

**REPORT OF THE  
VIRGINIA CODE COMMISSION ON**

**The Revision of  
Title 25  
of the Code of Virginia**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 16**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2003**

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**TABLE OF CONTENTS**

**INTRODUCTORY LETTER FROM CODE COMMISSION**

**EXECUTIVE SUMMARY .....v**

**I. TITLE 25.1.....1**

**II. APPENDICES**

**A. COMPARATIVE TABLE: TITLE 25 TO TITLE 25.1..... A-1**

**B. COMPARATIVE TABLE: TITLE 25.1 TO TITLE 25..... A-4**

**C. PROVISIONS IN TITLES OTHER THAN TITLE 25 THAT  
AUTHORIZE ENTITIES TO ACQUIRE PROPERTY BY  
CONDEMNATION ..... A-7**

**D. CHAPTER RELOCATED FROM TITLE 25 TO ANOTHER TITLE..... A-9**

**E. SECTIONS IN OTHER TITLES AFFECTED BY TITLE 25 REVISION... A-13**

**F. PROPOSED CHANGES TO PECULIAR BENEFIT/GENERAL  
ENHANCEMENT MEASURE ..... A-63**

**G. GENERAL ACCOUNT INVESTMENT PORTFOLIO MONTHLY  
AVERAGE BALANCES AND RATES..... A-64**

**Report of the  
Virginia Code Commission on the  
Revision of Title 25**

**Richmond, Virginia  
January 2003**

**To: The Honorable Mark Warner, Governor of Virginia  
and  
The General Assembly of Virginia**

In accordance with § 30-152 of the Code of Virginia, the Virginia Code Commission, in 2000, undertook the revision of Title 25, Eminent Domain, of the Code of Virginia. Title 25 had not been revised since the adoption of the Code of Virginia of 1950. Since that time, three of the title's original six chapters have been repealed, and one chapter has been added. This code revision project also provides an opportunity to set out in the eminent domain title the provisions applicable to the "quick-take" procedure that several entities are authorized to use, and which currently are set out in Title 33.1 (Highways). At the same time, a chapter that deals primarily with the issuance of bonds to finance the acquisition of waterworks systems by localities and water authorities is relocated to Title 15.2.

An advisory panel of practitioners assisted staff in making recommendations to the Code Commission. The panel was composed of Paul B. Terpak of Blankingship & Keith in Fairfax; John J. Beall, Jr. of the Office of the Attorney General; Francis A. Cherry, Jr. of Randolph, Boyd, Cherry & Vaughan in Richmond; Steven L. Micas, Chesterfield County Attorney; Grayson P. Hanes of Red Smith in Falls Church; and Gary Fentress of the Office of the Attorney for the City of Virginia Beach. The Code Commission wishes to express its sincere gratitude to each of the members of the panel for their contributions to this project.

Proposed Title 25.1 consists of four chapters and is organized in a manner that will make the laws concerning public assistance and social services much more accessible to practitioners and the general public. Obsolete and duplicative provisions have been repealed. When appropriate, provisions have been merged in an effort to provide uniformity.

The Virginia Code Commission recommends that the General Assembly enact legislation during the 2003 Session to implement the revisions proposed in this report.

Respectfully submitted,

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## EXECUTIVE SUMMARY

### INTRODUCTION

In June 2002, the Virginia Code Commission undertook the revision of Title 25 of the Code of Virginia. Title 25 establishes procedures for exercising the power of eminent domain.

The Code Commission has prepared the proposed Title 25.1 for introduction at the 2003 Session of the General Assembly. Title 25 has not been revised since the adoption of the Code of Virginia in 1950. During the past 52 years, many changes have been made to the procedures applicable to the condemnation of property. The primary purpose of the Title 25 revision is to reorganize the laws in a logical manner and improve their structure and clarity. Changes seek to remove or update archaic references and conform the provisions to current statutory drafting protocols. Additionally, certain substantive changes are made, many of which incorporate current practices, resolve confusion caused by conflicting provisions or conform provisions to other statutes. These changes include:

- Providing that in all cases under proposed Chapter 2's general condemnation procedure, the body determining just compensation will apply the peculiar benefits test. Section 25-46.20 currently provides that if just compensation is determined by a commission, the peculiar benefits test will be applied; if it is determined by a jury, the general enhancement in value test will be applied; and if it is determined by the court, the Code is silent;
- Providing that in all cases under proposed Chapter 3's quick take procedure, the body determining just compensation will apply the general enhancement in value test. This is not a substantive change in most instances because the quick take procedure in Title 33.1 provides for use of the general enhancement in value test. However, in quick take condemnations by sanitary districts and any other entity that is not bound by the requirements of § 33.1-130, the change replaces the peculiar benefits test with the general enhancement in value test;
- Allowing the court to select more than, but not less than, two alternate commissioners. Currently, two alternates must be selected;
- Allowing the names of more than two alternate jurors to be drawn, provided that at least half of the alternate jurors drawn (rather than one of two) are freeholders.
- Requiring the court, rather than the petitioner's attorney, to determine whether an owner who has not filed an answer to the petition is unrepresented by counsel;
- Authorizing a person who owns an outdoor advertising structure for which the Commonwealth Transportation Commissioner has issued a permit to participate in the process of selecting condemnation commissioners or jurors;
- Requiring that interest be paid in cases under the general condemnation procedure at the general account's primary liquidity portfolio rate. Currently, the interest rate is fixed at 8 percent annually;
- Permitting any condemnor who is authorized to exercise the quick take procedure, rather than only local governments, to conduct pre-condemnation inspections of property to determine its suitability for a project, subject to notifying the owner;
- Requiring that a condemnor who files a certificate of deposit with the court pursuant to the quick take procedure in proposed Chapter 3 must deposit the funds represented by the

certificate within 30 days of the date the court enters an order in the case. Currently, the parallel provisions in Title 33.1 state that such payment is required to be made within 21 days;

- Requiring that interest payable under the quick take provisions of proposed Chapter 3 be determined by reference to the general account's primary liquidity portfolio rate. Currently, interest accrues under the parallel sections of Title 33.1 at the general account composite rate;
- Requiring the relocation assistance advisory program to include measures as may be necessary or appropriate to assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling. Currently, such measures need to assure that, within a reasonable period of time, prior to displacement a comparable replacement dwelling will be available. Implementation of this language, which conforms the section to the wording of the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, may result in a substantive change; and
- Requiring that interest payable under the eminent domain provisions applicable to condemnations by the Commonwealth Transportation Commissioner be determined by reference to the general account's primary liquidity portfolio rate. Currently, interest accrues at the general account composite rate.

These substantive changes are explained in further detail in the chapter-by-chapter summary below.

A table listing sections of Title 25 and the corresponding numbers assigned to them in Title 25.1 or another title of the Code is included as Appendix A. A table listing all of the sections of proposed Title 25.1 and the sections in Title 25 from whence they originated is included as Appendix B.

## **ORGANIZATION OF TITLE 25.1**

The proposed Title 25.1 is divided into four chapters. Proposed Chapter 1 contains general provisions applicable to the entire title, including title-wide definitions. Currently, Title 25 does not have a similar chapter. Aside from the authorization for state institutions to acquire property by condemnation in proposed § 25.1-101, statutory provisions authorizing the exercise of the power of eminent domain continue to be located in the areas of the Code applicable to the agency or other entity generally. Title 25.1 does not attempt to consolidate the many provisions in the Code of Virginia that authorize public or private entities to condemn property. A list of sections in other titles of the Code that authorize an entity to acquire property by condemnation is included as Appendix C. Other provisions relocated to proposed Chapter 1 include those that condition or restrict the authority to exercise the power of eminent domain.

Proposed Chapter 2 (Condemnation Procedures) sets out the general procedure by which condemners exercise the power of eminent domain. It is based on the provisions of current Chapter 1.1, which was enacted in 1962. In an attempt to improve the chapter's accessibility, it is composed of eight articles. Separate articles are established to address the procedural

requirements applicable depending on whether the issue of the just compensation is determined by a panel of commissioners or by a jury.

Proposed Chapter 3 (Transferring Defeasible Title by Certificate) represents a major organization change. It sets out a "quick take" procedure based on the provisions of §§ 33.1-119 through 33.1-132 of Title 33.1 (Highways). The quick take procedure is distinguished from the general procedure set out in current Chapter 1.1 of Title 25 (proposed Chapter 2 of Title 25.1) by the fact that a condemnor utilizing the quick take process acquires defeasible title to property upon filing a certificate and depositing funds or a certificate of deposit with the appropriate court. The General Assembly has made the quick take procedure, which was drafted specifically for use by the Commonwealth Transportation Commissioner (CTC), available for use by several other governmental bodies. Setting out the quick take procedure in a chapter in Title 25.1 is intended to eliminate confusion caused by requiring other entities to use a procedure in Title 33.1 that is tailored for use by the CTC. In addition, condemnors should be able to refer to a single title for statutes relating to condemnation procedure. The Code Commission declined to relocate the CTC's quick take procedure from Title 33.1 to Title 25.1. However, many of the clarifying and stylistic changes included in proposed Chapter 3 of Title 25.1 are reflected in amendments to the corresponding sections in Title 33.1.

Proposed Chapter 4 (Relocation Assistance and Real Property Acquisition Policies) sets out many of the provisions in current Chapter 6 of Title 25, which is Virginia's enactment of legislation conforming to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P. L. 91-464; 42 U.S.C. §§ 4601-4655 (the "Uniform Act"). The Uniform Act provides additional payments and imposes additional procedural requirements when a "state agency" undertakes a project with federal or state funds. Virginia's adoption of the Uniform Act has been a condition to its receipt of certain federal funds because the Uniform Act provides that federal agencies may not provide funds for state projects involving condemnation without first receiving satisfactory assurances that displaced persons will be given such relocation payments and assistance as are required to be paid by a federal agency. Subsequent to its enactment in 1972, Virginia's version of the Uniform Act has been amended to enhance the benefits afforded to affected condemnees and to expand the types of condemnors who are subject to its requirements. The federal Uniform Act has also been amended since current Chapter 4 of Title 25 was enacted in 1972, notably by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (P. L. 100-17). The proposed Chapter 4 includes numerous changes that conform Virginia's version more closely to the federal law. The Code Commission considered but declined the option of incorporating by reference the requirements of the federal Uniform Act as has been done in several other states, including the neighboring states of West Virginia and Kentucky.

Current Chapter 2, relating to the acquisition of waterworks systems, is relocated to Title 15.1 (Counties, Cities and Towns). The chapter's provisions address the issuance of public debt in connection with the acquisition of such facilities, and its provisions can be exercised only by localities and public water authorities. Consequently, the chapter is clearly more a matter pertaining to local governments than to general eminent domain procedures.

Current Chapter 5 (Miscellaneous) is not carried forward as part of Title 25.1 and will be repealed. The chapter presently has only five sections. Of these, two are repealed; one is relocated to Chapter 1; one is relocated to Chapter 2; and one (§ 25-232.01) is the basis for a new section in proposed Chapter 1 of Title 25.1 (§ 25.1-101) and two sections in Title 15.2 (§§ 15.2-1901.1 and 15.2-1907).

## **DRAFTING NOTES IN TITLE 25.1**

A drafting note that describes the change made, if any, follows each section in the title revision. If a drafting note states "no change," the section contains no changes other than renumbering and updated cross-references. If a drafting note states "technical changes only," the section contains a change in the text of the section, even if it is only a change in punctuation; however, such changes are not meant to effect a substantive change in the law. If a section contains a substantive change in the law, the drafting note describes the change.

## **SUBSTANTIVE CHANGES AND OTHER SELECTED TOPICS IN TITLE 25.1**

### Chapter 1. General Provisions

Chapter 1 is a new chapter compiling general provisions relating to eminent domain procedure. Section 25.1-100 is a title-wide definition section that gathers definitions that are currently scattered throughout Title 25. New definitions include "body determining just compensation," "locality" or "local government," and "state institution."

The definition of "owner," which appears in current §§ 25-46.3, 25-238, and 33.1-89, is rewritten to relocate those portions of the definition that are applicable only in proceedings instituted by the CTC under Title 25 or Title 33.1. These portions are relocated both to proposed § 25.1-209 and to the proposed subsection C of § 33.1-98 to ensure that notices required to be given to owners are also given to persons owning structures or improvements for which an outdoor advertising permit has been issued by the CTC. Proposed subsection G of §§ 25.1-227 provides that such persons are "owners" for purposes of selecting commissioners and jurors. Other changes clarify that an owner is a person owning an interest in property that is the subject of condemnation proceedings, and attempt to clarify what "under existing law" means.

The existing definition of "person" is replaced with one that is intended to encompass all types of entities. The current definition is identical to the definition of "person" that was in § 1-13.19 as it existed prior to its amendment by Chapter 36 of the 1988 Acts of Assembly, which act redefined "person" as including "any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity." Because the definition of "person" in § 1-13.19 does not specifically address whether the Commonwealth, counties, and other non-corporate governmental entities are within the scope of such definition, the Code Commission decided that the appropriate action would be to specifically include such entities within the scope of the term "person" for purposes of proposed Title 25.1.

Other changes in Chapter 1 include revamping § 25-232.01, currently located in Chapter 5 of Title 25. Subsection A of this section authorizes several entities, including the Commonwealth Transportation Board, the Breaks Interstate Parks Commission, any state institution, and



localities to acquire property by condemnation. The scope of proposed § 25.1-101 is limited to granting condemnation authority to state institutions because the other entities mentioned in the current version of the section, other than the Breaks Interstate Parks Commission, are granted such authority under other laws. To ensure that there is no inadvertent deletion of any authorizations in current § 25-232.01 for localities to condemn property beyond what is currently authorized by Chapter 19 (§ 15.2-1900 et seq.) of Title 15.2, its provisions are set out as proposed § 15.2-1901.1. The second paragraph of current subsection A of § 25-232.01 is not retained because there are no longer "local county road authorities" and the provision no longer reflects current road funding practice. Current subsection B, which pertains to acquiring land or rights-of-way necessary for water systems, has been relocated to proposed § 15.2-1907 in Chapter 19 of Title 15.2.

Proposed § 25.1-105 rewrites the portion of subsection (a) of § 25-46.6 that addresses the condemnation of cemeteries to provide that nothing in Title 25.1 shall be construed to authorize the condemnation of property of any cemetery or burial ground, or any part thereof, and that the authority to condemn any cemetery or burial ground shall be specifically as provided by law. This section adopts the Attorney General's interpretation of that portion of subsection (a) of § 25-46.6 in a June 16, 1983, opinion (1982-83 O.A.G. 59), in which he stated that relevant language ("Nothing in this title shall be construed to authorize the condemnation of property of any cemetery or burial ground, or any part thereof") expressly establishes that the Virginia General Condemnation Act may not be considered a source of legislative authority to condemn certain cemetery lands. The language "pointedly does not go so far as to preclude other statutory sources of such condemnation authority or otherwise to limit the valid exercise of the same by any entity which possesses the power pursuant to another legislative grant." The Attorney General noted that "had the legislature in enacting § 25-46.6(a) intended to unqualifiedly limit all present and future general conferrals of the eminent domain power and thereby prohibit condemnation of lands of existing cemeteries under all circumstances, it easily could have done so by the same or similar language as that used in subsection (b) of the same statute." Proposed § 25.1-105 also deletes the provision that made this measure applicable to cemeteries established prior to the date of the charter of the petitioner on grounds that no language in Title 25 either grants or limits the authority to condemn property of any cemetery or burial ground, regardless of whether it was established prior to the date of the charter of the petitioner. Consequently, the phrase "established prior to the date of the charter of the petitioner proposing to condemn" has no substantive effect, and is deleted from this proposed section in order to avoid an implication that this section affects the authority to condemn cemetery land based on the respective ages of the cemetery and the petitioner's charter. The statement that that the authority to condemn any cemetery or burial ground shall be specifically as provided by law clarifies that the authority to condemn such properties exists as provided elsewhere in general law.

## Chapter 2. Condemnation Procedures

Section 25-46.2:1 of existing Chapter 1.1 of Title 25 is not carried forward to Title 25.1. It was added in 1972 when the former Chapter 4 of Title 25 (Public Park Condemnation) was repealed. It was intended to ensure that the repeal of such chapter was not construed as prohibiting condemnations for public park purposes when the power to condemn land for public purposes is conferred elsewhere by state law. The condemnation of lands for public park purposes is

specifically authorized by § 10.1-201 (areas, properties, lands of scenic beauty, recreational utility, historical interest, biological significance or any other unusual features) and § 10.1-114 (historic, architectural and archaeological sites).

Section 25-46.3:1 of existing Chapter 1.1 states that the word "company" means the Commonwealth Transportation Board or "governing body" in cases where either may exercise powers under existing § 25-232.1. This section is deleted as unnecessary because the word "company" is not used in existing Chapter 1.1. Moreover, the Commonwealth Transportation Board is not authorized to enter upon property pursuant to existing § 25-232.1. If the section was intended to apply to public service corporations, it is unnecessary because § 56-49 permits such entities to enter upon property to conduct examinations and surveys, subject to permission from, or notice to, the landowner as provided in § 25-232.1.

Section 25-232.1, currently in Chapter 5 of Title 25, authorizes a county, city or town to enter upon property for the purpose of conducting test to determines its suitability for a project, prior to instituting condemnation proceedings. Proposed § 25.1-203 makes a substantive change by extending this authority to condemnors that are authorized to exercise the quick take procedure set forth in proposed Chapter 3. This change is recommended because some of the entities that are currently authorized to exercise the quick take procedure under Title 33.1 have been granted the authority to conduct pre-condemnation entries upon property pursuant to § 33.1-94. While some entities that now have quick-take authority will gain the authorization to inspect property before filing a petition, all such pre-petition entries will be subject to the notification requirements now in § 25-232.1, which are more protective of landowners than are the terms of § 33.1-94.

Proposed § 25.1-227 makes several substantive changes to the procedure for selecting commissioners currently set out in § 25-46.20. First, the court will be allowed to select more than, but not less than, two alternates. Currently, two alternates must be selected. Second, the court will determine whether an owner who has not filed an answer to the petition is unrepresented by counsel. Currently, the judge may subpoena five persons to act as commissioners if the petitioner's attorney certifies that he believes that the owner is not represented by counsel.

Proposed § 25.1-229 makes a substantive change to the procedure for selecting jurors that is currently set out in § 25-46.20. It allows more than two names of alternate jurors to be drawn. It also provides that at least half of the alternate jurors (rather than one of two) must be freeholders.

Language is included in §§ 25.1-227 and 25.1-229 that provides, for purposes of these sections, a person who owns an outdoor advertising structure for which the CTC has issued a permit is deemed an "owner." This change attempts to implement the intent of the legislation enacted in 2002 in an apparent attempt to overturn the holding of the Virginia Supreme Court in *Lamar Corp. v. Commonwealth Transportation Commissioner*, 262 Va. 375 (2001). In that case the Court held that a lessee who owns structures that are affixed to land is not entitled to participate in property valuation proceeding to the same extent as the owner of the land.

Section 25-46.20 currently provides that when commissioners determine just compensation, the amount of damages to residual property is offset by the peculiar benefits to such residue by reason of the condemnation. When just compensation is determined by jurors, the amount of damages to residual property is offset by the enhancement in value, if any, to such residue by reason of such taking and use by the petitioner. When the court determines just compensation, the Code is silent. A change in proposed § 25.1-230 provides that in all cases under proposed Chapter 2's general condemnation procedure, the body determining just compensation will apply the peculiar benefits test. Requiring condemnation juries, as well as commissioners, to use the "peculiar benefits" test is a substantive change. The Code Commission could discern no rational justification for applying a separate measure of damages depending on whether a panel of commissioners or a jury fixes compensation. Such change will likely have a fiscal impact because an instance where a taking produces a specific benefit to the residue of an owner's property is generally more rare than one that enhances the residues value generally.

The enhancement in value test will be applied in cases where the condemnor uses the quick take procedure in proposed Chapter 3 of Title 25.1. This outcome was adopted because the Code sections that authorize various entities to use the Commonwealth Transportation Commissioner's condemnation procedure under §§ 33.1-119 through 33.1-132 also authorize them to rely on the general enhancement in value test set out in § 33.1-130. The general enhancement in value test will continue to be applied in condemnation cases by the Commonwealth Transportation Commissioner under Title 33.1. The proposed changes regarding application of the peculiar benefits and general enhancement in value tests are set out in the chart attached as Appendix F.

A substantive change replaces the fixed eight percent interest rate with a requirement that interest be paid at the general account's primary liquidity portfolio rate. The adoption of the variable interest rate provision is made in order to make the interest rates the same regardless of whether the condemnation proceeding is brought under proposed Chapter 2 or Chapter 3 of Title 25.1.

### Chapter 3. Transferring Defeasible Title by Certificate

Chapter 3 sets out a "quick take" procedure that parallels the procedure currently located in §§ 33.1-119 through 33.1-132 of the Highways title. The General Assembly has made the quick take procedure, which was drafted specifically for use by the Commonwealth Transportation Commissioner, available for use by numerous governmental bodies, including (i) Board of Conservation and Recreation (§ 10.1-114), (ii) localities (§§ 15.2-1902, 15.2-1904, and 15.2-1905), (iii) school boards (§ 22.1-127), (iv) Jamestown-Yorktown Foundation (§ 23-288), (v) Frontier Culture Museum of Virginia (§ 23-298), (vi) Department of Conservation and Recreation (§ 28.2-628), (vii) Virginia Fuel Commission (§ 45.1-161.320), and (viii) sanitary districts (§ 21-118).

Section 25.1-310 contains a substantive change from the corresponding provision in Title 33.1 on which it is based. Section 33.1-124 currently states that funds represented by a certificate be deposited within 21 days of the date of an order. It is increased to 30 days in order to make the provision consistent with the prompt payment law, which provides (at § 2.2-4347) that if a payment date has not been established by contract, it shall be paid 30 days after receipt of a proper invoice by the state agency.

Sections 33.1-124 and 33.1-128 require the payment of interest based on the general account composite rate. In the sections of proposed Chapter 3 that parallel these sections, the interest rate to be used is the general account's primary liquidity portfolio rate. This substantive amendment is intended to avert practical problems with use of the composite rate as an index, including the accrual of interest at a negative rate and extreme monthly fluctuations. Appendix G lists a comparison of the rates in fiscal year 2002 that would have accrued under both the primary liquidity rate and the composite index rate.

#### Chapter 4. Relocation Assistance and Real Property Acquisition Policies

Proposed Chapter 4 is the Commonwealth's legislation conforming to the federal Uniform Act. As such, it establishes certain benefits that exceed what would otherwise be required under Virginia's Constitution and statutory law, in order to qualify for federal funding of certain projects. The chapter is problematic for several reasons. Several of its provisions are not binding on the condemnor. For example, current § 25-248 states that property acquisitions shall be conducted, to the greatest extent practicable, in accordance with certain rules of conduct. Moreover, § 25-235.1 (a) provides that the provisions of § 25-248 creates no rights or liabilities.

The current Chapter 6 of Title 25 does not conform to the federal Uniform Act because (i) amendments to the federal law have not been incorporated into Virginia's version of the Act, (ii) the General Assembly has added certain protections for property owners not included in the Uniform Act, such as the requirement that the owner be given a copy of the condemnor's appraisal, and (iii) the General Assembly has required virtually all condemnors to comply with its requirements, regardless of whether federal funding is involved. The discrepancies between Virginia's current Chapter 6 and the federal Uniform Act have not been so substantive to induce the Federal Highway Administration to reject Virginia's program.

The existing statement of purpose and declaration of policy in current § 25-237 are deleted on grounds that their retention is not consistent with the Code Commission's directive to eliminate references to policy and purpose.

Section 25.1-411 includes an amendment that conforms language in existing § 25-242 to the language of § 4625 of the federal act. The initial phrase in subdivision C 3 requires the relocation assistance advisory program to include measures as may be necessary or appropriate to "[a]ssure that, within a reasonable period of time, prior to displacement there will be available a comparable replacement dwelling." The language in proposed § 25.1-411 and the Uniform Act requires measures to "[a]ssure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling." Though the change is intended to rephrase the existing language in order to comport with the comparable provision of the federal act, implementation of the Uniform Act's language may result in a substantive change.

### Sections Relocated from Title 25

Existing Chapter 2 of Title 25 (Acquisition of Waterworks Systems) is relocated to Title 15.2, where it is set out, with technical amendments, as Chapter 19.1. The chapter primarily addresses the issuance of public debt in connection with the acquisition of such facilities. Only localities and public water authorities can exercise its provisions. Consequently, the chapter is clearly more a matter pertaining to local governments than to general eminent domain procedures.

As previously noted, the portion of existing § 25-232.01 that authorizes localities to condemn property is set out as proposed § 15.2-1901.1 in Chapter 19 of Title 15.2. Current subsection B, which pertains to acquiring land or rights-of-way necessary for water systems, has been relocated to proposed § 15.2-1907 in Chapter 19 of Title 15.2.

