FINAL REPORT OF THE
JOINT SUBCOMMITTEE EXAMINING

The Current Means and Adequacy of Compensation to Virginia Citizens Whose Properties are Taken through the Exercise of Eminent Domain

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 43

COMMONWEALTH OF VIRGINIA
RICHMOND
2001

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Delegate James M. Shuler, Vice Chairman
Senator Charles J. Colgan
Senator Thomas K. Norment, Jr.
Senator John Watkins
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To: The Honorable James S. Gilmore, III, Governor of Virginia
and
The General Assembly of Virginia

Richmond, Virginia
May 2001

I. INTRODUCTION

The 1999 Session of the General Assembly adopted Senate Joint Resolution 271 and House Joint Resolution 491, establishing a 13-member joint subcommittee to study the current means and adequacy of compensation to Virginia citizens whose properties are taken through the exercise of eminent domain. The joint subcommittee is directed to study (i) the methods by which eminent domain is exercised and (ii) the means by which compensation is provided or obtained. At the conclusion of its first year of study, the joint subcommittee was continued in the 2000 Session of the General Assembly by Senate Joint Resolution 37 (Appendix A).

The joint subcommittee was chaired by Senator Madison E. Marye of Montgomery County, and Delegate James M. Shuler of Montgomery County was elected vice chairman. Other legislative members of the joint subcommittee in 2000 were Senator Charles J. Colgan of Prince William County, Senator Thomas K. Norment, Jr., of James City County, Senator John Watkins of Chesterfield County, Delegate L. Preston Bryant, Jr., of Lynchburg, Delegate Riley E. Ingram of Hopewell, Delegate Thomas M. Jackson, Jr., of Carroll, Delegate Robert G. Marshall of Prince William, and Delegate Brian J. Moran of Alexandria. Joseph T. Waldo of Norfolk and John McLeod, III of Blacksburg were reappointed as citizen members by the Speaker of the House, and Philip J. Infantino, III of Chesapeake was reappointed as a citizen member by the Senate Committee on Privileges and Elections.

Over the course of the two-year study, the joint subcommittee examined a number of issues in Virginia's eminent domain law. Speakers included law professors, eminent domain practitioners, real estate appraisers, representatives of condemning authorities, and numerous private citizens who have had experience with Virginia's eminent domain process. Each year, the joint subcommittee examined the issues raised in the speakers' testimony and proposed several recommendations for legislation to improve the condemnation process in Virginia.

II. FIRST YEAR OF STUDY

The joint subcommittee established under SJR 271/HJR 491 in 1999 held three information meetings and three public hearings throughout the Commonwealth during the 1999 interim. The joint subcommittee then held three work sessions to develop recommendations to the General Assembly and prepare legislative proposals. A number of bills were introduced in the 2000 Session with the joint subcommittee's endorsement and were passed by the General Assembly and signed into law.

Senator Marye introduced Senate Bill 453, which implemented a majority of the joint subcommittee's recommendations. The bill was amended several times in the Courts Committees of both the House and Senate, and went to a conference committee over the issue of replacing the commissioner system with a jury system. The conferees offered a compromise, with which both houses concurred, that gives the owner of the condemned property the option of using either the commissioner system or a jury system (with the majority of jurors being freeholders) to determine disputes regarding the amount of compensation.

Senate Bill 63, patroned by Senator Marye, incorporated the joint subcommittee's recommendation that application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act not be restricted to projects carried out with federal or state financial assistance. It also removed the $10,000 cap on payments for business relocation expenses and raised the existing cap on payments for the dislocation of a business or farm, in lieu of actual relocation expenses, from $20,000 to $50,000.

Senator Marye also introduced Senate Bill 110, which prohibited the Commonwealth Transportation Commissioner from exercising the power of eminent domain to acquire any portion of the property of an existing commercial establishment or any interest therein if the sole purpose of such acquisition is to control or limit access to commercial establishments located within 300 feet of any segment of the interstate highway system.

Senator Watkins introduced Senate Joint Resolution 38, which incorporated the joint subcommittee's recommendation that the Senate Finance and the House Appropriations Committees be directed to examine the feasibility of transferring the responsibility for acquiring property for highway purposes from the Department of Transportation to the Department of General Services. The resolution was rolled into Senate Joint Resolution 170, which requests the Joint Legislative Audit and Review Commission to study the financing of highway maintenance and construction by VDOT.

Though a divided joint subcommittee did not vote to introduce legislation allowing condemnees to recover litigation expenses from the condemnor, Senator Marye patroned, and joint subcommittee members Senator Norment, Delegate Griffith, Delegate Ingram, Delegate Moran, and Delegate Shuler co-patroned, such a bill. The bill was passed by indefinitely in the Senate Committee for Courts of Justice by a vote of 8-6.

III. 2000 STUDY

At its first meeting, the joint subcommittee established a workplan of issues for examination in the 2000 interim. A number of issues were tabled in 1999 for further study, including payment of condemnees' litigation expenses, compensation for business losses, compensating the condemnee for the cost of an independent appraisal, and communicating public concern about VDOT's attitude and practices to VDOT by letter. The joint subcommittee agreed to revisit all of these issues. The joint subcommittee also decided to review House Bill 85, procedures for notifying a landowner of a potential condemnation, at the request of the Chairman of the House Committee on Courts of Justice. Members also expressed concern about VDOT's process and time frames for completing a condemnation and providing payment to the condemnee.

A. STAFF OVERVIEW

Members of the joint subcommittee expressed an interest in using mediation and arbitration in eminent domain cases. Mediation involves a third party to facilitate discussion and negotiation. Arbitration also uses a neutral party, but the decision of an arbitration judge is binding and enforceable as a court order. Both procedures are set out in the Code of Virginia, but are not mandated except in certain juvenile and domestic relations cases. Examples of other states that use alternate dispute resolution in condemnation cases include Florida, which mandates non-binding mediation before condemnation, and Utah, which has a private property ombudsman who serves as a neutral party in negotiations.

At the request of several members, staff presented the joint subcommittee with a review of other states' laws regarding the payment of a condemnee's litigation expenses. A summary of those laws is attached as Appendix B. A trend began in the 1970s where states began adopting provisions allowing the condemnee to recover litigation expenses in certain cases. Now, 14 states allow for payment of litigation expenses where the condemnee prevails. Some states require the condemnee's award to exceed the last offer by a certain amount, others simply allow for recovery in any case where the condemnee's award is greater than the condemnor's last offer. Eight states allow the court to award litigation expenses in its discretion. Most require the condemnee's award to exceed the condemnor's last offer. Five states permit a condemnee's recovery of costs for expert testimony, but not attorney's fees. Twenty-two states permit the condemnee's recovery of attorney's fees in certain limited circumstances, e.g., bad faith, abandonment of a condemnation proceeding, or lack of authority to condemn.

Responding to members' requests, staff also distributed a summary of how other states handle payment of a condemnee's appraisal. Some states do pay for a condemnee to obtain an independent appraisal, but usually in limited circumstances. A copy of the summary is attached as Appendix C.

B. CITIZEN INPUT

Brent Riely of the Sensible Mountain Policy Action Coalition (SMPAC) expressed several concerns about the current law in Virginia regarding eminent domain. A recent gas pipeline proposed by Virginia Gas sparked concern on the part of a number of citizens in Southwest Virginia. Riely stated that notice of the pipeline was given largely through word of mouth, and most citizens were not aware that their property could be taken through the use of eminent domain. Riely identified five areas of concern: (i) if citizens are not properly notified about the use of eminent domain, the Commonwealth is making decisions about land policy without public input; (ii) local governments should have a role in deciding where eminent domain should be exercised; (iii) the state should own utility easements and allow corporations to use them for specific purposes; (iv) condemnors should have to meet stronger requirements to prove the need for a facility; and (v) the law should provide for more fair compensation to landowners.

