Code, which Chapter relates to condemnation generally, but it is not feasible to repeal §§ 33.1-119 through 33.1-129, and allied sections 33.1-130 and 33.1-132 and incorporate the provisions thereof in new sections in such Chapter 1.1 because of the above-mentioned cross-references; and

Whereas, some of the charters, acts and sections mentioned in the first paragraph hereof contain procedural provisions for condemnation cases which are inconsistent with the procedure prescribed in such Chapter 1.1; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the Virginia Code Commission is directed to make a study for the purpose of ascertaining all town and city charters, all special acts and all sections throughout the Code which contain provisions conferring the power of eminent domain, and which also contain provisions for such taking of title and possession prior to or during condemnation proceedings by payment into court, whether expressly set forth or included by cross-reference to §§ 33-70.1 through 33-70.11 or §§ 33.1-119 through 33.1-129, and which also contain procedural provisions for condemnation cases that are inconsistent with the procedure prescribed in such Chapter 1.1.

The Commission shall, in its report, include proposed legislation for the repeal of §§ 33.1-119 through 33.1-132 and the incorporation of the provisions thereof in Chapter 1.1 of Title 25 by adding thereto new sections; and for the amendment of all such charters, special acts and Code sections so as to delete therefrom references to either §§ 33-70.1 through 33-70.11 or §§ 33.1-119 through 33.1-129 and substitute therefor references to such new sections in such Chapter 1.1, and to provide that procedure for condemnation cases shall be that prescribed in such Chapter 1.1, in those instances where a different procedure is prescribed.

The Commission shall complete its study and make its report to the Governor and the General Assembly no later than December one, nineteen hundred seventy-three.

