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OFFICE WEST VIRGINIA
SECRETARY OF STATE

HB 4048

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

— ● —

ENROLLED

House Bill No. 4048

(By Delegates Craig, Amores, Mahan,
Morgan, Pethel, Stemple, Caputo, Armstead,
Schadler, Hamilton and Azinger)

— ● —

Passed March 11, 2006

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 4048

(BY DELEGATES CRAIG, AMORES, MAHAN,
MORGAN, PETHTEL, STEMPLE, CAPUTO, ARMSTEAD,
SCHADLER, HAMILTON AND AZINGER)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-18-6a; and to amend and reenact §54-1-2 of said code; and to further amend said code by adding thereto a new section designated §54-1-2a, all relating to limiting the use of eminent domain; creating definitions for certain terms; prohibiting use of eminent domain for economic development and providing for limited exceptions; establishing a procedure for municipal urban renewal authorities to use eminent domain for properties only in blighted areas; requiring notice of public hearing and rights of property owners related to proposed condemnation of property; requiring municipal urban renewal authority to consider other alternatives to condemnation; requiring municipal urban renewal authority to show property is blighted or necessary for the redevelopment plan; requiring municipal urban renewal authority meet additional requirements before proceeding with condemnation of nonblighted property; creating right for property owner to appeal

the condemnation; requiring municipal authority to prove all statutory criteria have been met; protecting property owners right to relocation assistance; prohibiting use of eminent domain for economic development that would result in private economic gain; and requiring a good faith offer prior to condemnation.

Be it enacted by the Legislature of West Virginia:

That §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-18-6a, and that §54-1-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §54-1-2a, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 18. SLUM CLEARANCE.

§16-18-3. Definitions.

1 The following terms, wherever used or referred to in this
2 article, shall have the following meanings, unless a different
3 meaning is clearly indicated by the context:

4 (a) "Area of operation" means in the case of a municipality,
5 the area within such municipality and the area within five miles
6 of the territorial boundaries thereof, except that the area of
7 operation of a municipality under this article shall not include
8 any area which lies within the territorial boundaries of another
9 municipality unless a resolution shall have been adopted by the
10 governing body of such other municipality declaring a need
11 therefor; and in the case of a county, the area within the county,
12 except that the area of operation in such case shall not include
13 any area which lies within the territorial boundaries of a
14 municipality unless a resolution shall have been adopted by the
15 governing body of such municipality declaring a need therefor;

16 and in the case of a regional authority, shall mean the area
17 within the communities for which such regional authority is
18 created: *Provided*, That a regional authority shall not undertake
19 a redevelopment project within the territorial boundaries of any
20 municipality unless a resolution shall have been adopted by the
21 governing body of such municipality declaring that there is a
22 need for the regional authority to undertake such development
23 project within such municipality. No authority shall operate in
24 any area of operation in which another authority already
25 established is undertaking or carrying out a redevelopment
26 project without the consent, by resolution, of such other
27 authority.

28 (b) "Authority", "slum clearance and redevelopment
29 authority" or "urban renewal authority" means a public body,
30 corporate and politic, created by or pursuant to section four of
31 this article or any other public body exercising the powers,
32 rights and duties of such an authority as hereinafter provided.

33 (c) "Blighted area" means an area, other than a slum area,
34 which by reason of the predominance of defective or inadequate
35 street layout, faulty lot layout in relation to size, adequacy,
36 accessibility or usefulness, insanitary or unsafe conditions,
37 deterioration of site improvement, diversity of ownership, tax
38 or special assessment delinquency exceeding the fair value of
39 the land, defective or unusual conditions of title, improper
40 subdivision or obsolete platting, or the existence of conditions
41 which endanger life or property by fire and other causes, or any
42 combination of such factors, substantially impairs or arrests the
43 sound growth of the community, retards the provision of
44 housing accommodations or constitutes an economic or social
45 liability and is a menace to the public health, safety, morals, or
46 welfare in its present condition and use.