Marion Cebula, a citizen of Prince William County, spoke to the joint subcommittee and recounted her experience with VDOT and the condemnation process. Ms. Cebula had difficulty in contacting personnel at VDOT who could help her, negotiating a settlement for their house, finding appropriate relocation housing, and navigating the appeals process. Ms. Cebula advocated mediation for parties involved in condemnation proceedings to allow a neutral party to help facilitate discussion and resolution of issues. Ms. Cebula also stressed the need for reimbursement of a condemnee's legal expenses, so that just compensation is not diminished by payment of these fees. A copy of her testimony is attached as Appendix D.

The joint subcommittee did not hold public hearings around the Commonwealth this year. However, the subcommittee welcomed written testimony, and received more than 20 items of written testimony from citizens across the Commonwealth. The majority of the testimony was in support of providing reimbursement of a condemnee's litigation expenses. Citizen testimony also supported efforts to reform the notice procedures in gas pipeline condemnation.

C. HOUSE BILL 85

Delegate Morgan introduced House Bill 85 in the 2000 Session. The bill prohibited cities and towns from using eminent domain to condemn property outside their boundaries, except in a contiguous locality. Currently, counties may only condemn land outside their boundaries where permitted by general law or special act, but cities and towns do not have such a restriction. The bill was referred to the Courts of Justice Committee, and the committee carried the bill over. The Chairman of House Courts of Justice asked the joint subcommittee to look at this issue in the 2000 interim.

Delegate Morgan expressed concern about the City of Newport News condemning land in King William County for a reservoir. The County of King William had little input in the location of the reservoir, and the public purpose for which a city may condemn land in another jurisdiction may not be a public purpose for the jurisdiction in which the land is

located. Delegate Morgan wanted a more level playing field between cities and counties on this matter.

The most common concern of interested parties with the bill is that localities would not be able to use eminent domain for their utility facilities. Concern was also expressed about airports needing to condemn land, but Senator Watkins explained that most airports are run by authorities with a stated public purpose, and this bill would not apply to authorities. The bill was amended to specifically permit cities and towns to condemn outside their boundaries for utility facilities, subject to the Virginia Electric Utility Restructuring Act.

IV. RECOMMENDATIONS FOR 2001 LEGISLATION

Concern about a natural gas pipeline going through parts of Southwest Virginia led to the subcommittee recommending revision to the procedures a gas pipeline company must follow in notifying citizens of the likelihood of condemnation. Under Delegate Shuler's bill, House Bill 2268 (Appendix E), owners of property within the route of a proposed gas pipeline or electric transmission line of 150 kV or more must be sent a notice of the proposed construction by first-class mail. The notice requirements for a public utility proposing to build a gas pipeline are conformed in several respects to those for the proposed construction of electric transmission lines. Gas companies must include in any notice a written description of the proposed route the line is to follow, a map or sketch of the route, and the time frame for requesting a hearing. The State Corporation Commission must hold a public hearing if requested by any interested party within 45 days after publication of a notice, and the Commission must hold at least one hearing in the area affected by pipeline construction if requested in writing by 20 or more interested parties. These requirements are designed to ensure that a gas pipeline company adopt a specific route for the pipeline and ensure that those persons with property in that route are aware of the possibility of condemnation. The bill passed the House and Senate and was signed into law by the Governor.

Delegate Morgan introduced House Bill 1825 (Appendix F) with the approval of the joint subcommittee to address the concerns that prompted his introduction of House Bill 85 in the 2000 Session. The bill prohibits counties, cities, and towns from condemning property outside their boundaries unless authorized by general law or special act. A locality may acquire property outside its boundaries through condemnation for purposes of establishing, maintaining or operating public utility facilities and transportation systems, subject to the Virginia Electric Utility Restructuring Act, where applicable. The bill passed both the House and Senate, and was signed into law by the Governor.

Other bills were introduced, including Senate Bill 1172 (Appendix G). Currently, condemnors other than state agencies are exempt from the requirement to conduct an appraisal of property less than $10,000 in value. The subcommittee recommended that state agencies be added to that list of exemptions, which would provide significant cost savings in highway construction projects. This bill was also enacted into law.

Some of the joint subcommittee's recommendations did not pass the General Assembly, including Senate Bill 1174 (Appendix H). This bill prohibited public service corporations from taking a strip of land by condemnation less than 400 feet in width when constructing a 765-kV overhead electric line. Under this measure, condemnors would also be required to offer to purchase the property containing any dwelling house that resides within 200 feet of the right-of-way for such 765-kV line. Senate Bill 1175 (Appendix I) required for the court in a condemnation case to refer the parties to a dispute resolution evaluation session, if requested by one of such parties. The bill referred to the statutory alternate dispute resolution procedures for proceeding beyond the evaluation session. Senate Bill 1173 (Appendix J) provided for payment by a condemnor of the costs of a condemnee's independent appraisal. All of these bills were passed by indefinitely in the Senate Courts of Justice Committee.

Senator Marye introduced Senate Bill 1171 (Appendix K), which would change eminent domain procedures to allow a court, in its discretion, to provide litigation expenses to a condemnee whose final award is higher than the condemnor's last written offer by 15 percent or more. Currently, some condemnees must decide between accepting a perceived unreasonable offer and litigating the condemnation amount, recognizing that the cost of litigation may be greater than the difference between the offer and the award. This measure attempts to provide a means for compensation to condemnees who receive offers that are too low, without encouraging condemnees to litigate in every case. The bill was passed by indefinitely in the Senate Courts of Justice Committee.

V. CONCLUSION

The joint subcommittee would like to express its sincere appreciation to all individuals who assisted in its study.

Respectfully submitted,

Senator Madison E. Marye, Chairman
Delegate James M. Shuler, Vice Chairman
Senator Charles J. Colgan
Senator Thomas K. Norment, Jr.
Senator John Watkins
Delegate L. Preston Bryant, Jr.
Delegate Riley E. Ingram
Delegate Thomas M. Jackson, Jr.
Delegate Robert G. Marshall
Delegate Brian J. Moran
Joseph T. Waldo, Esq.
John McLeod, III
Philip J. Infantino, III, Esq.

2000 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 37

Continuing the Joint Subcommittee Studying the Current Means and Adequacy of Compensation to Virginia Citizens Whose Properties Are Taken Through the Exercise of Eminent Domain.

Agreed to by the Senate, February 15, 2000
Agreed to by the House of Delegates, March 8, 2000

WHEREAS, Senate Joint Resolution No. 271 (1999) and House Joint Resolution No. 491 (1999) established the joint subcommittee to study the current means and adequacy of compensation to Virginia citizens whose properties are taken through the exercise of eminent domain; and

WHEREAS, the joint subcommittee was directed to study, among other things, (i) the methods by which eminent domain is exercised and (ii) the means by which compensation is provided or obtained; and

WHEREAS, the joint subcommittee has in its first year examined information on a wide variety of issues pertaining to the Commonwealth's eminent domain laws; and

WHEREAS, due to the complexity of the issues and time constraints, the joint subcommittee has not been able to complete its study of these issues and possible solutions to address the concerns identified by citizens who testified at the three public hearings conducted by the joint subcommittee; and

WHEREAS, the members agree that the joint subcommittee should be continued for a second year; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Subcommittee Studying the Current Means and Adequacy of Compensation to Virginia Citizens Whose Properties Are Taken Through the Exercise of Eminent Domain be continued. The joint subcommittee shall examine the procedures by which the power of eminent domain is exercised and the adequacy of compensation provided under current law.