### Sections in Chapter 5 Deleted from Title 25

Section 25-232.2 is deleted on grounds that it is obsolete. This provision was enacted as a part of the package of legislation enacted in the first 1991 Special Session to provide incentives for the establishment of a United Airways facility in Loudoun County. The facility was never constructed, and the provision has never been used.

Section 25-234 in current Chapter 5 is deleted on the basis that it is anachronistic. It establishes an expedited quick take procedure under which a political subdivision or state agency that is authorized to enter upon and take possession of property prior to or after the institution of condemnation proceedings shall deposit with the court the fair value of the land to be taken and any damages before entering upon such land. Any person entitled thereto may be paid his share of 90 percent of the fund deposited. The procedure conflicts with certain provisions of the quick take procedure in Title 33.1 (and in proposed Chapter 3 of Title 25.1), and it was represented that condemnors do not avail themselves of the provisions of this section. This section was enacted in 1956, and the quick take procedure in Title 33.1, which has superseded this section in practice, was enacted in 1958.

### Amendments to Sections in Other Titles Affected by Revision of Title 25

The amendments to § 15.2-1902 are intended to clarify that the quick take procedure that localities may exercise is as set forth in proposed Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, which in turn is based on §§ 33.1-119 through 33.1-132. Proposed subdivision 4 of § 15.2-1902 lists the sections in Title 33.1 that are currently referenced in that section as being applicable to condemnations by localities. These enumerated sections in the Highways title will continue to be applicable to local government condemnations for highway purposes, but are not incorporated into proposed Chapter 3 of Title 25.1.

Section 15.2-2146 includes an amendment that codifies the holding in *Board of Supervisors v. Alexandria Water Co.*, 204 Va. 434 (1963), that a county may acquire properties of a water company without the permission of the State Corporation Commission.

Several sections in Article 7 of Chapter 1 of Title 33.1 are amended to incorporate the housekeeping and clarifying amendments that are included in the corresponding sections of proposed Chapter 3 of Title 25.1. The most important of these changes spell out the distinctions between certificates of take and certificates of deposit. A change to § 33.1-98 requires that notices of the filing of a condemnation petition by the CTC will be served on the owner of an outdoor advertising structure. This change is intended to address the intent of including such persons within the scope of the definition of "owner" that was enacted in the 2002 Session of the General Assembly.

Proposed amendments to §§ 33.1-124 and 33.1-128 will eliminate the requirement that interest be based on the general account composite rate. As with the changes to the corresponding sections of proposed Chapter 3, the interest rate to be used is the general account's primary liquidity portfolio rate. This substantive amendment is intended to avert practical problems with use of the composite rate as an index, including the accrual of interest at a negative rate and extreme monthly fluctuations. Appendix G lists a comparison of the rates in fiscal year 2002 that would have accrued under both the primary liquidity rate and the composite index.

Proposed changes to § 36-27 delete the reference to "company" as used in current Chapter 1.1 of Title 25 because that term is not used in either that chapter or in proposed Chapter 2 of Title 25.1. Existing language in that section stating that a housing authority may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain is deleted because it is unclear, and may be construed as being inconsistent with the first sentence of subsection C, which provides that proceedings shall be in accordance with the provisions of Chapter 1.1 of Title 25 (Chapter 2 of Title 25.1).

## Title 25.1

### TITLE 25.1 -- EMINENT DOMAIN

#### Chapter

1. General Provisions
2. Condemnation Procedures
  - Article 1. General Provisions.
  - Article 2. Condemnation Proceedings.
  - Article 3. Right of Entry After Filing Petition
  - Article 4. Determination of Just Compensation by Commissioners
  - Article 5. Determination of Just Compensation by Jurors
  - Article 6. Provisions Applicable to Determinations of Just Compensation
  - Article 7. Judgment and Post-judgment Procedure.
  - Article 8. Dismissal of Proceedings
3. Transferring Defeasible Title by Certificate
4. Relocation Assistance and Real Property Acquisition Policies
  - Article 1. General Provisions
  - Article 2. Relocation Assistance
  - Article 3. Real Property Acquisition Policies

#### TITLE 25.1. EMINENT DOMAIN.

**Drafting note: Chapter 1 is a new chapter compiling general provisions relating to eminent domain procedures. Section 25.1-100 is a title-wide definition section that gathers definitions, most of which are currently in Chapter 1.1 of Title 25. The other sections address either grants of the eminent domain power (§ 25.1-101) or conditions on the exercise of the power of eminent domain (§§ 25.1-102 through 25.1-106).**

#### CHAPTER 1. GENERAL PROVISIONS.

#### § 25.1-100. Definitions.

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

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

**Drafting note: New term. It is used in order to avoid listing "commissioners, a jury, or the court" in numerous instances throughout the title.**

"Court" means the court having jurisdiction ~~and the judge or judges thereof in vacation as provided in § 25.1-201.~~

**Drafting note: Currently in § 25-46.3. Archaic language is deleted.**

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

**Drafting note: Currently in § 25-46.3. Change is clarifying.**

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

**Drafting note: Currently in § 25-46.3.**

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

**Drafting note: Currently in § 25-46.3. The use of the term "structures" makes the definition consistent with existing provisions elsewhere in the title, such as § 25-232.01, and includes buildings. As land is real estate, the removal of that term is not intended to be a substantive change.**

"Law" means ~~any statute, general, special, private or local, of this Commonwealth, including, but not limited to, the Code of Virginia or any section thereof.~~

**Drafting note: Currently in § 25-46.3. Deleted as unnecessary.**

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

**Drafting note: This new definition is substantively identical to the definition of such term in § 15.2-102.**

"Owner" means any person ~~owning land, buildings, structures or improvements upon land where such~~ who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. ~~Owner~~ The term "owner" shall not include



trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. ~~In proceedings instituted by the Commonwealth Transportation Commissioner under this title or Title 33.1, owner also includes persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner pursuant to § 33.1-360. This definition of the term "owner" shall not alter affect in any way the valuation of such land, buildings, structures or improvements under existing law property.~~

**Drafting note: Currently in § 25-46.3. The amendments in the first sentence clarify that an owner is a person owning an interest in property that is the subject of condemnation proceedings. The third sentence is relocated both to proposed § 25.1-209 and to the proposed subsection C of § 33.1-98 to ensure that notices required to be given to owners are also given to persons owning structures or improvements for which an outdoor advertising permit has been issued by the Commonwealth Transportation Commissioner. Proposed subsection G of § 25.1-227 provides that such persons are "owners" for purposes of that section, which addresses the empanelment of commissioners. Amendments to the fourth sentence attempt to clarify what is meant by "under existing law."**

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

**Drafting note: Currently in § 25-46.3. The current language is identical to the definition of "person" in § 1-13.19 prior to its amendment by Chapter 36 of the 1988 Acts of Assembly, which act redefined "person" as including "any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity." Because the definition of "person" in § 1-13.19 does not specifically address whether the Commonwealth, counties, and other non-corporate governmental entities are within the scope of such definition, this definition is appropriate.**

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

**Drafting note:** The change in the first sentence removes the term "public or private entity" because the proposed definition of person is sufficiently broad to encompass such entities. The new second sentence addresses provisions that are applicable to condemnors even though a petition has not been filed. The terms petitioner and condemnor are used without much distinction; see, for example, § 25-46.5 (condemnor) and § 25-46.7 (petitioner).

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

**Drafting note:** Currently in § 25-46.3. The amendments acknowledge that the definition of "land" in this section includes real estate.

~~"State" or "Commonwealth" means the Commonwealth of Virginia.~~

**Drafting note:** Currently in § 25-46.3. The definition is deleted as unnecessary.

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

**Drafting note:** The term "state institution" is used in § 25.1-101 (current § 25-232.01 A) and § 25.1-103 (current § 25-46.6), but is not currently defined.

§ 25.1-101. Condemnation by localities and state institutions.

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

B. Condemnation proceedings authorized by subsection A shall be conducted under the provisions of Chapter ~~4.1 2~~ (§ ~~25-46.1~~ 25.1-200 et seq.) of this title insofar as applicable.

~~The location of all roads to be constructed with both state aid and county or district funds shall first be approved by the appropriate local county road authorities.~~

~~B. Upon compliance with the provisions of Chapter 1.1 of this title insofar as applicable, cities and towns may acquire by condemnation any lands or rights-of-way~~

~~necessary for providing watersheds or for laying water pipes, and counties may so acquire such lands or rights of way within their borders. Any interest acquired under this section by a county, city or town shall be subject to the provisions of § 25-233.~~

**Drafting note: Currently located at § 25-232.01. The definition of "land" in § 25.1-100 includes buildings and structures. The changes proposed to clause (c) of subsection A conform the language to similar provisions in § 25.1-204 (current § 25-46.5). The section's scope is limited to granting authority to acquire property by condemnation to state institutions because other entities mentioned in the current version of the section are given such authority under other laws: Condemnations by the Commonwealth Transportation Commissioner are authorized by §§ 33.1-89 and 33.1-229 et seq. A parallel provision retaining the condemnation authority of localities is set out as proposed § 15.2-1901.1. The second paragraph of current subsection A is deleted because there are no longer "local county road authorities" and no longer reflects current funding practice. Subsection B has been relocated to proposed § 15.2-1907 in Chapter 19 (§ 15.2-1900 et seq.) of Title 15.2.**

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

No A. Except as provided in §§ 15.2-1906 and 15.2-2146, no (i) corporation or (ii) electric authority created under the provisions of Chapter 54 (§ 15.2-5400 et seq.) of Title 15.2 shall file a petition to take by condemnation proceedings any property belonging to any other corporation possessing the power of eminent domain, unless, after notice to all parties in interest and an opportunity for a hearing, the State Corporation Commission shall certify that a public necessity or that an essential public convenience shall so require, and shall give its permission thereto; and in no event shall one corporation take by condemnation proceedings any property owned by and essential to the purposes of another corporation possessing the power of eminent domain. Notwithstanding anything herein to the contrary, a locality exercising the powers granted by § 15.2-2109 or § 15.2-2115 shall be subject to the provisions of this section to the same extent as are corporations, unless otherwise provided in § 15.2-1906 or § 15.2-2146.

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

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

**Drafting note:** Subsections A and B are currently located at § 25-233. The amendments in the first section of subsection A clarify that its requirements apply to all corporations, rather than only to any created under Chapter 54 of Title 15.2. The references to §§ 15.2-1906 and 15.2-2146 are intended to avoid ambiguities in interpretation. Section 15.2-1906 provides that the provisions of § 25-233 shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety. Notes to § 15.2-2146 cite Board of Supervisors v. Alexandria Water Co., 204 Va. 434, 132 S.E.2d 440 (1963) as holding that under this section the power of a county board to acquire by condemnation the properties of a water company is unconditional and that it may do so without the permission of the State Corporation Commission, under former § 15.1-340 (now § 15.2-1906). Section 15.2-2109 provides that in exercising its powers to acquire certain utilities, localities shall be subject to the provisions of § 25-233 as are other corporations. Subsection C is based on the second sentence of § 33.1-95, and addresses statutes in other titles that currently incorporate by reference the quick-take procedure set out in § 33.1-119 et seq. Currently, § 25-233 is made specifically applicable to condemnations under (i) § 5.2-34 (for airports), (ii) § 15.2-1904 (by localities), (iii) § 15.1-2109 (local utility facilities), (iv) § 15.2-4518 (transportation districts), (v) §§ 15.2-5114 and 15.2-5149 (water and waste authorities), (vi) §§ 15.2-5424 and 15.2-5425 (electric authorities); (vii) § 16.1-319 (regional juvenile facility commissions), (viii) § 21-248 (sanitation district commissions), (ix) § 22.1-126.1 (school property), (x) § 56-49 (public service corporations), (xi) § 56-347 (railroads), (xii) § 62.1-136 (Virginia Port Authority), and (xiii) § 62.1-150 (flood control projects). Pursuant to the provisions of the second sentence of § 33.1-95, which is incorporated in proposed subsection C, entities authorized to use the procedure set out in § 33.1-119 et seq. are subject to § 25-233. These entities include: (i) Board of Conservation and Recreation (§ 10.1-114), (ii) localities (§§ 15.2-1902, 15.2-1904, and 15.2-1905), (iii) school boards (§ 22.1-127), (iv) Jamestown-Yorktown Foundation (§ 23-288), (v) Frontier Culture Museum of Virginia (§ 23-298), (vi) Department of Conservation and Recreation (§ 28.2-628), (vii) Virginia Fuel Commission (§ 45.1-161.320), and (viii) sanitary districts (§ 21-118).

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

~~(a) Nothing in this chapter shall be so construed as to authorize the condemnation or acquisition, except by Without the consent of the General Assembly, ef no condemnor shall be authorized to condemn or acquire any lands belonging to, attached to the site, or used for the purposes of any university, college, or other seminary of learning owned and controlled by the Commonwealth, or any lands belonging to, attached to the site, or used for the purposes of any state hospital, or the institutions for the deaf and blind, or to authorize the condemnation institution.~~

**Drafting note:** Currently located at § 25-46.6(a). The changes clarify that the condemnation or acquisition of lands of a state institution requires the consent of the General Assembly.

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

~~(b) The No lands of any university, incorporated college, or other seminary of learning, not owned and controlled by the Commonwealth, private, nonprofit institution of higher education in the Commonwealth approved to confer degrees pursuant to Chapter 21.1 (§ 23-276.1 et seq.) of Title 23 that, at the time proceedings are instituted, (i) are located within 500 feet of any building erected and used for school purposes or (ii) surround the school buildings and are used as a campus, park, or athletic ground or field, shall be subject to condemnation for the purposes of public highways, except that no part of such lands shall be condemned which are within 500' of any building erected and used for school purposes at the time proceedings are instituted, nor through the land which surrounds the school buildings and is used at such time as a campus, park, or athletic ground or field in connection therewith.~~

**Drafting note: Currently located at § 25-46.6(b). The change deletes the reference to the archaic "seminary of learning" and clarifies what constitutes a private college or university.**

§ 25.1-105. Condemnation of cemeteries.

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

**Drafting note: Currently located within § 25-46.6(a). This section adopts the interpretation thereof by the Attorney General set forth in a June 16, 1983, opinion (1982-83 O.A.G. 59), in which he states that relevant language ("Nothing in this title shall be construed to authorize the condemnation of property of any cemetery or burial ground, or any part thereof") expressly establishes that the Virginia General Condemnation Act may not be considered a source of legislative authority to condemn certain cemetery lands. He added that the language "pointedly does not go so far as to preclude other statutory sources of such condemnation authority or otherwise to limit the valid exercise of the same by any entity which possesses the power pursuant to another legislative grant." The Attorney General then observed that "had the legislature in enacting § 25-46.6(a) intended to unqualifiedly limit all present and future general conferrals of the eminent domain power and thereby prohibit condemnation of lands of existing cemeteries under all circumstances, it easily could have done so by the same or similar language as that used in subsection (b) of the same statute." He concludes that while the language in § 25-46.6(a) expressly limits the General Condemnation Act as a substantive source of condemnatory power over cemetery lands it does not, by its terms, so limit any other statute. No language in Title 25 either grants or limits the authority to condemn property of any cemetery or burial ground, regardless of whether it was established prior to the date of the charter of the petitioner. Consequently, the phrase "established prior**

to the date of the charter of the petitioner proposing to condemn" has no substantive effect, and is deleted from this proposed section in order to avoid an implication that this section affects the authority to condemn cemetery land based on the respective ages of the cemetery and the petitioner's charter. The second sentence clarifies that the authority to condemn such properties exists as provided elsewhere in general law.

~~§ 25-46.2:2~~ 25.1-106. Limitation on power of eminent domain Condemnation of lands within agricultural and forestal districts.

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

**Drafting note: No change.**

~~CHAPTER 1.  
CONDEMNATION GENERALLY.~~

**Drafting note: Chapter 1 was repealed by chapter 426 of the Acts of Assembly of 1962.**

~~CHAPTER 1.1~~ 2.  
CONDEMNATION GENERALLY PROCEDURES.

**Drafting note: This chapter sets forth the procedure to be followed in the acquisition of property by condemnation, unless another condemnation procedure is authorized. Alternate condemnation procedures are provided for the Commonwealth Transportation Commissioner under Article 7 of Chapter 1 of Title 33.1, counties under § 15.2-1904, and entities currently authorized to use the procedures set forth in §§ 33.1-119 through 33.1-132 (see the note to § 25.1-102 for a list of such entities). Municipal charters may also provide for alternate condemnation procedures. Aside from the authorization for state institutions to acquire property by condemnation in proposed Chapter 1 of Title 25.1 (see § 25.1-101), statutory provisions authorizing the exercise of the power of eminent domain continue to be located in the areas of the Code applicable to the entity generally. Statutory authorizations for entities to acquire property by condemnation are not relocated to proposed Title 25.1. A list of sections in other titles of the Code that authorize condemnations is included as Appendix C.**

Article 1.  
General Provisions.

~~§ 25-46.1. Short title.~~

The short title of this chapter shall be the "Virginia General Condemnation Act."

**Drafting note: § 1-13.9:1 makes short title citations unnecessary.**

~~§ 25-46.2 25.1-200.~~ Chapter controls condemnation proceedings.

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

**Drafting note: No changes. Other statutes establishing condemnation procedures of limited applicability include § 15.2-1905 (special provisions for counties) and §§ 33.1-119 through 33.1-132 (the quick take procedure for the Commonwealth Transportation Commissioner). Proposed Chapter 3 of Title 25.1 sets out the quick-take procedure for those petitioners authorized to use it.**

~~§ 25-46.2:1. Condemnation of land for public park purposes.~~

The repeal of Chapter 4 (§ 25-120 et seq.) of Title 25, known as the "Public Park Condemnation Act," shall not be construed as prohibiting the exercise of the power of eminent domain to condemn land or lands within this Commonwealth for use as a public park, or for public park purposes, in any case wherein such power for such use or purposes has been, or hereafter shall be, conferred by the laws of this Commonwealth. Proceedings in the condemnation of land for such use or purposes shall be in accordance with the provisions of this chapter.

**Drafting note: This section was added in 1972 when the former Chapter 4 of Title 25 (Public Park Condemnation) was repealed. It was intended to ensure that the repeal of such chapter was not construed as prohibiting condemnations for public park purposes when the power to condemn land for public purposes is conferred elsewhere by state law. The condemnation of lands for public park purposes is specifically authorized by § 10.1-201 (areas, properties, lands of scenic beauty, recreational utility, historical interest, biological significance or any other unusual features) and § 10.1-114 (historic, architectural and archaeological sites).**

~~§ 25-46.2:2. Limitation on power of eminent domain.~~

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

**Drafting note: Language moved to proposed § 25.1-106.**

~~§ 25-46.3. Definitions.~~

**Drafting note:** Except as specifically noted below, the terms currently defined in this section are moved to proposed § 25.1-100.

~~As used in this chapter, unless otherwise clearly indicated herein or required by the context:~~

~~"Court" means the court having jurisdiction and the judge or judges thereof in vacation.~~

~~"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition, whichever occurs first.~~

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

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

~~"Law" means any statute, general, special, private or local, of this Commonwealth, including, but not limited to, the Code of Virginia or any section thereof.~~

**Drafting note:** This definition is deleted as unnecessary.

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

~~"Person" may extend and be applied to bodies politic and corporate as well as individuals.~~

~~"Petitioner" means any person or public or private entity possessing the power to exercise the right of eminent domain seeking to exercise such power under this chapter.~~

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



~~"State" or "Commonwealth" means the Commonwealth of Virginia.~~

**Drafting note: This definition is deleted as unnecessary.**

~~§ 25-46.3:1. Meaning of "company."~~

~~The word "company" as used in this chapter shall mean the Commonwealth Transportation Board or "governing body" in cases where the Board or governing body may exercise the right of eminent domain under the provisions of § 25-232.1.~~

**Drafting note: This section is deleted as unnecessary because the word "company" is not used in existing Chapter 1.1 of Title 25. In addition, (i) the Commonwealth Transportation Board is not authorized to enter upon property pursuant to existing § 25-232.1, and (ii) public service corporations are permitted to enter upon property to conduct examinations and surveys, subject to permission from, or notice to, the landowner as provided in § 25-232.1, under § 56-49.**

~~§ 25-46.4 25.1-201. Jurisdiction of condemnation proceedings.~~

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

**Drafting note: The new phrase at the end of the section addresses the current provision local charters may give any "other city court of record" jurisdiction of condemnation proceedings.**

~~§ 25-46.4:1 25.1-202. Proceedings to be on law side of court Nature of proceedings.~~

~~Condemnation proceedings shall be on the law side of the court in which the petition is filed conducted as actions at law.~~

**Drafting note: The changes remove archaic language.**

~~§ 25-232.4 25.1-203. Authority of counties, cities and towns to enter upon certain condemners to inspect property subject to eminent domain; reimbursement for damages; notice prior to entry.~~

~~A. In connection with the actual or proposed acquisition, construction, improvement, enlargement, extension and equipment of any project wherein the power of eminent domain may be exercised, any county, city or town locality or any petitioner exercising the procedure set forth in Chapter 3 (§ 25.1-300 et seq.) of this title, acting through its duly authorized officers, agents or employees, is hereby authorized to may enter upon any land, water or premises located within or without said county, city or~~

~~town, for the purpose of making surveys, borings, soundings, appraisals or examinations for the purpose of determining the suitability of such property for the project involved, and such entry shall not be deemed a trespass, but the county, city or town shall make reimbursement for any actual damages resulting from such entry; provided, however, that unless property without the written permission shall have been previously obtained, no such county, city or town shall enter upon any such land, water or premises until it has, by certified mail, requested permission from the of its owner of such land, water or premises, to effect such entry, fifteen days prior to the date such entry is proposed to be made. Such date shall be set forth in the request for permission for entry. In the event written permission from such owner is not received prior to the time such entry is proposed, such county, city or town shall, by certified mail, notify such owner that it proposes to enter such land, water or premises on a date not less than fifteen days from the date such notice is mailed if (i) the petitioner has requested the owner's permission to inspect the property as provided in subsection B, (ii) the owner's written permission is not received prior to the date entry is proposed, and (iii) the petitioner has given the owner notice of intent to enter as provided in subsection C.~~

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

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

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

**Drafting note: The pre-petition right of entry currently is provided only for localities. The extension of this authority to condemnors authorized to exercise the procedure set forth in proposed Chapter 3 is a substantive change. It is recommended because Chapter 3 does not include a grant of the same authority for such entry as is currently provided under § 33.1-94. Other changes are intended to improve clarity.**

~~§ 25-46.5 25.1-204. Effort to purchase required; prerequisite to effort to purchase or filing certificate.~~

~~A. No A condemnor shall not institute proceedings shall be taken to condemn property until a bona fide but ineffectual effort has been made to acquire purchase from the owner by purchase the property sought to be condemned, except where has been made. However, such effort shall not be required if the consent cannot be obtained because of the incapacity of one or more of the owners (i) is a person under a disability or because one or more of such owners is otherwise unable to convey legal title to such~~

property or, (ii) is unknown or (iii) cannot with reasonable diligence be found within this Commonwealth.

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

C. If the condemnor obtains an appraisal of the property pursuant to the provisions of § 25.1-417, such written statement shall include a copy of the appraisal of the property prepared pursuant to § 25-248 upon which such offer is based.

~~€~~ D. Notwithstanding any provision of law to the contrary, a condemnor, prior to making an offer to acquire a fee simple interest in property by purchase or filing a certificate of take or certificate of deposit pursuant to ~~§ 33.1-120 or § 33.1-121~~ Chapter 3 (§ 25.1-300 et seq.) of this title or § 33.1-120, shall conduct or cause to be conducted an examination of title to the property in order to ascertain the identity of the each owner ~~or owners~~ of such property and to determine the nature and extent of such ~~owners'~~ owner's interests in the property.

**Drafting note: In subsection C, amendments reconcile the issue of whether a condemnor must give a copy of an appraisal to the owner when the condemnor obtains an appraisal when such was not required. Other changes are technical and clarifying.**

~~§ 25-46.6. Lands of certain state institutions; cemeteries; lands of universities, colleges, etc., not owned by Commonwealth.~~

~~(a) Nothing in this chapter shall be so construed as to authorize the condemnation or acquisition, except by the consent of the General Assembly, of any lands belonging to, attached to the site, or used for the purposes of any university, college, or other seminary of learning owned and controlled by the Commonwealth, or any lands belonging to, attached to the site, or used for the purposes of any state hospital, or the institutions for the deaf and blind, or to authorize the condemnation of any cemetery or burial ground, or any part thereof, established prior to the date of the charter of the petitioner proposing to condemn.~~

~~(b) The lands of any university, incorporated college, or other seminary of learning, not owned and controlled by the Commonwealth, shall be subject to condemnation for the purposes of public highways, except that no part of such lands shall be condemned which are within 500' of any building erected and used for school purposes at the time proceedings are instituted, nor through the land which surrounds the school buildings and is used at such time as a campus, park, or athletic ground or field in connection therewith.~~

**Drafting note: This section has been relocated to §§ 25.1-103, 25.1-104, and 25.1-105.**

Article 2.  
Condemnation Proceedings.