47 (d) "Blighted property" means a tract or parcel of land that,
48 by reason of abandonment, dilapidation, deterioration, age or

49 obsolescence, inadequate provisions for ventilation, light, air or
50 sanitation, high density of population and overcrowding,
51 deterioration of site or other improvements, or the existence of
52 conditions that endanger life or property by fire or other causes,
53 or any combination of such factors, is detrimental to the public
54 health, safety or welfare.

55 (e) “Bonds” means any bonds, including refunding bonds,
56 notes, interim certificates, debentures, or other obligations
57 issued by an authority pursuant to this article.

58 (f) “Community” means any municipality or county in the
59 state.

60 (g) “Clerk” means the clerk or other official of the munici-
61 pality or county who is the custodian of the official records of
62 such municipality or county.

63 (h) “Federal government” is the United States of America
64 or any agency or instrumentality, corporate or otherwise, of the
65 United States of America.

66 (i) “Governing body” means the council or other legislative
67 body charged with governing the municipality or the county
68 court or other legislative body charged with governing the
69 county.

70 (j) “Mayor” means the officer having the duties customarily
71 imposed upon the executive head of a municipality.

72 (k) “Municipality” means any incorporated city, town or
73 village in the state.

74 (l) “Obligee” means any bondholder, agents or trustees for
75 any bondholders, or lessor demising to the authority property
76 used in connection with a redevelopment project, or any
77 assignee or assignees of such lessor’s interest or any part

78 thereof, and the federal government when it is a party to any
79 contract with the authority.

80 (m) "Person" means any individual, firm, partnership,
81 corporation, company, association, joint stock association, or
82 body politic; and shall include any trustee, receiver, assignee,
83 or other similar representative thereof.

84 (n) "Public body" means the state or any municipality,
85 county, township, board, commission, authority, district, or any
86 other subdivision or public body of the state.

87 (o) "Real property" includes all lands, including improve-
88 ments and fixtures thereon, and property of any nature appurte-
89 nant thereto, or used in connection therewith, and every estate,
90 interest and right, legal or equitable, therein, including terms for
91 years and liens by way of judgment, mortgage or otherwise and
92 the indebtedness secured by such liens.

93 (p) "Redeveloper" means any person, partnership, or public
94 or private corporation or agency which shall enter or propose to
95 enter into a redevelopment contract.

96 (q) "Redevelopment contract" means a contract entered into
97 between an authority and a redeveloper for the redevelopment
98 of an area in conformity with a redevelopment plan.

99 (r) "Redevelopment plan" means a plan for the acquisition,
100 clearance, reconstruction, rehabilitation, or future use of a
101 redevelopment project area.

102 (s) "Redevelopment project" means any work or undertak-
103 ing:

104 (1) To acquire pursuant to the limitations contained in
105 subdivision (11), section two, article one, chapter fifty-four
106 slum areas or blighted areas or portions thereof, including

107 lands, structures, or improvements the acquisition of which is
108 necessary or incidental to the proper clearance, development or
109 redevelopment of such slum or blighted areas or to the preven-
110 tion of the spread or recurrence of slum conditions or conditions
111 of blight;

112 (2) To clear any such areas by demolition or removal of
113 existing buildings, structures, streets, utilities or other improve-
114 ments thereon and to install, construct, or reconstruct streets,
115 utilities, and site improvements essential to the preparation of
116 sites for uses in accordance with a redevelopment plan;

117 (3) To sell, lease or otherwise make available land in such
118 areas for residential, recreational, commercial, industrial or
119 other use or for public use or to retain such land for public use,
120 in accordance with a redevelopment plan; and

121 (4) Preparation of a redevelopment plan, the planning,
122 survey and other work incident to a redevelopment project and
123 the preparation of all plans and arrangements for carrying out
124 a redevelopment project.