The joint subcommittee shall be composed of 13 members, as follows: 4 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; 6 members of the House of Delegates to be appointed by the Speaker of the House, in accordance with the principles of Rule 16 of the Rules of the House of Delegates; and 3 citizens at large, one to be appointed by the Senate Committee on Privileges and Elections and two to be appointed by the Speaker of the House.

The Division of Legislative Services shall continue to provide staff support for the study. All other agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 2001 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The direct costs of this study shall not exceed $11,200.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

State Provisions on the Recovery of Litigation Expenses in Eminent Domain Proceedings

Franklin D. Munyan
Division of Legislative Services
August 24, 1999

Introduction

At the Joint Subcommittee's meeting on July 21 in Salem, the statement was made that twenty-six states allow recovery of attorneys' fees in condemnation proceedings. This figure is too low or too high, depending on how the issue is stated.

Although in the middle and latter part of the Nineteenth Century a number of states adopted statutes requiring payment of the landowner's attorney's fees in eminent domain proceedings, most of these statutes were subsequently repealed so that by the 1950s the general American rule was that in eminent domain proceedings brought by a public body, attorney's fees were not paid to a landowner's attorney. In recent years, however, there has been a trend toward adoption of statutes authorizing payment of such litigation expenses either in all, or at least some, instances. In 1971, for example, seven states had statutes authorizing payment of attorneys' fees in eminent domain proceedings. By the end of 1976, at least twelve states had such a provision. [Geoffrey Dobson, "Payment of Attorney Fees in Eminent Domain and Environmental Litigation" (Transportation Research Board, ALI/ABA 1979), p. 703.]

All but a handful of states now allow persons whose property is taken by exercise of the power of eminent domain to recover attorney's fees or other litigation expenses in some specified circumstances. The most typical situations where state law allow the recovery of litigation expenses are when the state dismisses condemnation proceedings, is held not to be authorized to condemn the property, or is successfully sued in an inverse condemnation proceeding. Much of the trend toward adoption of legislation providing for payment of a landowner's attorney's fees in these circumstances is attributable to such federal legislation as the Uniform Relocation Assistance Act and the Federal Acquisition Policies Act.

Thus while most states allow recovery of attorney's fees in circumstances covered by state laws adopted in response to federal legislation, far fewer states allow a landowner to recover his attorney's fee in disputes over the valuation of the condemned property.

The basis for state requirements for payment of a condemnee's attorney's fees varies widely. One state (Montana) has a constitution that specifically requires payment of litigation expenses as an element of just compensation. A few states

(including Florida and Idaho) have held by judicial decision that the constitutional requirement for payment of just or fair compensation requires payment of the condemnee's attorney fees. In the vast majority of states, attorneys' fees may not be awarded unless specifically authorized by statute.

Many states provide generally that the condemnor is required to pay the court costs associated with condemnation proceedings. In the vast majority of these jurisdictions, including Virginia, "costs" have been deemed to include such things as filing fees and compensation of commissioners or jurors. In Idaho and Kansas, however, costs have been held to include the condemnee's attorney's fees.

Of the states that provide for payment of the condemnee's litigation expenses, some cover fees of attorneys, appraisers, and surveyors, or some, but not all, of such fees. For example, North Carolina allows some appraisers fees if the appraisal is used at trial, but does not provide for payment of attorneys' fees generally.

Several states (including Oklahoma and North Carolina) allow the payment of attorneys' fees in litigation arising out of condemnations by certain condemnors but not others.

Several state laws addressing payment of litigation expenses provide that the decision to award them, and the amount payable, rests within the discretion of the court; in others, the decision to pay fees and their amount are controlled by statute. In certain circumstances, fees may be payable if the court finds that the condemnor acted maliciously or in bad faith.

Where such fees are allowed by statute, the amount of attorneys' fees to be payable may depend on the benefit to the condemnee. Several of these statutes require, or use as a factor in determining the amount of the award, that the award at trial be more than the condemnor's final offer. Often the margin between the award and the final offer must exceed a certain percentage of the final offer.

Finally, some of the states (including Indiana and Pennsylvania) that allow the payment of attorneys' fees to "successful" condemnees have capped the amount of such fees at specified dollar amounts. Florida caps the award at a percentage of the benefit provided to the owner. Some states limit the award to amounts based on the regular hourly rate and the time spent on the trial and preparation, thereby precluding contingency fee arrangements.

A related issue is whether the owner's fee obligation to his attorney should be limited to the amount awarded by the court as attorney's fees, as in the Virginia Workers' Compensation Act, or be credited for any additional amount awarded by the court as attorney's fees. In other words, should an owner's attorney be permitted to be paid more by his client than the court determines is an appropriate award for an attorney's fee?

Litigation Expenses in Virginia Condemnation Cases

In Virginia, the Supreme Court held in Ryan v. Davis, 201 Va. 79, 109 S.E.2d 409 (1959), that "costs" should be confined to statutory fees to which officers, witnesses, jurors, commissioners, and others are entitled for their services. They should not be extended to every conceivable cost and expense incurred by a party engaged in litigation. In the absence of specific statutory authorization, a trial court is not authorized to assess the condemnor with the condemnee's attorney's fees.

Several Virginia statutes provide for the payment of attorney's fees and other litigation expenses in certain circumstances. Under § 25-46.34, payment of attorneys' and expert witness fees is allowed if eminent domain actions are abandoned.

Section 25-250 provides that if the final judgment in a condemnation proceeding is that the real property cannot be acquired by condemnation or the proceeding is abandoned, the owner shall be reimbursed for reasonable expenses "including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings."

Section 25-251 provides that litigation expenses are payable to successful plaintiffs in inverse condemnation actions.

Under § 25-46.32, the court may in its discretion tax as a cost a fee for a survey for the landowner, not to exceed $100.

House Bill 221 (1998) would have allowed court to award reasonable attorneys' fees and other costs to the property owner if the amount of compensation awarded exceeds the amount offered by the petitioner as part of its bona fide offer to purchase the property.

Uniform Eminent Domain Code

The Uniform Eminent Domain Code states at § 1205 (b) as follows:

If the amount of compensation awarded to the defendant by the judgment, exclusive of interest and costs, is equal to or greater than the amount specified in the last offer of settlement made by the defendant under Section 708, the court shall allow the defendant his costs under subsection (a) and in addition his litigation expenses in an amount not exceeding the greater of _____ dollars or [25] percent of the amount by which the compensation awarded exceeds the amount of the plaintiff's last offer of settlement made under Section 203 or 708.

An optional provision of the Uniform Act provides:

[(c). If the amount of compensation awarded to the defendant by the judgment, exclusive of interest and costs, is equal to or less than the amount specified in the last offer of settlement made by the plaintiff under Section 708, the defendant shall not be entitled to his costs incurred after the date of service of the offer.]

Federal Equal Access to Justice Act

According to Nichols on Eminent Domain, some condemnees may, in limited circumstances, recover costs and attorney's fees from the federal government under the Equal Access to Justice Act (28 U.S.C. § 2412). However, courts have been hesitant in awarding attorney's fees in condemnation cases. § 15.03 [1].

The Act generally provides that a prevailing party, other than the federal government, may recover fees and costs in any action brought by the federal government unless the court determines that the government's position was substantially justified or that special circumstances make such an award unjust. To be a "party," an individual cannot have a net worth of more than $2 million, and a business entity's net worth cannot exceed $7 million.

