

No. 126. An act relating to revising the state highway condemnation law.

(H.523)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE INTENT

(a) The intent of the changes to the definition of necessity made in this act is to state the definition in accordance with State Transportation Board v. May, 137 Vt. 320 (1979), and to reorganize the definition for the sake of clarity. No substantive change is intended.

(b) The standard of review of the agency of transportation's determination of necessity established in 19 V.S.A. § 505(a)(3) of this act is intended to replace the former language of 19 V.S.A. § 507(a) stating that "the exercise of reasonable discretion upon the part of the agency shall not be presumed," as well as to replace the standard of review adopted in Latchis v. State Hwy. Bd., 120 Vt. 120 (1957) and relied upon in subsequent cases.

Sec. 2. 19 V.S.A. chapter 5 is amended to read:

CHAPTER 5. CONDEMNATION FOR STATE

HIGHWAY PROJECTS

§ 500. INTENT

The purpose of this chapter is to ensure that a property owner receives fair treatment and just compensation when the owner's property is taken for state highway projects, and that condemnation proceedings are conducted

expeditiously so that highway projects in the public interest are not unnecessarily delayed.

§ 501. DEFINITIONS

The following words and phrases as used in this chapter shall have the following meanings:

(1) “Necessity” ~~shall mean~~ means a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. ~~Due~~ Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

(A) adequacy of other property and locations ~~and to;~~

(B) ~~the~~ quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking. ~~In this matter the court shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the;~~

(C) effect upon home and homestead rights and the convenience of the owner of the land; ~~to the~~

(D) effect of the highway upon the scenic and recreational values of the highway; ~~to the~~

(E) need to accommodate present and future utility installations within the highway corridor; ~~to the~~

(F) need to mitigate the environmental impacts of highway construction; and ~~to the~~

(G) effect upon town grand lists and revenues.

(2) Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property, which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.

(3) “Interested person” or “person interested in lands” or “property owner” means a person who has a legal interest of record in the property ~~affected~~ taken or proposed to be taken.

§ 502. AUTHORITY; PRECONDEMNATION ~~PROCEDURE~~ HEARING

(a) Authority. The ~~transportation board~~ agency, when in its judgment the interest of the state requires, ~~shall request the agency to~~ may take any ~~land or~~

~~rights in land, including easements of access, air, view and light, deemed~~
property necessary to lay out, relocate, alter, construct, reconstruct, maintain,
repair, widen, grade, or improve any state highway, including affected portions
of town highways. ~~All property rights shall be taken in fee simple whenever~~
~~practicable.~~ In furtherance of these purposes, the agency may enter upon ~~land~~
~~adjacent to the proposed highway or upon other lands for the purpose of~~
~~examination and making necessary surveys. However, that~~ lands to conduct
necessary examinations and surveys; however, the agency shall do this work
~~shall be done~~ with minimum damage to the land and disturbance to the owners
and shall be subject to liability for actual damages. All property taken
permanently shall be taken in fee simple whenever practicable. For all state
highway projects involving property acquisitions, the agency shall follow the
provisions of the Uniform Relocation Assistance and Real Property
Acquisitions Policies Act (“Act”) and its implementing regulations, as may be
amended.

(b) The agency, in the construction and maintenance of limited access
highway facilities, may also take any land or rights of the landowner in land
under 9 V.S.A. chapter 93, subchapter 2, relating to advertising on limited
access highways.

(c) Public hearing; notice of hearing.

(1) A public hearing shall be held for the purpose of receiving suggestions and recommendations from the public prior to the agency's initiating proceedings under this chapter for the acquisition of any ~~lands or rights~~ property. The hearing shall be conducted by the agency. ~~Public notice shall be given by printing~~

(2) The agency shall prepare an official notice stating the purpose for which the property is desired and generally describing the highway project.

(3) Not less than 30 days prior to the hearing, the agency shall:

(A) cause the official notice not less than 30 days prior to the hearing to be printed in a newspaper having general circulation in the area affected. ~~—A;~~

(B) mail a copy of the notice ~~shall be mailed to the board,~~ to the legislative bodies of the municipalities affected; ~~and a copy sent~~

(C) by certified mail a copy of the notice to all known owners of ~~lands and rights in land affected by~~ whose property may be taken as a result of the proposed improvement.