125 (t) "Slum area" means an area in which there is a predomi-
126 nance of buildings or improvements or which is predominantly
127 residential in character, and which, by reason of dilapidation,
128 deterioration, age or obsolescence, inadequate provision for
129 ventilation, light, air, sanitation, or open spaces, high density of
130 population and overcrowding, or the existence of conditions
131 which endanger life or property by fire and other causes, or any
132 combination of such factors, is conducive to ill health, transmis-
133 sion of disease, infant mortality, juvenile delinquency and
134 crime, and is detrimental to the public health, safety, morals or
135 welfare.

136 (u) "Unblighted property" means a property that is not a
137 blighted property.

§16-18-6. Preparation and approval of redevelopment plans.

1 (a) An authority shall not acquire real property for a
2 redevelopment project unless the governing body of the
3 community in which the redevelopment project area is located
4 has approved the redevelopment plans, as prescribed in
5 subsection (i) below.

6 (b) An authority shall not prepare a redevelopment plan for
7 a redevelopment project area unless the governing body of the
8 community in which such area is located has, by resolution,
9 declared such area to be a slum or blighted area in need of
10 redevelopment.

11 (c) An authority shall not recommend a redevelopment plan
12 to the governing body of the community in which the redevel-
13 opment project area is located until a general plan for the
14 development of the community has been prepared.

15 (d) The authority may itself prepare or cause to be prepared
16 a redevelopment plan or any person or agency, public or
17 private, may submit such a plan to an authority. A redevel-
18 opment plan shall be sufficiently complete to indicate its relation-
19 ship to definite local objectives as to appropriate land uses,
20 improved traffic, public transportation, public utilities, recre-
21 ational and community facilities and other public improvements
22 and the proposed land uses and building requirements in the
23 redevelopment project area, and shall include without being
24 limited to:

25 (1) The boundaries of the redevelopment project area, with
26 a map showing the existing uses and conditions of the real
27 property therein;

28 (2) A land use plan showing proposed uses of the area;

29 (3) Information showing the standards of population
30 densities, land coverage and building intensities in the area after
31 redevelopment;

32 (4) A statement of the proposed changes, if any, in zoning
33 ordinances or maps, street layouts, street levels or grades,
34 building codes and ordinances;

35 (5) A site plan of the area; and

36 (6) A statement as to the kind and number of additional
37 public facilities or utilities which will be required to support the
38 new land uses in the area after redevelopment.

39 (e) Prior to recommending a redevelopment plan to the
40 governing body for approval, an authority shall submit such
41 plan to the planning commission of the community in which the
42 redevelopment project area is located for review and recom-
43 mendations as to its conformity with the general plan for the
44 development of the community as a whole. The planning
45 commission shall submit its written recommendations with
46 respect to the proposed redevelopment plan to the authority
47 within thirty days after receipt of the plan for review. Upon
48 receipt of the recommendations of the planning commission or,
49 if no recommendations are received within said thirty days, then
50 without such recommendations, an authority may recommend
51 the redevelopment plan to the governing body of the commu-
52 nity for approval.

53 (f) Prior to recommending a redevelopment plan to the
54 governing body for approval, an authority shall consider
55 whether the proposed land uses and building requirements in
56 the redevelopment project area are designed with the general
57 purpose of accomplishing, in conformance with the general
58 plan, a coordinated, adjusted and harmonious development of
59 the community and its environs which will, in accordance with
60 present and future needs, promote health, safety, morals, order,

61 convenience, prosperity and the general welfare, as well as
62 efficiency and economy in the process of development;
63 including, among other things, adequate provision for traffic,
64 vehicular parking, the promotion of safety from fire, panic and
65 other dangers, adequate provision for light and air, the promo-
66 tion of the healthful and convenient distribution of population,
67 the provision of adequate transportation, water, sewerage and
68 other public utilities, schools, parks, recreational and commu-
69 nity facilities and other public requirements, the promotion of
70 sound design and arrangement, the wise and efficient expendi-
71 ture of public funds, the prevention of the recurrence of
72 insanitary or unsafe dwelling accommodations, slums, or
73 conditions of blight, and the provision of adequate, safe and
74 sanitary dwelling accommodations.