The Act provides that, in condemnation cases, a party has prevailed if the amount of the final judgment "is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trail on behalf of the government." 28 U.S.C. § 2412(2)(H). This has been construed to mean that the prevailing party is the one whose testimony in court is closest to the award. United States v. 5,507.38 Acres of Land, 832 F.2d 882 (5th Cir. 1987).

In order to determine whether the government's position was substantially justified, the Tenth Circuit has listed the following factors for court consideration: (i) the reasonableness and reliability of the government's appraisals introduced into evidence, based on the qualifications of the appraiser, the impartiality of the appraiser, the reasons why the government's appraisal differs from the landowner's, and awards and sales of similar property in the area at the time in question; (ii) a comparison of the government's appraisal, the offer made, and proof of valuation at trial; and (iii) any other relevant evidence. Nichols, supra, § 15.03[2].

Summary of Laws of States

The laws of states with respect to their provisions for the payment of litigation expenses incurred by condemnees do not fall into clear categories. The following analysis groups statutes on the basis to which they address disputes about the amount of compensation due for a taking of or damage to property through the exercise of the power of eminent domain. A summary of the laws of the states is attached as an appendix.

A. Condemnor is required to pay litigation expenses in all cases or when litigation results in greater compensation to the condemnee:

Alaska: If court award is 10 % more than master's allowance or "appears necessary to achieve a just and adequate compensation."

Florida: Condemnor is required to pay reasonable appraisal fees, and to pay attorney's fees based solely on the benefit achieved for the client. The benefit means the margin between the final judgment and the last offer made before the attorney was retained, or if none was made the first offer after the attorney was retained. The amount of the fee shall be 33 % of the benefit amount up to $250,000; 25 % of benefit between 250,000 and $1 million; and 20 % of benefit over $1 million. Courts must reduce fees owed by the client by the amount awarded by the court.

Indiana: If the award is greater than the last offer, court shall allow litigation expenses up to $2,500.

Iowa: If award of commissioners exceeds 110 % of the final offer.

Maine: If Department of Transportation appeals and does not prevail, it must pay the owner's reasonable fees.

Michigan: If amount awarded exceeds offer, court shall order reimbursement of reasonable attorney's fees, not to exceed one-third of the excess, and the amount will be set by the court using eight factors. Expert witness fees are allowed, with one expert per element of damages unless the court decides otherwise.

Montana: State Constitution requires payment of expenses when owner prevails; fees are awarded on an hourly basis when owner prevails by receiving an award in excess of the final offer of the condemnor.

Oklahoma: If jury's award exceeds commissioners' award by 10 %.

Oregon: If trial court's award is greater than the highest offer by condemnor or if first offer was made in bad faith.

Pennsylvania: Owners shall be reimbursed up to $500 toward reasonable expenses actually incurred for appraisal, attorney and engineering fees.

South Carolina: Owner is entitled to apply for payment of litigation expenses if he prevailed, determined by whether the award is at least as close to the highest valuation put on it by the condemnor at trial.

South Dakota: If the award is at least $700 and is at least 20 % greater than the final offer, owner is entitled to reasonable fees of an attorney and not more than two expert witnesses.

Washington: If condemnor fails to make an offer, or judgment is 10 % more than the offer, but only if owner stipulates to an order of immediate possession upon condemnor's deposit of funds into court to pay the amount offered.

Wisconsin: If the judgment exceeds the offer by at least $700 and 15%.

B. Courts have the discretion, but are not required, to award to the condemnee its litigation expenses in eminent domain proceedings:

California: If the court finds that the offer of plaintiff was unreasonable and the demand of the defendant was reasonable in light of the evidence admitted and the compensation awarded, litigation expenses will be awarded.

Delaware: If award is closer to valuation evidence provided by defendant than plaintiff's offer. Court may reduce or deny amount if plaintiff's position was substantially justified or special circumstances make award unjust. Amount cannot exceed amount of compensation. If award is lower than plaintiff's offer, it may apply for an order for defendant to pay its litigation expenses.

Idaho: Expenses may be awarded; one factor is whether verdict exceeds a timely offer by 10 %.

Kansas: Court may allow fees if jury verdict is greater than the court appointed appraiser's award.

Louisiana: Attorney's fees may be awarded if award is greater than the condemnor's highest offer; costs (including appraiser's fees) shall, under Constitution, be paid by condemnor.

Nebraska: Court may in its discretion require payment of fees (including two experts) if (i) judgment is 15 % greater than the appraiser's award; (ii) condemnor appeals and amount of final judgment is at least 85 % of the award; or (iii) both appeal and the judgment is greater than the appraiser's award. If condemnee appeals and judgment is less, court may award costs (but not attorney's or expert's fees) to the condemnor.

New York: Litigation expenses may be awarded by court where deemed necessary to achieve just and adequate compensation where the award is substantially in excess of the condemnor's proof.

North Dakota: At discretion of the court, may award costs and/or attorney's fees.

C: Condemnees are allowed to recover fees of expert witnesses, including appraisers, but are not authorized to recover attorney's fees:

Colorado: Payment of expert witness fees, including appraiser fees, required.

Connecticut: Appraisal fee reimbursement is optional if award exceeds last offer.

Minnesota: Appraisal fee payment at the option of the court.

New Hampshire: Court has discretion on expert witness fees.

North Carolina: In the discretion of the court for appraiser and engineers where they testify as witnesses or produce materials introduced as evidence.

D. Litigation expenses are not allowed in litigation involving only general valuation disputes, but may be allowed in specific circumstances where the condemnor (i) is found to have acted in bad faith, (ii) abandons the condemnation proceeding without justification, (iii) is held not to be authorized to condemn the property, (iv) loses an inverse condemnation action, or (v) fails to pay an award within a specified period:

Alabama, Arizona, Arkansas, Georgia, Hawaii, Illinois, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Rhode Island, Tennessee, Texas, Utah, Vermont, West Virginia, Wyoming.

Effect of Award of Attorneys Fees

In Los Angeles v. Ortiz, 6 Cal. 3d 141, 98 Cal. Rptr. 454, 490 P.2d 1142 (1971), noted that in Florida following the decision by that state's supreme court that attorneys' fees are payable to condemnees in Dade County v. Brigham, 47 So. 2d 602 (Fla. 1950), the percentage of properties acquired by purchase was reduced from 90 percent before 1950 to 20 percent by 1957.

Geoffrey Dobson, former Chief Counsel to the Florida Department of Transportation, attempted in the mid-1970s to determine whether there is a correlation between the allowance of litigation costs and the ratio of properties acquired by purchase as opposed to those acquired by condemnation. A survey was made of states covering the period 1974-1976 and the data was compared to data obtained in 1971 and previous years.

He concluded that "[a] review of the various states fails to reflect any clear pattern between those that pay such fees and those that do not. At least some states paying fees have a more favorable record than other states which do not." Geoffrey Dobson, "Payment of Attorney Fees in Eminent Domain and Environmental Litigation" (Transportation Research Board, ALI/ABA 1979), p. 725-726.

Percentage of Acquisitions by Purchase, 1974-1976

States Paying Fees		States Not Paying Fees	
Oregon	88	Alabama	66
Nebraska	79	Connecticut	62
Iowa	90	Hawaii	40
Alaska	80	Minnesota	65
Florida	33*		

* Average of 1973-74 figure of 43%, 1974-75 figure of 47%, and 1975-76 figure over 15 months of 8%.

