WEST VIRGINIA CODE CHAPTER 54 ARTICLE 1

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§54-1-1. Bodies which may exercise power of eminent domain.

The United States of America, the State of West Virginia, and every corporate body politic heretofore or hereafter created by the Constitution or statutes of the state, and every corporation heretofore or hereafter organized under the laws of, or authorized to transact business in, the state, for any purpose of internal improvement for which private property may be taken or damaged for public use as authorized in section two of this article, shall have the right of eminent domain, and may exercise the same to the extent and in the manner provided in this chapter, and subject to the restrictions and limitations provided by law.

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

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

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

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

(3) For constructing, maintaining and operating pipelines, plants, systems and storage facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas, and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise, (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), and for underground storage areas and facilities, and the operation and maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be condemned and within the limits of the reservoir proposed to be utilized for such purposes, has ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial quantities, when for public use, the extent of the area to be acquired for such purpose to be determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall be construed to interfere with the power of the state and its political subdivisions to enact and enforce ordinances and regulations deemed necessary to protect the lives and property of citizens from the effects of explosions of oil or gas;

(4) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;

(5) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of a municipal corporation, and if not within a municipal corporation, in the name of the county commission of the county in which the property is located;

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

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

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

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

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

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

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

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

(12) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: Provided, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: Provided, however, That in addition to all other requisites by federal or state Constitutions, statute or common law required for the taking of private property for

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public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to private property for public use as in this subsection hereinabove provided, is that the Public Service Commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for the public convenience and necessity, and that the Public Service Commission of this state shall not extend a certificate of convenience and necessity or make such finding of public convenience and necessity unless, in addition to the other facts required to support such findings, it shall have been established by the applicant therefor that the patents and other similar rights under which the applicant proposes to construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and shall remain equally available, insofar as said subsequent applicant may determine such availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of convenience and necessity and finding of fact for any other pipeline in West Virginia; for the purpose of making the findings hereinbefore set forth the Public Service Commission shall have and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be subject to judicial review as in other Public Service Commission proceedings.

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

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

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

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§54-1-3. Entry on lands.

Any incorporated company or body politic, invested with the power of eminent domain under this chapter, by its officers, servants and agents may enter upon lands for the purpose of examining the same, surveying and laying out the lands, ways and easements which it desires to appropriate, provided no injury be done to the owner or possessor of the land; but no company or body politic, under the authority of this section, shall throw open fences or enclosures on any land, or construct its works through or upon the same, or in anywise injure the property of the owner or possessor, without his consent, until it shall have obtained the right so to do in the manner provided in this chapter.

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§54-1-3a. Entry by political body to obtain data; compensation to owner.

If the applicant be the State of West Virginia, or any agency or political subdivision thereof, and if the applicant shall have given the person residing thereon, if any, at least three days' notice of its intent, the applicant, by its authorized contractors, officers, agents, and employees, may enter and bring necessary or desirable machinery, equipment and tools upon any property, waters and premises in this state, to make thereon such surveys, inspections, examinations, investigations, tests, soundings and drillings as the applicant shall deem necessary or desirable for the purpose for which the property, or an interest or right therein, is proposed to be taken, which shall include, but shall not be limited to, laying out the lands, ways and easements, and acquiring data and information deemed necessary or desirable by the applicant in contemplation of acquiring the property, waters or premises, or an interest or right therein, by the power of eminent domain. Such entry or acts authorized by this section shall not be deemed either a trespass or an entry under any condemnation proceeding which may then be pending. Such entry or acts shall not continue longer than one year, except by the consent in writing of the owner, or by authority of the circuit court of the county wherein the property lies. It shall be the duty of the applicant to compensate the owner reasonably for the use of his property and to pay him the amount of any actual or demonstrable damages proximately resulting from any such entry or acts. In the event the applicant and the owner cannot agree as to the amount of such damage, if any, the applicant shall institute a condemnation proceeding for the purpose of determining the amount thereof, if any. If the applicant shall fail to institute such a proceeding within sixty days after receipt of demand therefor from the owner, by certified or registered mail, the owner may have a writ of mandamus in the circuit court of the county wherein such entry or act authorized by this section was made or performed, to compel the applicant to institute and prosecute to completion a condemnation proceeding for such purpose.

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§54-1-4. Restrictions as to dwelling houses -- Railroad and other internal improvement companies.