~~The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.~~

(4) ~~The board may designate one or more members to attend the hearing and shall do so if a written request is filed with the board at least 10 days prior to the public hearing.~~ At the hearing, the agency shall set forth the reasons for the selection of the route intended and shall hear and consider all objections,

suggestions for changes, and recommendations made by any person interested. ~~If no board member attended the hearing, a written request may be filed with the board within 30 days after the public hearing asking the board to review the project and the record of the hearing. In such event, the board shall complete its review within 30 days after the request. Following the hearing, unless otherwise directed by the board, the agency may proceed to lay out the highway and survey and acquire the land to be taken or affected, giving consideration to any objections, suggestions, and recommendations received from the public in accordance with this chapter.~~

* * *

§ 503. PRECONDEMNATION NECESSITY DETERMINATION; SURVEY AND APPRAISAL; OFFER OF JUST COMPENSATION; NOTICE OF RIGHTS; NEGOTIATION; STIPULATION

(a) ~~When~~ Necessity determination; appraisal.

(1) After conducting the hearing required under section 502 of this chapter and considering the objections, suggestions, and recommendations received from the public, if the agency of transportation desires to acquire land or any rights in land finds the taking of property to be necessary for the purpose of laying out, relocating, altering, constructing, reconstructing, maintaining, repairing, widening, grading, or improving a state highway, it shall cause the land property proposed to be acquired or affected to be

surveyed and shall make a written determination of necessity consistent with subdivision 501(1) of this chapter. Prior to initiating negotiations under this section, the agency shall cause property proposed to be taken to be appraised unless:

(A) the property owner offers to donate the property after being fully informed by the agency of the right to receive just compensation for damages and releasing the agency from any obligation to conduct an appraisal; or

(B) the agency determines that an appraisal is unnecessary because the valuation question is uncomplicated and the agency estimates the property to have a low fair market value, in accordance with 49 C.F.R. § 24.102.

(2) The agency shall prepare a waiver valuation if an appraisal is not conducted, pursuant to subdivision (1)(B) of this subsection (a).

(3) The property owner or his or her designee shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) Offer of just compensation. Prior to the initiation of negotiations, the agency shall prepare a written offer of just compensation, which shall include a statement of the basis for the offer and a legal description of the property proposed to be acquired.

(c) Negotiation. Prior to instituting condemnation proceedings under section 504 of this chapter, the agency shall make every reasonable effort to

acquire property expeditiously by negotiation and shall comply with subsection (d) of this section.

(d) Notice and other documents. The agency shall hand-deliver or send by mail to interested persons a notice of procedures and rights and the offer of just compensation. The notice of procedures and rights shall include an explanation of the proposed state highway project and its purpose, and statements that:

(1) The agency is seeking to acquire the property described in the offer of just compensation for the project.

(2) Agency representatives are available to discuss the offer of just compensation.

(3) The agency does not represent the property owner, and he or she may benefit from the advice of an attorney.

(4) If the agency and the property owner are unable to reach agreement on the agency's legal right to take the property, the agency may file a complaint in superior court to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the agency.

(5) The property owner may enter into an agreement with the agency stipulating to the agency's legal right to take his or her property without waiving the owner's right to contest the amount of the agency's offer of compensation.

(6) If the agency and the property owner agree that a taking is lawful, or if a court issues a judgment authorizing the agency to take the owner's property, title to the property will transfer to the agency only after the agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking.

(7) To contest the amount of compensation received, the owner must file an action with the transportation board or in superior court within 90 days of the notice of taking, except that the issue of compensation ("damages") must be decided by the superior court if the owner's demand exceeds the agency's offer of just compensation by more than \$25,000.00. The owner or the agency may appeal a decision of the board to the superior court, and may appeal a decision of the superior court to the supreme court. Either party is entitled to demand a trial by jury in superior court on the issue of damages.

(8) A copy of an appraisal or an estimated valuation ("waiver valuation") shall be furnished by the agency at the owner's request.

(9) Summarize the property owner's right to relocation assistance, if applicable.

(e) Agreement on taking, damages.