Part of the increase in the percentage of Florida's acquisitions that required litigation was attributed to the fact that Florida had enacted a statute recognizing business damages as a separate element of damages in condemnation proceedings. The practice of condemnors was to make no assessment of business damages, and to leave the matter up to the jury. Consequently, there was no attempt to negotiate a settlement with owners of certain business property.

A review of states that had recently adopted attorneys' fees provisions (California, Pennsylvania and Louisiana) indicates, though not conclusively, that the percentage of parcels acquired by negotiations will decline but not significantly upon the adoption of such a provision. Id. at 728-729.

MEMORANDUM

To: Carey Friedman
Maureen Stinger
From: Austin Wallace
Date: October 19, 2000
Re: Eminent Domain survey

Attached is a chart indicating whether or not state law requires a condemning authority to pay for the condemnee's appraisal in an eminent domain proceeding.

Here's a quick summary of the findings:

1. 37 states do not require the payment of condemnee's appraisal costs.
2. 3 states explicitly allow for payment of condemnee's appraisal costs (Arizona, Colorado and Pennsylvania) with few or no provisos.
3. 9 states allow for the payment under certain circumstances. Of these, Connecticut and North Carolina provide payment only by court order. Mississippi does so only if the condemnor seeks immediate possession of property. Florida allows payment if the parties agree to it, while Louisiana only allows for payment if the parties agree to a settlement without having to go to court. The remainder (Hawaii, Maryland, Montana and Nebraska) only allow for payment if the taking is judged to be not valid (i.e. it fails to meet the statutory requirements).

I have included copies of the Arizona, Colorado and Pennsylvania statutes for your reference.

	A	B	C
1	**STATE**	**PAYS FOR CONDEMNEES APPRAISAL?**	**NOTES**
2	Alabama	No	
3	Alaska	No	
4	Arkansas	No	
5	California	No	
6	Deleware	No	
7	Georgia	No	
8	Idaho	No	
9	Illinois	No	
10	Indiana	No	
11	Iowa	No	
12	Kansas	No	
13	Kentucky	No	
14	Maine	No	
15	Massachusetts	No	
16	Michigan	No	
17	Minnesota	No	
18	Missouri	No	
19	Nevada	No	
20	New Hampshire	No	
21	New Jersey	No	
22	New Mexico	No	appraisals done by 3 appraisers (with each party appt. one), third chosen by two previously appointed appraisers...each party pays for 3/2 appraiser
23	New York	No	
24	North Dakota	No	
25	Ohio	No	
26	Oklahoma	No	
27	Oregon	No	
28	Rhode Island	No	
29	South Carolina	No	
30	South Dakota	No	
31	Tennessee	No	
32	Texas	No	
33	Utah	No	
34	Vermont	No	
35	Washington	No	
36	West Virginia	No	
37	Wisconsin	No	
38	Wyoming	No	
39	Arizona	Yes	41-791.02(I) If only one appraisal is ordered by condemning authority, property owner may request and the authority shall provide a 2nd appraisal

	A	B	C
1	**STATE**	**PAYS FOR CONDEMNEES APPRAISAL?**	**NOTES**
40	Colorado	Yes	38-1-121
41	Connecticut	Yes	48-26 by court order
42	Florida	Yes	sec. 73.015(4)(c) provides that pay for appraisal can be accomplished by agreement between condemnee and condemnor.
43	Hawaii	Yes	sec. 516-23 only if property isn't acquired (not valid taking) or property isn't taken within 12 months
44	Louisiana	Yes	sec. 5111 only if settlement
45	Maryland	Yes	sec. 12 - 106 only if condemnee wins in condemnation hearing (I.e. not valid taking) and compensation is then fixed by court
46	Mississippi	Yes	sec. 11-2783 if immediate possession is sought. Ct. appoints appraiser, cost is taxed as cost of proceeding
47	Montana	Yes	70-30-207: commission of 3 appointed by court to asses. Condemnor & condemnee each nominate one, each of which agree on the nomination of the third. If condemnee wins, appraisal is paid for.
48	Nebraska	Yes	sec. 76-726 if condemnee wins in proceeding (ie. Not a valid taking) or condemnor gives up.
49	North Carolina	Yes	40A-8: payment at court's discretion
50	Pennsylvania	Yes	Unconsolidated Laws Title 26, Article IV, sec. 610...up to $500.

TESTIMONY OF BRYAN AND MARIAN CEBULA

OCTOBER 23, 2000

BEFORE
THE JOINT SUBCOMMITTEE ON EMINENT DOMAIN

Marian and Bryan Cebula
(703) 221-2330

I would like to thank the committee for inviting me to speak about a subject that I feel strongly is extremely important to the rights of the citizens of Virginia.

Let me begin by clarifying a misnomer perpetrated by Virginia Department of Transportation (VDOT) in their most recent correspondence with a few delegates and the Governor, I am not a traumatized woman seeking to remain in my home. I am a CPA, CGMF and a CFE. I work for the US GAO and have years of experience gathering pertinent facts, presenting evidence in non-emotional terms in confrontational situations. I have spent many hours reviewing the rules and regulations governing VDOT and VDOT's actions which are in complete disregard of rules promulgated to protect landowners.

My research and experience with VDOT convinces me, and I hope that it will convince you, that those with eminent domain power can, will, and DO mislead and coerce victims and generally disregard landowners rights to fair compensation and that their process of negotiation and appeal is ineffective, costly to taxpayers and intentionally fragmented for the purpose of rendering the landowner efforts useless to negotiate fair value for their property. Requiring mediation of eminent domain actions by truly impartial mediators and requiring the condemning agency to pay court costs is necessary to protect landowners rights.

VDOT disregards rules and regulations setting out policy on negotiation and eminent domain. On November 1, 1999, VDOT sent a representative, Gail Travaglini of the Terra Company, to our house with an offer. She returned on December 29, 1999 to discuss the offer, however, she could not address issues related to our home based business. Ms. Travaglini told us that the questions we were asking were out of her realm of her jurisdiction and that we should write a letter requesting a meeting with Mr. Marvin Brown of VDOT. She said that the letter should be received by VDOT by January 26, 2000. On January 4, we talked with Ms. Travaglini again to let her know that we could not accept the offer with out further clarification on the business issues. We sent a certified letter requesting a meeting, return receipt requested, which arrived at VDOT on January 26, 2000. The letter was signed for by Florine McCall of VDOT. We did not hear from VDOT in the following weeks. On March 6, we called to follow-up on the letter and were told that Mr. Brown had retired, that Mr. John Webb was out of the country and that no one was available to help us. We tried to call Mr. Brown again on March 10 and were directed to Ms. Melissa Corder who advised us that VDOT was not in receipt of the letter and that we should write another letter. We asked Ms. Corder if we could fax a copy of the letter to her. She said no, that we should write a second letter. While we were kept busy writing letters requesting a negotiation meeting, VDOT filed a certificate of take on February 7. In addition, even though Mr. Brown was not available to talk with us on March 10 regarding negotiation, he

was available to sign a letter dated the same day giving us a 90 day notice to vacate the house and provide misleading information indicating that VDOT was in the process of filing a certificate when in actuality the certificate of take had already been filed.