No railroad company, or other company of internal improvement, in locating and constructing its lines shall invade the dwelling house of any person, or any space within sixty feet thereof, without the consent of the owner, unless necessary so to do in passing through a narrow gorge, defile or narrow pass, or to avoid undesirable curves, angles, and grades, in the construction of its line, or to eliminate such curves, angles, and grades in any line heretofore constructed. This prohibition shall not apply to the territory within any municipal corporation, nor to the acquisition by condemnation of land for any purpose of the company other than right of ways for its main lines and transmission lines.

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§54-1-5. Same -- Lines for transportation of gas, oil, coal, etc., and storage tanks.

No line for the transportation of natural or artificial gas under pressure or for the transportation of petroleum oil or for the transportation of coal and its derivatives and mixtures and combinations thereof with any substance, and no tank for storing oil or natural gas, shall be laid or constructed within one hundred feet of any occupied dwelling house, without the consent of the owner. This section shall not apply to the territory within municipal corporations.

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§54-1-5a. Restrictions as to the exercise of the right of eminent domain by the West Virginia Housing Development Fund.

(1) The West Virginia Housing Development Fund, in exercising the power of eminent domain as provided for in section six, article eighteen, chapter thirty-one of this code, shall allege and prove, and the trier of fact shall find, in addition to other requirements of the law, the following:

(a) That resort is had to condemnation proceedings only after all other reasonable alternatives for acquisition of the site in question have been explored and found impractical;

(b) That the housing sought to be developed on the site in question is necessitated by circumstances existing in the local community or area where the site is located as follows:

(i) An extreme shortage of land suitable for housing exists in the local community or area and that no practical alternative site is available for purchase by negotiation;

(ii) A serious shortage of housing exists in the local community or area, as evidenced by an insufficient number of housing units, by low vacancy rates, or by a high proportion of substandard or overcrowded housing;

(iii) An open, active and free market for adequate housing does not exist in the local community or area;

(iv) The real property which is the subject of the proposed condemnation proceeding is not a part of, or contiguous to, the owner's principal residence or the curtilage thereof; and

(v) The owner of the real property which is the subject of the condemnation proceeding is seized of title to the surface of five thousand acres of land or more within this state, without reduction for any lease, license or easement to which the estate may be subject: Provided, That any portion of the five thousand acres or more of land which is being used or operated in the production of agricultural products by the owner of his lessee (under bona fide written lease executed and delivered prior to the institution of a proceeding in condemnation subject to the restriction provided in this section) shall not be taken by condemnation under the provisions of this section. In the case of a corporate owner, the court shall aggregate the holdings of the corporation, the holdings of other corporate bodies which have legally enforceable control of a majority of the shares of the corporate owner, and the holdings of other corporate bodies which have a majority of their shares subject to the legally enforceable control of the corporate owner. Such aggregate holdings shall be used to determine whether the corporate owner owns five thousand acres of land or more within this state.

(2) If, for any reason, the provisions of subdivision (b), subsection one of this section are held unconstitutional or invalid, then upon the finding of such unconstitutionality or invalidity, the West Virginia Housing Development Fund shall not exercise the powers of eminent

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domain provided for in section six, article eighteen, chapter thirty-one of this code.

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§54-1-6. Quantity of land acquired.

The land acquired by condemnation by any railroad company for its main depots, termini, buildings, machine shops, railroad yards and railroad facilities, and the land or interest therein so acquired by any company incorporated for a work of internal improvement along its line generally, or for any other public use authorized by section two of this article, shall be limited to such quantity as is necessary for the purpose or purposes for which it is appropriated.

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§54-1-7. Roadways; crossings.

If any company shall acquire land under the provisions of this chapter, and, in the construction and operation of its work of internal improvement, obstruct or impede the owner of residue of the tract of land from crossing the land so acquired, when such crossing is essential for the proper use of the remaining land of the owner, it shall permit the owner of the land to construct, maintain and use suitable crossings over the land so acquired. If such land shall have theretofore been cleared and fenced, or shall thereafter be cleared and fenced, the company shall construct and forever maintain suitable farm crossings to adequately serve the tract of land as a whole, and, if a railroad company, cattle guards and fences, on both sides of the lands condemned and appropriated.

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§54-1-8. Estate acquired; taxation.