(1) An interested person may enter into an agreement with the agency stipulating to the necessity of the taking and the public purpose of the project, to damages, or to any of these. The agreement shall include:

(A) a statement that the person executing the agreement has examined a survey or appraisal of the property to be taken;

(B) an explanation of the legal and property rights affected;

(C) a statement that the person has received the documents specified in subsection (d) of this section; and

(D) if the agreement concerns only the issues of necessity or public purpose, a statement that the right of the person to object to the amount of compensation offered is not affected by the agreement.

(2) If an interested person executes an agreement stipulating to the necessity of the taking and the public purpose of the project in accordance with subdivision (1) of this subsection, the agency shall prepare, within 10 business days of entering into the agreement, a notice of condemnation and shall file it in accordance with section 506 of this chapter. The notice of condemnation shall include a legal description of the property to be taken.

§ 504. ~~PETITION FOR HEARING TO DETERMINE NECESSITY~~COMPLAINT; SERVICE; ANSWER

(a) ~~Upon completion of the survey the agency may petition a superior judge, setting forth in the petition that it proposes to acquire certain land, or rights in land, and describing the lands or rights, and the survey shall be attached to the petition and made a part of the petition. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the judge fix a time and place when he or she, or some other superior judge, will hear all parties concerned and determine whether the taking is necessary.~~ Verified complaint. If a property owner has not entered into an agreement stipulating to the necessity of a taking and the public purpose of a highway project, and the agency wishes to proceed with the taking, the agency shall file a verified complaint in the civil division of the superior court in a county where the project is located seeking a judgment of condemnation. The complaint shall name as defendants each interested person who has not stipulated to a proposed taking, and shall include:

(1) statements that the agency has complied with subsection 503(d) of this chapter;

(2) the agency's written determination of necessity;

(3) a general description of the negotiations undertaken; and

(4) a survey of the proposed project, and legal descriptions of the property and of the interests therein proposed to be taken.

(b) Service and notice.

(1) Except as otherwise provided in this section, the agency shall serve the complaint and summons in accordance with the Vermont Rules of Civil Procedure and section 519 of this chapter.

(2) The agency shall publish a notice of the complaint, the substance of the summons, and a description of the project and of the lands to be taken in a newspaper of general circulation in the municipalities where the project is located, once a week on the same day of the week for three consecutive weeks. The agency shall mail a copy of the newspaper notice to the last known address of an interested person not otherwise served, if any address is known. Upon affidavit by the secretary that diligent inquiry has been made to find all interested persons and, if applicable, that service on a known interested person cannot with due diligence be made in or outside the state by another method prescribed in Rule 4 of the Vermont Rules of Civil Procedure, the newspaper publication shall be deemed sufficient service on all unknown interested persons and all known interested persons who cannot otherwise be served. Service by newspaper publication is complete the day after the third publication.

(3) Unless otherwise served under subdivision (1) of this subsection, the agency shall mail a copy of the complaint to the clerk, legislative body, and board of listers of each municipality in which land is proposed to be taken. The clerk with responsibility over the land records shall record the copy of the complaint (including the survey), and shall enter the names of the property owners named in the complaint in the general index of transactions affecting the title to real estate.

(c) Necessity, public purpose; default. If an interested person does not file a timely answer denying the necessity of a taking or the public purpose of the project, the court may enter a judgment of condemnation by default.

§ 505. ~~HEARING TO DETERMINE NECESSITY ON PROPOSED~~
TAKING; JUDGMENT; APPEAL AND STAY

~~(a) The superior judge to whom the petition is presented shall fix the time for hearing, which shall not be more than 60 nor less than 40 days from the date he or she signs the order. Likewise, he or she shall fix the place for hearing, which shall be the superior court or any other place within the county in which the land in question is located. If the superior judge to whom the petition is presented cannot hear the petition at the time set he or she shall call upon the administrative judge to assign another superior judge to hear the cause at the time and place assigned in the order. Hearing.~~

(1) If a timely answer is filed denying the necessity of a taking or the public purpose of the project, the court shall schedule a final hearing to determine the contested issues, which shall be held within 90 days of expiration of the deadline for filing an answer by the last interested person served. Absent good cause shown, the final hearing date shall not be postponed beyond the 90-day period.

