

Department of Planning and Budget 2022 Fiscal Impact Statement

1. **Bill Number:** SB694

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

2. **Patron:** Obenshain

3. **Committee:** Courts of Justice

4. **Title:** Eminent domain.

5. **Summary:** Makes various changes to the laws pertaining to condemnation procedures, including (i) providing that localities shall not condition or delay the timely advancement or approval of any application for or grant of any permit or other approval for real property for the purpose of allowing the condemnation or acquisition of the property; (ii) requiring a condemnor to provide the property owner with a copy of its title report and all recorded instruments found in the title examination; (iii) requiring the clerk of court, when funds are paid into the court during a condemnation proceeding, to deposit such funds into an interest-bearing account; (iv) requiring the court to order the condemnor to reimburse the property owner for the reasonable costs and fees, not to exceed \$7,500, for a survey (under current law, this amount is capped at \$1,000); (v) requiring temporary construction easements to have an expiration date included in the recorded certificate and requiring condemnors to record a certificate of completion within 90 days upon completion of construction of any public use project for which a portion of private property was taken; (vi) requiring that a condemnor who has been sued for just compensation pursuant to a "quick-take" condemnation procedure to reimburse the property owner for his fees and costs incurred in filing the petition; and (vii) permitting the owner of property that the Commissioner of Highways has taken to petition the circuit court for the appointment of commissioners or the empanelment of a jury to determine just compensation under certain circumstances and requiring the Commission of Highways to reimburse the owner for his fees and costs incurred in filing the petition.

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

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

8. **Fiscal Implications:** This legislation may increase the costs of eminent domain proceedings by increasing certain administrative burdens for entities utilizing eminent domain as well as increasing the potentially reimbursable amounts for survey costs and fees and costs incurred in filing certain petitions. Additionally, the bill may increase costs to the Virginia Department of Transportation (VDOT) by requiring VDOT to reimburse property owners for fees and costs related to filing petitions in the circuit court for the appointment of commissioners or the empanelment of a jury to determine just compensation under certain circumstances. The number and nature of proceedings which would result in increased costs

to VDOT or other entities utilizing eminent domain is unknown; as a result, the fiscal impact of this legislation 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, governmental entities utilizing eminent domain.

10. Technical Amendment Necessary: No.

11. Other Comments: None.