§ 25.1-205. Commencement of proceedings.

A. Proceedings for condemnation shall be initiated by filing a petition complying with the requirements of § 25.1-206 in the court having jurisdiction under § 25.1-201.

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

**Drafting note: Subsection A is the first sentence, with technical modifications, of the first paragraph of § 25-46.9. The first sentence of subsection B is relocated from subdivision (b)(1) of current § 25-46.7. The second sentence of subsection B is intended to resolve a potential conflict between this provision and § 25-233 (proposed § 25.1-102), which prohibits a corporation in certain instances from filing a condemnation petition unless it has obtained a certificate from the State Corporation Commission.**

§ 25-46.7 25.1-206. Petition for condemnation.

The petition for condemnation shall contain:

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

(b)2. Short and plain statements of the following:

~~1 a.~~ The authority for the taking; ~~provided, however, no public utility shall be required to obtain, as a prerequisite to its filing of its petition for the condemnation of property necessary for ordinary extensions or improvements of its facilities within the territory in which it is lawfully authorized to operate, for use in public utility service, a certificate from the State Corporation Commission under the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 et seq.) of Title 56;~~

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

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

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

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

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

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

8 h. Compliance with the provisions of § ~~25-46.5~~ 25.1-204 and the manner of such compliance; and

9 i. Where applicable, compliance with the provisions of § ~~25-233~~ 25.1-102 and the manner of such compliance.

~~(e) 3.~~ A prayer asking for judgment (i) that the property or the estate, interest or rights therein be condemned and the title thereto vested in the petitioner, ~~and (ii) that just compensation for the property to be taken and the damages, if any, as a result of the taking and use by the petitioner, beyond the peculiar benefits, if any, by reason of such taking and use by the petitioner, be ascertained as provided in § 25.1-230 and awarded, and (iii) for such other relief as may be lawful and proper.~~

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

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

~~(f) There may be joined in the same petition one or more separate pieces, tracts, parcels or lots of land, whether in the same or different ownership and whether or not sought for the same use; provided, however, the court, on its own motion or on motion~~

~~of any party in furtherance of convenience or to avoid prejudice, may order a severance and separate trial of any claim or claims or of any issue or issues.~~

(g) 5. The petitioner shall furnish the clerk ~~one~~ 1 copy of the petition and all exhibits thereto and such additional copies of the petition as may reasonably be needed by the clerk or any defendant.

**Drafting note: The stricken portion of current subdivision (b)(1) is relocated to § 25.1-205 B. The change to current subdivision (c) reflects the change in § 25.1-230 that recognizes that the general enhancement in value test may be used in certain cases. Subdivision (d) is relocated to § 25.1-207, and subdivision (f) is relocated to § 25.1-208. Other changes are technical.**

~~§ 25-46.8. Right of entry upon property.~~

~~Unless otherwise provided by law, any petitioner may enter upon the property to be condemned at any time after the filing of its petition for condemnation and prior to the determination and deposit of the award of just compensation in the manner provided in this chapter, for the purpose of constructing its works or improvements thereon in the manner proposed by the petitioner if, upon the petitioner's application to do so, the court, after twenty one days' notice thereof has been served on the owners mutatis mutandis in the same manner as is provided in §§ 25-46.9, 25-46.10, 25-46.11 and 25-46.12, and after a hearing thereon finds (1) that a public necessity or an essential public convenience requires such entry for such purposes, that an emergency exists justifying such entry, before the time when just compensation can be determined and the amount so determined paid into court, and (2) that the interests of the owners of such property will be adequately protected by the payment into court for the benefit of the owners of the amount of the offer made in accordance with § 25-46.5 or, if no offer is required by that section, by the payment into the court the amount of a good faith estimate of the value of the property, and, in the discretion of the court, the giving of a surety bond in an amount and with such surety as the court may determine. Upon such payment and the giving of such bond, if any is required, with surety in the office of the clerk or with the court, conditioned as required by law and to the effect that the petitioner and its surety or sureties are bound to the owners of the property to be taken or damaged to secure to each of them payment of just compensation therefor as finally determined in the condemnation proceedings, the petitioner shall have the right to enter and construct its works or improvements upon or through the property as described in its petition. At any time after such payment into court, a party whose property or interest therein is to be taken or damaged may apply to the court for the withdrawal of his share thereof in the manner provided in § 25-46.30. The clerk shall deposit the funds so paid to the credit of the court in an account of a type which bears interest.~~

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

~~If the petitioner enters upon the property under this section and does any work thereon, or causes any injury or damage to such property, it shall not thereafter be entitled, without the consent of the owner, to abandon the proceedings for the condemnation thereof, but shall conduct such proceedings with reasonable dispatch to final judgment and the petitioner shall pay to the owner of the property or into court the amount of just compensation as determined in the condemnation proceedings.~~

**Drafting note: Language is relocated to §§ 25.1-223, 25.1-224, and 25.1-225.**

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

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

**Drafting note: This provision is relocated from subsection (d) of § 25-46.7.**

§ 25.1-208. Joinder of separate parcels.

The same petition may join 1 or more separate pieces, tracts, parcels or lots of land, whether in the same or different ownership and whether or not sought for the same use; however, the court, on its own motion or on motion of any party in furtherance of convenience or to avoid prejudice, may order a severance and separate trial of any claim or claims or of any issue or issues.

**Drafting note: This provision is relocated from subsection (f) of § 25-46.7.**

~~§ 25-46.9~~ § 25.1-209. Commencement of proceedings; notice; filing of answer and grounds of defense; election for the appointment of a commission or empanelment of a jury. Notice of filing of petition.

~~Proceedings for condemnation shall be initiated by filing the petition referred to in § 25-46.7 in the court, or in the clerk's office thereof, having jurisdiction under § 25-46.4.~~  
A. Upon the filing of such a petition for condemnation, the petitioner shall give the owners ~~twenty-one~~ 21 days' notice of the filing of such petition and of its intention to apply to the court to ascertain just compensation for the property to be taken or affected as a result of the taking and use by the petitioner of the estate, ~~interest or rights~~ property to be so acquired.

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

C. The notice may also include notice of the petitioner's application for the right of entry as provided in ~~§ 25-46.8~~ 25.1-223, whenever if such application is included in the petition as authorized by § 25.1-207.

~~The notice, along with a copy of the petition, shall be served on the owners, and~~

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

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

**Drafting note: The first sentence of the current section is relocated to § 25.1-205. Subsection D is currently the last paragraph of § 25-46.9. Subsection E incorporates provisions that were included in the definition of "owner" in Chapter 878 of the 2002 Acts of Assembly.**

~~§ 25-46.10~~ 25.1-210. Service of notice by order of publication; mailing copy of notice by publication.

A. Upon the filing of an affidavit by a duly authorized officer, agent or attorney for the petitioner stating that he believes any owner cannot be personally served because after diligent inquiry within the Commonwealth such owner's place of residence cannot be ascertained or, if ascertained, that it is not within this Commonwealth, service of the notice may be made on such owner by an order of publication. Such order shall be published in a newspaper published in the county or city where the property or major portion thereof is located, or if there is no such newspaper then in a newspaper having a general circulation in such city or county, once a week for not less than ~~two~~ 2 successive calendar weeks and shall be posted on the front door of the courthouse within ~~ten~~ 10 days after the entry of the order of publication. Unknown owners who may have an interest in the property may be served by order of publication in like manner addressed to "Unknown Owners." The clerk shall mail a copy of the notice by publication to any owner who cannot be personally served but whose place of residence is then known.

B. The provisions of this section and ~~§ 25-46.11~~ 25.1-211 shall apply only to orders of publication in condemnation actions.

**Drafting note: Technical changes only.**



§ ~~25-46-11~~ 25.1-211. Form of notice by publication.

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

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

Name of petitioner

v. At Law . . . . .

Name of one or more defendants, et al.,

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

(city or county), Virginia.

To Whom It May Concern:

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

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

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

And it appearing by affidavit filed according to law that the following owners are not residents of the Commonwealth of Virginia, or their names and addresses are not known and that diligence has been used by and on behalf of the petitioner to ascertain such names and addresses without effect: (here set out the names of such owners or classes of owners and addresses where known), it is

Ordered that the aforesaid owners do appear within ten (10) days after due publication of this order in the clerk's office of the (here insert the name of the court) and do what is necessary to protect their interests; and it is further Ordered that if any of the above named owners desires to assert any objection or defense to the taking or damaging of his property or to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners or the empanelment of a jury he shall file his answer and grounds of defense designating the property in which he claims to be interested,

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

An extract, Teste:

.....Clerk

(Here state name and address of counsel for petitioner)

B. Such notice by publication may also include notice of the petitioner's application for the right of entry as provided in § ~~25-46-8~~ 25.1-223, whenever such application is included in the petition.

**Drafting note: Technical changes only.**

§ ~~25-46-12~~ 25.1-212. Personal service of notice on nonresident owner.

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

**Drafting note: Technical changes only.**

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

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

**Drafting note: No changes; this section is currently included in § 25-46.9, except for the initial phrase of the first sentence, which has been moved to subsection B of § 25.1-209.**

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

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

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

~~A copy of the notice required to be served on the owners by this section also shall be served in the same manner upon any tenant entitled to participate in the proceeding pursuant to § 25-46.21:1, whose lease has been duly recorded or whose tenancy is actually known to the petitioner. However, a tenant so notified may participate in the proceeding only as permitted by § 25-46.21:1.~~

**Drafting note: This section is currently part of § 25-46.9. The reference to pleas in abatement is deleted as archaic. The change in subsection B addresses situations where an answer is filed but does not include an election as to who will determine the issue of just compensation. The reference to § 25.1-220 is intended to make this section consistent with the provision of that section that implies that if an answer is not filed, the petitioner may elect to have the issue of just compensation determined by the court. The stricken last paragraph is relocated to subsection D of § 25.1-209.**

~~§ 25-46.13~~ 25.1-215. No notice required where owner is ~~infant, incapacitated or a convict~~ a person under a disability; appointment of guardian ad litem.

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

**Drafting note: The changes adopt language used in § 8.01-9.**

~~§ 25-46.14~~ 25.1-216. Amendments to pleadings.

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

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

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

**Drafting note: Technical changes only.**

§ ~~25-46.15~~ 25.1-217. Substitution of party where owner becomes incapable of defending.

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

B. If the successor does not make or consent to the motion, the party making the motion shall file it ~~in the clerk's office with the court~~ and the procedure thereon and the service of notice of such motion, if any, shall be in whatever manner the court may require as reasonable and proper in the circumstances involved but in no event shall the period of time required for any notice be greater than that which is prescribed for the notice in § ~~25-46.9~~ 25.1-209 or § ~~25-46.10~~ 25.1-210.

**Drafting note: Technical changes only.**

§ ~~25-46.16~~ 25.1-218. Intervention in proceedings.

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

**Drafting note: Technical changes only.**

§ ~~25-46.17~~ 25.1-219. Pretrial settlement conference; determination of preliminary issues; fixing date of trial on issue of just compensation.

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

B. At the hearing upon the petition and application for either the appointment of commissioners or the empanelment of a jury made in accordance with ~~§ 25-46-9~~ 25.1-209, if no answer and grounds of defense has been filed objecting to the jurisdiction of the court to hear the case and to proceed with the appointment of commissioners or the empanelment of a jury, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined by a commission, a jury or by the court, as provided in ~~§ 25-46-19~~ 25.1-220. If any answer and grounds of defense has been filed objecting to the jurisdiction of the court, the court shall determine such issues or other matters in controversy, excepting the issue of just compensation or matters relating to the ownership of any land or other property or the interests of any party in such land or other property, ~~and if.~~

C. If the court determines all such issues or other matters involving the jurisdiction of the court in favor of the petitioner, the court shall enter an order fixing a date for the trial of the issue of just compensation and stating that such issue shall be determined by either a commission, by a jury or by the court, as provided in ~~§ 25-46-19~~ 25.1-220.

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

~~D~~ E. At such hearing the court ~~may~~ shall also determine whether the petitioner shall ~~have the~~ be granted a right of entry as provided in ~~§ 25-46-8~~ 25.1-223.

**Drafting note: In subsection A, the requirement that any pretrial settlement conference "be held not sooner than thirty days prior to trial" is clarified to avoid any ambiguity. The subsection is also amended to clarify that the unavailability of a neutral third party does not obviate the requirement for a settlement conference.**

~~§ 25-46.19~~ 25.1-220. How Who determines issue of just compensation ~~to be~~ determined.

The issue of just compensation shall be determined by a commission or a jury, upon a timely election made by an owner as provided in § ~~25-46.9~~ 25.1-213. ~~The commissioners or jurors shall be selected in the manner hereinafter provided in § 25-46.20.~~ However, by agreement of the petitioner and all the parties who are sui juris that have appeared or responded, or, if the ~~defendant~~ no owner upon proper notice ~~fails to appear~~ has appeared or ~~respond~~ responded, or has filed an answer and grounds of defense that fails to elect to have the determination of just compensation made by either commissioners or a jury, then, upon motion of the petitioner, the issue of just compensation may be determined by the court.

**Drafting note: This section is currently set out at § 25-46.19; the sentence stating that "commissioners or jurors shall be selected in the manner hereinafter provided in § 25-46.20" is deleted as unnecessary. Proposed amendments to the second sentence attempt to address cases where there are multiple parties defendant, and where an answer is filed but no election is made.**

~~§ 25-46.17.1~~ 25.1-221. Consolidation of petitions for trial.

Unless any party demands a separate hearing on the issue of just compensation, the court may consolidate for trial ~~two~~ 2 or more petitions.

**Drafting note: No change.**

~~§ 25-46.18~~ 25.1-222. Proceedings not to be delayed by claims with respect to ownership of property.

No delay in the proceeding for the determination of just compensation shall be occasioned by the claims of the parties with respect to the ownership of any land or other property or to the interest therein of the respective parties, ~~but in.~~ In such cases the court shall require the retention of the deposit of the award for the whole property, or the part in dispute, until the rights of the respective parties have been determined in the manner hereinafter provided in § ~~25-46.28~~ 25.1-241; provided, however, the court shall permit any such claimants to intervene as parties to the proceedings as provided in § ~~25-46.16~~ 25.1-218.

**Drafting note: Technical changes only.**

Article 3.  
Right of Entry After Filing Petition.

~~§ 25-46.8~~ 25.1-223. Right of ~~entry to enter~~ upon property.

A. Unless otherwise provided by law, any petitioner may enter upon the property to be condemned at any time after the filing of its petition for condemnation ~~and prior to~~

~~the determination and deposit of the award of just compensation in the manner provided in this chapter, for the purpose of constructing its works or improvements thereon in the manner proposed by the petitioner-if, upon approval of the petitioner's application for entry as provided in this article.~~

~~B. Notice of the petitioner's application to do so, the court, after twenty-one days' notice thereof has been for entry shall be served on the owners mutatis mutandis in the same manner as is provided in §§ 25-46.9, 25-46.10, 25-46.11 and 25-46.12 this chapter for service of notice of the filing of a petition.~~

**Drafting note: Language is relocated from § 25-46.8. The qualification that entry be made prior to the determination and deposit of the award of just compensation is deleted as unnecessary.**

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

A. The court, and after 21 days following service of the petitioner's application, and after a hearing thereon, may approve the petitioner's application if it finds-(1) that:

-a 1. A public necessity or an essential public convenience requires such entry for such purposes, that an;

2. An emergency exists justifying such entry, before the time when just compensation can be determined and the amount so determined paid into court; and (2) that the

3. The interests of the owners of such property will be adequately protected by (i) the payment into court for the benefit of the owners of the amount of the offer made in accordance with § 25-46-5 25.1-204 or; (ii) if no offer is required by that section, by the payment into the court of the amount of a good faith estimate of the value of the property, and, in the discretion of the court, the giving of.

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

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

D. At any time after such payment into court, a party whose property or interest therein is to be taken or damaged may apply to the court for the withdrawal of his share thereof in the manner provided in § 25-46-30 25.1-243.

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

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

**Drafting note: Language is relocated from § 25-46.8, with technical changes.**

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

If the petitioner enters upon the property under this section and does any work thereon, or causes any injury or damage to such property, it shall not thereafter be entitled, without the consent of the owner, to abandon the proceedings for the condemnation thereof, but shall conduct ~~such the condemnation~~ proceedings with reasonable dispatch to final judgment ~~and the petitioner shall pay to the owner of the property or into court the amount of just compensation as determined in the condemnation proceedings.~~

**Drafting note: This provision is relocated from § 25-46.8. The last phrase, stating that the petitioner shall pay to the owner the just compensation determined in the condemnation proceeding, is deleted as unnecessary.**

Article 4.

Determination of Just Compensation by Commissioners.

~~§ 25-46.20~~ 25.1-226. Empanelment and oath Qualification of commissioners or jurors; jury to fix value of property and damages; qualification of commissioners and jurors; strikes.

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

B. All commissioners shall be disinterested freeholders and residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. No person shall serve as a commissioner for more than 1 full week within any 3-month period, unless agreed to by the parties.

**Drafting note: Articles 4 and 5 split current § 25-46.20, addressing whether just compensation will be determined by a panel of commissioners of a jury. Subsection B assumes that the phrase "unless agreed to by the parties" in the second sentence in current § 25-46.20 A refers only to the limitation that no person serve as a commissioner for more than 1 week in a 3-month period (and not also to the residence requirement).**



§ 25.1-227. Empanelment of commissioners.

~~the A. The parties to the eminent domain proceeding may agree upon five 5 or nine 9 disinterested freeholders persons qualified to act as commissioners, or as provided in subsection B of § 25.1-226.~~

~~if B. If the parties cannot agree upon the names of commissioners to be summoned 5 or 9 qualified persons to act as commissioners, then each party shall present to the court a list containing the names of at least six freeholders from which 6 qualified persons. If any party fails to submit such a list of names, the court may, in its discretion, submit such a list in such party's behalf.~~

~~C. From the lists submitted pursuant to subsection B, the court shall select the names of nine persons 9 potential commissioners and two at least 2 alternates who shall at. At least one 1 week prior to their service, such persons shall be summoned to serve as commissioners appear. However, no person shall serve as such commissioner for more than one full week within any three month period, unless agreed to by the parties, all of whom shall be residents of the county or city wherein the property or the greater portion of the property to be condemned is situated. If any party fails to submit a list containing six or more names as provided in this section, the judge may, in his discretion, submit such a list in such party's behalf. If a defendant has filed no answer to the petition, and the attorney for the petitioner certifies that he believes the defendant is unrepresented by counsel the judge may, in his discretion, and subject to the right of the petitioner to challenge for cause, subpoena five persons who shall serve as commissioners.~~

~~Once nine D. If 9 qualified persons are selected, the petitioner and the owners shall each have two 2 peremptory challenges and the remaining five, or the original five if only five are summoned, 5 shall be appointed, any three or more of whom may act serve as commissioners. Such commissioners shall fix the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property by reason of the taking and use thereof by the petitioner. Before executing their duties the commissioners shall take an oath before some officer authorized by the laws of this Commonwealth to administer an oath, that they will faithfully and impartially ascertain what will be the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property, by reason of such taking and use by the petitioner. If 5 qualified persons are agreed upon as provided in subsection A, they shall serve as commissioners.~~

~~E. If an owner has filed no answer to the petition, and the court finds that the owner is not represented by counsel, the court may, in its discretion, and subject to the right of the petitioner to challenge for cause, subpoena 5 persons who shall serve as commissioners.~~

~~F. Any 3 or more of the 5 commissioners may act.~~

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

**Drafting note: This section reorganizes subsection A of current § 25-46.20. The last 2 sentences of current subsection A are relocated to proposed § 25.1-230. In proposed subsection C, current language is amended to provide that the court may select more than, but not less than, 2 alternates. This substantive change is suggested as a means of addressing a discrepancy in current practice. In subsection E, current language is amended to provide that the court, rather than the attorney for the petitioner, will determine whether the owner is unrepresented by counsel. This substantive change is suggested in order to avoid procedures being determined by what the petitioner's attorney believes. Proposed subsection G incorporates language from the current definition of "owner" that was enacted in 2002 in legislation that overturned a result of *Lamar Corp. v. Commonwealth Transportation Commissioner*, 262 Va. 375 (2001), in which the Virginia Supreme Court held that § 25-46.20 did not provide for tenants to participate in the process for the selection of commissioners, and that a lessee who owns structures that are affixed to the land are not entitled to participate in the valuation proceeding to the same extent as the owner of the underlying land.**

#### Article 5.

#### Determination of Just Compensation by Jurors.

~~§ 25-46.20 25.1-228. Empanelment and oath of commissioners or jurors; jury to fix value of property and damages; qualification~~ Qualification ~~of commissioners and jurors; strikes.~~

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

B. Persons selected as condemnation jurors shall be residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror when he, or any person for him, solicits or requests a member of the jury commission to place his name on a list of condemnation jurors. A majority of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction.

**Drafting note: Currently in § 25-46.20 B.**

§ 25.1-229. Selection of jurors.

1. Condemnation jurors shall be selected as follows:

A. ~~The jury commissioners established pursuant to Chapter 11 (§ 8.01-336 et seq.) of Title 8.01 shall select condemnation jurors. The jury commissioners shall select as condemnation jurors persons who are residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror when he, or any person for him, solicits or requests a member of the jury commission to place his name on a list of condemnation jurors. A majority of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction. Except as otherwise provided in this subsection, the provisions of §§ 8.01-345, 8.01-346, 8.01-347, 8.01-356, and 8.01-358 relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and voir dire examination shall apply to condemnation jurors, mutatis mutandis.~~

~~In any case where the issue of just compensation is to be determined by a jury,~~  
B. ~~The condemnation jury shall be comprised of five 5 members, and the jurors. The members of the condemnation jury shall be drawn from the list submitted by the jury commission. The clerk shall, in the presence of the judge, after thoroughly mixing the ballots in the box, openly draw nine names therefrom. At the same time, two additional the names of at least two additional persons shall be drawn to act as alternate jurors in the event of the death, absence, or disability of any acting juror. However, a majority of the nine names drawn as acting jurors, and at least one of half of the two names drawn for alternate jurors, shall be freeholders of property within the jurisdiction. As soon as practicable thereafter, the clerk shall serve notice on the jurors so drawn to appear in court on the date set for trial. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.~~

C. After each ballot containing a juror's name has been drawn, it shall be placed in a secure envelope maintained for the purpose of holding drawn ballots. The envelope shall be kept in the ballot box. No drawn ballot shall be returned to the pool of undrawn ballots until the pool has been exhausted, except as may be required to ensure that the required number of names drawn are freeholders of property within the jurisdiction. However, the clerk shall immediately return to the pool of undrawn ballots the ballot of any juror who was drawn but was excused by the court from appearing or was not required to appear because of trial cancellation. When the pool is exhausted, all ballots shall be returned to the box and drawing shall begin again. Alternatively, the procedures for selection by mechanical or electronic techniques as provided in § 8.01-350.1 may be utilized.

D. It shall be the duty of the clerk to notify each juror whose name has been drawn of the date on which he is to appear to hear the case. The notice shall be in writing and shall be delivered at least seven 7 days prior to the trial. The clerk shall also promptly notify in writing the jurors who have been struck by pretrial challenge that they need not appear.

E. The court shall have the discretionary power to excuse a juror's attendance on any given day or for any specific case upon request of the juror for good cause

shown. If a juror is so excused ~~seven~~ 7 or more days prior to trial, a replacement juror shall be drawn and notified under the procedures provided in this section. However, if a juror is so excused within ~~six~~ 6 days prior to trial, an alternate juror will be designated to serve as juror.

2.F. On the day set for trial, jurors who appear shall be called in such a manner as the judge may direct to be sworn on their voir dire until a disinterested and impartial panel is obtained. In addition, a juror may be stricken for cause ~~for reasons civil jurors are excused~~. If all ~~nine~~ 9 jurors and ~~two~~ 2 alternates appear and none are stricken for cause, each party shall be entitled to exercise ~~two~~ 2 peremptory strikes. However, if, because of strikes for cause and unexpected failure to appear, fewer than ~~nine~~ 9 but more than ~~five~~ 5 jurors remain before the court, the number of peremptory strikes for each party shall be equally reduced, and the judge shall, if necessary, strike by lot an additional name in order to reduce the jury to ~~five~~ 5 members; however, the judge shall not strike a freeholder if the striking of such name would result in freeholders constituting less than a majority of the members of the jury. If fewer than ~~seven~~ 7 jurors remain before the court prior to the exercise of peremptory strikes, the trial may proceed and be heard by less than ~~five~~ 5 jurors provided the parties agree. However, no trial shall proceed with fewer than ~~three~~ 3 jurors.