(2) At the hearing, the agency shall present evidence on any contested issue.

(3)(A) The court shall presume that the agency's determination of the necessity for and public purpose of a project is correct, unless a party demonstrates bad faith or abuse of discretion on the part of the agency.

(B) The court shall review de novo the agency's determination of the need to take a particular property and to take it to the extent proposed.

~~(b) If the land proposed to be acquired extends into two or more counties, then a single hearing to determine necessity may be held in one of the counties. In fixing the place for hearing, the superior judge to whom the petition is presented shall take into consideration the needs of the parties. Discovery. Absent a showing of unfair prejudice, the right to discovery on the issues of necessity and public purpose shall be limited to the plans, surveys, studies, reports, data, decisions, and analyses relating to approving and designing the highway project.~~

(c) Judgment. If the court finds a proposed taking lawful, it shall issue a judgment of condemnation describing the property authorized to be taken, declaring the right of the agency to take the property by eminent domain, and declaring that title to the property will be transferred to the agency after the agency, in accordance with section 506 of this chapter, has recorded the judgment, tendered or deposited payment, and notified the owner of the recording and payment. The court may in its judgment modify the extent of a proposed taking.

(d) Litigation expenses.

(1) If the court finds a proposed taking to be unlawful, or if the agency abandons the condemnation proceeding other than under a settlement, the court shall dismiss the complaint and award the property owner his or her costs and reasonable litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

(2) If the court issues a judgment of condemnation that substantially reduces the scope of the agency's proposed taking, the court shall award the property owner a share of his or her costs and reasonable litigation expenses that is proportional to the reduction in the proposed taking.

(e) Appeal, stay. A judgment of condemnation may be appealed or stayed as a final judgment for possession of real estate under the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure. A judgment

that that the agency cannot acquire the property by condemnation likewise may be appealed.

§ 506. ~~SERVICE AND PUBLICATION OF NECESSITY PETITION
AND NOTICE OF HEARING; ANSWER RECORDING OF
JUDGMENT OR NOTICE OF CONDEMNATION; PAYMENT;
VESTING OF TITLE~~

~~(a)(1) The agency shall prepare a notice of the necessity hearing. The notice shall include the names of the municipalities in which the lands to be taken or affected are located; the names of all interested persons within the meaning of subdivision 501(2) of this chapter; and a brief statement identifying the proposed project and its location, and the date, time and place of the necessity hearing. The agency shall make service of copies of the petition, the notice of hearing and the survey (for the purposes of this section, “survey” means a plan, profile, or cross-section of the proposed project) as follows:~~

~~(1) Upon interested persons in accordance with the Vermont Rules of Civil Procedure for service of process, except as stated in subsection (b) of this section and in section 519 of this title or, with respect to interested parties with no known residence or place of business within the state, by certified mail, return receipt requested. The copy of the survey that is served upon interested persons need include only the particular property in which those persons have an interest.~~

~~(2) One copy each upon the clerk, legislative body, and board of listers of each affected municipality by certified mail. The clerk shall record the notice of hearing in the municipal land records, at the agency's expense, and shall enter the names of the interested persons in the general index of transactions affecting the title to real estate. Within 15 business days of the issuance of a judgment of condemnation by the court or of the preparation of a notice of condemnation by the agency in accordance with subdivision 503(e)(2) of this chapter, the agency shall:~~

~~(A) record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where the land is situated; and~~

~~(B) tender to the property owner, or deposit with the court, the amount of the offer of just compensation prepared under subsection 503(b) of this chapter or any other amount agreed to by the owner.~~

~~(2) For the purposes of this chapter, if an interested person has not provided the agency identification information necessary to process payment, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered when the agency makes payment into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information.~~

~~(b) The agency also shall publish the notice of hearing in a newspaper of general circulation in the municipalities in which the proposed project lies. Publication shall be made once a week for three consecutive weeks on the same day of the week, the last publication to be not less than five days before the hearing. When service on an interested person cannot with due diligence be made within or outside the state, upon affidavit of the secretary of transportation or the secretary's designee that diligent inquiry has been made to find the interested person, the publication shall be deemed sufficient service on that person. The affidavit shall be accompanied by an affidavit of the person attempting service that the location of the interested person is unknown and that the interested person has no known agent upon whom service can be made~~
Title in the property shall vest in the state, and the agency may proceed with the project, upon the later of:

(1) the agency's complying with the requirements of subsection (a) of this section; and

(2) the agency's mailing or delivering to the owner a notice of taking stating that it has complied with the requirements of subsection (a) of this section.