75 (g) The recommendation of a redevelopment plan by an
76 authority to the governing body shall be accompanied by the
77 recommendations, if any, of the planning commission concern-
78 ing the redevelopment plan; a statement of the proposed method
79 and estimated cost of the acquisition and preparation for
80 redevelopment of the redevelopment project area and the
81 estimated proceeds or revenues from its disposal to redevelop-
82 ers; a statement of the proposed method of financing the
83 redevelopment project; and a statement of a feasible method
84 proposed for the relocation of families to be displaced from the
85 redevelopment project area.

86 (h) The governing body of the community shall hold a
87 public hearing on any redevelopment plan or substantial
88 modification thereof recommended by the authority, after
89 public notice thereof by publication as a Class II legal adver-
90 tisement in compliance with the provisions of article three,
91 chapter fifty-nine of this code, and the publication area for such
92 publication shall be the community. Public notice shall also
93 include notice by certified letter, return receipt requested to

94 each property owner of record of all affected properties of the
95 proposed project. The notice shall include:

96 (1) Notice of the public hearing time, date and location;

97 (2) The right to have an inspection by the municipal
98 authority to determine if the property is blighted or unblighted;

99 (3) The inspection procedures; and

100 (4) The rights the property owner has pursuant to section
101 six-a of this article relating to unblighted properties in blighted
102 or slum areas.

103 The last publication shall be at least ten days prior to the
104 date set for the hearing. The notice shall describe the time, date,
105 place and purpose of the hearing and shall also generally
106 identify the area to be redeveloped under the plan. All inter-
107 ested parties shall be afforded at such public hearing a reason-
108 able opportunity to express their views respecting the proposed
109 redevelopment plan. The municipal authority shall consider
110 reasonable alternatives for the redevelopment project that will
111 minimize the use of eminent domain against any properties that
112 are not blighted.

113 (i) Following such hearing, the governing body may
114 approve a redevelopment plan if it finds that said plan is
115 feasible and in conformity with the general plan for the devel-
116 opment of the community as a whole: *Provided*, That if the
117 redevelopment project area is a blighted area, the governing
118 body must also find that a shortage of housing of sound
119 standards and designs, adequate for family life, exists in the
120 community; the need for housing accommodations has been or
121 will be increased as a result of the clearance of slums in other
122 areas under redevelopment; the conditions of blight in the
123 redevelopment project area and the shortage of decent, safe and
124 sanitary housing cause or contribute to an increase in and

125 spread of disease and crime and constitute a menace to the
126 public health, safety, morals or welfare; and that the develop-
127 ment of the blighted area for predominantly residential uses is
128 an integral part of and essential to the program of the commu-
129 nity for the elimination of slum areas. A redevelopment plan
130 which has not been approved by the governing body when
131 recommended by the authority may again be recommended to
132 it with any modifications deemed advisable.

133 (j) A redevelopment plan may be modified at any time by
134 the authority: *Provided*, That if modified after the lease or sale
135 of real property in the redevelopment project area, the modifi-
136 cation must be consented to by the redeveloper or redevelopers
137 of such real property or his successor, or their successors in
138 interest affected by the proposed modification. Where the
139 proposed modification will substantially change the redevelop-
140 ment plan as previously approved by the governing body the
141 modification must similarly be approved by the governing
142 body.

**§16-18-6a. Municipal non-blighted property in slum or blight
areas.**

1 (a) The municipal authority shall have the burden to show
2 that a property is blighted. If the property owner does not allow
3 the authority to conduct an inspection of the property to
4 determine whether it is appropriate to deem the property
5 blighted or unblighted, then it is a rebuttable presumption that
6 the property is blighted.