~~3. Before executing the duties of a juror, each juror drawn shall take an oath before an officer authorized by the laws of this Commonwealth to administer an oath that he will faithfully and impartially ascertain the value of the property to be taken and the damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of such taking and use by the petitioner.~~

~~4. The jurors selected to hear the case shall fix the value of the property to be taken and the damages, if any, which may accrue to the residue beyond any enhancement in value to such residue by reason of the taking and use thereof by the petitioner.~~

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

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

**Drafting note: Currently in § 25-46.20 B. Current subdivision B 3 is relocated to proposed § 25.1-230, and the first part of current subdivision 4 is relocated to § 25.1-230, with amendments that adopt the "peculiar benefit" test in lieu of the "general enhancement in value" test. Substantive changes proposed to subsection B provide for drawing more than 2 names of alternate jurors, with the corresponding requirement that at least half of the alternate jurors (rather than 1 of 2) be freeholders. In subsection F, the reference to reasons civil jurors**

are excused is deleted based on the suggestion that such standard may create confusion. Subsection H is set out for the reasons stated in the drafting note following § 25.1-227.

Article 6.  
Provisions Applicable to Determinations of Just Compensation.

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

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

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

2. In any other condemnation proceeding, the body determining just compensation shall ascertain the value of the property to be taken and the damages, if any, to any other property beyond the peculiar benefits, if any, to such other property, by reason of such taking and use by the petitioner.

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

**Drafting note: Proposed subsection A makes a substantive change to the measure of ascertaining just compensation when the party determining just compensation is a jury. Such change will likely have a fiscal impact. Currently, (i) subsection A of § 25-46.20 provides that when just compensation is determined by commissioners, the amount of damages to residual property is offset by the peculiar benefits to such residue by reason of the condemnation, and (ii) subsection B of § 25-46.20 provides that when just compensation is determined by jurors, the amount of damages to residual property is offset by the enhancement in value, if any, to such residue by reason of such taking and use by the petitioner. Requiring condemnation juries as well as commissioners to use the "peculiar benefits" test is a substantive change. No rational justification for applying a separate measure of damages depending on whether compensation is fixed by a panel of commissioners or a jury could be determined. Under proposed subdivision A 1, the "enhancement in value" test**

will be applied in cases where the condemnor uses the "quick take" procedure in proposed Chapter 3 of Title 25.1. The Code sections that authorize various entities to use the Commonwealth Transportation Commissioner's condemnation procedure under §§ 33.1-119 through 33.1-132 also authorize them to rely on the general enhancement in value test set out in § 33.1-130. The provisions of clauses (i) and (ii) of subdivision A 1 are relocated from § 33.1-130. Use of the "general enhancement" test will continue to be applied in condemnation cases by the Commonwealth Transportation Commissioner under Title 33.1. Subsection B is based on provisions in § 25-46.20.

~~§ 25-46.21 25.2-231. View by commissioners or jurors; hearing of testimony; report; exceptions to report and hearing thereon of property.~~

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

**Drafting note: Technical changes only.**

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

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

B. When the ~~commissioners or jurors~~ body determining just compensation shall have arrived at their ~~its~~ conclusion ~~they, it~~ shall make their ~~its~~ report in writing to the court, ~~or to the judge thereof in vacation.~~

**Drafting note: This section includes provisions in current § 25-46.21. The reference to judges in vacation is deleted as archaic.**

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

A. The report of the body determining just compensation may be confirmed or set aside forthwith by the court, ~~or the judge, as the case may be, provided that.~~

B. However, when the report is so filed and before the court ~~or judge~~ passes thereon, either party shall have the right to file written exceptions to the report, which shall be filed not later than ~~ten~~ 10 days after the rendering of the report by the ~~commissioners or the jurors~~ body determining just compensation. The court ~~or the judge, as the case may be,~~ shall have the same power over the ~~commissioners' or~~

~~jurors'~~ reports of the body determining just compensation as it now has over verdicts of juries in civil actions.

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

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

**Drafting note: Technical changes only.**

§ ~~25-46.21:4~~ 25.1-234. Participation of by certain tenants in condemnation proceedings to determine just compensation.

A. Any tenant under a lease with a term of ~~twelve~~ 12 months or longer may participate in the proceedings described in ~~§ 25-46.21~~ to determine just compensation to the same extent as his landlord or the owner, if, not less than ~~ten~~ 10 days prior to the date for the trial of the issue of just compensation, such tenant shall file his petition for intervention, in the manner provided in § ~~25-46.16~~, including 25.1-221. Such petition for intervention shall include (i) a verified copy of the lease under which he is in possession, and (ii) an affidavit by the tenant or his duly authorized agent or attorney, stating:

{1}. That he claims an interest in the award; and

{2}. That he desires to offer admissible evidence concerning the value of the property being taken or damaged.

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

C. Nothing in this section shall be construed, however, as authorizing such tenant to offer any evidence in the proceedings described in ~~§ 25-46.21~~ to determine just compensation concerning the value of his leasehold interest in the property involved therein or as authorizing the ~~commissioners or jurors, as applicable,~~ body determining just compensation to make any such determination in formulating their ~~its~~ report.

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

**Drafting note: The changes to the existing § 25-46.21:1 are not intended to make any substantive changes. The proposed subsection D clarifies the provisions that are encompassed by current § 25-46.21.**

~~§ 25-46.22~~ 25.1-235. Compensation of commissioners or jurors.

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

**Drafting note: No change.**

~~§ 25-46.23~~ 25.1-236. Contracts made part of report.

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

**Drafting note: Technical changes only.**

## Article 7. Judgment and Post-judgment Procedure.

~~§ 25-46.24~~ 25.1-237. Payment of compensation and damages into court; vesting of title.

Upon the return of the report of the ~~commissioners, jurors or the court, as the case may be~~ body determining just compensation, and the confirmation, alteration or modification thereof in the manner provided in this chapter, the sum so ascertained by the court as compensation and damages, if any, to the property owners may be paid into court, ~~upon which~~ Upon paying such sum into court, title to the property and rights condemned shall vest in the petitioner to the extent prayed for in the petition, unless such title shall have already vested in the petitioner in a manner otherwise provided by



law, and the. The petitioner or its agent shall have the right to enter and construct its works or improvements upon or through the property described in its petition.

**Drafting note: Technical changes only.**

~~§ 25-46-25.~~ § 25.1-238. ~~When petitioner~~ Petitioner may begin work during pendency of proceedings; ~~no injunction to be awarded~~ injunction prohibited.

A. Upon the return of the report of the ~~commissioners, jurors or the court, as the case may be,~~ body determining just compensation and upon payment into court of the sum ascertained therein, the petitioner or its agents may enter and construct its works or improvements upon or through the property as described in its petition, notwithstanding the pendency of proceedings on any objections to such report in the trial court, or upon an appeal of the case, or the ordering of a new trial of the issue of just compensation or otherwise. ~~And~~

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

**Drafting note: Technical changes only.**

~~§ 25-46-26~~ 25.1-239. Finality of order confirming, ~~etc.,~~ altering or modifying report; appeal.

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

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

**Drafting note: Technical changes only.**

~~§ 25-46-28~~ 25.1-240. Distribution of money paid into court.

A. Upon the award being paid into court and the confirmation of the report in the manner provided in ~~§ 25-46-24~~ 25.1-237, the interest or estate of the owner or owners in the property taken or damaged shall terminate and they shall have such interest or estate in the fund and any interest accrued thereon so paid into court as they had in the property so taken or damaged, ~~and all.~~ All liens by a deed of trust, judgment or otherwise upon such property or any interest therein shall be transferred to the fund so paid into court. If the court is satisfied that the persons having an interest therein are before the court, the court shall make such distribution of such money and any interest

accrued thereon as to it may seem proper, having due regard to the interest of all persons therein, and in what proportions such money is properly payable.

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

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

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

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

**Drafting note: Technical changes only. This section is based on the first paragraph of § 25-46.28; the remaining three paragraphs are made a separate section (§ 25.1-241).**

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

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

B. In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court may appoint a commissioner in chancery to take evidence upon the conflicting claims. No If the fund, exclusive of interest, is \$500 or more, the costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund and any interest accrued thereon or the distribution thereof shall not be taxed against the petitioner;~~provided, however, that in the event that.~~ If the fund, exclusive of interest, is less than \$500, such costs shall be taxed against the petitioner.

C. Upon a determination by the court of the rights and claims of the persons entitled to the fund and any interest accrued thereon, an order shall be entered directing the disbursement among the persons entitled thereto or to whomsoever they may by

writing direct. Any party aggrieved thereby may apply for an appeal as provided in subsection B of ~~§ 25-46.26~~ 25.1-239.

**Drafting note: This section is based on the second, third and fourth paragraphs of § 25-46.28; no substantive changes.**

~~§ 25-46.29~~ 25.1-242. Appointment of other commissioners or empanelment of other jurors body to determine just compensation when new trial ordered; costs upon of new trial.

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

B. If a new trial of the issue of just compensation is ordered, either in the trial court or upon appeal, upon an exception by an owner with respect to the insufficiency of the award of just compensation, and the subsequent report of the award of just compensation, which is confirmed, is for the same or a lesser total amount, the court shall (i) tax all the costs of the new trial against the owner making such exception and shall (ii) order repayment to the petitioner of any sum paid to such owner out of the fund paid into court by the petitioner in excess of the total sum ascertained by the second report with interest thereon at the rate of eight percent annually from the date the original payment was made to such owner until the date such excess is repaid to the petitioner except that any interest. Interest accruing thereon prior to July 1, 1970, shall be paid at the rate of five 5 percent annually; and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six 6 percent annually; interest accruing thereafter and prior to July 1, 2003, shall be paid at the rate of 8 percent annually; and interest accruing thereafter shall be paid at the general account's primary liquidity portfolio rate, compiled by the Department of the Treasury for the month in which the original payment was made to such owner.

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

**Drafting note: A substantive change replaces the fixed 8 percent interest rate with the same provision adopted in §§ 25.1-315 and 25.1-316 that provides that interest is payable at the general account's primary liquidity portfolio rate. The adoption of the variable interest rate provision is made in order to make the**

rates the same regardless of whether the condemnation proceeding is brought under Chapter 2 or Chapter 3 of Title 25.1.

§ ~~25-46-30~~ 25.1-243. Withdrawal pendente lite of money paid into court.

A. At any time after payment into court of the sum ascertained in the report of the award of just compensation, notwithstanding the fact that another trial of the issue of just compensation has been ordered or an appeal has been taken from a final order upon the report as provided in subsection B of § ~~25-46-26~~ 25.1-239, a party whose property or interest therein is to be taken or damaged may apply to the court, in the manner hereinafter provided in this section, for the withdrawal pendente lite of all, or any portion of his pro rata share, of the amount deposited for his interest in the property to be taken or damaged, together with his pro rata share of any interest accrued thereon.

B. If such application requests withdrawal of an amount in excess of fifty 50 percent of such owner's pro rata share of the amount deposited ~~as aforesaid~~, exclusive of interest, the court may require the applicant, before withdrawing any of such excess, to give or file a bond ~~in the clerk's office with surety approved by the court or clerk, conditioned as required by law to the effect that they are bound to the petitioner in such amount as fixed by the court, but not to exceed double the amount of such excess, with the court~~ for the return of the amount withdrawn that exceeds the amount to which the owner is entitled as finally determined in the condemnation proceeding, together with interest ~~at the rate of eight percent annually, except that any interest from the date of the withdrawal of the amount in excess of 50 percent of such owner's pro rata share of such amount deposited. Such bond shall be with surety approved by the court or clerk, conditioned as required by law to the effect that they are bound to the petitioner in such amount as fixed by the court, but not to exceed double the amount of such excess. Interest accruing prior to July 1, 1970, shall be paid at the rate of five 5 percent, and annually; interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six 6 percent, from the date of the withdrawal of the amount in excess of fifty percent of such owner's pro rata share of such amount deposited as aforesaid annually; interest accruing thereafter and prior to July 1, 2003, shall be paid at the rate of 8 percent annually; and interest accruing thereafter shall be paid at the general account's primary liquidity portfolio rate, compiled by the Department of the Treasury.~~

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

D. If any person ~~appear~~ appears and ~~object~~ objects to the proposed withdrawal, or if the petitioner so requests, the court shall determine the amount to be withdrawn, if any, and the persons entitled thereto, ~~whereupon~~. Upon such determination, no other person so served shall have any claim against the petitioner to the extent of the amount so withdrawn. The court may follow the procedure prescribed in ~~§ 25-46.28~~ 25.1-241 for the determination of any controversy among any claimants to the funds or to the ownership of the property subject to the condemnation, and may tax the costs thereof as therein provided.

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

F. The amount of the petitioner's deposit under ~~§§ 25-46.8, 25-46.24~~ 25.1-224 or ~~§ 25-46.25~~ 25.1-237 and the amount of such deposit withdrawn by any party in accordance with the provisions of this section ~~may~~ shall not be given in evidence or referred to in the trial of the issue of just compensation or be considered by the court or upon appeal in determining whether the award is inadequate or excessive, nor limit the rights of any party to appeal from any decision therein.

**Drafting note: A substantive change replaces the fixed 8 percent interest rate with the same provision adopted in §§ 25.1-315 and 25.1-316 that provides that interest is payable at the general account's primary liquidity portfolio rate. The adoption of the variable interest rate provision is made in order to make the rates the same regardless of whether the condemnation proceeding is brought under Chapter 2 or Chapter 3 of Title 25.1.**

~~§ 25-46.34~~ 25.1-244. Interest on award; entry of judgment for award and interest.

~~(a) Where~~ A. If the petitioner has exercised pendente lite the right to enter into and take possession of the land or other property, in the manner provided by this chapter, upon the payment into court of the sum ascertained in the report of just compensation as provided in ~~§ 25-46.25~~ 25.1-238, the owner thereof shall receive interest at ~~the rate of eight percent annually, except that any interest accruing prior to July 1, 1970, shall be paid at the rate of five percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six percent,~~ upon the difference between (i) the amount of just compensation as finally determined and awarded to such owner and (ii) the amount, if any, ~~which that~~ such owner received or was entitled to receive, from the fund so paid into court. Such interest shall be paid for the period from the time of such entry by the petitioner until the time the fund paid into court on account of the final award of just compensation to such owner is available for distribution. Interest accruing prior to July 1, 1970, shall be paid at the rate of 5 percent annually; interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of 6 percent annually; interest accruing thereafter and prior to July 1, 2003, shall be paid at the rate of 8 percent annually; and interest accruing thereafter shall be paid at the

general account's primary liquidity portfolio rate, compiled by the Department of the Treasury. No interest shall be payable upon any amount which that was withheld from such owner on account of questions involving his right, title, interest or estate in the land or other property taken or damaged.

~~(b)~~ B. If the petitioner has exercised the right pendente lite to enter into and take possession of the land or other property to be taken or damaged as provided in § ~~25-46.8~~ 25.1-224, the owner thereof shall receive, in addition to ~~what the amount that~~ he is entitled to receive under ~~paragraph (a) of this section~~ subsection A, interest at the rate of ~~eight percent~~ general account's primary liquidity portfolio rate annually upon the difference between (i) the amount of the award of just compensation, as finally determined and (ii) the amount previously paid into court as required under § 25-46.8 25.1-223. Such interest shall be paid for the period from the time of such entry until payment into court of the sum ascertained in the report of just compensation as provided in § ~~25-46.24~~ 25.1-237.

~~(c)~~ C. No interest shall be allowed during the time any distribution of the fund paid into court was delayed in the trial court or upon appeal, or thereafter, occasioned by any exceptions made by such owner which that are not sustained in whole or in part.

~~(d)~~ D. If the petitioner fails to pay into court any sum necessary for paying the total award which that has been confirmed finally or the interest to which the owner is entitled under this section for a period of ~~thirty~~ 30 days after the time for noting an appeal, the court shall enter judgment therefor against the petitioner, unless the proceedings have been dismissed in accordance with the provisions of § ~~25-46.34~~ Article 8 (§ 25.1-248 et seq.) of this chapter.

E. Interest allowable under the provisions of this section shall be reduced to the extent the fund has accrued interest during the pendency of the suit in the account required by § ~~25-46.8~~ 25.1-223.

**Drafting note: Substantive changes replace the fixed 8 percent interest rate with the same provision adopted in §§ 25.1-315 and 25.1-316 that provides that interest is payable at general account's primary liquidity portfolio rate. The adoption of the variable interest rate provision is made in order to make the rates the same regardless of whether the condemnation proceeding is brought under Chapter 2 or Chapter 3 of Title 25.1.**

~~§ 25-46.32~~ 25.1-245. Costs.

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

B. The court may in its discretion tax as a cost a fee, not to exceed \$1,000, for a survey for the landowner, ~~such fee not to exceed \$1000.~~

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

**Drafting note: Technical changes only.**

§ ~~25-46.33~~ 25.1-246. When sheriff to remove forcible resistance to entry.

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

**Drafting note: No substantive changes in the law. Land and interests and estates in property are all included in the definition of property in proposed § 25.1-100.**

§ ~~25-46.27~~ 25.1-247. Recordation of orders, judgments and proceedings; costs.

A. The clerk of the court shall make and certify a copy of so much of the orders, judgments and proceedings in the case as shall show such condemnation, including a plat and description of the ~~land or other property, or the estate or interest in the land~~ condemned, and any such contract, if any there be, as is mentioned in § ~~25-46.23~~, and shall have the same recorded 25.1-236. The clerk shall record such material in the deed book land records in the ~~his~~ office of the clerk of the court wherein deeds are recorded in such county or city, and indexed index it in the names of the parties.

B. If any portion of the land lies in ~~two~~ 2 or more counties or cities, or county and city localities, the clerk shall certify a copy of the proceedings above mentioned to the clerk of the court of each such ~~county or city and such locality~~. The clerks shall record and index the same copy as above provided in subsection A.

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

**Drafting note: No substantive changes. Land and interests and estates in property are all included in the definition of property in proposed § 25.1-100.**

Article 8.  
Dismissal of Proceedings.

§ ~~25-46.34~~ 25.1-248. Dismissal of proceedings; dropping defendant prior to trial on issue of just compensation.

(a) If ~~no~~ a hearing has not begun in the trial of the issue of just compensation for the taking or damaging of property ~~or property interest~~ and the petitioner has not already acquired the title or a lesser interest or estate in, or taken possession of, such property, the petitioner may upon motion obtain, as a matter of right, an order

dismissing the proceeding as to such property, ~~which.~~ Such order shall also provide, except as may be provided otherwise in a settlement by agreement of the parties, that the petitioner shall pay such owner or owners their reasonable expenses ~~which~~ that have been actually incurred by them in preparing for the trial on the issue of just compensation, in such amounts as the court deems just and reasonable.

**Drafting note: No substantive changes; property is defined in § 25.1-100 to include property interests.**

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

(b) At any time after a hearing has begun in the trial of the issue of just compensation for the taking or damaging of any property or property interest, if the petitioner has not having already acquired the title or a lesser interest ~~or estate~~ in, or taken possession of, such property, or paid the amount of just compensation into court, and before the time for noting an appeal from any final order upon a report of just compensation, the petitioner may, upon motion, obtain as a matter of right an order dismissing the proceedings as to such property, ~~which.~~ Such order shall also provide that the petitioner shall pay such owner or owners for the following expenses ~~which~~ that have been actually incurred by them in such amounts as the court deems just and reasonable: (i) an attorney's fee; (ii) witness fees, including reasonable fees of not more than 3 expert witness fees, not exceeding three, witnesses; and (iii) other reasonable expenses and compensation for time spent as a result of the condemnation proceedings. If any such expenses are not paid within ~~thirty~~ 30 days of the entry of such order, judgment therefor shall be entered against the petitioner.

**Drafting note: Technical changes only.**

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

(c) ~~In the event~~ If the petitioner fails to pay to the parties entitled thereto, or into court, the amount of the award of just compensation before the time for noting an appeal from any final order upon the report of just compensation, the owner or owners of the property to be taken or affected damaged may, upon motion, obtain as a matter of right an order dismissing the proceeding as to such property, ~~which.~~ Such order shall also provide that the petitioner shall pay such owner or owners his expenses as provided in subsection (b) of this section § 25.1-249. If any such expenses are not paid within ~~thirty~~ 30 days of the entry of such order, judgment therefor shall be entered against the petitioner.

**Drafting note: Technical changes only.**

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

(d) A. Before the vesting of title, or a lesser interest ~~or estate~~ therein in any tract ~~or parcel of land~~ property in the manner prescribed in this chapter, the proceedings may



be dismissed, in whole or in part, as to any such property upon the filing of a stipulation of dismissal by the parties affected thereby; and, if, if such parties so stipulate, the court may vacate any order that has been entered.

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

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

**Drafting note: Technical changes only.**

~~§ 25-46-34:1.~~

~~Expired.~~

~~§ 25-46-35.~~

~~Repealed by Acts 1972, c. 738.~~

~~§ 25-46-36. Cities to pay relocation costs.~~

~~The governing body of any city shall authorize the payment of relocation costs in connection with the exercise of the power of eminent domain as provided in Chapter 6 (§ 25-235 et seq.) of this title under such rules and regulations as such chapter may require.~~

**Drafting note: This section has been repealed because each city is obligated, as a "state agency," to pay certain relocation costs pursuant to proposed Chapter 4 (Relocation Assistance and Real Property Acquisition Policies).**

**Drafting note: Chapter 2 of Title 25 is relocated to Title 15.2, where it is set out, with technical amendments, as Chapter 19.1, consisting of §§ 15.2-1908 through 15.2-1916.**

~~CHAPTER 2.  
ACQUISITION OF WATERWORKS SYSTEMS.~~

~~§ 25-47. Council or other governing body to file copy of resolution.~~

~~In any proceedings instituted under the provisions of the preceding chapter by any city or county pursuant to the provisions of § 15.2-1906 and §§ 15.2-2146 through 15.2-2148 for the acquisition by such city or county of a waterworks system, after the~~

~~commissioners have filed their report as provided by such chapter, it shall be the duty of its council or other governing body, within such time as may be fixed and allowed by the court, to file in the proceedings a certified copy of a resolution of such council or other governing body stating whether the council or other governing body is of opinion that it is in the best interest of the city or county to take the property sought to be condemned at the amount fixed by the commissioners as compensation or damages on account of the taking of same. If such copy of the resolution be not filed within the time allowed by the court, or within any extension of such time which may be allowed, the proceedings shall be dismissed on motion of any party thereto.~~

**Drafting note: This section has been relocated to proposed § 15.2-1908.**

~~§ 25-48. Such resolution to contain statement as to issuance of bonds.~~

~~If in order to pay the amount fixed by the commissioners it will be necessary for the city or county to issue and sell its bonds, such resolution filed shall so state, and shall further state that the council or other governing body proposes promptly to take the necessary and appropriate action required by law to issue and sell such bonds whenever authorized by § 25-49.~~

**Drafting note: This section has been relocated to proposed § 15.2-1909.**

~~§ 25-49. Prerequisite to issuance and sale of bonds.~~

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

**Drafting note: This section has been relocated to proposed § 15.2-1910.**

~~§ 25-50. Statement by defendant precludes appeal.~~

~~If such a statement or statements, as provided for in § 25-49, be filed by the defendant or defendants, no appeal or writ of error shall thereafter be allowed such defendant or defendants.~~

**Drafting note: This section has been relocated to proposed § 15.2-1911.**

~~§ 25-51. Time for sale of bonds or payment fixed by court.~~

~~When such report shall have been finally confirmed or when such defendant or defendants have filed in such proceedings the statement or statements as provided by §~~

~~25-49, the court shall, upon motion of any party to the proceedings, after notice to all other parties thereto, fix a reasonable time within which the city or county must complete the issuance and sale of its bonds, if the sale of bonds is necessary, or pay the money to the party or parties entitled thereto, or pay the same into the court. Such time so fixed may be extended by the court for good cause shown.~~

**Drafting note: This section has been relocated to proposed § 15.2-1912.**

~~§ 25-52. Time for holding election if revenue bonds are to be issued.~~

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

**Drafting note: This section has been relocated to proposed § 15.2-1913.**

~~§ 25-53. Proceedings dismissed if issuance defeated or bonds cannot be sold; resolution of approval of report not deemed contract to purchase.~~

~~In the event that such an election is held and the proposed bond issue is not approved therein, or if approved and for any reason the bonds proposed to be issued by any such city or county cannot be sold upon terms which, in the opinion of the city council or other governing body, are reasonably advantageous to such city or county, then, upon motion of such city or county, the proceedings shall be dismissed and there shall be no obligation upon such city or county to take the property or pay the amount fixed by the commissioners' report, notwithstanding the fact that the council or other governing body may have filed the resolution of approval of the commissioners' report as provided by § 25-47, nor shall the filing of any such resolution approving the award of the commissioners be deemed to be a contract on the part of any such city or county to purchase or take the property sought to be condemned, or to render any such city or county liable in damages for failure to take same.~~

**Drafting note: This section has been relocated to proposed § 15.2-1914.**

~~§ 25-54. Proceedings dismissed on failure to pay compensation; judgment for fees and costs.~~

~~In the event that any such city or county fails to pay the amount fixed and ascertained by the commissioners' report, as directed by the court and within the time, or any extension thereof, allowed by the court as provided by § 25-51, the proceedings shall be dismissed on motion of any party thereto. If such proceedings be so dismissed, judgment shall be entered against such city or county for all costs and the attorneys' fee or fees actually incurred by the defendant or defendants; provided, however, that the fee or fees shall be so paid only to the extent they are reasonable in the opinion of the court.~~

**Drafting note: This section has been relocated to proposed § 15.2-1915.**

~~§ 25-55. Right to pay compensation into court and take possession and operate.~~

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

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

**Drafting note: This section has been relocated to proposed § 15.2-1916.**

CHAPTER 3.  
FEDERAL CONDEMNATION.

