

Department of Planning and Budget 2022 Fiscal Impact Statement

1. **Bill Number:** SB666S1

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Petersen

3. **Committee:** Finance and Appropriations

4. **Title:** Eminent domain; lost access and lost profits.

5. **Summary:** Redefines "lost profits" for the purposes of determining just compensation in eminent domain cases.

6. **Budget Amendment Necessary:** No.

7. **Fiscal Impact Estimates:** Preliminary. See item 8 below.

8. **Fiscal Implications:** According to the Virginia Department of Transportation, this bill may increase the costs of litigating and settling lost profit cases to the Commonwealth in eminent domain actions by expanding the definition of lost profits to include expected profits, including lost profits due to damage to the property and removing the requirement that lost profits be subject to adjustment using generally accepted accounting principles. Additionally, the bill eliminates the provision requiring the lost profits not be duplicated in the compensation otherwise awarded to the owner of the property taken or damaged in determination of just compensation. The impact of these changes to the Virginia Department of Transportation (VDOT), or other entities utilizing eminent domain, is indeterminate.

Additionally, according to the Office of the Attorney General (OAG) the deletion of the language concerning inverse condemnation is likely to increase the number of inverse condemnation cases that would be filed because it gives the ability to file inverse condemnation cases for temporary interference with a business or farm operation, resulting in increased costs to the Commonwealth for attorney's fees and expert expenses. Such cases would be defended by the OAG or be referred to outside counsel. The OAG estimates an additional two to five additional attorneys may be necessary to cover such cases; annual costs for five additional attorneys would be approximately \$700,000. The OAG and VDOT currently have a memorandum of understanding (MOU) specifying that costs related to transportation-related legal services are to be paid to the OAG by VDOT. In the event that outside counsel is needed, the costs would be paid by VDOT directly to such counsel. VDOT anticipates that outside counsel will likely be needed for cases resulting from changes proposed by this legislation. The determination between the need for additional services provided by the OAG versus services provided by outside counsel cannot be made at this time. The total costs related to the need for increased legal services, via OAG and/or outside counsel, is indeterminate.

The Virginia Department of Transportation relies on revenues generated for highway maintenance operations, which are fully appropriated in the 2022 Budget Bill (HB30/SB30). Although additional appropriation is not needed, the agency will need to redirect funding from other budgeted activities to address the potential costs associated with this legislation.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Transportation, Office of the Attorney General, other entities utilizing eminent domain.

10. Technical Amendment Necessary: No.

11. Other Comments: None.