7 (b) When any area has been declared to be slum and
8 blighted, pursuant to the provisions of this article, if a private
9 property within that area is found to not be a blighted property,
10 then to condemn the property pursuant to article two, chapter
11 fifty four of the code, the municipal authority must demon-
12 strate, in addition to all other lawful condemnation require-

13 ments, that the project or program requiring the clearance of the
14 slum and blighted area:

15 (1) Cannot proceed without the condemnation of the private
16 property at issue;

17 (2) That the private property shown not to be blighted
18 cannot be integrated into the proposed project or program once
19 the slum and blighted area surrounding such property is taken
20 and cleared;

21 (3) That the condemnation of the unblighted property is
22 necessary for the clearance of an area deemed to be slum or
23 blighted;

24 (4) That other alternatives to the condemnation of the
25 unblighted property are not reasonably practical;

26 (5) That every reasonable effort has been taken to ensure
27 that the unblighted property and its owners have been given a
28 reasonable opportunity to be included in the redevelopment
29 project or plan without the use of eminent domain;

30 (6) That no alternative site within the slum and blighted
31 area is available for purchase by negotiation that might substi-
32 tute as a site for the unblighted property;

33 (7) That the redevelopment project or plan could not be
34 restructured to avoid the taking of the unblighted property;

35 (8) That the redevelopment project or plan could not be
36 carried out without the use of eminent domain; and

37 (9) That there is specific use for the unblighted property to
38 be taken and a plan to redevelop and convert the unblighted
39 property from its current use to the stated specific use basically
40 exists.

41 (c) In any case when the municipal authority has decided to
42 pursue condemnation, the property owner shall have the right
43 to seek review in the circuit court within the county wherein the
44 property lies. Prior to authorizing condemnation as provided
45 pursuant to article two, chapter fifty-four of the code, the court
46 must find that the property is blighted, or if unblighted, that the
47 authority has met the requirements of subsection (b) of this
48 section.

49 (d) All of the rights and remedies contained in article three,
50 chapter fifty-four of this code concerning relocation assistance
51 are available to the private property owner whose unblighted
52 property is being condemned, and if the property to be con-
53 demned contains a business owned by the property owner, the
54 property owner is entitled to the amount, if any, which when
55 added to the acquisition cost of the property acquired by the
56 condemning authority, equals the reasonable cost of obtaining
57 a comparable building or property having substantially the same
58 characteristics of the property sought to be taken.

§16-18-8. Eminent domain.

1 (a) An authority shall have the right to acquire by the
2 exercise of the power of eminent domain, pursuant to the
3 limitations contained in subdivision (11), section two, article
4 one, chapter fifty-four, any real property which it may deem
5 necessary for a redevelopment project or for its purposes under
6 this article after the adoption by it of a resolution declaring that
7 the acquisition of the real property described therein is neces-
8 sary for such purposes. An authority may exercise the power of
9 eminent domain in the manner provided for condemnation
10 proceedings, in chapter fifty-four of the code of West Virginia,
11 one thousand nine hundred thirty-one, as amended, or it may
12 exercise the power of eminent domain in the manner now or
13 which may be hereafter provided by any other statutory
14 provisions for the exercise of the power of eminent domain.

15 Property already devoted to a public use may be acquired in
16 like manner: *Provided*, That no real property belonging to the
17 municipality, the county or the state may be acquired without
18 its consent.

19 (b) When an authority has found and determined by
20 resolution that certain real property described therein is
21 necessary for a redevelopment project or for its purposes under
22 this article, the resolution shall be conclusive evidence that the
23 acquisition of such real property is necessary for the purposes
24 described therein.