**Drafting note: Chapter 3 of Title 25 was repealed by Chapter 153 of the Acts of Assembly of 1952.**

~~CHAPTER 4.  
PUBLIC PARK CONDEMNATION.~~

**Drafting note: Chapter 4 of Title 25 was repealed by Chapter 436 of the Acts of Assembly of 1972.**

~~CHAPTER 5.  
MISCELLANEOUS.~~

**Drafting note: Chapter 5 of Title 25 is not carried forward as part of Title 25.1 and will be repealed. All of the its current sections are either relocated to other chapters or will be repealed.**

~~§ 25-232.01. Condemnation by localities and state institutions.~~

~~A. The Commonwealth Transportation Board, the Breaks Interstate Park Commission, any state institution, or the governing body of any county, city or town may acquire by condemnation title to (i) land, buildings and structures, (ii) any easement thereover or (iii) any sand, earth, gravel, water or other necessary material for the purpose of opening, constructing, repairing or maintaining a road or for any other authorized public undertaking if the terms of purchase cannot be agreed upon or the owner (i) is unknown, (ii) cannot with reasonable diligence be found in the Commonwealth or (iii) due to incapacity cannot negotiate an agreement. Condemnation proceedings shall be conducted under the provisions of Chapter 1.1 (§ 25-46.1 et seq.) of this title insofar as applicable.~~

~~The location of all roads to be constructed with both state aid and county or district funds shall first be approved by the appropriate local county road authorities.~~

~~B. Upon compliance with the provisions of Chapter 1.1 of this title insofar as applicable, cities and towns may acquire by condemnation any lands or rights-of-way necessary for providing watersheds or for laying water pipes, and counties may so acquire such lands or rights-of-way within their borders. Any interest acquired under this section by a county, city or town shall be subject to the provisions of § 25-233.~~

**Drafting Note: Language in subsection A regarding state institutions moved to proposed § 25.1-101. Language in subsection A regarding localities moved to proposed § 15.2-1901.1. Language in subsection B moved to proposed § 15.2-1907.**

~~§ 25-232.1. Authority of counties, cities and towns to enter upon property subject to eminent domain; reimbursement for damages; notice prior to entry.~~

~~In connection with the actual or proposed acquisition, construction, improvement, enlargement, extension and equipment of any project wherein the power of eminent domain may be exercised, any county, city or town, acting through its duly authorized officers, agents or employees, is hereby authorized to enter upon any land, water or premises located within or without said county, city or town, for the purpose of making surveys, borings, soundings, appraisals or examinations for the purpose of determining the suitability of such property for the project involved, and such entry shall not be deemed a trespass, but the county, city or town shall make reimbursement for any actual damages resulting from such entry; provided, however, that unless written permission shall have been previously obtained, no such county, city or town shall enter upon any such land, water or premises until it has, by certified mail, requested permission from the owner of such land, water or premises, to effect such entry, fifteen days prior to the date such entry is proposed to be made. Such date shall be set forth in the request for permission for entry. In the event written permission from such owner is not received prior to the time such entry is proposed, such county, city or town shall, by certified mail, notify such owner that it proposes to enter such land, water or premises on a date not less than fifteen days from the date such notice is mailed.~~

**Drafting note: Language moved to proposed 25.1-203.**

~~§ 25-232.2. Condemnation by certain authorities.~~

~~Any authority created as a body politic and corporate, independent of all other bodies, having powers and jurisdiction conferred upon it by legislative authority of the Commonwealth of Virginia and the District of Columbia, which has the power of eminent domain for the acquisition of property and property interests for aircraft hangar, maintenance and operations facilities, shall conduct such proceedings in the name of the boards of directors of such authorities. In the event the initial construction cost of such an aircraft hangar, maintenance and operations facility exceeds \$300 million, any such authority shall be vested with the same powers granted the Commonwealth Transportation Commissioner pursuant to §§ 33.1-98 through 33.1-132, mutatis mutandis, but only for an aircraft hangar, maintenance and operations facility with an initial construction cost exceeding \$300 million.~~

**Drafting note: This section is deleted as obsolete. This provision was enacted as a part of the package of legislation enacted in the first 1991 Special Session to provide incentives for the establishment of a United Airways facility in Loudoun County; the facility was never constructed.**

~~§ 25-233. Condemnation of property of corporation possessing power of eminent domain.~~

~~No corporation or authority created under the provisions of Chapter 54 (§ 15.2-5400 et seq.) of Title 15.2 shall file a petition to take by condemnation proceedings any property belonging to any other corporation possessing the power of eminent domain, unless, after notice to all parties in interest and an opportunity for a hearing, the State Corporation Commission shall certify that a public necessity or that an essential public~~

~~convenience shall so require, and shall give its permission thereto; and in no event shall one corporation take by condemnation proceedings any property owned by and essential to the purposes of another corporation possessing the power of eminent domain. If the State Corporation Commission gives its permission to a condemnation, the Commission shall establish for use in any condemnation proceeding whether any payment for stranded investment is appropriate and, if so, the amount of such payment and any conditions thereof.~~

**Drafting note: Language relocated to proposed § 25.1-102.**

~~§ 25-234. Political subdivisions and state agencies to deposit estimated compensation and damages before entry.~~

~~Any political subdivision or agency of the Commonwealth having the power of eminent domain which is now or may hereafter be authorized to enter upon and take possession of property and rights of way prior to or after the institution of condemnation proceedings to acquire such property rights of way shall deposit with the clerk of the court having jurisdiction such sum as it shall estimate to be the fair value of the land to be taken and the damages, if any, before entering upon such land in furtherance of the purpose for which such land is to be acquired. Upon the deposit with the clerk of the court of such sum, any person or persons entitled thereto may, upon petition to the court, be paid his or their pro rata share of ninety per centum of such fund deposited. The acceptance of such payment shall not preclude such person or persons from appealing any decision rendered in such proceedings. If the sum deposited is greater or less than the amount finally determined by the decision in such proceeding or by an appeal, the amount of the increase or decrease shall be paid by or refunded to the condemner.~~

**Drafting note: Deleted as archaic, and because a quick take procedure is set out in proposed Chapter 3 (§ 25.1-300 et seq.) of Title 25.1. This section was enacted in 1956, and the quick-take procedure in Title 33.1, which has superseded this section in practice, was enacted in 1958.**

### CHAPTER 3. TRANSFERRING DEFEASIBLE TITLE BY CERTIFICATE.

**Drafting note: This chapter sets out the "quick take" procedure currently located in §§ 33.1-119 through 33.1-132. Several governmental bodies are currently authorized to use this procedure, and setting it out in Title 25.1 is intended to eliminate confusion caused by requiring other entities to use a procedure tailored for the Commonwealth Transportation Commissioner. The provisions shown as existing language are currently in §§ 33.1-119 through 33.1-132, to aid the reader in comparing this chapter's provisions with those current provisions.**

§ 25.1-300. Definitions.

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

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

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

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

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

**Drafting note: New section. The term "authorized condemnor" supplants the term "Commissioner" as used in current §§ 33.1-119 et seq., and encompasses entities that are currently authorized to use the quick-take procedure. The provisions in §§ 33.1-119 through 33.1-132 will not be affected by this section, though they may be amended to make similar stylistic and formatting changes that are used in this chapter. The definitions of "certificate of deposit" and "certificate of take" are set out to clarify the current alternate procedures under which a condemnor may either (i) pay funds into court and record a certificate, or (ii) file a certificate under current § 33.1-121 stating that the money will be paid into court upon entry of a court order.**

~~§ 33.1-119 25.1-301. Authority to take possession and title to property before or during condemnation Applicability of chapter; purpose and intent of provisions.~~

~~In addition to the exercise of the power of eminent domain prior to the entry upon land being condemned, as provided hereinabove, the Commissioner is authorized to acquire title and to enter upon and take possession of such property and rights of way, for the purposes set out in § 33.1-89, as the Commissioner may deem necessary, and proceed with the construction of such highway, such taking to be made pursuant to the following sections.~~



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

B. It is the intention of these sections this chapter to provide that such property and rights-of-way may, in the discretion of the Commissioner authorized condemnor, be condemned as provided in this chapter before, during or after the construction of the highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this article shall apply, whether the property and rights-of-way are condemned before, during or after the construction of the highway improvements thereon.

**Drafting note: The changes are intended to tailor the provisions of § 33.1-119, which are directed at highway condemnations, to application in condemnations by other entities authorized to use this procedure.**

§ 25.1-302. Protection of property.

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

**Drafting note: Currently this is the penultimate sentence in § 33.1-119.**

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

So far as possible all rights-of-way shall be acquired or contracted for. An authorized condemnor shall comply with the applicable provisions of § 25.1-204 and subdivision A 1 of § 25.1-417 before any exercising its authority to acquire property by condemnation is resorted to under the procedure set forth in this chapter.

**Drafting note: This is based on the last sentence in § 33.1-119, but is rewritten to clarify the interplay between such section and current § 25-46.5 and subdivision (a) of § 25-248, both of which establish requirements that the condemnor attempt to purchase property before instituting a condemnation action.**

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

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

**Drafting note: This is based on the first paragraph in § 33.1-119. It is retained in order to ensure that the right to enter upon and take possession of property prior to its condemnation is not inadvertently affected.**

§ 33.1-120 25.1-305. Payments Authorized condemnor to make payment into court or file certificate of deposit before entering upon land.

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

1. Pay into the court, or to the clerk thereof, wherein condemnation proceedings are pending, or are to be instituted, such sum as he shall estimate to be the fair value of the land taken, or interest therein sought, and damage done, based on a bona fide appraisal, before entering upon, or taking possession of, such land pursuant to the foregoing section (§ 33.1-119). is required by subsection B; or

§ 33.1-121. Certificates in lieu of payments; payment of certificates; notice to owner.

A 2. File with the court wherein condemnation proceedings are pending, or are to be instituted, a certificate of deposit issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer authorized condemnor for such sum as is required by subsection B, stating that any sum or sums of money designated therein will be paid pursuant to the order of court, when filed with the court wherein condemnation proceedings are pending, or are to be instituted, which shall be deemed and held for the purpose of this article chapter to be payment into the custody of such court.

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

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

D. Payment against any such a certificate so issued and countersigned of deposit, when ordered by the court named therein, shall be paid by the State Treasurer on warrants of the Comptroller, issued on vouchers signed by the Commonwealth Transportation Commissioner authorized condemnor.

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

**Drafting note: This section seeks to clarify that making the payment into the court or filing a certificate of deposit are equivalent alternative options.**

Subsection B clarifies that the amount required is to be determined in the same manner under either alternative. The reference to the requirement for an appraisal under proposed § 25.1-417 addresses the provision in current § 25-248 that exempts certain condemnors from the appraisal requirement when the value of the property is less than \$10,000 based on assessment records or other objective evidence. Subsection C clarifies that the delivery of payment into the court does not affect the requirement that a certificate of take be recorded in the clerk's office.

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

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

**Drafting note: This is based on the current second paragraph of § 33.1-121.**

~~§ 33.1-122~~ 25.1-307. Recordation. Content of certificates; recordation of certificates; transfer of title or interest; land situate in two or more counties or cities.

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

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

**Drafting note: Subsection A is based on § 33.1-123. The first sentence of subsection B is currently the first sentence of § 33.1-122, and the second sentence is based on language in the last paragraph of § 33.1-122.**

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

A. Upon such recordation, the of a certificate:

1. The interest or estate of the owner of such the property described therein shall terminate and the;

2. The title to such property or interest or estate of the owner shall be vested in the Commonwealth and such authorized condemnor;

3. The owner shall have such interest or estate in the funds held on deposit by virtue of deposited with the court or represented by the certificate of deposit as he the owner had in the property taken or damaged; and all

4. All liens by deed of trust, judgment or otherwise upon such property or estate or interest shall be transferred to such funds.

B. ~~The title in the Commonwealth authorized condemnor shall be defeasible until (i) the reaching of an agreement between the Commissioner authorized condemnor and such owner, reach an agreement as provided in § 33.1-129 25.1-317, or (ii) the compensation for the taking or damage to the property is determined by condemnation proceedings as hereinafter provided in § 25.1-313.~~

**Drafting note: Subsection A is based on the second sentence of the first paragraph of § 33.1-122. Subsection B is currently the last sentence of the first paragraph of § 33.1-122.**

§ 25.1-309. Property situate in 2 or more localities.

If the land property affected by the certificate aforesaid is situate in ~~two~~ 2 or more ~~counties or cities~~ localities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the ~~counties or cities~~ locality in which any portion of the land property lies, ~~who.~~ The clerk shall record the same in his the deed book and index it in the name of the person who had the land before and also in the name of the Commonwealth manner prescribed in subsection B of § 25.1-307.

**Drafting note: This section is based on the second paragraph of § 33.1-122.**

~~§ 33.1-123. Certificates to describe land and list owners.~~

~~The certificate shall set forth the description of the land or interest therein being taken or damaged, and the owner or owners, if known.~~

**Drafting note: This section is relocated to § 25.1-307.**

~~§ 33.1-124 25.1-310. Proceedings for distribution of funds; effect of acceptance of payments; evidence as to amount of deposit or certificate.~~

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

B. A copy of such petition shall be served on the Commonwealth Transportation Commissioner, his deputy or any attorney authorized to accept service either (i) the attorney of record for the petitioner, if a condemnation proceeding is pending; or (ii) if such a proceeding is not pending, an officer or agent of the authorized condemnor who is authorized to accept service of process in any court proceeding on behalf of the authorized condemnor.

C. The copy of the petition shall be served with a notice returnable to the court or judge not less than ~~twenty-one~~ 21 days after such service, to show cause, if any, the Commissioner authorized condemnor can, why such amount should not be distributed in accordance with the prayers of the petition.

D. If the Commissioner authorized condemnor does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution.

E. If funds have been deposited with the court pursuant to subdivision A 1 of § 33.1-120 25.1-305, any interest ~~which~~ that has accrued on the funds shall be payable to the person or persons entitled to receive such funds.

F. If funds are not then on deposit with the court but are represented by a certificate of deposit pursuant to subdivision A 2 of § 33.1-124 25.1-305, a certified copy of such order shall forthwith be sent to the Commissioner authorized condemnor by the clerk. ~~‡ The authorized condemnor shall be the duty of the Commissioner to deposit~~ such funds with the court within ~~twenty-one~~ 30 days of the date of such order.

G. Interest shall be payable on funds represented by a certificate of deposit from the date of filing of the certificate of deposit until the funds are paid into court at the general account composite account's primary liquidity portfolio rate as set forth in § 33.1-128 shall be payable on such funds from the date of filing of such certificate if the funds are not deposited with the clerk when the certificate is filed for the month in which the order pursuant to this section is entered. However, ~~no~~ interest shall not accrue if an injunction is filed against the Department of Transportation for authorized condemnor that enjoins the taking of the property described in the certificate.

H. If the Commissioner authorized condemnor shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by ~~§ 25-46-28~~ 25.1-241 for the distribution of awards.

**Drafting note: This section is based on the first two paragraphs of § 33.1-124. The requirement that funds represented by a certificate be deposited within 21 days of the date of an order is amended to 30 days in order to make the provision consistent with the prompt payment law, which provides (at § 2.2-4347) that if a payment date has not been established by contract it shall be 30 days after receipt of a proper invoice by the state agency. The provisions regarding payment of interest based on the general account composite rate is amended in order to avert practical problems that have arisen whereby the existing language would require interest to accrue at a negative rate.**

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

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

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

**Drafting note: This section is based on the third paragraph of § 33.1-124 and includes technical changes.**

~~§ 33.1-125~~ 25.1-312. Reformation, alteration, revision, amendment or invalidation of certificate.

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

B. The court or judge in vacation shall have jurisdiction to:

~~reform~~ 1. Reform, alter, revise, amend or invalidate, in whole or in part, any certificate, to; and

~~correct~~ 2. Correct mistakes in the description of the property affected by such certificate, to correct the name or names of the owner or owners in the certificate, to correct or any other error which that may exist with respect to such certificate or for any other purpose.

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

D. The court may enter an order permitting the reformation, alteration, revision, amendment or invalidation, in whole or in part and such, of the certificate. Such order, together with any revised certificate which that may be necessary, shall be spread recorded in the current deed book clerk's office in the same manner required for the recordation of a certificate. The filing of any certificate pursuant to the provisions of this section shall not alter the date of taking as established by the filing recordation of the original certificate pursuant to § 33.1-122 25.1-307 as to any land which property that is included in the amended certificate, and no such. An amended certificate shall not include any land property not included in the original certificate.

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

**Drafting note: This section is based on § 33.1-125 and includes technical changes.**

~~§ 33.1-127 25.1-313. When Institution of condemnation proceedings instituted; payment of compensation or damages; order confirming award; recording.~~

~~At The authorized condemnor shall institute condemnation proceedings with respect to property described in a certificate any time after the recordation of such the certificate, but within sixty 60 days after the completion of the construction of such highway the improvements upon the property described in the certificate, if (i) the Commissioner authorized condemnor and the owner or owners of such lands or interest therein property taken or damaged by the Commissioner authorized condemnor are unable to agree as to the compensation or damages, if any, caused thereby attributable to such taking or damage, or (ii) such consent agreement cannot be obtained due to the incapacity of because the owners or one 1 or more of them, or because such owner, or owners, be are under a disability, are unknown or cannot with reasonable diligence be found within this Commonwealth, the Commissioner shall institute condemnation proceedings, as provided in this article, unless said. However, this section shall not require the institution of condemnation proceedings shall if they have been instituted prior to the recordation of such certificate.~~

**Drafting note: This section is based on the first sentence of § 33.1-127 and includes technical changes.**

~~§ 25.1-314. Order confirming award; recordation.~~

~~The final order of the court confirming the Commissioner's an award of compensation to the owner or owners of property shall confirm in the authorized condemnor absolute and indefeasible title to the land, or interest therein sought, in the Commonwealth and property that is the subject of the condemnation proceeding. Such order shall be spread recorded in the current deed book land records in the office of each clerk of court in which the certificate was recorded.~~

**Drafting note: This section is based on the last sentence of § 33.1-127 and includes technical changes.**

~~§ 33.1-128 25.1-315. Awards in greater or lesser amounts than deposit; interest.~~

~~In the event A. If the amount of an award in a condemnation proceeding being of a is greater amount than that deposited by virtue of a certificate with the court or represented by a certificate of deposit, the excess amount, together with interest~~

accrued on such excess amount, shall be paid into court for the person or persons entitled thereto.

B. Interest shall accrue on the excess amount at the general account composite account's primary liquidity portfolio rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered, computed from the date of such deposit to the date of payment into court, shall and be paid into court for the person or persons entitled thereto, except that. However, any interest which that accrued before July 1, 1970, shall be paid at the rate of five 5 percent, and interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six 6 percent, and any interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight 8 percent.

**Drafting note: This section is based on provisions in § 33.1-128, but provisions regarding payment of interest based on the general account composite rate is amended in order to avert unexpected consequences that have arisen whereby the existing language would require interest to accrue at a negative rate.**

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

In the event If the amount of an award in a condemnation proceeding being of a lesser amount is less than that deposited with the court or represented by a certificate of deposit, and the person or persons entitled thereto have received a distribution pursuant to § 25.1-310 of the such funds deposited with the court pursuant to § 33.1-124, the Commissioner authorized condemnor shall recover (i) the amount of such excess and (ii) interest on such excess at the general account composite account's primary liquidity portfolio rate and, if. If any person has been paid a greater sum than that to which he is entitled as determined by the award, judgment shall be entered for the Commissioner authorized condemnor against such person for the amount of such excess and interest.

**Drafting note: This section is based on provisions in § 33.1-128, but provisions regarding payment of interest based on the general account composite rate is amended in order to avert unexpected consequences that have arisen whereby the existing language would require interest to accrue at a negative rate.**

§ 33.1-129 25.1-317. Agreements as to compensation; petition and order of court thereon; disposition of funds.

At any time after the recordation of such a certificate, but prior to the institution of condemnation proceedings, if the Commissioner authorized condemnor and the owner, or owners of the land or interest therein property taken or damaged are able to agree as to compensation for the land property taken and damages, if any, caused by such taking, the Commissioner authorized condemnor shall file with the court a petition so stating, with a. A copy of the agreement shall be attached to the petition. If condemnation proceedings are already pending at the time of reaching such agreement is reached, no such the authorized condemnor shall not be required to file a petition



~~shall be required, but the shall file a motion for dismissal of such to dismiss the condemnation proceedings shall contain containing an averment that such agreement has been reached. Upon the filing of such a petition, or a motion to dismiss, as herein provided, the court shall thereupon enter an order confirming absolute and indefeasible title to the land or interest therein property in the condemning authority, or in the Commonwealth if the condemning authority is an agency of the Commonwealth. Such order shall be spread recorded in the current deed book clerk's office of each court in which the certificate is recorded. Upon entry of such order, the Commissioner and State Treasurer condemning authority shall be relieved of further obligation by virtue of having filed such a certificate of deposit with the court.~~

~~B. If it shall appear from such petition and agreement, or motion to dismiss a pending suit, that no person or persons other than those executing such agreement are entitled to the fund on deposit funds deposited with the court or represented by a certificate of deposit, the court shall direct that such fund funds, after payment therefrom of any taxes which that may be charged against such land the property taken, be disbursed and distributed in accordance with the statement or charge in provisions stated in the petition, or motion, among the parties or persons entitled thereto. If it shall appear that a controversy exists as to the persons entitled to such fund funds, such distribution shall be made in accordance with the provisions of § 33.1-124 25.1-310.~~

**Drafting note: This section is based on provisions in § 33.1-129 and includes technical changes.**

~~§ 33.1-130. Enhancement to be offset against damage.~~

~~In all cases under the provisions of this article, the enhancement, if any, in value of the remaining property of the landowner by reason of the construction or improvement contemplated or made by the Commissioner, shall be offset against the damage, if any, resulting to such remaining property of such landowner by reason of such construction or improvement. But such enhancement in value shall not be offset against the value of the property taken. And if such enhancement in value shall exceed the damage, there shall be no recovery over against the landowner for such excess.~~

**Drafting note: This provision pertains to the substantive issue of amount of compensation required to be paid to a landowner. It states the "general enhancement in value" rule. This section has been incorporated into subdivision A 1 of § 25.1-230, and provides that the general enhancement in value rule will be applicable in condemnations that utilize the procedure established by this chapter.**

~~§ 33.1-132 25.1-318. Remedy of landowners under certain conditions Petition by owner for determination of just compensation.~~

~~Whenever the Commissioner enters upon and takes possession of property under the provisions of §§ 33.1-119 through 33.1-121 and has not completed the construction of the highway project after a reasonable time for such purpose has~~

~~elapsed or has not instituted condemnation proceedings within sixty days after completion of the construction of the highway project, or within one year after he has entered upon and taken possession of the property, whether the construction of the highway project has been completed or not, the property A. The owner of property that an authorized condemnor has entered and taken possession of pursuant to the provisions of this chapter may, if no agreement has been made with the Commissioner as to compensation and damage, if any, petition the circuit court of the county or the court of the city in which such cases are tried, and locality in which the greater portion of the property lies, or the judge thereof in vacation, for the appointment of commissioners or a jury to determine just compensation for the property taken and damages done, if any, to such property, as provided in Chapter 2 (§ 25.1-200 et seq.) of this title if (i) the owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any, and (ii) the authorized condemnor:~~

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

2. Has not instituted condemnation proceedings within:

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

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

B. A copy of such petition shall be served upon the Commissioner authorized condemnor at least ten 10 days before it is presented to filed in the court, or the judge thereof in vacation, and the Commissioner. The authorized condemnor shall file an answer thereto within five 5 days after the filing of the petition is so presented. If it be found by the court, or the judge thereof in vacation, finds that a reasonable time has elapsed for the completion of the construction of the highway project or that sixty days have elapsed since the completion of the construction of the highway project or that more than one year has elapsed since the Commissioner entered upon and took possession of the property, without condemnation proceedings being instituted and without an agreement having been made between the property owner and the Commissioner as to compensation and damages, if any the conditions prerequisite for such appointment as provided in subsection A are satisfied, the court shall appoint commissioners shall be appointed or empanel a jury, as requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall thereafter be governed by the procedure prescribed by Chapter 4-1 2 (§ 25-46.1 25.1-200 et seq.) of Title 25 this title insofar as the same may be applicable.