VDOT not only disregards the rules, they change the rules as they go to benefit themselves. My husband and his brother own 1 acre, zoned A-1 with two houses and two detached garages. His brother lived in one house and we live in the other. In the beginning, VDOT determined that the property was separate and that they would negotiate separately and in private with the two owners. Our house was appraised at $147,000 and an offer based on the appraisal was presented to us in November. In a meeting with VDOT held April 3, Mr. Webb stated that our proceeds were tenuous and dependent on future negotiations with my husband's brother. VDOT had changed the rules and now the separate private negotiations would be disregarded and division of proceeds for the entire acquisition would be based on negotiations between the two owners. VDOT did this because it was in their best interest. The other owner had challenged the allocation of purchase price and VDOT was faced with loosing $16,000. On June 15, 2000 Joy Layne, VDOT called me to advise me that the allocation would change because VDOT did not know that the property was owned by 2 people despite VDOT's requirement to do a full title search before appraisal and despite previous letters from VDOT listing both owners on the documents. Ms. Layne advised me that she would be sending me a letter clarifying the issues. On June 19,

2000 Ms. Layne wrote a letter that subsequently changed the allocation and reduced the appraisal to $131,000. VDOT policy does not allow them to acquire property until the price has been set by appraisal and the landowner has the opportunity to present additional information. VDOT ignored all these rules in the taking of our property and changed the rules to suit themselves.

In addition, VDOT is not allowed to acquire property until an offer has been made based on appraisal or available replacement housing and the displacee has an opportunity to complete negotiations and remaining time to purchase the replacement house. During negotiations, Ms. travaglini instructed us not to obligate ourselves to any relocation options until VDOT decided what our proceeds would be. Again, VDOT changed the rules as they went, putting the landowner at a disadvantage. Because of the errors, called "snafus" by VDOT, we were not aware of our proceeds from the acquisition of our home until about June 21, 2000 and we were not given the opportunity to negotiate with VDOT because they refuse to acknowledge receiving the letter or being advised by their representative that we were requesting a meeting. The replacement house was sold on November 18 and therefore not available to purchase. VDOT has not followed policy to present a new replacement house.

Once the property belonged to VDOT they proceeded to practice coercion in their attempts to get us out of the property. We are now in a position of requesting a 30 day extension to remain in

the house and being assessed a monthly rent of $1,150 for a house VDOT only appraised for $131,000. On May 8, 2000 we requested a 120 day extension to vacate the house. This was denied even though VDOT's date for soliciting bids for the project were projected to be in 2002. We are required to request 30 day extensions by the 15th of each month. If VDOT takes a week to respond, it would give us one week to move in the case of a denial. We were told by VDOT the they have the power to evict and could put our belongings in the street. These are powerful words used to elicit fear and stringent requirements given that 1) VDOT should not own the property because policy of negotiation was not followed; 2) the road has been completely repaved for continued use; 3) the estimated bid date is still a year in the future; and 4) actual construction could not possibly be started until well after 6 months after bids are received. This amounts to coercion, strictly forbidden by the rules, regulations and VDOT written policy. It becomes obvious why VDOT ignored our letter and their representatives assertions that we were requesting further negotiations to clarify issues related to the business and proceeded to take the property. VDOT advanced the time of condemnation to afford them the opportunity to exert undue pressure on us to settle.

Once VDOT had taken the property, we were placed in a position to go through the appeal process. The appeal process is so fragmented that no one could navigate to a successful outcome. VDOT has ignored a study of comparable housing in our area

documented and presented to them in April. They will not address this study or evidence that the comparable house selected by them 1) does not allow us to continue our business; 2) does not place us in the same ownership status; and 3) does not provide the same function. VDOT avoids the issues by fragmenting the process and employing a divide and conquer mentality. VDOT is requiring that we talk to three different people regarding relocation, acquisition and business. On top of that the responsible people keep changing. On April 3, we had a meeting with VDOT in which acquisition, relocation and business were discussed. AT the beginning of our "interim" hearing on August 21, 2000 VDOT disclosed that only relocation would be discussed and refused to discuss acquisition. We were told that acquisition had been turned over to VDOT's attorney, Strode Brent. We had been told this before with out the effect of gagging further discussion. However, on this occasion, VDOT decided that would be the case and Mr. Brown stated explicitly that he did not have the authority to discuss acquisition or business issues. Now after the meeting, I have received a letter from Mr. Charles Nottingham dated September 20, 2000 in which he states that only relocation will be discussed at out final hearing and directs us to discuss acquisition issues with Mr. Brown. Who has the ball. Does VDOT know? And why can't we get responsible individuals in the same room to discuss and settle the issues? Would anyone in this room be able to sell their home a piece at a time. Or would they want the whole picture before signing off to sell the roof? The entire price is exactly what the landowners need and deserve and

what VDOT is not willing to provide with their fragmented appeals process.

We have caught VDOT in so many irregularities and mis-representations that the process of appeal has become personnel to VDOT personal. This is understandable and human nature but the result is that it brings the process of negotiation and review to a halt. Mediation would bring a neutral party to the table to decide what is personal and what is appropriate compensation. In addition, if VDOT employees were faced with being accountable for justifying court cost associated with their mistakes, VDOT would be more careful to follow the rules and the require their employee to be accountable for their actions. In addition, if a landowner must seek legal recourse for just compensation, that compensation should not be eaten away by legal fees. Progress in Virginia should not be borne on the backs of landowners. Legal fees born by VDOT will improve the process and assure accountability.

In closing, I would like to caution you not to be mislead by the argument that so few landowners argue for fair compensation and therefore the compensation must be fair. It has taken me hundreds of hours in libraries and in front of a computer searching data bases and writing approximately 30 letters to get to where I am today. Few people have the time to devote to an undertaking of this proportion and still fewer have the resources to pay attorneys fees to gain fair value for their property.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, 23219-2000

CHARLES D. NOTTINGHAM
COMMISSIONER

September 20, 2000

Project 6234-076-111, RW-203
Prince William County
Property of Bryan D. Cebula and
Marian D. Cebula - Parcel 032
Final Relocation Appeal

Mr. Bryan D. Cebula
10528 Dumfries Road
Manassas, Virginia 20112

Dear Mr.Cebula:

This will acknowledge your September 7 letter advising that you are appealing the decision of Marvin N. Brown, Northern Virginia District Right of Way and Utilities Manager, concerning your relocation entitlements.

Our Director of Right of Way and Utilities, Stuart A.Waymack, is being asked to schedule a hearing before a review panel at a time and location convenient to all parties concerned. Mr. Waymack or his representative will be contacting you in the immediate future regarding this matter.

As a reminder, only relocation issues will be addressed at this appeal. Any concerns you have with the acquisition of your property should be directed to Mr. Marvin Brown.

Sincerely,

Charles D. Nottingham

CC: Mr. S. A. Waymack

Received by Melissa Corder
3-14-2000
Original signature

March 13, 2000

Marvin N. Brown
District Right of Way
Virginia Department of Transportation
3975 Fair Ridge Drive, Suite 228 South
Fairfax, Virginia 22033

Dear Mr. Brown,

I am writing to follow-up on my letter dated January 21, 2000 (registered letter # Z 281 142 107) which was delivered to your office on January 26, 2000. Per discussion with the Virginia Department of Transportation (VDOT) receptionist on duty March 6, 2000, you are retired. Per discussion with Melissa Corder on March 10, Mr. Webb, a requested participant to the meeting my letter was trying to set up, will be on vacation for a couple of weeks. Ms Corder directed me to write a second letter since you had not received the first letter which was signed for by Florine McCall of your office.