Any corporation, or body politic, authorized to acquire private property for public use under the provisions of this chapter, may acquire an estate in fee simple, or any lesser estate therein. As to any land in which a railroad company shall acquire an estate less than a fee, for the construction of any part of its railroad, and as to any land in which any other condemnor shall acquire an estate less than a fee and in the use made of such lands shall deprive the former owner of the possession thereof and the right to cultivate and graze the same, such lands shall be assessed for taxation against the condemnor and his successor in title the same as if the tract had been appropriated in fee; and the payment of the taxes thereon by such condemnor in any case shall inure to the benefit of the holder of the estate in the land not condemned and appropriated, and shall preserve the same from forfeiture as to him

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§54-1-9. Crossing or alteration of course of works of another entity; civil action.

If any entity having the power of eminent domain under other provisions of this article including any railroad company, canal company, company organized for the purpose of transporting oil or natural or manufactured gas, or both, by means of pipeline, company organized for the purpose of transporting coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes or otherwise, telephone or telegraph company, company operating an electric transmission line, private corporation or public corporation operating a system of pipelines for transporting water, private corporation or public corporation operating a sewer system for public use, the West Virginia department of highways, or any county court, deems it necessary in the construction or relocation of its works, or any part thereof, to cross any other railroad, canal, sewer line, pipeline, any state or other public road at grade or otherwise, telephone or telegraph line or electric transmission line, such crossing may be made provided said works be so constructed as not to impede the passage or transportation of persons, property, commodities or sewage along, over or through the same. If any such company, private corporation, public corporation, West Virginia department of highways or county court desire that the course of any other railroad, canal, sewer line, pipeline, state, or other public road, telephone or telegraph line, electric transmission line, or any stream which is not a public highway, be altered to avoid the necessity of any crossing, or of frequent crossings, or to facilitate the crossing thereof, or the construction of a parallel work, the alteration may be made in such manner as may be agreed between the said party desiring such alteration and the owner of such other facility or land to be affected thereby. In case the parties interested fail to agree upon such crossing or alteration as is desired, said party desiring such crossing or alteration may bring a civil action, and in such action the court may, in a proper case, order that any proper crossing, or alteration, may be made upon payment of just compensation for the property or interest in property to be taken and upon payment of damages, if any, to the residue thereof beyond all benefits to be derived thereby. Following said civil action, and if the court order such crossing or alteration may be made, said party desiring such crossing or alteration may thereupon proceed under article two of this chapter to obtain the right to make such crossing or alteration and to have determined the amount of compensation and damages owing as a result thereof.

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§54-1-10. Taking wood and other materials and water; deposits of waste; cutting trees.

Any railroad company may, in the manner provided by this chapter, enter upon and take from any land adjacent to or in the vicinity of its road, wood, earth, gravel, shale, stone or other material necessary to be used in constructing, maintaining, repairing, operating, enlarging or altering its road, and in like manner may acquire land for any such purpose, or for the purpose of depositing and wasting thereon earth, gravel, shale, stone or other material excavated by it in the construction, maintenance, repair, operation, alteration or enlargement of its railroad. Any railroad company may in like manner take, impound and consume any and all water not required by the owner thereof and necessary for the use of its engines, whether locomotive or stationary, and such land contiguous to such water as shall be required for the construction of suitable wells or reservoirs, locating its pumps and machinery, the erection of necessary buildings and for a right of way thereto; and may also acquire such right of way as may be necessary for pipes to be used for conducting such water to the proper locality: Provided, That the owner of the land on which the water condemned is situated, or the riparian owners below affected, shall have the right to use water necessary for purposes connected with the proper use and operation of their land, or for domestic purposes or the watering of domestic animals. Any railroad company may take and cut down any standing trees that may be in danger of falling upon or obstructing its railroad, making compensation therefor in the manner provided by this chapter.

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§54-1-11. Specific purposes not limitation.

The power of eminent domain conferred on any incorporated company or body politic by sections one and two of this article shall not be deemed or construed to be limited or restricted in any manner by the enumeration by any other provision of this code of any specific purpose for which such power may be exercised.

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§54-1-12. Facilities for moving fuel coal to coal fired steam electric power plants.

The owner or operator of a coal fired steam electric power plant, the output of which plant is for public use, shall have the right to construct, maintain and operate roads and rail facilities for transporting fuel coal to such power plant as a part of said plant and the same shall be considered to be for public use.

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