~~(c) Compliance with these provisions of this title shall constitute sufficient notice to and service upon all interested persons and municipalities~~
Except in the case of agreed compensation, an owner's acceptance and use of a payment

under this section does not affect his or her right to contest or appeal damages under sections 511–513 of this chapter, but shall bar the owner’s right to contest necessity and public purpose.

~~(d) No service need be made upon any interested person or municipality that has stipulated to necessity in accordance with section 508 of this chapter~~
Upon the agency’s recording of the judgment or notice of condemnation, the clerk with responsibility over land records shall enter the name of each property owner named in the judgment or notice as a grantor in the general index of transactions affecting the title to real estate. The agency shall comply with the provisions of 27 V.S.A. chapter 17 governing the composition and recording of project layout plats.

~~(e) Unless an answer denying the necessity or propriety of the proposed taking is filed by one or more parties served or appearing in the proceedings on or before the date set in the notice of hearing on the petition, the necessity and propriety shall be deemed to be conceded, and the court shall so find.~~

[Repealed.]

~~§ 507. HEARING AND ORDER OF NECESSITY~~ CATTLE-PASSES

~~(a) At the time and place appointed for the hearing, the court, consisting of the superior judge signing the order or the other superior judge as may be assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held shall hear all persons~~

~~interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the court shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the agency shall not be presumed. The court may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the court. The court shall make findings of fact and file them and any party in interest may appeal under the Vermont Rules of Appellate Procedure adopted by the supreme court. The court shall, by its order, determine whether the necessity of the state requires the taking of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed taking in such respects as to the court may seem proper.~~

~~(b) By~~ In its order of condemnation, the court may ~~also~~ direct the agency of ~~transportation~~ to install passes under the highway ~~as specified in this chapter~~ for the benefit of ~~the~~ large modern farm properties, the fee title of which is owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal, or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than 50 milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency of ~~transportation~~ and the property owner from determining the

specifications of a cattle-pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.

§ 508. ~~STIPULATION OF NECESSITY~~

~~(a) A person or municipality owning or having an interest in lands or rights to be taken or affected, a municipality in which the land is to be taken or affected, and other interested persons may stipulate as to the necessity of the taking.~~

~~(b) The stipulation shall be an affidavit sworn to before a person authorized to take acknowledgments, and, in the case of a municipality, shall be executed by a majority of its legislative body. The stipulation shall be in a form approved by the attorney general and shall include but not be limited to the following:~~

~~(1) a recital that the person or persons executing the stipulation have examined the applicable plan and survey of the lands or rights to be taken;~~

~~(2) an explanation of the legal and property rights affected; and~~

~~(3) that the right of the person to adequate compensation is not affected by executing the stipulation.~~

~~(c) The stipulation shall be invalid unless within two years of the date of the stipulation an order of necessity is granted. [Repealed.]~~

§ 509. PROCEDURE

~~(a) The stipulation shall be filed with the appropriate superior court, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The court may also cite in additional parties in accordance with section 507 of this title.~~

~~(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the court shall at the hearing determine if the person has an interest in lands or rights to be taken such as to be entitled to object to the proposed finding of necessity, and, if he is so affected or concerned, whether there is necessity for the taking, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The court may continue the hearing to allow proper preparation by the agency of transportation and interested parties.~~

~~(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the court may immediately issue an order of necessity.~~

~~(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.~~

~~(e) A copy of the order finding necessity shall be mailed to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.~~

~~(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the transportation board may enter into an agreement for purchase of lands or rights affected, provided the agreement is conditioned upon the issuance of an order of necessity.~~

~~[Repealed.]~~

~~§ 510. APPEAL FROM ORDER OF NECESSITY~~

~~(a) If the state, municipal corporation or any owner affected by the order of the court is aggrieved by the order, an appeal may be taken to the supreme court. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:~~