CHAPTER 54. EMINENT DOMAIN

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

1 (a) The public uses for which private property may be taken
2 or damaged are as follows:

3 (1) For the construction, maintenance and operation of
4 railroad and traction lines (including extension, lateral and
5 branch lines, spurs, switches and sidetracks), canals, public
6 landings, wharves, bridges, public roads, streets, alleys, parks
7 and other works of internal improvement, for the public use;

8 (2) For the construction and maintenance of telegraph,
9 telephone, electric light, heat and power plants, systems, lines,
10 transmission lines, conduits, stations (including branch, spur
11 and service lines), when for public use;

12 (3) For constructing, maintaining and operating pipelines,
13 plants, systems and storage facilities for manufacturing gas and
14 for transporting petroleum oil, natural gas, manufactured gas,
15 and all mixtures and combinations thereof, by means of pipes,

16 pressure stations or otherwise, (including the construction and
17 operation of telephone and telegraph lines for the service of
18 such systems and plants), and for underground storage areas
19 and facilities, and the operation and maintenance thereof, for
20 the injection, storage and removal of natural gas in subterranean
21 oil and/or gas bearing stratum, which, as shown by previous
22 exploration of the stratum sought to be condemned and within
23 the limits of the reservoir proposed to be utilized for such
24 purposes, has ceased to produce or has been proved to be
25 nonproductive of oil and/or gas in substantial quantities, when
26 for public use, the extent of the area to be acquired for such
27 purpose to be determined by the court on the basis of reason-
28 able need therefor. Nothing in this subsection shall be construed
29 to interfere with the power of the state and its political subdivi-
30 sions to enact and enforce ordinances and regulations deemed
31 necessary to protect the lives and property of citizens from the
32 effects of explosions of oil or gas;

33 (4) For constructing, maintaining and operating, water
34 plants and systems, including lines for transporting water by
35 any corporate body politic, or private corporation, for supplying
36 water to the inhabitants of any city, town, village or commu-
37 nity, for public use, including lands for pump stations, reser-
38 voirs, cisterns, storage dams, and other means of storing,
39 purifying and transporting water, and the right to take and
40 damage lands which may be flooded by the impounded waters,
41 and to appropriate any spring, stream and the surrounding
42 property necessary to protect, preserve and maintain the purity
43 of any such spring, stream, reservoir, cistern and water im-
44 pounded by means of any storage dam;

45 (5) For the purpose of constructing, maintaining and
46 operating sewer systems, lines and sewage disposal plants, to
47 collect, transport and dispose of sewage. When in the interest
48 of the public welfare and the preservation of the public health,
49 the construction of a sewer line to serve a single building or

50 institution shall be deemed a public use, and, for such purpose,
51 the right of eminent domain, if within a municipal corporation,
52 may be exercised in the name of a municipal corporation, and
53 if not within a municipal corporation, in the name of the county
54 commission of the county in which the property is located;

55 (6) For the reasonable use by an incorporated company
56 engaged in a public enterprise of which the state or any county
57 or municipality is the sole or a part owner;

58 (7) For courthouses and municipal buildings, parks, public
59 playgrounds, the location of public monuments, and all other
60 public buildings;

61 (8) For cemeteries, and the extension and enlargement of
62 existing cemeteries: *Provided*, That no lands shall be taken for
63 cemetery purposes which lie within four hundred feet of a
64 dwelling house, unless to extend the boundaries of an existing
65 cemetery, and then only in such manner that the limits of the
66 existing cemetery shall not be extended nearer than four
67 hundred feet of any dwelling house distant four hundred feet or
68 more from such cemetery, or nearer than it was to any dwelling
69 house which is within four hundred feet thereof;

70 (9) For public schools, public libraries and public hospitals;

71 (10) For the construction and operation of booms (including
72 approaches, landings and ways necessary for such objects),
73 when for a public use;

74 (11) By the State of West Virginia for any and every other
75 public use, object and purpose not herein specifically men-
76 tioned, but in no event may "public use", for the purposes of
77 this subdivision, be construed to mean the exercise of eminent
78 domain primarily for private economic development.

79 For purposes of this subdivision, no private property may
80 be taken by the State of West Virginia or its political subdivi-
81 sions without the owner's consent when the primary purpose of
82 the taking is economic development that will ultimately result
83 in ownership or control of the property transferring to another
84 private entity, other than one having the power of eminent
85 domain, whether by purchase agreement, long-term lease
86 agreement or any other mechanism whereby ownership or
87 control is effectively transferred: *Provided*, That a municipal
88 urban renewal authority may exercise a right of eminent domain
89 as to property only within an area designated a slum area or
90 blighted area under the provisions of article eighteen, chapter
91 sixteen of this code.