**Drafting note: This section is based on provisions in § 33.1-132 and has been rewritten to improve its readability.**

CHAPTER 6.4.  
THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY  
ACQUISITION POLICIES ACT OF 1972.

**Drafting note:** Proposed Chapter 4 sets out Virginia's enactment of legislation conforming to the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act of 1970, P. L. 91-464; 42 U.S.C. §§ 4601-4655 (the "Uniform Act"). Subsequent to its enactment in 1972, Virginia's version of the Uniform Act has been amended to enhance the benefits afforded to affected condemnees and to expand the types of condemnors who are subject to its requirements. This chapter includes numerous changes that incorporate amendments to the federal Uniform Act since enactment of current Chapter 6 in 1972.

Article 1.  
General Provisions.

~~§ 25-235. How chapter cited.~~

~~This chapter may be cited as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972.~~

**Drafting Note:** § 1-13.9:1 makes short title citations unnecessary.

~~§ 25-235.1. Construction of chapter.~~

~~(a) The provisions of §§ 25-248 and 25-252 of Article 3 of this chapter create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.~~

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

**Drafting Note:** The language in current subsection (a) is incorporated into § 25.1-417 (current § 25-248) and § 25.1-421 (current § 25-252). The provisions of subsection (b) are relocated to § 25.1-404.

~~§ 25-236. Application of chapter.~~

~~A. The provisions of any municipal charter notwithstanding, the provisions of this chapter shall be applicable to the acquisition of real property by any state agency as hereinafter defined.~~

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

~~C. The provisions of this chapter relating to relocation assistance shall apply for the benefit of persons, other than the owner, who are actually and lawfully occupying the real property to be acquired and who have been occupants thereof for at least ninety days prior to the initiation of negotiations for acquisition.~~

**Drafting note: The provisions of subsections A and B have been relocated to § 25.1-401. The provisions of subsection C have been relocated to § 25.1-416.**

~~§ 25-237. Purpose and declaration of policy.~~

~~(a) The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of programs or projects involving the acquisition of real property by any state agency as defined in § 25-238. In order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole, such policy shall be uniform as to (1) relocation payments, (2) advisory assistance, and (3) assurances of availability of housing.~~

~~(b) It shall be the policy of the Commonwealth to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many programs, and to promote public confidence in land acquisition practices.~~

**Drafting note: This section is deleted on grounds that it does not codify a substantive duty, and its retention is not consistent with the Code Commission's directive to eliminate references to policy and purpose.**

~~§ 25-238~~ 25.1-400. Definitions.

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

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

**Drafting note: This term is defined in § 4601(13) of the federal act.**

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

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

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of ~~§ 25-239-A~~ 25.1-406, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is (i) decent, safe and sanitary; (ii) adequate in size to accommodate the occupants; (iii) within the financial means of the displaced person; (iv) functionally equivalent; (v) in an area not subject to unreasonable adverse environmental conditions; and (vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

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

1. Is structurally sound, weather tight and in good repair;

2. Has a safe electrical wiring system adequate for lighting and appliances;

3. Contains a heating system capable of maintaining a healthful temperature;

4. Is adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced household;

5. Has a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains sink, toilet, and bathing facilities (shower or bath, or both), all operational and connected to a functional water and sewer disposal system;

6. Provides unobstructed egress to safe open space at ground level. If the unit is above the first floor and served by a common corridor, there must be 2 means of egress; and

7. Is free of barriers to egress, ingress and use by a displaced person who is handicapped.

**Drafting note: This definition is based on federal regulations and the Virginia Administrative Code.**

"Displaced person" means any:

1. Any person who moves ~~(i)~~ from real property, or moves his personal property from real property, ~~(a\_i)~~ as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or ~~(b\_ii)~~ on which such person is a residential tenant; or conducts a small business, or a farm operation or a business ~~defined in this article described in clause 4 of the definition of "business" in this section~~ as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and ~~(ii)~~

~~solely~~ 2. Solely for the purposes of §§ ~~25-239 A and B~~ 25.1-406, 25.1-407, and 25-242 25.1-411, any person who moves from real property, or moves his personal property from real property: (i) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for such a program or project undertaken by a state agency; or (ii) as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, of other real property on which such person conducts a business or farm operation, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and

3. Any person who moves or discontinues his business or moves other personal property, or moves from his dwelling, as the direct result of (i) federally assisted activities for the enforcement of a building code or other similar code or (ii) a program of rehabilitation or demolition of buildings conducted pursuant to a federally assisted governmental program.

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

**Drafting note: The changes set out in proposed subdivisions 1 and 2 insert language currently set out in the definition of displaced person in § 4601(6) of the federal act. The next-to-last paragraph includes language currently set out in § 25-245, with technical changes that delete reference to April 10, 1972.**

"Dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house, a single family unit in a 2-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

**Drafting note: This definition is based on federal regulation and the Virginia Administrative Code.**

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

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

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

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

**Drafting note: This definition is deleted because the same term is defined on a title-wide basis in proposed § 25.1-100.**

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

**Drafting Note: Technical changes are intended to encompass limited liability companies and other forms of business entities.**

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

**Drafting note: Technical changes only.**

"Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the state agency has determined has little or no value or utility to the owner.

**Drafting note: This term is set forth in § 4651(9) of the federal act, and is used in proposed subdivision 9 of § 25.1-417 (current § 25-248(i)).**

§ 25.1-401. Scope of chapter.

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

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

**Drafting note: This provision is relocated from subsections A and B of § 25-236. Technical changes in subsection B clarify that the qualifying phrase applies to clauses (i), (ii), and (iii).**

§ 25.1-402. Rules and regulations.

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

**Drafting note: This section is currently set out at § 25-253.**

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

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

**Drafting note: This provision is currently set out at § 25-246.**

§ 25.1-404. Administrative payments; construction.

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



**Drafting note:** This provision is currently set out as subsection (b) of § 25-235.1.

~~§ 25-244~~ 25.1-405. Funds for ~~carrying out~~ implementing provisions of chapter.

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

**Drafting note:** Technical changes only.

Article 2.  
Relocation Assistance.

~~§ 25-239~~ 25.1-406. ~~Payments for moving~~ Moving and ~~relocation~~ related expenses.

~~A.~~ Whenever the acquisition of real property for a program or project undertaken by a state agency will result in the displacement of any person, ~~such~~ the state agency shall make fair and reasonable relocation payments to ~~the displaced persons~~ as required by this chapter ~~person~~ for:

1. Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, ~~but~~ which payments shall not ~~to~~ exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency;

3. Actual reasonable expenses in searching for a replacement business or farm;  
and

4. Actual reasonable expenses necessarily incurred in reestablishing a displaced farm, nonprofit organization or small business at its new site, ~~but~~ in accordance with criteria established by the state agency ~~but~~ not to exceed \$25,000 ~~in accordance with criteria established by the state agency~~.

**Drafting note:** The changes to subdivision A 4 attempt to clarify the apparent intent regarding agency criteria. It is based on § 4622(a) of the federal act.

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

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

**Drafting note: Currently located at subsection B of § 25-239. The last sentence is clarifying.**

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

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

**Drafting note: Currently located at subsection C of § 25-239. The last sentence is clarifying.**

~~§ 25-240~~ 25.1-409. Additional payments to enable displaced persons to acquire dwellings Replacement housing for homeowners.

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

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

2. The amount, if any, ~~which~~ that will compensate ~~such~~ the displaced person for any increased interest costs and other debt service costs ~~which~~ that such person is required to pay for financing the acquisition of any ~~such~~ comparable replacement dwelling. ~~Such~~ The amount for any increased interest or debt service costs shall be (i) determined in accordance with the criteria established by the state agency. ~~Such amount shall be~~ and (ii) paid only if the dwelling acquired by the state agency was

encumbered by a bona fide mortgage ~~which that~~ was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling; and

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

B. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling ~~which is decent, safe, and sanitary~~ not later than the end of the ~~one~~ 1-year period beginning on the later of (i) the date on which he receives final payment of all costs for the acquired dwelling, or (ii) the date on which the state agency obligation under § 25-247 25.1-414 is met, whichever is the later date, except that, However, the state agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the cost of relocating the person to a comparable replacement dwelling within ~~one~~ 1 year of such date.

**Drafting note: Subsections A and B correspond to § 4623(a) of the federal act. Other changes are technical.**

~~§ 25-244 25.1-410. Additional payments to certain persons not eligible for payments under § 25-240~~ Replacement housing for tenants and certain homeowners.

A. In addition to amounts otherwise authorized by this ~~chapter article~~, a state agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 25-240 25.1-409 which dwelling was actually and lawfully occupied by such displaced person for not less than ~~ninety~~ 90 days immediately prior to (i) the initiation of negotiations for acquisition of ~~such the~~ the dwelling; or (ii) ~~in any case in which~~ if the displacement is not a direct result of acquisition, such other event as the agency shall prescribe. Such payment shall consist of the amount necessary to enable such displaced person to lease or rent, for a period not to exceed ~~forty-two~~ 42 months, a comparable replacement dwelling, but not to exceed \$5,250. At the discretion of the agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

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

received under subsection A of § 25-240 25.1-409 had the person owned and occupied the displacement dwelling 180 days immediately prior to the initiation of such negotiations.

**Drafting note: The last 2 sentences of subsection A are in § 4624(a)(2) of the federal act. Other changes are technical.**

§ ~~25-242~~ 25.1-411. Relocation planning, assistance coordination, and advisory programs to be established services.

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

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

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

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

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

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

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

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

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

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

**Drafting note:** The changes generally conform this section to § 4625(c) and (d) of the federal act. The amendment to the initial phrase in subdivision C 3 ("Assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling . . .") is intended to rephrase the existing language in order to comport with language in the federal act; however, the Code Commission acknowledges that implementation of the federal act's language may result in a substantive change.

~~§ 25-243~~ 25.1-412. Administration of relocation assistance programs.

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

**Drafting note:** The defined term "person" includes each of these types of entities.

~~§ 25-244~~. Funds for carrying out provisions of chapter.

~~Funds appropriated or otherwise available to any state agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project.~~

**Drafting note:** This section is relocated to proposed § 25.1-405 in Article 1 of this chapter because it applies to the provisions of "this chapter," and thus applies to payments under Article 3 as well as this Article 2.

~~§ 25-245 25.1-413. Certain Payments to certain persons deemed displaced for purposes of chapter as the result of certain code enforcement activities.~~

~~A person who moves or discontinues his business or moves other personal property, or moves from his dwelling on or after April 10, 1972, as the direct result of federally assisted building or other similar federally assisted code enforcement activities, or a program of rehabilitation or demolition of buildings conducted pursuant to a federally assisted governmental program, is deemed to be a displaced person for the purposes of this chapter; provided, however, any local governing body may in its discretion Notwithstanding any other provision of this article, the governing body of a locality shall be authorized to make payments, to any displaced person who is displaced by nonfederally assisted housing, plumbing, building, electrical, elevator, fire, food and health and sanitation code enforcement activities, in its discretion either (i) in accordance with amounts not exceeding the amounts authorized by the provisions of this chapter, or (ii) in such lesser amounts as it may determine, to any person or persons displaced by nonfederally assisted housing, plumbing, building, electrical, elevator, fire, food and health and sanitation code enforcement activities; such local governing body. Localities may adopt policies and procedures for payments to be made to persons displaced by such nonfederally assisted programs.~~

**Drafting note: The first part of this section has been incorporated into the definition of "displaced person" in § 25.1-400. The other changes attempt to clarify the section's intent to allow localities to make payments to the described class of displaced persons of lesser amounts than what is otherwise required by the provisions of this article.**

~~§ 25-246. Payments not considered income, etc.~~

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

**Drafting note: This section has been relocated to § 25.1-405 in Article 1 because the payments include those made under Articles 2 and 3.**

~~§ 25-247 25.1-414. Authority of agency where replacement housing not available; requiring person to move.~~

~~A. If a program or project undertaken by a state agency cannot proceed to actual construction on a timely basis because comparable replacement sale or rental housing is dwellings are not available, and it is determined by the acquiring state agency determines that such housing dwellings cannot otherwise be made available, such agency may take such action as is necessary or appropriate to provide such housing~~

dwelling by use of funds authorized for such project. The state agency may use this section to exceed the maximum amounts that may be paid under §§ 25.1-409 and 25.1-410 on a case-by-case basis for good cause as determined in accordance with such regulations as the state agency shall issue.

B. No person shall be required to move from his dwelling on account of any project, unless the head of the state agency ~~head~~ is satisfied that comparable replacement housing, in accordance with subdivision 3 of subsection C of § 25-242, is available to such person.

**Drafting note: Amendments conform this section generally to § 4626 of the federal act. Other changes are technical.**

~~§ 25-247.1~~ 25.1-415. Amounts Adjustments to of benefits under ~~§§ 25-239, 25-240, and 25-244~~ certain benefit limits.

The monetary limits provided for in ~~§§ 25-239, 25-240, 25.1-406, 25.1-408, 25.1-409, and 25-244~~ 25.1-410 shall be adjusted to conform to future revisions of corresponding monetary benefits under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646).

**Drafting note: Technical changes only.**

~~§ 25-236~~ 25.1-416. Application of chapter article.

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

**Drafting note: This section has been relocated from subsection C of § 25-236. Amendments are intended to clarify that the benefits provided by this article are intended for owners as well as the occupants designated by this section.**

### Article 3. Real Property Acquisition Policies.

~~§ 25-248~~ 25.1-417. General rules-provisions for conduct of acquisition.

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

(a) ~~An~~ 1. The state agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

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

(c) 3. ~~Before the initiation of~~ initiating 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, if such an appraisal is required. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, ~~will~~ shall be disregarded in determining the compensation for the property. The agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation, together with a copy of the agency's approved appraisal of the fair market value of such property upon which the agency has based the amount offered for the property, if such an appraisal is required. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

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

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

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



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

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

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

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

~~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.~~

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

**Drafting note: The current last paragraph is incorporated into proposed subdivision 2 in order to clarify when an appraisal is required. This provision is amended to clarify that it applies to all "state agencies," as the existing provision encompasses all entities within the scope of the definition of such term. Subdivision A 10 is based on § 4651(10) of the federal act. Subsection B is currently located at § 25-235.1(a).**

~~§ 25-249 25.1-418. Reimbursement of owner for recording fees, taxes, penalty costs for prepayment of mortgage, etc certain expenses.~~

Any state agency acquiring real property ~~on or after April 10, 1972,~~ in connection with any program or project ~~shall,~~ as soon as practicable after the first to occur of the date of payment of the purchase price, or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the state agency deems fair and reasonable, for expenses he necessarily incurred for (a i) recording fees, transfer taxes and similar expenses incidental to conveying such real property to the state agency; (b ii) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering such real property; and (c iii)

the pro rata portion of real property taxes paid ~~which that~~ are allocable to a period subsequent to the first to occur of the date of vesting title in the state agency, or the effective date of possession of such real property by the state agency, whichever is the earlier.

**Drafting note: This provision corresponds to § 4653 of the federal act. Other changes are technical.**

~~§ 25-250~~ 25.1-419. Reimbursement of owner for costs, ~~etc.,~~ when condemnation proceeding is abandoned or decision is against condemnation denied.

~~Where~~ The court having jurisdiction of a condemnation proceeding is instituted by a state agency, on or after April 10, 1972, to acquire real property for such use and (1) the final judgment is that the real property cannot be acquired by condemnation or (2) the proceeding is abandoned, by condemnation shall award the owner of any right, title or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the state agency cannot acquire the real property by condemnation or (ii) the proceeding is abandoned by the state agency. The award of such sums will be paid by the state agency ~~which that~~ sought to condemn the property.

**Drafting note: This provision corresponds to § 4654 of the federal act. Other changes are technical.**

~~§ 25-251~~ 25.1-420. Reimbursement of owner for costs, ~~etc.,~~ incurred in declaratory judgment inverse condemnation proceeding under § 8.01-187.

~~Where~~ If a declaratory judgment proceeding is instituted pursuant to § 8.01-187 by the owner of any right, title or interest in real property because of use of his property, on or after April 10, 1972, in any program or project undertaken by a state agency, and either (i) the court, rendering renders a judgment for the plaintiff in such proceeding and awarding awards compensation for the taking of property, or (ii) the Attorney General effecting effects a settlement of any such proceeding in which the Commonwealth is a party, the court or Attorney General, as appropriate, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or the Attorney General, as the case may be, reimburse such plaintiff for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of such proceeding.

**Drafting note: Technical changes only.**

~~§ 25-252~~ 25.1-421. Buildings, structures and other improvements on real property.

~~(a) A.~~ To the greatest extent practicable, where an interest in real property is acquired, on or after April 10, 1972 by a state agency, the state agency shall acquire an

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

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

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

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

**Drafting note: Subsection D is currently located at § 25-235.1(a). Other changes are technical.**

~~§ 25-253. Rules and regulations.~~

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

**Drafting Note: This section has been moved to § 25.1-402.**

~~§ 25-254.~~

~~Not set out.~~

**Drafting Note: This section is a severability clause. It is unnecessary; see § 1-17.1.**



APPENDIX A

**Title 25 - Eminent Domain**

**Chapter 1.1 - Condemnation Generally.**

Old Section	New Section
25-46.1	REPEALED
25-46.2	25.1-200
25-46.2:1	REPEALED
25-46.2:2	25.1-106
25-46.3	25.1-100
25-46.3:1	REPEALED
25-46.4	25.1-201
25-46.4:1	25.1-202
25-46.5	25.1-204
25-46.6	25.1-103 25.1-104 25.1-105
25-46.7	25.1-205 25.1-206 25.1-207 25.1-208
25-46.8	25.1-223 25.1-224 25.1-225
25-46.9	25.1-205 25.1-209 25.1-213 25.1-214
25-46.10	25.1-210
25-46.11	25.1-211
25-46.12	25.1-212
25-46.13	25.1-215
25-46.14	25.1-216
25-46.15	25.1-217
25-46.16	25.1-218
25-46.17	25.1-219
25-46.17:1	25.1-221
25-46.18	25.1-222
25-46.19	25.1-220
25-46.20	25.1-226 25.1-227 25.1-228 25.1-229

	25.1-230
25-46.21	25.1-231 25.1-232 25.1-233
25-46.21:1	25.1-234
25-46.22	25.1-235
25-46.23	25.1-236
25-46.24	25.1-237
25-46.25	25.1-238
25-46.26	25.1-239
25-46.27	25.1-247
25-46.28	25.1-240 25.1-241
25-46.29	25.1-242
25-46.30	25.1-243
25-46.31	25.1-244
25-46.32	25.1-245
25-46.33	25.1-246
25-46.34	25.1-248 25.1-249 25.1-250 25.1-251
25-46.36	REPEALED

**Chapter 2 - Acquisition of Waterworks Systems.**

Old Section	New Section
25-47	15.2-1908
25-48	15.2-1909
25-49	15.2-1910
25-50	15.2-1911
25-51	15.2-1912
25-52	15.2-1913
25-53	15.2-1914
25-54	15.2-1915
25-55	15.2-1916

**Chapter 5 - Miscellaneous.**

Old Section	New Section
25-232.01	25.1-101 15.2-1901.1 15.2-1907

25-232.1	25.1-203
25-232.2	REPEALED
25-233	25.1-102
25-234	REPEALED

**Chapter 6 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972.**

Old Section	New Section
25-235	REPEALED
25-235.1	25.1-404 25.1-417 25.1-421
25-236	25.1-401 25.1-416
25-237	REPEALED
25-238	25.1-400
25-239	25.1-406 25.1-407 25.1-408
25-240	25.1-409
25-241	25.1-410
25-242	25.1-411
25-243	25.1-412
25-244	25.1-405
25-245	25.1-413
25-246	25.1-403
25-247	25.1-414
25-247.1	25.1-415
25-248	25.1-417
25-249	25.1-418
25-250	25.1-419
25-251	25.1-420
25-252	25.1-421
25-253	25.1-402
25-254	REPEALED

## APPENDIX B

### Title 25.1 - Eminent Domain

#### Chapter 1. - General Provisions.

New Section	Old Section
25.1-100	25-46.3
25.1-101	25-232.01
25.1-102	25-233 33.1-95
25.1-103	25-46.6(a)
25.1-104	25-46.6(b)
25.1-105	25-46.6(a)
25.1-106	25-46.2:2

#### Chapter 2 - Condemnation Procedures.

New Section	Old Section
25.1-200	25-46.2
25.1-201	25-46.4
25.1-202	25-46.4:1
25.1-203	25-232.1
25.1-204	25-46.5
25.1-205	25-46.9 25-46.7(b)
25.1-206	25-46.7(a) 25-46.7(b) 25-46.7(c) 25-46.7(e) 25-46.7(g)
25.1-207	25-46.7(d)
25.1-208	25-46.7(f)
25.1-209	25-46.9
25.1-210	25-46.10
25.1-211	25-46.11
25.1-212	25-46.12
25.1-213	25-46.9
25.1-214	25-46.9
25.1-215	25-46.13
25.1-216	25-46.14
25.1-217	25-46.15
25.1-218	25-46.16
25.1-219	25-46.17
25.1-220	25-46.19



25.1-221	25-46.17:1
25.1-222	25-46.18
25.1-223	25-46.8
25.1-224	25-46.8
25.1-225	25-46.8
25.1-226	25-46.20 A
25.1-227	25-46.20 A
25.1-228	25-46.20 B
25.1-229	25-46.20 B
25.1-230	25-46.20 A 25-46.20 B
25.1-231	25-46.21
25.1-232	25-46.21
25.1-233	25-46.21
25.1-234	25-46.21:1
25.1-235	25-46.22
25.1-236	25-46.23
25.1-237	25-46.24
25.1-238	25-46.25
25.1-239	25-46.26
25.1-240	25-46.28
25.1-241	25-46.28
25.1-242	25-46.29
25.1-243	25-46.30
25.1-244	25-46.31
25.1-245	25-46.32
25.1-246	25-46.33
25.1-247	25-46.27
25.1-248	25-46.34(a)
25.1-249	25-46.34(b)
25.1-250	25-46.34(c)
25.1-251	25-46.34(d) 25-46.34(e) 25-46.34(f)

**Chapter 3 - Transferring Defeasible Title by Certificate.**

New Section	Old Section
25.1-300	NEW
25.1-301	33.1-119
25.1-302	33.1-119
25.1-303	33.1-119
25.1-304	33.1-119
25.1-305	33.1-120 33.1-121

25.1-306	33.1-121
25.1-307	33.1-122
25.1-308	33.1-122
25.1-309	33.1-122
25.1-310	33.1-124
25.1-311	33.1-124
25.1-312	33.1-125
25.1-313	33.1-127
25.1-314	33.1-127
25.1-315	33.1-128
25.1-316	33.1-128
25.1-317	33.1-129
25.1-318	33.1-132

**Chapter 4 - Relocation Assistance and Real Property Acquisition Policies.**

New Section	Old Section
25.1-400	25-238
25.1-401	25-236
25.1-402	25-253
25.1-403	25-246
25.1-404	25-235.1(b)
25.1-405	25-244
25.1-406	25-239 A
25.1-407	25-239 B
25.1-408	25-239 C
25.1-409	25-240
25.1-410	25-241
25.1-411	25-242
25.1-412	25-243
25.1-413	25-245
25.1-414	25-247
25.1-415	25-247.1
25.1-416	25-236 C
25.1-417	25-248 25-235.1(a)
25.1-418	25-249
25.1-419	25-250
25.1-420	25-251
25.1-421	25-252 25-235.1(a)

APPENDIX C

PROVISIONS IN TITLES OTHER THAN TITLE 25 THAT AUTHORIZE  
ENTITIES TO ACQUIRE PROPERTY BY CONDEMNATION

<u>Entity</u>	<u>Section</u>
Virginia Public Building Authority	2.2-2263, 2.2-2276
Virginia Small Business Financing Authority	2.2-2286
Produce Market Authorities	3.1-62
Virginia Aviation Board	5.1-2.2:1, 5.1-2.5
Commonwealth Transportation Commissioner	5.1-50
Metropolitan Washington Airports Authority	5.1-160
Department of Conservation and Recreation	10.1-114, 10.1-201
Watershed improvement districts	10.1-635
Waste Management Board	10.1-1402, 10.1-1432
Localities	5.1-34; 15.2-1811; 15.2-1901 et seq.; 22.1-126.1; 28.2-628; 36-19.5; 36-49.1:1; 44-129; 57-36; 62.1-150
Transportation districts	15.2-4515; 15.2-4518
Water and sewer authorities	15.2-5114
Hospital commissions	15.2-5214
Hospital authorities	15.2-5343
Electric authorities	15.2-5425
Park authorities	15.2-5704
Localities for Virginia Baseball Stadium Authority	15.2-5807
Regional juvenile detention commissions	16.1-318, 16.1-319
Sanitary districts	21-118; 21-118.4

Sanitation commissions	21-166, 21-168; 21-170; 21-246; 21-248; 21-250
Drainage districts	21-323
School boards	22.1-126.1; 22.1-127, 22.1-234
VCU Health System Authority	23-50.16:12
Jamestown-Yorktown Foundation	23-288
Frontier Culture Museum of Virginia	23-298
Department of Conservation and Recreation	28.2-628
Department of Transportation	28.2-628
Mosquito control commissions	32.1-193
Board of Health	32.1-230
Commonwealth Transportation Board	33.1-49; 33.1-58; 33.1-254; 33.1-269; 33.1- 272; 33.1-300
Commonwealth Transportation Commissioner	33.1-39; 33.1-89 et seq.; 33.1-217; 33.1-264; 33.1-348; 33.1-370; 33.1-422; 33.1-443
Woodrow Wilson Bridge and Tunnel Authority	33.1-320.2
Housing authorities	36-19; 36-27; 36-48; 36-48.1; 36-50; 36-51; 36-52.2
Adjutant General, Department of Military Affairs	44-132
Virginia Fuel Commission	45.1-161.316.
Public service corporations	56-49; 56-458.1; 56-464; 62.1-98
Utility cooperatives	56-231.23; 56-231.43; 56-495
Railroads	56-347
PPTA & PPEA operator, responsible public entity	56-568; 56-569; 56-575.11; 56-575.12
Virginia Port Authority	62.1-136

## APPENDIX D

### CHAPTER RELOCATED FROM TITLE 25 TO ANOTHER TITLE

**Drafting note:** This chapter is relocated from Chapter 2 (§ 25-47 et seq.) of Title 25. Placement in Title 15.2 is appropriate because the procedure can be used only by localities and water authorities and primarily addresses the issuance of public bonds to finance its costs.