~~(1) that he or she has a likelihood of success on the merits;~~

~~(2) that he or she will suffer irreparable harm in the absence of the requested stay;~~

~~(3) that other interested parties will not be substantially harmed if a stay is granted; and~~

~~(4) that the public interest supports a grant of the proposed stay.~~

~~(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.~~

~~(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation of the land included in the survey as finally approved by the court without further hearing or consideration of any question of the necessity of the taking. In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one year necessity period. [Repealed.]~~

§ 511. HEARING TO DETERMINE AMOUNT OF COMPENSATION

DETERMINATION OF DAMAGES

~~(a) Following a determination of the necessity of the taking as above provided, when an Disputes between a property owner of land or rights and the agency of transportation are unable to agree on the amount of compensation to~~

be paid, and if the agency of transportation desires to proceed with the taking, ~~the transportation board~~ as a result of a taking shall be resolved as follows:

(1) If the owner's demand exceeds the agency's offer of just compensation by \$25,000.00 or less, the owner may obtain a determination of damages by either:

(A) petitioning the transportation board, or

(B) filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.

(2) If the owner's demand exceeds the agency's offer of just compensation by more than \$25,000.00, the owner may obtain a determination of damages by filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.

(3) A property owner may file a petition, complaint, or motion under subdivision (1) or (2) of this subsection no later than 90 days after the date of the notice of taking required under subsection 506(b) of this chapter.

(4) A petition improperly filed with the board shall be transferred to the superior court and, upon such transfer, the owner shall be responsible for applicable court filing fees.

(b) The board or the court shall appoint a time and place in ~~the~~ a county where the land is situated for ~~examining the premises and~~ a hearing ~~parties~~ interested, giving the parties at least 10 days' written notice ~~in writing to the~~

~~person owning the land or having an interest in the land. At that time and place, a member or members of the transportation board shall hear any person having an interest in the land and desiring to be heard.~~

~~(b) If the land proposed to be acquired~~ of the hearing. If the property taken extends into two or more counties, the board or court may hold a single hearing in one of the counties to determine ~~compensation~~ damages. In fixing the place for the hearing, the ~~transportation~~ board or court shall ~~take into consideration~~ consider the needs of the parties.

(c) Unless the parties otherwise agree or unless the board or the court determines that it is in the public interest to proceed on the question of damages, any proceedings to determine damages shall be stayed pending the final disposition of any appeal of the questions of necessity or public purpose.

(d) Upon demand, a party is entitled to a jury trial in superior court on the issue of damages.

(e) The board or the court shall first determine the total damages as between the agency and all interested persons claiming an interest in a subject property, and the agency may thereafter withdraw from further proceedings with respect to that property. The board or the court shall then determine any further questions in the matter, including the apportionment of damages among interested persons. Any board decision on damages shall include findings of fact, and shall be served on the parties immediately after its issuance.

§ 512. ~~ORDER FIXING COMPENSATION PAYMENT FOLLOWING
DECISION ON DAMAGES; INVERSE CONDEMNATION;
RELOCATION ASSISTANCE CREDIT OF STATE PLEDGED~~

(a) ~~Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken. Within 30 days of the board's order a final decision on damages and the exhaustion or expiration of all appeal rights, the agency shall file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the person, and pay or tender the owner the amount, if any, by which the award to each the person entitled exceeds the amount previously paid or tendered by the agency. A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.~~

(b) ~~In the event the plaintiff prevails against the state in an action for inverse condemnation, arising under this title or as a result of the acquisition of real property for a program or project undertaken by a federal agency, or with federal financial assistance, the court shall determine an award or allow to the plaintiff as part of its judgment such sum as will, in the opinion of the court,~~

~~reimburse the plaintiff for his or her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding. [Repealed.]~~

~~(c) When federal funds are available to provide relocation assistance and payments to persons displaced as a result of federal and federally assisted programs, any state agency may match the federal funds to the extent provided by federal law and grant relocation assistance and payments in the instances and on the conditions set forth by federal law and regulations. [Repealed.]~~

(d) The credit of the state of Vermont is pledged to the payment of all amounts awarded or allowed under the provisions of the chapter, and these amounts shall be lawful obligations of the state of Vermont.