The purpose of my first letter (attached) was to request a meeting to facilitate the process of acquisition and mutual acceptance of acquisition terms. I did this on the advice of your contractor, Gail Travaglini, Terra Company, who was unable to address issues outside her realm of jurisdiction. Since these issues have never been addressed by VDOT, original negotiations have never been completed. I was surprised to get your registered letter dated March 10, 2000 informing me of your intentions to proceed by filing a Certificate under the eminent domain statutes and informing me that I must move out in ninety days. In addition, I was disappointed that I was not informed earlier of VDOT's intentions to send the Certificate letter while I was on the phone trying to clear up the matter of the "missing" letter with 3 of the 5 persons cc'ed on your letter who are involved in the project and certainly had knowledge of the action.

I again request a meeting with VDOT and additionally request Mr. Webb and any other persons with the authority to address all issues related to VDOT's acquisition of property. Ms. Travaglini suggested that I provide two dates. I am available April 3, and April 10. If these dates are not convenient to you or others who will attend the meeting, please call so that we can arrange a mutually agreeable date and time. I can be reached at (703) 221-2330. I am very interested in settling this matter and look forward to hearing from you to set up the meeting. Thank you for your consideration.

Sincerely,

Bryan D. Cebula

Bryan D. Cebula

Received by
Melissa Cordle
3-14-2000
Original Signature

January 21. 2000

Marvin N. Brown
District Right of Way
Virginia Department of Transportation
3975 Fair Ridge Drive
Fairfax, Virginia 22030

Dear Mr. Brown,

In response to a discussion with Gail Travaglini, Terra Company, I am writing to request a meeting with you. I would also like for Mr. John Webb to join us at the meeting.

Ms. Travaglini is the Virginia Department of Transportation (VDOT) contractor who has approached me with an offer from VDOT to acquire my home on Dumfries road. In conversations with Ms Travaglini, I have brought up issues that are outside the realm of Ms Travaglini's jurisdiction and feel that a meeting with you and Mr. Webb would facilitate the process of acquisition and mutual acceptance of acquisition terms.

Ms. Travaglini suggested that I provide two dates on which I could meet with you and Mr. Webb. I am available February 11, 2000 and February 23, 2000. If these dates are not convenient to you or Mr. Webb, please call so that we can arrange a mutually agreeable date. can be reached at (703) 221-2330.

Thank you in advance for you consideration.

Sincerely,

Bryan D. Cebula

Bryan D. Cebula

Received by Melissa Cordell
3-14-2000

original signature

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. MARVIN. N. BROWN
District Right of WAY
Virginia Department of Transportation
3975 FAIR Ridge Drive
FAIRFAX, VA 22030

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly): Norine McCall — B. Date of Delivery: 1-26-00

C. Signature: X Norine McCall — ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
Z 281 142 107

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 758

An Act to amend and reenact §§ 56-46.1 and 56-265.2:1 of the Code of Virginia, relating to State Corporation Commission approval of construction of certain facilities.

[H 2268]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-46.1 and 56-265.2:1 of the Code of Virginia are amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In such proceedings it shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 4 *3* (§ ~~15.1-446.1~~ *15.2-2223* et seq.) of Chapter ~~11~~ *22* of Title ~~15.1~~ *15.2*. Additionally, the Commission (i) may consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

B. No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least thirty days' advance notice by *(i)* publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, ~~and~~ *(ii)* written notice to the governing body of each such county and municipality, *and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality,* approve such line. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned and, in the case of any application which is filed with the Commission in the years 1991 and 1992, for approval of a line of 500 kilovolts or more, any portion of which is proposed for construction west of the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit power from new electric generation facilities constructed after January 9, 1991.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. In any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

If, prior to such approval, written requests therefor are received from twenty or more interested parties, the Commission shall hold at least one hearing in the area which would be affected by construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. For purposes of this section, "interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or

owning property in each such county or municipality and "environment" or "environmental" shall be deemed to include in meaning "historic," as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

For purposes of this section, "qualifying facilities" means a cogeneration or small power production facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

1. That the applicant will make available to new electric generation facilities constructed after January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the twelve months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the twelve months following completion of the transmission line.

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B of this section, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published *and mailed* in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give interested parties in the newly affected areas the same protection afforded interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § ~~15.1-456~~ *15.2-2232* and local zoning ordinances with respect to such transmission line.

§ 56-265.2:1. Approval by Commission required for construction of certain gas pipelines and related facilities; notice and hearing.

A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have been adopted pursuant to Article 4 *3* (§ ~~15.1-446.1~~ *15.2-2223* et seq.) of Chapter ~~11~~ *22* of Title ~~15.1~~ *15.2*.

B. The Commission shall not approve construction of any such pipeline unless the public utility has provided thirty days' advance public notice of the proposed pipeline by (i) publishing a notice in a newspaper or newspapers of general circulation in each of the counties and municipalities through which the pipeline is proposed to be constructed, (ii) providing written notice to the governing body of each such county and municipality, *(iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed pipeline, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality,* and (~~iii~~ *iv*) filing a copy of

any plans, specifications, or maps of the proposed pipeline with the Commission, which plans, specifications, or maps shall be made available for public inspection at the Commission's business office, during normal business hours. *Any notice required by this subsection shall include a written description of the proposed route the line is to follow, a map or sketch of the route, and information regarding the time period during which persons may request a public hearing under subsection C of this section.*

C. If, within ~~thirty~~ *forty-five* days after publication *and mailing* of ~~a notice as~~ *the notices* required in subsection B of this section, any interested party requests a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold ~~a~~ *such* hearing *or hearings* at such place as may be designated by the Commission. *If written requests therefor are received from twenty or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the pipeline, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.*

D. For the purposes of this section, "interested parties" means the governing bodies of any counties or municipalities through which the pipeline is to be constructed, and persons residing or owning property within one-half mile of such pipeline. For the purposes of this section, "environment" or "environmental" shall be deemed to include in meaning "historic."

E. If a significantly different route is determined more desirable after the giving of the notice required in subsection B of this section, the Commission shall cause notice of the new route or routes to be published *and mailed* in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section to the full extent necessary to give interested parties in the newly affected areas the same protection afforded interested parties affected by the route described in the original notice.

F. Approval of a pipeline pursuant to this section shall be deemed to satisfy and supersede the requirements of § 15.2-2232 and local zoning ordinances with respect to such pipeline and related facilities; however, the Commission shall not approve the construction of a natural gas compressor station in an area zoned for residential use unless the public utility provides certification from the local governing body that the natural gas compressor station is consistent with the zoning ordinance. The certification required by this subsection shall be deemed to have been waived unless the local governing body informs the Commission and the public utility of the natural gas compressor station's compliance or noncompliance within forty-five days of the public utility's written request.

VIRGINIA ACTS OF ASSEMBLY – 2001 SESSION

CHAPTER 538

An Act to amend and reenact § 15.2-1901 of the Code of Virginia, relating to condemnation authority of counties, cities, and towns.

[H 1825]

Approved March 23, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1901 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-1901. Condemnation authority.

A. In addition to the authority granted to localities pursuant to any applicable charter provision or other provision of law, whenever a locality is authorized to acquire real or personal property or property interests for a public use, it may do so by exercise of the power of eminent domain, except as provided in subsection ~~C.~~ *B.*

B. ~~A city or town may acquire property or property interests outside its boundaries by exercise of the power of eminent domain.~~

~~C.~~ A ~~county~~ *locality* may acquire property or property interests outside its boundaries by exercise of the power of eminent domain only if such authority is expressly conferred by general law or special act. *However, cities and towns shall have the right to acquire property outside their boundaries for the purposes set forth in § 15.2-2109 by exercise of the power of eminent domain. The exercise of such condemnation authority by a city or town shall not be construed to exempt the municipality from the provisions of subsection F of § 56-580.*

2001 SESSION

010007468

SENATE BILL NO. 1172

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact § 25-248, as it is in effect and as it shall become effective, of the Code of Virginia, relating to eminent domain; appraisal of real property.