#### CHAPTER 19.1. ACQUISITION OF WATERWORKS SYSTEMS.

§ ~~25-47~~ 15.2-1908. Council or other governing body to file copy of resolution.

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

**Drafting note: Technical changes.**

§ ~~25-48~~ 15.2-1909. Such resolution to contain statement as to issuance of bonds.

If in order to pay the amount fixed by the ~~commissioners~~ body determining just compensation it will be necessary for the city or county to issue and sell its bonds, such resolution filed shall so state, and shall further state that the council or other governing body proposes promptly to take the necessary and appropriate action required by law to issue and sell such bonds whenever authorized by § ~~25-49~~ 15.2-1910.

**Drafting note: Technical changes only.**

§ ~~25-49~~ 15.2-1910. Prerequisite to issuance and sale of bonds.

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

**Drafting note: Technical changes only.**

§ ~~25-50~~ 15.2-1911. Statement by defendant precludes appeal.

If ~~such a statement or statements, as provided for in § 25-49 15.2-1910, be is~~ filed by the each defendant ~~or defendants~~, no appeal or writ of error shall thereafter be allowed such defendant ~~or defendants~~.

**Drafting note: Technical changes only.**

§ ~~25-51~~ 15.2-1912. Time for sale of bonds or payment fixed by court.

When such report shall have been finally confirmed or when such defendant or defendants have filed in such proceedings the statement or statements as provided by § ~~25-49~~ 15.2-1910, the court shall, upon motion of any party to the proceedings, after notice to all other parties thereto, fix a reasonable time within which the city or county must complete the issuance and sale of its bonds, if the sale of bonds is necessary, or pay the money to the party or parties entitled thereto, or pay the same into the court. Such time so fixed may be extended by the court for good cause shown.

**Drafting note: No change.**

§ ~~25-52~~ 15.2-1913. Time for holding election if revenue bonds are to be issued.

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

**Drafting note: Technical changes only.**

§ ~~25-53~~ 15.2-1914. Proceedings dismissed if issuance defeated or bonds cannot be sold; resolution of approval of report not deemed contract to purchase.

In the event that such an election is held and the proposed bond issue is not approved therein, or if approved and for any reason the bonds proposed to be issued by any such city or county cannot be sold upon terms which, in the opinion of the city council or other governing body, are reasonably advantageous to such city or county, then, upon motion of such city or county, the proceedings shall be dismissed and there shall be no obligation upon such city or county to take the property or pay the amount fixed by the ~~commissioners'~~ report of the body determining just compensation, notwithstanding the fact that the council or other governing body may have filed the resolution of approval of the ~~commissioners'~~ report of the body determining just compensation as provided by ~~§ 25-47~~ 15.2-1908, nor shall the filing of any such resolution approving the award of the ~~commissioners~~ body determining just compensation be deemed to be a contract on the part of any such city or county to purchase or take the property sought to be condemned, or to render any such city or county liable in damages for failure to take same.

**Drafting note: Technical changes only.**

~~§ 25-54~~ 15.2-1915. Proceedings dismissed on failure to pay compensation; judgment for fees and costs.

In the event that any such city or county fails to pay the amount fixed and ascertained by the ~~commissioners'~~ report of the body determining just compensation, as directed by the court and within the time, or any extension thereof, allowed by the court as provided by ~~§ 25-54~~ 15.2-1912, the proceedings shall be dismissed on motion of any party thereto. If such proceedings be so dismissed, judgment shall be entered against such city or county for all costs and the attorneys' fee or fees actually incurred by the defendant or defendants; provided, however, that the fee or fees shall be so paid only to the extent they are reasonable in the opinion of the court.

**Drafting note: Technical changes only.**

~~§ 25-55~~ 15.2-1916. Right to pay compensation into court and take possession and operate.

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

determining just compensation, or from operating same or making replacements, repairs, betterments or additions thereto.

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

**Drafting note: Technical changes only.**



## APPENDIX E

### SECTIONS IN OTHER TITLES AFFECTED BY TITLE 25 REVISION

#### § 2.2-2286. Power to condemn.

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

**Drafting note: Technical changes only. As proposed Title 25.1 contains both a general condemnation procedure and a quick take procedure, the reference to Chapter 2 of Title 25.1 is intended to avoid any confusion as to which procedure applies.**

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

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

**Drafting note: Technical changes, intended to specify the procedure to be followed; § 56-347, which specifies the condemnation powers of railroads, provides that such proceedings shall be conducted in the manner provided by Chapter 1.1 of Title 25.**

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

Private property needed by any city, incorporated town or county for an airport or landing field shall be acquired by purchase, if the city, town or county is able to agree with the owners on the terms thereof. The cities, incorporated towns or counties are hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements and privileges ~~which~~ that are necessary for airport and landing field purposes. Proceedings for the acquisition of such lands, easements and privileges by condemnation may be instituted and conducted in the name of such county, city or town, and the procedure shall be mutatis mutandis the same as in the acquisition of land by condemnation proceedings instituted by railroads and may acquire in like manner, for a term of years or perpetually, the right of easement to remove and control the growth of any tree or vegetation standing or growing in said land outside the boundaries of any airport or landing field and the right of easement to place and maintain suitable signs or markers or lights to adequately locate and mark objects or structures ~~which~~ that are hazardous to aircraft using such airports or landing fields, of ingress and egress to and from such airport hazards for the purpose of maintaining and repairing such signs, markers and lights and cutting of trees or other growing vegetation penetrating the approach and departure slope easement. The right of condemnation granted herein shall be subject to the same provisions as are provided in ~~§ 25-233~~ 25.1-102 concerning the condemnation of property belonging to a corporation possessing the power of eminent domain by another public service corporation.

**Drafting note: Technical changes only.**

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

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

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

C. The Authority established hereunder is hereby granted full power to exercise the right of eminent domain in the acquisition of any lands, easements, privileges or

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

**Drafting note: Technical changes only.**

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

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

1. To ensure that Departmental historical and cultural facilities are suitable for public, patriotic, educational and recreational assemblies and events;

2. To plan, establish, construct, operate, maintain and manage historic museums, commemorative memorials and other facilities as directed by acts of the General Assembly;

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

4. To lease acquired property to any person, association, firm or corporation for terms and conditions determined by the Director with the Governor's consent.

**Drafting note: Technical changes clarify that the quick take procedure set out in proposed Chapter 3 of Title 25.1 will be used in all quick take proceedings other than those by the Commonwealth Transportation Commissioner.**

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

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

B. The Director is authorized to institute and prosecute any proceedings in the exercise of the power of eminent domain for the acquisition of such properties for public use in accordance with Chapter ~~4.4~~ 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1.

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

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

**Drafting note: No change.**

§ 10.1-635. Power of eminent domain.

In addition to any other powers conferred on it by law, any watershed improvement district organized under the provisions of this article shall be authorized to acquire by eminent domain any lands, property rights, franchises, rights-of-way, easements or other property deemed necessary or convenient for the efficient operation of the district. Such proceedings shall be in accordance with and subject to the provisions of the laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of a public service company and subject to the provisions of Chapters ~~1.4~~ Chapter 2 (§ ~~25-46.4~~ 25.1-200 et seq.) and ~~5~~ (§ ~~25-232.01~~ et seq.) of Title ~~25~~ 25.1.

**Drafting note: Technical changes. The relevant provisions of Chapter 5 of Title 25 have been incorporated into Chapters 1 and 2 of Title 25.1.**

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

For the purpose of § 10.1-638 B the Board is authorized to purchase property and rights-of-way condemned for watershed maintaining, protecting, or providing

supplies of water and for water storage purposes under §§ 25-232.01, 15.2-1904, 21-448 and 15.2-1907, 15.2-5114, and 21-118 and the condemnor is authorized to sell any such property or rights-of-way to the Board.

**Drafting note: Technical change. The use of the word "watersheds" is replaced because the term is generally defined as a region draining into a body of water.**

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

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

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

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

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

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

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

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

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

C. The provisions of a tree conservation ordinance enacted pursuant to this section shall not apply: (i) to work conducted on federal or state property; (ii) to emergency work to protect life, limb or property; (iii) to routine installation, maintenance and repair of cable and wires used to provide cable television, electric, gas or telephone

service; (iv) to activities with minor effects on trees, including but not limited to, home gardening and landscaping of individual homes; and (v) commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops.

D. In the event that the application of any ordinance regulating the removal of heritage, specimen, memorial or street trees results in any taking of private property for a public purpose or use, the governing body shall compensate by fee or other consideration the property owner for such taking and the ordinance shall so state thereby notifying the owner of his right to seek such fee or other compensation. The provisions of Chapter ~~4-4\_2~~ (~~§ 25-46.1~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 shall apply to the taking of private property for a public purpose pursuant to such local ordinance.

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

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

**Drafting note: Technical changes only.**

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

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

1. Supervise and control waste management activities in the Commonwealth.
2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.
3. Provide technical assistance and advice concerning all aspects of waste management.
4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.
5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.
6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste ~~which~~ that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. Apply for federal funds and transmit such funds to appropriate persons.

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter ~~4-4 2~~ (§ ~~25-46.4 25.1-200~~ et seq.) of Title ~~25 25.1~~, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees

shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue such permits. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. Make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

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

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

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

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

**Drafting note: Technical changes only.**



§ 10.1-1432. Further powers of Board.

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

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter ~~1-1~~ 2 (§ ~~25-46-4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas. In all instances lands which that are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

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

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

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

**Drafting note: No change.**

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter

shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

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

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

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

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

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

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

**Drafting note: No change.**

§ 15.2-729. Relocation assistance programs.

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

**Drafting note: No change.**

§ 15.2-1901.1. Condemnation by localities authorized.

The Commonwealth Transportation Board, the Breaks Interstate Park Commission, any state institution, or the governing body of any county, city or town locality may acquire by condemnation title to (i) land, buildings and structures, (ii) any easement thereover or (iii) any sand, earth, gravel, water or other necessary material for the purpose of opening, constructing, repairing or maintaining a road or for any other authorized public undertaking if the terms of purchase cannot be agreed upon or the owner (i\_a) is unknown, (ii\_b) cannot with reasonable diligence be found in the Commonwealth or (iii\_c) due to incapacity cannot negotiate an agreement. Condemnation proceedings shall be conducted under the provisions of Chapter ~~4-4~~ 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of this title Title 25.1 insofar as applicable.

**Drafting note: This new section is based on subsection A of § 25-232.01. It is set out here as existing language in order to assist the reader in identifying changes from subsection A of § 25-232.01.**

§ 15.2-1902. Condemnation proceedings generally.

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

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

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

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

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

**Drafting note: The amendments are intended to clarify that the quick take procedure that localities may exercise is as set forth in proposed Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, which in turn is based on §§ 33.1-119 through 33.1-132. Proposed subdivision 4 lists the sections in Title 33.1 that are currently referenced in this section, but are not incorporated into proposed Chapter 3 of**

**Title 25.1. These include (i) § 33.1-91, which authorizes the acquisition of an entire tract when only a portion is to be used for highway purposes; (ii) § 33.1-92, which declares that the acquisition of residual parcels is in the public interest and constitutes a public use; (iii) § 33.1-93, which addresses the use and disposition of residue parcels; (iv) § 33.1-94, which authorizes the Commonwealth Transportation Commissioner to enter upon land to determine its suitability for highway purposes; (v) § 33.1-96, which authorizes the Commonwealth Transportation Commissioner to acquire interests for exchanges with railroads and other public utilities; and (vi) § 33.1-117, which addresses removal of materials from streams, rivers or watercourses for use on public roads. Currently-referenced sections that are not set out in proposed subdivision 4 include (i) § 33.1-98, which provides that condemnation proceedings shall be instituted and conducted in accordance with existing Chapter 1.1 (§ 25-46.1 et seq.) except that the provisions of §§ 33.1-119 through 33.1-132 shall be applicable to such proceedings; (ii) §§ 33.1-99 through 33.1-116, which have been repealed; (iii) § 33.1-118, which is reserved, and (iv) §§ 33.1-119 through 33.1-132, which are replicated in proposed Chapter 3 of Title 25.1.**

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

A. When a condemnation is authorized by § 15.2-1901, a locality may enter upon and take possession of property before the conclusion of condemnation proceedings, using the procedures in ~~§§ 33.1-119 through 33.1-132~~ Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, for public purposes of (i) streets and roads, (ii) drainage facilities, (iii) water supply and sewage disposal systems (including pipes and lines) and, (iv) oyster beds and grounds, and for any of the purposes set out in § 25-232.01, and 15.2-1901.1. In such proceedings, the procedure may be, when the necessary changes have been made, the same as is prescribed in Article 7 (§ 33.1-89 et seq.) of Chapter 33.1 for condemnation proceedings by the Commonwealth Transportation Commissioner in the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth or § 33.1-229, 2 (§ 25.1-200 et seq.) of Title 25.1 or the same as prescribed in Chapter 1.1 3 (§ 25-46.1 et seq.) of Title 25 25.1. It is the intention of this section to provide that property Property may be condemned after the construction of a project, as well as prior thereto, and to The provisions of Chapter 3 of Title 25.1 shall be used to identify the fund out of which the judgment of the court in condemnation proceedings shall be paid. However, no property of any public service corporation shall be condemned except in accordance with §§ 15.2-1906, 15.2-2146 through 15.2-2148 and 25-233 25.1-102.

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

C. Before entering and taking possession of any property, the locality shall pay into court or to the clerk thereof, for the property owner's benefit, such sum as the

governing body estimates to be the fair value of the property taken and damage, if any, done to the residue. Such payment shall not limit the amount to be allowed under proper proceedings.

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

**Drafting note: Technical changes. The language referring to the intention of this section is deleted, and affirmative language is inserted in its place.**

§ 15.2-1905. Special provisions for counties.

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

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

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

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

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

**Drafting note:** The amendments attempt to clarify the intent of the existing section. Rather than cross-reference § 33.1-98, its substance is restated in clauses (i) and (ii) of subsection C.

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

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

petitioner that such existing water or sewage system be condemned in its entirety. The court having jurisdiction of the condemnation proceedings shall, as the occasion arises and prior to the filing of the report of the commissioners appointed to determine a just compensation for the property sought to be condemned in its entirety, take such steps as may be necessary and proper to cause to be included in an inventory of the property sought to be condemned full descriptions of any and all such property whenever the exigencies of the case or the ends of justice will be promoted thereby. Such inventory shall be made a part of the record in the proceedings and referred to the commissioners.

**Drafting note: Technical changes only, to reflect that Chapter 2 of Title 25 has been relocated to new Chapter 19.1 of Title 15.2.**

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

Upon compliance with the applicable provisions of Chapter 1.1 of this title insofar as applicable Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, cities and towns may acquire by condemnation any lands or rights-of-way necessary for maintaining, protecting, or providing watersheds supplies of water for public use or for laying water pipes, and counties may so acquire such lands or rights-of-way within their borders. Any interest acquired under this section by a county, city or town shall be subject to the provisions of ~~§ 25-233~~ 25.1-102.

**Drafting note: Relocated from subsection B of § 25-232.01. The use of the word "watersheds" is replaced with "supplies of water" because a watershed is generally defined as a region draining into a body of water.**

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

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

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

may be necessary to make, erect, construct, operate and maintain any of the works or plants mentioned in this section.

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

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

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

**Drafting note: The reference to § 15.2-2115 is deleted, and the provision is added to § 15.2-2115. The other changes are technical.**



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

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

**Drafting note: This change is technical because § 15.2-2109 currently provides that localities exercising the powers granted by this section shall be subject to the provisions of existing § 25-233 (proposed § 25.1-102) to the same extent as are corporations.**

§ 15.2-2140. Dispute between jurisdictions; appeals.

A. An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to any party from the judgment of the special court, and the appeal shall be heard and determined without reference to the principles of demurrer to evidence. The special court shall certify the facts in the case to the Supreme Court, and the evidence shall be considered as on appeal in proceedings under Chapter 4-42 (§ 25.1-200 et seq.) of Title 25 (~~§ 25-46.1 et seq.~~) 25.1. In any case, by consent of all parties of record, a motion to dismiss may be made at any time before final judgment on appeal.

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

**Drafting note: No change.**

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

For the purpose of providing an adequate water supply or of acquiring, maintaining or enlarging a waterworks system, any locality, in addition to other powers conferred by law, may acquire, as provided in § 15.2-1800, within or outside or partly within and partly outside the limits of the locality, the property, in whole or in part, whensoever acquired, of any private or public service corporation operating a waterworks system or chartered for the purpose of acquiring or operating such a system. Such property shall include its lands, plants, works, buildings, machinery, pipes, mains, wells, basins, reservoirs and all appurtenances thereto and its contracts, easements, rights and franchises, including its franchise to be a corporation, whether such property, or any part thereof, is essential to the purposes of the corporation or not.

However, any locality condemning property hereunder shall furnish water, at appropriate rates, to the customers of any water company whose property is condemned. The provisions of § 25.1-102 shall not apply in the case of condemnation of an existing water or sewage disposal system in its entirety.

**Drafting note: The last sentence codifies the holding of the Virginia Supreme Court in Board of Supervisors v. Alexandria Water Co., 204 Va. 434 (1963), that a county may acquire properties of a water company without the permission of the State Corporation Commission.**

§ 15.2-3221. Appeals; how heard.

An appeal may be granted by the Supreme Court, or any justice thereof. The special court shall certify the facts in the case to the Supreme Court, and the evidence shall be considered as on appeal in proceedings under Chapter 4-1 2 (§ 25-46-1 25.1-200 et seq.) of Title 25 25.1. In any case, by consent of all parties of record, the motion to annex may be dismissed at any time before final judgment on appeal.

**Drafting note: No change.**

§ 15.2-4518. Additional powers.

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

1. Adopt and have a common seal and alter the seal at pleasure;
2. Sue and be sued;
3. Make regulations for the conduct of its business;
4. Make and enter into all contracts or agreements, as the commission may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted under this chapter;
5. Apply for and accept loans and grants of money or materials or property at any time from the United States of America or the Commonwealth or any agency or instrumentality thereof, for itself or as an agent on behalf of the component governments or any one or more of them; and in connection therewith, purchase or lease as lessor or lessee, any transit facilities required under the terms of any such grant made to enable the commission to exercise its powers under § 15.2-4515 B 5;
6. In the name of the commission, and on its behalf, acquire, hold and dispose of its contract or other revenues;
7. Exercise any power usually possessed by private corporations, including the right to expend, solely from funds provided under this chapter, such funds as may be

considered by the commission to be advisable or necessary in the performance of its duties and functions;

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

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

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

11. Institute and prosecute any eminent domain proceedings to acquire any property authorized to be acquired under this title in accordance with the provisions of Chapter 4-1 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1, and subject to the approval of the State Corporation Commission, ~~and of § 25-233~~ pursuant to § 25.1-102;

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

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

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

**Drafting note: Technical changes only.**

§ 15.2-5114. Powers of authority.

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

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

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

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

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

5. Sue and be sued;

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

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

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

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

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

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

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

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

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

**Drafting note: Technical change only.**

§ 15.2-5343. Eminent domain.

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

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

**Drafting note: Technical changes only.**

§ 15.2-5367. Appeal.

An appeal may be granted by the Supreme Court of Virginia, or any judge thereof, to either the authority or the city from the judgment of the court, and the appeal shall be heard and determined without reference to the principles of demurrer to evidence. The trial court shall certify the facts in the case to the Supreme Court and the evidence shall be considered as on appeal in proceedings under Chapter 4.4.2 (§ 25-46.4 25.1-200 et seq.) of Title 25.1. By consent of both parties of record, the petition may be dismissed at any time before final judgment on the appeal.

**Drafting note: No change.**

§ 15.2-5425. Eminent domain.

An authority created under the provisions of this chapter is hereby vested with the power of eminent domain and the same authority to exercise the power of eminent domain as is granted in Chapter 4.4.2 (§ 25-46.4 25.1-200 et seq.) of Title 25.1 and, ~~mutatis mutandis, as is granted to the Commonwealth Transportation Board in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1,~~ subject to the provisions of ~~§ 25-233 25.1-102,~~ provided that this power shall not be used to acquire existing power supply facilities or plants held for future use. Furthermore, no authority may condemn property outside of the territorial limits of its member governmental units without obtaining the consent of the governing body of the locality in which such property is located; however, in any case in which the approval by such locality is withheld, the authority seeking such approval may petition for the convening of a special court, pursuant to §§ 15.2-2135 through 15.2-2141.

**Drafting note: Technical changes only.**

§ 15.2-5807. Acquisition of property.

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

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

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

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

**Drafting note: Technical changes only.**

§ 16.1-319. Acquisition of property by commission.

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

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

**Drafting note: No change.**

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

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

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

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

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

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

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

{6}. To levy and collect an annual tax upon all the property in such sanitary district subject to local taxation to pay, either in whole or in part, the expenses and charges incident to constructing, maintaining and operating water supply, sewerage,



garbage removal and disposal, heat, light, fire-fighting equipment and power and gas systems and sidewalks for the use and benefit of the public in such sanitary district. Any locality imposing a tax pursuant to this subdivision may base the tax on the full assessed value of the taxable property within the district, notwithstanding any special use value assessment of property within the sanitary district for land preservation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, provided the owner of such property has given written consent.

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

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

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

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

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

b. For the purpose of constructing water or sewer lines, the proceedings shall be instituted and conducted in accordance with the procedures prescribed either by such method Chapter 2 of Title 25.2 or in the manner provided for the condemnation of land by the Commonwealth Transportation Commissioner in §§ 33.1-119 through 33.1-129, Chapter 3 (§ 25.1-300 et seq.) of Title 25.1; or, (b) in the case of lands proposed to be condemned for

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

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

**Drafting note: Technical and clarifying amendments.**

§ 21-248. Enumeration of powers of commission.

