

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1962

ENROLLED

Committee Substitute for
SENATE BILL NO. 5, 28-31-32

(By Mr.....)

28-31-32

PASSED February 5 1962

Ninety Days

In Effect FROM Passage



Filed in Office of the Secretary of State
of West Virginia **FEB 10 1962**

JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bills Nos. 28-31-32

[Passed February 5, 1962; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, five and nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the public uses for which private property may be taken or damaged in the exercise of the right of eminent domain; to restrictions on the location of pipe lines and storage tanks near dwelling houses; and to crossings, connections, or alteration of works by agreement or civil action, involving companies and other bodies having the right of eminent domain; and relating particularly in these respects to the transportation by common carriers of

coal and its derivatives and all mixtures and combinations thereof with any substance by pipe lines where such common carriers are engaged in some intrastate pipe line activity in this state.

Be it enacted by the Legislature of West Virginia:

That sections two, five and nine, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. Public Uses for Which Private Property May

2 Be Taken or Damaged.—The public uses for which private

3 property may be taken or damaged are as follows:

4 (a) For the construction, maintenance and operation

5 of railroad and traction lines (including extension, lateral

6 and branch lines, spurs, switches and sidetracks), canals,

7 public landings, wharves, bridges, public roads, streets,

8 alleys, parks and other works of internal improvement, for

9 the public use;

10 (b) For the construction and maintenance of telegraph,

11 telephone, electric light, heat and power plants, systems,

12 lines, transmission lines, conduits, stations (including
13 branch, spur and service lines), when for public use;

14 (c) For constructing, maintaining and operating pipe
15 lines, plants, systems and storage facilities for manufac-
16 turing gas and for transporting petroleum oil, natural gas,
17 manufactured gas, and all mixtures and combinations
18 thereof, by means of pipes, pressure stations or otherwise,
19 (including the construction and operation of telephone
20 and telegraph lines for the service of such systems and
21 plants), and for underground storage areas and facilities,
22 and the operation and maintenance thereof, by gas public
23 utilities selling natural gas at retail in West Virginia for
24 the injection, storage and removal of natural gas in sub-
25 terranean oil and/or gas bearing stratum, which, as shown
26 by previous exploration of the stratum sought to be con-
27 demned and within the limits of the reservoir proposed to
28 be utilized for such purposes, has ceased to produce or
29 has been proved to be nonproductive of oil and/or gas in
30 substantial quantities, when for public use, the extent of
31 the area to be acquired for such purpose to be determined
32 by the court on the basis of reasonable need therefor.

33 Nothing in this subsection shall be construed to interfere
34 with the power of the state and its political subdivisions
35 to enact and enforce ordinances and regulations deemed
36 necessary to protect the lives and property of citizens from
37 the effects of explosions of oil or gas;

38 (d) For constructing, maintaining and operating, water
39 plants and systems, including lines for transporting water
40 by any corporate body politic, or private corporation, for
41 supplying water to the inhabitants of any city, town, vil-
42 lage or community, for public use, including lands for
43 pump stations, reservoirs, cisterns, storage dams, and other
44 means of storing, purifying and transporting water, and
45 the right to take and damage lands which may be flooded
46 by the impounded waters, and to appropriate any spring,
47 stream and the surrounding property necessary to protect,
48 preserve and maintain the purity of any such spring,
49 stream, reservoir, cistern and water impounded by means
50 of any storage dam;

51 (e) For the purpose of constructing, maintaining and
52 operating sewer systems, lines and sewage disposal plants,
53 to collect, transport and dispose of sewage. When in the

54 interest of the public welfare and the preservation of the
55 public health, the construction of a sewer line to serve a
56 single building or institution shall be deemed a public
57 use, and, for such purpose, the right of eminent domain,
58 if within a municipal corporation, may be exercised in
59 the name of the municipal corporation, and if not within
60 a municipal corporation, in the name of the county court
61 of the county in which the property is located;

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

65 (g) For courthouses and municipal buildings, parks,
66 public playgrounds, the location of public monuments, and
67 all other public buildings;

68 (h) For cemeteries, and the extension and enlargement
69 of existing cemeteries: *Provided*, That no lands shall be
70 taken for cemetery purposes which lie within four hun-
71 dred feet of a dwelling house, unless to extend the boun-
72 daries of an existing cemetery, and then only in such man-
73 ner that the limits of the existing cemetery shall not be

74 extended nearer than four hundred feet of any dwelling
75 house distant four hundred feet or more from such ceme-
76 tery, or nearer than it was to any dwelling house which
77 is within four hundred feet thereof;

78 (i) For public schools, public libraries, and public hos-
79 pitals;

80 (j) For the construction and operation of booms (in-
81 cluding approaches, landings and ways necessary for such
82 objects), when for a public use;

83 (k) By the state of West Virginia for any and every
84 other public use, object and purpose not herein specifically
85 mentioned. By the United States of America for each and
86 every legitimate public use, need and purpose of the gov-
87 ernment of the United States, within the purview, and
88 subject to the provisions of chapter one of this code;

89 (1) For constructing, maintaining and operating pipe-
90 lines, plants, systems and storage facilities, for the trans-
91 portation by common carrier as a public utility of coal
92 and its derivatives and all mixtures and combinations
93 thereof with any substance by means of pipes, pressure
94 stations or otherwise (including the construction and