Patrons—Marye, Colgan, Norment and Watkins; Delegates: Bryant, Ingram, Jackson, Marshall, Moran and Shuler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 25-248, as it is in effect and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 25-248. (Effective until July 1, 2002) General rules for conduct of acquisition.

Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

(a) An agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) 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.

(c) Before the initiation of negotiations for real property, the state agency concerned 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. 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, will 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. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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

(e) 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 ninety days' written notice from the agency concerned, of the date by which such move is required.

(f) If the 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.

(g) In no event shall the 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.

(h) If any interest in real property is to be acquired by exercise of the power of eminent domain, the agency concerned shall institute formal condemnation proceedings. No agency shall intentionally

make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) 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.

The provisions of this section requiring the agency to obtain or rely upon an appraisal shall not apply to the acquisition of real property by a *state agency,* public service corporation, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof, or two or more of the aforementioned if the official 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.

§ 25-248. (Effective July 1, 2002) General rules for conduct of acquisition.

Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in accordance with the following provisions:

(a) An agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) 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.

(c) Before the initiation of negotiations for real property, the state agency concerned 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. 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, will 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. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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

(e) 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 ninety days' written notice from the agency concerned, of the date by which such move is required.

(f) If the 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.

(g) In no event shall the 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.

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

(i) 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.

The provisions of this section requiring the agency to obtain or rely upon an appraisal shall not apply to the acquisition of real property by a *state agency,* public service corporation, municipal

corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof, or two or more of the aforementioned if the official 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.

Official Use By Clerks

Passed By The Senate		Passed By The House of Delegates	
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

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Clerk of the Senate Clerk of the House of Delegates

2001 SESSION

010044468

SENATE BILL NO. 1174

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact § 56-49 of the Code of Virginia, relating to exercise of eminent domain; construction of overhead electrical transmission lines.

Patron—Marye

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 56-49 the Code of Virginia is amended and reenacted as follows:

§ 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.

(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 (§ 25-46.1 et seq.) of Title 25 and shall be subject to the provisions of § 25-233. 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, 25-46.10 and 25-46.12, 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. *If the dwelling house of any person lies within 200 feet of the edge of any right-of-way for an overhead electric transmission line of 755 kilovolts or more, the corporation acquiring the right-of-way shall offer to purchase the dwelling house at its appraised value.* 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.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

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Clerk of the Senate Clerk of the House of Delegates

2001 SESSION

010670468

SENATE BILL NO. 1175

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend the Code of Virginia by adding a section numbered 25-46.19:01, relating to mandatory mediation in eminent domain proceedings.

Patrons—Marye, Colgan and Watkins; Delegates: Bryant, Ingram, Marshall, Moran and Shuler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 25-46.19:01, as follows:

§ 25-46.19:01. Mandatory mediation prior to trial on the issue of just compensation.

Notwithstanding the provisions of § 25-46.19, upon motion of any party made at least sixty days prior to trial, the petitioner and all parties shall attend mediation prior to the trial on the issue of determining just compensation. Upon receipt of such motion, the court shall refer the petitioner and the parties to a dispute resolution evaluation session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set forth in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. The dispute resolution evaluation session shall occur at least thirty days before, but no more than sixty days prior to, the trial date. If an agreement is not reached on the issue of just compensation through further mediation as agreed to by the parties prior to the return date set by the court pursuant to § 8.01-576.5, the court shall proceed according to the provisions of § 25-46.19. The fee of a mediator appointed pursuant to this section shall be determined by the court in accordance with § 8.01-576.7.

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Date: _____ Date: _____

Clerk of the Senate

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2001 SESSION

010009468

SENATE BILL NO. 1173

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend the Code of Virginia by adding a section numbered 25-249.1, relating to eminent domain; reimbursement of owner for cost of appraisal.

Patrons—Marye, Colgan and Watkins; Delegates: Bryant, Ingram, Jackson, Marshall, Moran and Shuler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 25-249.1, as follows:

§ 25-249.1. Reimbursement of owner for cost of appraisal; providing copy of appraisal to state agency.

Any state agency acquiring real property in connection with any program or project shall reimburse the owner for reasonable expenses the owner incurred in having the real property appraised, following the initiation of negotiations for acquisition of the real property pursuant to § 25-248, by an appraiser selected by the owner, provided that (i) reimbursement shall not be required if the appraisal is conducted by someone other than a certified general real estate appraiser licensed in accordance with Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54; (ii) reimbursement shall be not be required if the owner failed to provide the state agency with a copy of the appraisal report as soon as practicable after the owner's receipt thereof; (iii) reasonable expenses shall include the cost of the actual appraisal and any additional hourly or per diem fees if the appraiser is required to testify as to the valuation of the real property; and, (iv) the state agency shall not be required to reimburse the owner for the cost of more than one such appraisal.

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Official Use By Clerks

Passed By The Senate		Passed By The House of Delegates	
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Date: _____ Date: _____

Clerk of the Senate

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2001 SESSION

010006468

SENATE BILL NO. 1171

Offered January 10, 2001
Prefiled January 10, 2001

A BILL to amend the Code of Virginia by adding a section numbered 25-46.32:1, relating to eminent domain; payment of litigation expenses.

Patrons—Marye, Colgan and Norment; Delegates: Ingram, Marshall, Moran and Shuler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 25-46.32:1 as follows:

§ 25-46.32:1. Litigation expenses.

A. As used in this section, "litigation expenses" means the costs, disbursements, and expenses, including attorney fees, appraisal fees, and fees for expert testimony, necessary to prepare for anticipated, or to participate in, court proceedings incurred by the condemnee in connection with an action to determine the issue of just compensation for a taking or damaging of property under exercise of the power of eminent domain.

B. If the amount of just compensation, awarded to the condemnee by the judgment, exclusive of interest and costs, exceeds the amount specified in the highest written offer of settlement made by the condemnor by fifteen percent or more, the condemnee may apply for an order for the condemnor to pay the condemnee's reasonable litigation expenses actually incurred because of the court proceedings on the issue of just compensation, by serving on the condemnor and filing with the clerk of the court a verified application therefor within fifteen days after the court's confirmation of the jury's decision. The application shall show cause why the condemnee is entitled to an award of litigation expenses pursuant to this section; state the amount sought; and include an itemized statement under oath from an attorney, appraiser, or expert witness representing or appearing at trial on behalf of the condemnee stating the fee charged, the basis therefor, the actual time expended and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded.

C. In any proceeding to determine the amount of litigation expenses to be awarded, the court shall consider, among such other factors as the court deems relevant, the benefit provided to the condemnee by any of the professionals or the expert witness for whom the litigation expenses were incurred. Litigation expenses may be awarded to such of the attorneys, appraisers, or expert witnesses representing or appearing at trial on behalf of the condemnee, and in such amounts, if any, as the court deems in the best interests of justice. In making its determination of whether to make an award pursuant to this section, the court may consider (i) the extent that the condemnee, during the course of the proceeding, engaged in conduct that unduly and unreasonably protracted the final resolution of the action; (ii) whether the position of the condemnor was substantially justified; and (iii) whether special circumstances make an award of litigation expenses unjust. In no event shall the amount of the expenses awarded pursuant to this subsection exceed the amount awarded as just compensation.

D. Any litigation expenses awarded by the court pursuant to this subsection shall be paid within thirty days of the court's final order.