§ 513. ~~APPEAL FROM ORDER FIXING COMPENSATION OF~~
DAMAGES DECISION; JURY TRIAL

(a) ~~A person or a municipal corporation interested in the lands affected by a relocation who is party~~ dissatisfied with ~~the a~~ decision of the transportation board as to the amount or apportionment of damages awarded ~~for the lands,~~ may appeal to ~~the a~~ superior court where the land is situated within ~~ninety~~ 30 days after the ~~report has been filed~~ date of the decision, and any number of persons aggrieved may join in the appeal.

(b) ~~Any person~~ A party appealing the award of ~~damages made by the transportation board, and the agency of transportation, shall be~~ is entitled to a jury trial in the superior court upon demand.

(c) A party aggrieved by a superior court decision on damages under this section or section 511 of this chapter may appeal to the supreme court in accordance with the Vermont Rules of Appellate Procedure.

§ 514. AWARD OF COSTS IN DAMAGES ACTION; LITIGATION EXPENSES IN INVERSE CONDEMNATION ACTION

(a) ~~When the appellant is allowed a sum greater than was awarded by the transportation board, the court shall tax costs against the agency of transportation. When the award fixed by the transportation board is upheld, the court shall tax costs against the appellant. The court shall fix the time for paying the damages awarded. If a damages award by a court is more than the agency's offer of just compensation or offer of judgment, whichever is greater, the court shall award the property owner his or her reasonable costs. If the damages award is less than or equal to the greater of the agency's offer of just compensation or offer of judgment, the court shall award the agency its reasonable costs.~~

(b) If a court renders judgment in favor of a property owner in an inverse condemnation action or if the agency effects a settlement of an inverse condemnation action, the court shall award the owner his or her reasonable

costs and other litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

§ 515a. ~~EVIDENCE OF HIGHWAY COMPLETION~~

~~The lack of a certificate of completion of a highway shall not alone constitute conclusive evidence that a highway is not public. [Repealed.]~~

* * *

§ 517. ~~VESTING OF TITLE~~

~~Title to the lands taken, or other rights acquired, under this chapter, shall vest in the state upon the filing for record with the town clerk of the transportation board's order as provided in section 512 of this chapter, unless previously acquired by deed or other appropriate instrument. [Repealed.]~~

* * *

§ 519. CONDOMINIUMS; COMMON AREAS AND FACILITIES

(a) For purposes of this section, the terms "apartment owner," "association of owners," "common areas and ~~facilities~~" facilities," and "declaration" shall have the same meanings as in the Condominium Ownership Act, 27 V.S.A. chapter 15.

(b) Notwithstanding any other provision of law, whenever the agency under this chapter ~~5 of this title~~ proposes to acquire any common areas and facilities of a condominium, the association of owners shall constitute the interested person or persons interested in lands in lieu of the individual

apartment owners for purposes of the necessity hearing, the compensation hearing, and any appeals therefrom.

(c) The agency shall serve one copy of the ~~necessity petition~~ complaint and summons upon the association of owners through one of its officers or agents, instead of upon the individual apartment owners.

(d) The agency shall make the compensation check payable to the association of owners, which shall then make proportional payments to the apartment owners as their interests appear in the declaration.

Sec. 3. 19 V.S.A. § 1(12) is amended to read:

(12) “Highways” are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town.

However, the lack of a certificate of completion of a state or town highway shall not alone constitute conclusive evidence that the highway is not public.

The term “highway” includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The

term “highway” does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

* * * Conforming Changes * * *

Sec. 4. 5 V.S.A. § 652 is amended to read:

§ 652. ~~PETITION TO SUPERIOR COURT~~

The secretary of transportation or the legislative body of a municipality, as defined in 24 V.S.A. § 2001, or the committee representing two or more municipalities, when authorized by vote of their legislative bodies, may ~~petition a~~ proceed in superior ~~judge~~ court as provided in 19 V.S.A. chapter 5, except as otherwise provided in this subchapter.

Sec. 5. REPEAL

5 V.S.A. § 654 (answer in airport condemnation proceedings) and 10 V.S.A. § 959 (determination of damages for taking of land for flood control project) are repealed.