92 By the United States of America for each and every
93 legitimate public use, need and purpose of the government of
94 the United States, within the purview, and subject to the
95 provisions of chapter one of this code.

96 (12) For constructing, maintaining and operating pipelines,
97 plants, systems and storage facilities, for the transportation by
98 common carrier as a public utility of coal and its derivatives
99 and all mixtures and combinations thereof with any substance
100 by means of pipes, pressure stations or otherwise (including the
101 construction and operation of telephone and telegraph lines for
102 the service of such systems and plants), for public use: *Pro-*
103 *vided*, That the common carrier engages in some intrastate
104 activity in this state, if there is any reasonable demand therefor:
105 *Provided, however*, That in addition to all other requisites by
106 federal or state constitutions, statute or common law required
107 for the taking of private property for public use, a further
108 prerequisite and condition precedent to the exercise of such
109 taking of or damage to private property for public use as in this
110 subsection hereinabove provided, is that the Public Service
111 Commission of this state, in an appropriate hearing and
112 proceeding on due notice to all interested persons, firms or

113 corporations, in accordance with the procedure now or hereafter
114 established by statute and the regulations thereunder, shall have
115 found that such pipeline transportation of coal and its deriva-
116 tives and all mixtures and combinations thereof is required for
117 the public convenience and necessity, and that the Public
118 Service Commission of this state shall not extend a certificate
119 of convenience and necessity or make such finding of public
120 convenience and necessity unless, in addition to the other facts
121 required to support such findings, it shall have been established
122 by the applicant therefor that the patents and other similar rights
123 under which the applicant proposes to construct, maintain or
124 operate such pipeline, plants, systems and storage facilities
125 shall be and shall remain equally available, insofar as said
126 subsequent applicant may determine such availability, upon fair
127 and reasonable terms, to other bona fide applicants seeking a
128 certificate of convenience and necessity and finding of fact for
129 any other pipeline in West Virginia; for the purpose of making
130 the findings hereinbefore set forth the Public Service Commis-
131 sion shall have and exercise jurisdiction, and that the aforesaid
132 findings in this proviso above set forth shall be subject to
133 judicial review as in other Public Service Commission proceed-
134 ings.

135 It is the intention of the Legislature in amending this
136 section by the addition of subdivision (12) to extend the right of
137 eminent domain to coal pipelines for public use; to provide for
138 regulation of such coal pipelines by the Public Service Com-
139 mission of this state or the Interstate Commerce Commission of
140 the United States of America, or both; to assure that such rights
141 shall be extended only to public utilities or common carriers as
142 distinguished from private carriers or contract carriers; to make
143 patents covering the same equally available to others on fair and
144 reasonable terms; and to prevent monopolistic use of coal
145 pipelines by any users thereof which would result in any
146 appreciable economic detriment to others similarly situated by
147 reasons of any such monopoly.

§54-1-2a. Notice; good faith purchase.

1 Prior to initiation of any condemnation proceeding pursuant
2 to slum and blight, the applicant must make a reasonable
3 attempt to notify all parties subject to a petition for condemna-
4 tion provided in section two of this article, and attempt to enter
5 into negotiations for purchase of the property with the owners.
6 The applicant shall make an offer in good faith for the purchase
7 of the property subject to the condemnation prior to initiation
8 of the condemnation proceeding.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

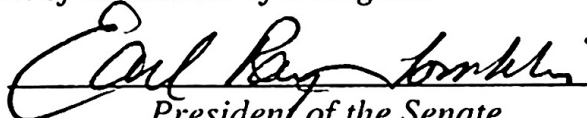

Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within as approved this the 5th
day of April 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 4:05 pm