Every commission shall have the following powers:

- {1}. To adopt and have a common seal and to alter the same at pleasure;
- {2}. To sue and to be sued;
- {3}. In the name of the commission and on its behalf, to acquire, hold and dispose of its fees, rents and charges and other revenues;
- {4}. In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire, hold, and dispose of other personal property for the purposes of the commission;
- {5}. In the name of the commission but for the cities, counties and towns in whole or in part embraced within the district, to acquire by purchase, gift, condemnation or otherwise, real property or rights or easements therein, necessary or convenient for the purposes of the commission, subject to mortgages, deeds of trust, or other liens or otherwise, and to hold and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the commission; provided that the right of condemnation granted herein shall be subject to the same provisions as are provided in § ~~25-233~~ 25.1-102 concerning the condemnation of any property belonging to a corporation possessing the power of eminent domain by another public service corporation;
- {6}. To borrow money for the purposes of the commission and to issue therefor its bonds, and to provide for and secure the payment of its bonds and the rights of the holders thereof, and to fund or refund its bonds by the issuance of bonds hereunder;
- {7}. To accept gifts or grants or real or personal property, money, material, labor or supplies for the purposes of the commission and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants;
- {8}. To enter on any lands, waters and premises for purpose of making surveys, borings, soundings and examinations for the purposes of the commission;

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

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

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

**Drafting note: Technical changes only.**

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

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

**Drafting note: No change.**

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

A school board shall have the power to exercise the right of eminent domain and may condemn land or other property or any interest or estate therein, including dwellings, yards, gardens or orchards, necessary for public school purposes pursuant to the provisions of Chapter ~~4-4~~ 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 and in the manner provided by law ~~for the Commonwealth Transportation Commissioner in Article~~

~~7 (§ 33.1-89 et seq.)~~ of Chapter ~~4 3 (25.1-300 et seq.)~~ of Title ~~33.1 25.1~~. To determine the suitability of the land for school purposes, a school board shall have the same right of entry under the same conditions as a county, city, or town pursuant to ~~§ 25-232.1 25.1-203~~. A school board shall have no authority to locate any school which was not begun prior to January 1, 1978, on property outside the boundaries of the school division unless the school board first obtains the approval of the governing body of the county, city or town in which a proposed school will be located.

**Drafting note: Technical changes only.**

§ 23-50.16:12. Eminent domain.

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

**Drafting note: No change.**

§ 23-288. Powers and duties.

The Foundation shall have the power and duty to:

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

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

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

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

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

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

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

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

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

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

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

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

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

**Drafting note: Technical changes only.**

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

A. The Board of Trustees shall:

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

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

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

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

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

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

7. Acquire, with the consent of the Governor, lands, property and structures deemed necessary to the purpose of the Museum by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Museum may proceed in the manner provided by law for the Commonwealth Transportation Commissioner in Article 7 (~~§ 33.1-89 et seq.~~) of Chapter 4.3 (§ 25.1-300 et seq.) of Title ~~33.4~~ 25.1;

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

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

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

B. In addition to the powers granted by subsection A, the Board may, from time to time, evaluate the significance or suitability of the furnishings, household items, and other objects heretofore and hereinafter acquired by purchase, gift or donations with or for the Museum, for the purpose of accurately presenting the tastes and lifestyles of the people living during the era the Museum depicts and within the limitations of the furnishings, household items, and other objects that would have been available to and within the means of such persons. The Board may dispose of those furnishings, household items, and other objects determined by the Board to be of little or no significance or suitability for achieving the purposes or mission of the Museum by exchange or sale, so long as such disposition is not inconsistent with the terms of the acquisition of the relevant property. At the discretion of the Board, sales of these items may be conducted by auction houses recognized for their expertise in the sale of such property.

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

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

**Drafting note: Technical changes only.**

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

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

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

**Drafting note: Technical changes only.**

§ 32.1-193. Eminent domain.

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

**Drafting note: Technical changes only.**

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

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

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

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

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

E. In negotiating with a property owner with respect to payment for prospective damage to property not taken incident to the purposes of this section, the Commissioner shall ensure that such property owner or his authorized representative is properly informed as to the type and amount of foreseeable damage and/or enhancement.



Adequate briefing includes: (i) the giving of plats and profiles of the project, showing cuts and fills, together with elevations and grades; (ii) explanation, in lay terms, of all proposed changes in profile, elevation and grade of the highway and entrances, including the elevations of proposed pavement and shoulders, both center and edges, with relation to the present pavement, and approximate grade of entrances to the property.

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

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

**Drafting note: Technical changes only.**

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

In acquiring rights-of-way for highway construction, reconstruction or improvement, and lands incidental to such construction, reconstruction or improvement, the Commissioner is authorized and empowered, whenever a portion of a tract of land is to be utilized for right-of-way, or a purpose incidental to the construction, reconstruction or improvement of a public highway, to acquire by purchase, gift or by the exercise of the power of eminent domain the entire tract of land or any part thereof, whenever the remainder of such tract or part thereof can no longer be utilized for the purpose for which the entire tract is then being utilized, or a portion of a building is to be taken or the cost of removal or relocation of the buildings, or other improvements on the remaining portion, necessitated by the taking, would exceed the cost of destroying such buildings or other improvements, or the highway project will leave the remaining portions without a means of access to a public highway, or whenever in the judgment of the Commissioner the resulting damages to the remainder of such tract or part thereof lying outside the proposed right-of-way, or the area being acquired for a purpose incidental to the construction, reconstruction or improvement of a public highway, will approximate or

equal the fair market value of such remaining lands; provided, however, that the Commissioner shall not acquire the remainder of such tracts by purchase where the remaining portion is in excess of ~~ten~~ 10 acres or, by condemnation where the remaining portion is in excess of ~~two~~ 2 acres. Nothing contained herein shall be construed as preventing the Commissioner from complying, where applicable, with the provisions of § ~~25-248~~ 25.1-417.

**Drafting note: No change.**

§ 33.1-95. Limitations in Title ~~25~~ 25.1 not applicable to Commissioner.

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

**Drafting note: The second sentence of this section is set out as proposed subsection C of § 25.1-102, to address the application of proposed § 25.1-102 (current § 25-233) to provisions that authorize other entities to use the Commonwealth Transportation Commissioner's quick-take procedure.**

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

Notwithstanding anything to the contrary contained in this chapter or in Chapter ~~4-1~~ 2 (§ ~~25-46.4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1:

1. The Commonwealth Transportation Commissioner shall notify every owner of a building, structure, or other improvement, as defined in this section, if the Commissioner intends to exercise the power of eminent domain in a manner that would result in a taking of the building, structure, or other improvement;

2. The owner of any such building, structure, or other improvement may present evidence of the fair market value of such building, structure, or other improvement in the proceedings described in § ~~25-46.24~~ 25.1-233, provided such owner has filed a petition for intervention pursuant to § ~~25-46.16~~ 25.1-218;

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

4. For purposes of this section, "fair market value" ~~shall mean~~ means the price that the real property would bring if it were offered for sale by one who wanted to sell,

but was under no necessity, and was bought by one who wanted to buy, but was under no necessity;

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

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

**Drafting note: Technical changes only.**

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

A. Proceedings for condemnation under this article shall be instituted and conducted in accordance with the procedures provided in Chapter ~~4-1-2~~ 2 (§ ~~25-46.1-25.1-200~~ et seq.) of Title ~~25~~ 25.1, except that the provisions of §§ 33.1-119 through 33.1-132 shall be applicable to such proceedings.

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

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

**Drafting note: Subsection C is derived from the definition of "owner" in current §§ 25-46.3 and 25-238. Its inclusion is based on information that the purposes of this provision was to ensure that the affected persons received notice of proceedings to the same extent as the condemned property's owner.**

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

~~The Commissioner shall pay into court, or to the clerk thereof, such sum as he shall estimate to be the fair value of the land taken, or interest therein sought, and damage done, based on a bona fide appraisal, before~~ A. Before entering upon, or taking

possession of, such land pursuant to the foregoing section (§ 33.1-119), the Commissioner shall either:

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

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

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

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

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

E. As used in this article:

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

"Certificate of deposit" means a certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2.

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

**Drafting note: The amendments to this section incorporate the clarifying amendments to the corresponding section in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1.**

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

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

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

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

**Drafting note: The amendments to this section incorporate the clarifying amendments to the corresponding section in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1.**

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

A. ~~Any person or persons shown by such a certificate to be entitled thereto may petition the court for the distribution of all or any part of the funds deposited with the court pursuant to subdivision A 1 of § 33.1-120 or represented by a certificate recorded of deposit filed pursuant to subdivision A 2 of § 33.1-124 33.1-120.~~

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

C. ~~If the Commissioner does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount in accordance with the prayers of the petition. However, in the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution.~~

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

E. If funds are not then on deposit with the court but are represented by a certificate of deposit filed pursuant to subdivision A 2 of § ~~33.1-124~~ 33.1-120, a certified copy of such order shall forthwith be sent to the Commissioner by the clerk. It shall be the duty of the Commissioner to deposit such funds with the court within twenty-one days of the date of such order.

F. Interest shall be payable on funds represented by a certificate of deposit from the date of filing of the certificate of deposit until the funds are paid into court at the general account composite account's primary liquidity portfolio rate as set forth in § ~~33.1-128~~ shall be payable on such funds from the date of filing of such certificate if the funds are not deposited with the clerk when the certificate is filed for the month in which the order pursuant to this section is entered. However, no interest shall not accrue if an injunction is filed against the Department of Transportation for that enjoins the taking of the property described in the certificate.

G. If the Commissioner shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by § ~~25-46-28~~ 25.1-240 for the distribution of awards.

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

**Drafting note:** The amendments to this section incorporate the clarifying amendments to the corresponding section in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1. The revision to the method for calculating interest in subsection F is intended to avert unanticipated results that have arisen whereby the existing language would require interest to accrue at a negative rate.

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

~~In the event~~ A. If the amount of an award in a condemnation proceeding being of a ~~is~~ greater amount than that deposited by virtue of with the court or represented by a certificate of deposit, the excess amount, together with interest accrued on such excess amount, shall be paid into court for the person or persons entitled thereto.

B. Interest shall accrue on the excess amount at the general account composite account's primary liquidity portfolio rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered, computed from the date of such deposit to the date of payment into court, ~~shall and~~ be paid into court for the person or persons entitled thereto, ~~except that.~~ However, any (i) interest ~~which that~~ accrued before July 1, 1970, shall be paid at the rate of five 5 percent, ~~and;~~ (ii) interest accruing thereafter and prior to July 1, 1981, shall be paid at the rate of six 6 percent, ~~and any;~~

(iii) interest accruing thereafter and prior to July 1, 1994, shall be paid at the rate of eight 8 percent; and (iv) interest accruing thereafter and prior to July 1, 2003, shall be paid at the general account composite rate, compiled by the Department of the Treasury of Virginia for the month in which the award is rendered.

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

**Drafting note: The amendments to this section are intended to incorporate the clarifying amendments to the corresponding section in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1. The revision to the method for calculating interest is intended to avert unanticipated results that have arisen whereby the existing language would require interest to accrue at a negative rate.**

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

Whenever the Commissioner enters upon and takes possession of property under the provisions of §§ 33.1-119 through 33.1-121 and has not completed the construction of the highway project after a reasonable time for such purpose has elapsed or has not instituted condemnation proceedings within sixty 60 days after completion of the construction of the highway project, or within ~~one 1~~ year after he has entered upon and taken possession of the property, whether the construction of the highway project has been completed or not, the property owner may, if no agreement has been made with the Commissioner as to compensation and damage, if any, petition the circuit court of the county or the court of the city in which such cases are tried, and in which the greater portion of the property lies, ~~or the judge thereof in vacation,~~ for the appointment of commissioners or a jury to determine just compensation for the property taken and damages done, if any. A copy of such petition shall be served upon the Commissioner at least ten 10 days before it is presented to the court, ~~or the judge thereof in vacation,~~ and the Commissioner shall file an answer thereto within five days after the petition is so presented. If it be found by the court, ~~or the judge thereof in vacation,~~ that a reasonable time has elapsed for the completion of the construction of the highway project or that sixty 60 days have elapsed since the completion of the construction of the highway project or that more than ~~one 1~~ year has elapsed since the Commissioner entered upon and took possession of the property, without condemnation proceedings being instituted and without an agreement having been made between the property owner and the Commissioner as to compensation and damages, if any, commissioners or a jury shall be appointed to ascertain the amount of compensation to be paid for the property taken and damages done, if any. The proceedings shall

thereafter be governed by the procedure prescribed by Chapter ~~4-1-2~~ (§ ~~25-46-4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 insofar as the same may be applicable.

**Drafting note: Technical changes only.**

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

In the event no agreement can be reached as provided hereinabove or whenever such land is a part or the whole of a cemetery or graveyard owned by persons unknown, or by any person, church, association, corporation, or other legal entity, not having legal authority to make disposition of the same, the Commonwealth Transportation Commissioner shall petition the court of the city or county in which the land is situate, and in which condemnation proceedings are instituted to acquire land, for the purpose of condemning such land and having the remains interred in such cemetery or graveyard removed to some suitable repository. To such petition the owner or owners of the land and next of kin to the persons interred therein, if known, shall be made defendants and served with notice. If such owner or owners and next of kin be unknown, or infant, insane or incompetent, or nonresident of this Commonwealth, such notice shall be served in the manner prescribed by Chapter ~~4-1-2~~ (§ ~~25-46-4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1.

**Drafting note: No change.**

§ 33.1-238. Action of commissioners; report.

The commissioners shall meet on the lands of such proprietors and tenants as may be named in the order of the board of supervisors or other governing body at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants or their agents, except only that it need not be given to one present at the time of making the order. Any one or more of the commissioners attending on the land as aforesaid may adjourn, from time to time, till the business shall be finished. The commissioners, in the discharge of their duties, shall comply in all respects with the provisions of Chapter ~~4-1-2~~ (§ ~~25-46-4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 so far as applicable. They shall forthwith make return of their report ~~and the certificate~~ required by § ~~25-46-20~~ 25.1-232 to the board of supervisors or other governing body and, unless good cause be shown against the report, it shall be confirmed. If, however, good cause be shown against the report or the commissioners report their disagreement, or fail to report within a reasonable time, the board of supervisors or other governing body, as often as it seems proper, may appoint other commissioners for the purpose of ascertaining the compensation and damages as aforesaid. When any report is confirmed, the board of supervisors or other governing body shall establish or alter the road or bridge with or without gates, as to it may seem proper, and provide for the payment of the compensation and damages allowed.

**Drafting note: Technical changes only.**



§ 33.1-422. Approval by Commonwealth Transportation Board.

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

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

**Drafting note: Technical changes only.**

§ 33.1-443. Approval by Commonwealth Transportation Board.

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

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

**Drafting note: No change.**

§ 36-27. Eminent domain.

A. An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which may be necessary for the purposes of such authority under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided in Chapter ~~4-1 2~~ (§ ~~25-46.1 25.1-200~~ et seq.) of Title ~~25 25.1~~. The commissioners before which condemnation proceedings are conducted may hear evidence as to the value of the property including but not limited to the owner's appraisal and the effect that any pending application for a zoning change, special use permit application or variance application may have on the value of the property. The court may also determine whether there has been unreasonable delay in the institution of the proceedings after public announcement by the condemnor of a project ~~which~~ that necessitates acquisition by the condemnor of a designated land area consisting of or including the land sought to be condemned. If the court determines that such unreasonable delay has occurred, it shall instruct the commissioners in such proceedings to allow any damages proved to their satisfaction by the landowner or landowners to have been sustained to his or their land during and because of such delay, in addition to and separately from the fair market value thereof, but such damages shall not exceed the actual diminution if any in fair market value of the land in substantially the same physical condition over the period of the delay. This provision shall not apply to any such public announcement made prior to July 1, 1960.

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

C. In all such cases the proceedings shall be according to the provisions of Chapter ~~4-1 2~~ (§ ~~25-46.1 25.1-200~~ et seq.) of Title ~~25 25.1~~, so far as they can be applied to the same, ~~and the term "company" as used in such chapter, and any officers of a "company" referred to therein, shall be construed as meaning the authority and the commissioners thereof, respectively. An authority may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain.~~ No real property belonging to the city, the county, the Commonwealth or any other political subdivision thereof be acquired without its consent.

**Drafting note: The reference to "company" is deleted because that term is not used in either Chapter 1 of current Title 25 or Chapter 2 of proposed Title 25.1. The second sentence is deleted because it is unclear, and may be construed as being inconsistent with the first sentence of subsection C, which provides that proceedings shall be in accordance with the provisions of Chapter 2 of Title 25.1.**

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

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

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

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

D. Not less than ~~three~~ 3 weeks prior to the date of the public hearing before the planning commission, the commission shall provide by regular and certified mail, notice of such hearing to (i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes within the locality; (ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and (iii) the representative neighborhood association, if any, for the immediate area. The notice shall include the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than ~~six~~ 6 days elapsing between the first and second publication in a newspaper published or having general circulation in the locality in which the property is located. The notice also shall be posted on the property. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than ~~six~~ 6 days nor more than ~~twenty-one~~ 21 days after the second publication.

E. The planning commission shall determine whether:

1. The owner has failed to cure the blight or present a reasonable plan to do so;

2. The property is blighted;

3. The plan for the repair or other disposition of the property is in accordance with the locally adopted comprehensive plan, zoning ordinances, and other applicable land use regulations; and

4. The property is located within an area listed on the National Register of Historic Places. In such instances, the planning commission shall consult with the locally established architectural review board, if any, regarding the proposed repair or other disposition of the property by the authority or governing body.

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

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

H. In lieu of the acquisition of blighted property by the exercise of the powers of eminent domain as herein provided, and in lieu of the exercise of other powers granted in subsections A through F, a locality may, by ordinance, declare any blighted property

as defined in § 36-49 to constitute a nuisance, and thereupon abate the nuisance pursuant to § 15.2-900 or § 15.2-1115. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records.

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

**Drafting note: Technical changes only.**

§ 45.1-161.320. Proceedings for condemnation.

A. Proceedings for condemnation hereunder shall be instituted and conducted in the name of the Commission, and the procedure shall, except insofar as altered herein, be as provided in ~~Article 7 (§ 33.1-89 et seq.)~~ of Chapter ~~4~~ 3 (§ 25.1-300 et seq.) of Title ~~33.1~~ 25.1.

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

**Drafting note: Technical changes only.**

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

Notwithstanding any provision contained in this chapter, the Commonwealth Transportation Commissioner or any city, town, county or other political subdivision or agency of this Commonwealth possessing the power of eminent domain may, for any public purpose and notwithstanding the pendency of any proceeding brought for the

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

**Drafting note: Technical changes only.**

§ 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 ~~§ 25-232.4~~ 25.1-203.

(2). To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity

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

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

**Drafting note: Technical changes only.**

§ 56-347. Power of condemnation; limitation.

In addition to the powers conferred by Title 13.1, every corporation of this Commonwealth organized to conduct a railroad business shall have the power to acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works including depots, stations, shops, yards, industrial spurs, switches and sidetracks, terminals or additional tracks or facilities, and for all other necessary railroad purposes and purposes incidental thereto, for its use in serving the public, including permanent, temporary, continuous, periodical or future use, whenever such corporation cannot agree upon the terms of purchase or

settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceedings shall be conducted in the manner provided by Chapter ~~1-12~~ 2 (§ ~~25-46-4~~ 25.1-200 et seq.) of Title ~~25~~ 25.1 and shall be subject to the provisions of § ~~25-233~~ 25.1-102. Provided, however, such corporation shall not take by condemnation proceedings a strip of land for its right-of-way within sixty feet of the dwelling house of any person except (a) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ ~~25-46-9~~ 25.1-209, ~~25-46-10~~ 25.1-210, and ~~25-46-12~~ 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; or (b) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (c) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission obtained from the authorities having jurisdiction over such highways.

**Drafting note: Technical changes only.**

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

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

(a) Such corporation may, by the exercise of such right for such purpose, acquire all necessary lands, property and rights of whatsoever nature, whether or not such lands, property or rights have been theretofore appropriated or devoted, or sought to be appropriated or devoted to public use, including but not restricted to, the lands, property and rights necessary for any storage, diversion, regulation ~~or~~ detention, and/ ~~or~~ interference with the flow of any water and for any waterway and including also, but not restricted to, any lands, structures, property or rights owned, used or held by or for public or private, religious, charitable, educational or cemetery purposes; any dwelling houses and any public or private roads and bridges, and any other property, public or private, when necessary for such purpose; provided, however, that the right of eminent domain under this section shall not be available against existing public-carrier railroads; and provided further that, in the event of the condemnation under this chapter of any roads or bridges, the commissioners in assessing the compensation and damages therefor, shall consider the cost of relocating and constructing such roads or bridges



upon other reasonable convenient locations, and the damage, if any, to persons and corporations because of relocation and construction. No such corporation shall impair the drinking water supply of any city or town or acquire any municipal electric light and power or water plant by virtue of any additional powers conferred by this chapter; provided further that the provisions of this section shall not be construed to authorize the acquisition by condemnation or otherwise of any streets or alleys or portions thereof in incorporated cities or towns.

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

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

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

(e) In all cases of the exercise of such right of eminent domain just compensation shall be paid to the owners and tenants of the property taken or damaged, in the manner provided by law for all property taken or damaged. The proceedings for this purpose shall be in accordance with Chapter 2 (§ 25.1-200 et seq.) of Title 25 25.1 and other provisions of law. As to any part of the real estate sought to be taken for any of the purposes authorized in this chapter, such corporation may describe in its application for condemnation an estate or interest therein of a fee or less than a fee and, upon

payment therefor, such estate or interest as is stated and described in such application shall vest in such corporation; but when less than a fee is taken, the commissioners in assessing damages shall take into consideration the actual damage that is done or that may be done to the fee by such taking, including the use to which the property so taken will be put by such corporation. ~~Provided, however, that~~ However, nothing contained in § 62.1-97 shall deprive any owner of property of any right to receive just compensation and damages as provided by law, upon the exercise of the right of eminent domain by any licensee under this chapter.

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

**Drafting note: Technical changes only.**

§ 62.1-136. Power of eminent domain.

The Authority is hereby vested with the power of eminent domain to acquire property or any interest therein, however held, but not property of the Commonwealth or its agencies, and may exercise the same for the purposes set forth in §§ 62.1-132.18 and 62.1-132.19 in the manner and to the extent set forth in, and subject to the provisions of, Chapter 2 (§ 25.1-200 et seq.) of Title 25 25.1; provided that the Authority shall have no power to condemn any property belonging to any other political subdivision of the Commonwealth, or to any common carrier, or public utility or other public service corporation which is being devoted to public use or service. Whether property is being devoted to public use or service in the case of a public service corporation, common carrier, or public utility, shall be decided by the State Corporation Commission in a proceeding under § ~~25-233~~ 25.1-102; and in the case of a political subdivision shall be decided by the court in which the proceeding is brought.

**Drafting note: Technical changes only.**

§ 62.1-150. Acquisition of lands.

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

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

**Drafting note: Technical changes only.**

**APPENDIX F**

**PROPOSED CHANGES TO PECULIAR BENEFIT/GENERAL ENHANCEMENT MEASURE**

	Current Titles 25 and 33	Proposed Title 25.1
<b>General Procedure</b> (test depends on body determining just compensation)		
If decided by Commission	Peculiar Benefit	Peculiar Benefit
If decided by Jury	General Enhancement	Peculiar Benefit
If decided by Judge	Not affirmatively set out	Peculiar Benefit
<b>Quick Take Procedure</b> (test depends on identity of the condemnor)		
By Comm. Trans. Comm'r	General Enhancement	General Enhancement (Title 33.1)
By Other Entities	General Enhancement (but 33.1-130 is not applicable to sanitary districts; see Fairfax Co. v. Smith)	General Enhancement

APPENDIX G

DEPARTMENT OF THE TREASURY  
 General Account Investment Portfolio  
 Monthly Average Balances and Rates  
 (dollars in millions)

FISCAL YEAR 2002	PRIMARY LIQUIDITY Yield (%)	EXTERNAL MANAGEMENT EXTENDED DURATION (1,2) Annualized Total Return (%)	COMPOSITE Rate (%)
July, 2001	4.98	23.82	10.32
August	4.92	11.17	6.80
September	4.69	20.92	9.63
October	4.56	19.83	9.36
November	4.70	-13.38	-1.43
December (3)	4.69	-6.40	0.62
January, 2002	3.92	7.17	4.86
February	4.14	11.66	6.28
March (4)	3.90	-17.28	-2.80
April	3.96	22.96	9.86
May	3.53	9.57	5.36
June			
Year-to-Date Average	4.37	8.16	5.54

1. Performance on the extended duration portion of the General Account is now reported on an annualized total return basis. Total return includes unrealized gains and losses, which in the short term can make returns more volatile. Over an extended time period the fluctuations average out and total return approaches the portfolio yield.

2 Unaudited.

3 External management Total Return and Composite Rate for December and February were revised after the original report was issued.

4 Primary Liquidity Balance & Return and the Composite Balance & Rate for March were revised after the original report was issued.