Sec. 6. 10 V.S.A. §§ 958 and 960 are amended to read:

§ 958. EMINENT DOMAIN; DETERMINING NECESSITY

(a) The commissioner of the department of environmental conservation may ~~petition~~ file a complaint in the superior court for any county in which a

portion of the real estate lies to determine that necessity requires that the state acquire real estate within the state, including real estate held for public use in the name of the state or any municipality, for the purpose of flood control projects.

* * *

(c) The ~~petition~~ complaint, the service thereof and the proceedings in relation thereto, including rights of appeal, shall conform with and be controlled by ~~chapter 5 of Title 19~~ V.S.A. chapter 5.

§ 960. ENTRY AUTHORIZED

The commissioner of the department of environmental conservation or his or her authorized agents may enter upon any real estate at reasonable times and places for the purpose of making surveys or other investigations under this section, subsection 952(b) and sections 953, ~~957-959~~ 957-958, and 961 of this title. The owners of damaged real estate may recover for damages sustained by reason of the preliminary entry authorized by this section in an action at law against the commissioner.

Sec. 7. 24 V.S.A. § 4012 is amended to read:

§ 4012. EMINENT DOMAIN; EXEMPTION OF PROPERTY FROM EXECUTION

(a) An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its

purposes 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 for the condemnation of land or rights therein ~~by the state transportation board~~ as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519 and acts amendatory thereof or supplementary thereto. Property already devoted to a public use may be acquired, provided that no real property belonging to the city, county, state, or any political subdivision thereof may be acquired without its consent.

* * *

Sec. 8. 24 V.S.A. § 5104 is amended to read:

§ 5104. PURPOSES AND POWERS

(a) The authority may purchase, own, operate, or provide for the operation of land transportation facilities, and may contract for transit services, conduct studies, and contract with other governmental agencies, private companies, and individuals.

(b) The authority shall be a body politic and corporate with the powers incident to a municipal corporation under the laws of the state of Vermont consistent with the purposes of the authority, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including, ~~but not limited to,~~ the following:

* * *

(11) within its area of operation, to acquire by the exercise of the power of eminent domain any real property which it may have found necessary for its purposes, in the manner provided for the condemnation of land or rights therein as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519.

* * *

* * * Transition Provision * * *

Sec. 9. TRANSITION

(a) The state highway condemnation procedures of 19 V.S.A. chapter 5 in effect prior to July 1, 2012 shall continue to apply to all superior court and transportation board proceedings brought by the agency prior to July 1, 2012.

(b) With respect to any superior court proceeding brought by the agency on or after July 1, 2012 under 19 V.S.A. chapter 5, as amended by this act, the agency shall be required to demonstrate that it has satisfied the requirements of this act with respect to precondemnation appraisals, offers of just compensation, and negotiations with property owners.

Sec. 10. REPORT

By October 15, 2013, the agency shall submit to the house and senate committees on judiciary and on transportation a report listing:

(1) every acquisition of property, whether by agreement or through condemnation, for which the agency prepared a waiver valuation in fiscal year 2013;

(2) the value of the property estimated in the waiver valuation;

(3) whether an appraisal of the property was obtained by the agency or the property owner and, if so, the appraised value of the property;

(4) the date and the amount of the first offer made to the property owner;

(5) the date and the amount of the final payment to the property owner for the property; and

(6) whether the final payment to the property owner resulted from an agreement prior to the filing of a condemnation action, an agreement following the filing of a condemnation action, or a board or court decision on compensation.

Sec. 11. TRAINING OF TRANSPORTATION BOARD MEMBERS

(a) Within 30 days after the effective date of this act, the executive secretary of the transportation board shall arrange for transportation board members to be trained on:

(1) the methodology of condemnation appraisals;

(2) the law of Vermont, including court decisions, governing the determination of damages resulting from a condemnation for a state highway project; and

(3) provisions of the Uniform Relocation Assistance and Real Property Acquisition Properties Act related to the determination of damages.

(b) Within 30 days of a new member joining the board, the executive secretary of the board shall arrange for the new member to be trained as described in subsection (a) of this section.

* * * Effective Date * * *

Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (transition provision), and Sec. 11 (training of board members) of this act shall take effect on passage.

(b) All other sections shall take effect on July 1, 2012.

Approved: May 11, 2012