95 operation of telephone and telegraph lines for the service
96 of such systems and plants), for public use: *Provided*,
97 That the common carrier engages in some intrastate ac-
98 tivity in this state, if there is any reasonable demand
99 therefor: *Provided, however*, That, in addition to all other
100 requisites by federal or state constitutions, statute or
101 common law required for the taking of private property
102 for public use, a further prerequisite and condition
103 precedent to the exercise of such taking of or damage to
104 private property for public use as in this sub-section here-
105 inabove provided, is that the public service commission
106 of this state, in an appropriate hearing and proceeding on
107 due notice to all interested persons, firms or corporations,
108 in accordance with the procedure now or hereafter estab-
109 lished by statute and the regulations thereunder, shall
110 have found that such pipeline transportation of coal and
111 its derivatives and all mixtures and combinations thereof
112 is required for the public convenience and necessity, and
113 that the public service commission of this state shall not
114 extend a certificate of convenience and necessity or make
115 such finding of public convenience and necessity unless,

116 . in addition to the other facts required to support such
117 finding, it shall have been established by the applicant
118 therefor that the patents and other similar rights under
119 which the applicant proposes to construct, maintain or
120 operate such pipeline, plants, systems and storage facili-
121 ties shall be and shall remain equally available, insofar
122 as said subsequent applicant may determine such avail-
123 ability, upon fair and reasonable terms, to other bona fide
124 applicants seeking a certificate of convenience and neces-
125 sity and finding of fact for any other pipeline in West
126 Virginia; for the purpose of making the findings herein-
127 before set forth the public service commission shall have
128 and exercise jurisdiction, and that the aforesaid findings
129 in this proviso above set forth shall be subject to judicial
130 review as in other public service commission proceed-
131 ings.

*Amended
and
added*
132 It is the intention of the Legislature in amending sec-
133 tion two by the ^{addition} ~~passing~~ of subsection (1) as set forth above
134 to extend the right of eminent domain to coal pipelines
135 for public use; to provide for regulation of such coal pipe-
136 lines by the public service commission of this State or

137 the interstate commerce commission of the United States
138 of America, or both; to assure that such rights shall be
139 extended only to public utilities or common carriers as
140 distinguished from private carriers or contract carriers;
141 to make patents covering the same equally available to
142 others on fair and reasonable terms; and to prevent
143 monopolistic use of coal pipelines by any users thereof
144 which would result in any appreciable economic detri-
145 ment to others similarly situated by reason of any such
146 monopoly.

Sec. 5. Restrictions as to Dwelling Houses.—No line for
2 the transportation of natural or artificial gas under pres-
3 sure or for the transportation of petroleum oil or for the
4 transportation of coal and its derivatives and mixtures and
5 combinations thereof with any substance, and no tank
6 for storing oil or natural gas, shall be laid or constructed
7 within one hundred feet of any occupied dwelling house,
8 without the consent of the owner. This section shall not
9 apply to the territory within municipal corporations.

Sec. 9. Crossings, Connections or Alteration of Works;
2 **Civil Action.**—If any railroad, canal company, company

3 organized for the purpose of transporting carbon oil or
4 natural or manufactured gas, or both, by means of pipes
5 or otherwise, company organized for the purpose of trans-
6 porting coal and its derivatives and all mixtures and com-
7 binations thereof with any substance by means of pipes
8 or otherwise, telephone or telegraph company, company
9 operating an electric transmission line, the state road com-
10 mission, or any county court, deem it necessary in the con-
11 struction of its work, or any branch or siding thereof, to
12 cross any other railroad, canal, pipe line, any state or other
13 public road at grade or otherwise, telephone or telegraph
14 line or electric transmission line, it may do so, provided
15 its works be so constructed as not to impede the passage
16 or transportation of persons, property, or commodities
17 along, over or through the same. If any such company
18 desire that the course of any other railroad, canal, pipe
19 line, state, or other public road, telephone or telegraph
20 line, electric transmission line, or any stream which is not
21 a public highway, should be altered to avoid the necessity
22 of any crossing, or of frequent crossings, or to facilitate
23 the crossing thereof, or the construction of a parallel work,

24 the alteration may be made in such manner as may be
25 agreed between the company desiring such alteration and
26 the other railroad, or canal company, or pipe line com-
27 pany, or state road commission in the case of a state road,
28 the owner of the land to be affected by the alteration of
29 the course of such stream, telephone and telegraph com-
30 pany or the company operating such electric transmission
31 line. In case the parties interested fail to agree upon such
32 crossing or alteration as is desired, the company desiring it
33 may bring a civil action, and in such action the court may,
34 in a proper case, order that such, or any proper crossing,
35 or alteration, may be made upon payment of damages to
36 be ascertained as provided in article two of this chapter
37 and the company desiring such crossing or alteration may
38 thereupon proceed under said article two to obtain the
39 right to make such crossing or alteration. If such crossing
40 or alteration as is allowed by this section shall cause dam-
41 age to any party or persons, or to the owner of any lands,
42 then the railroad, canal, pipe line company, telephone or
43 telegraph company, or company operating such electric
44 transmission line, or state road commission or county

45 court, shall pay such damages; but any county-district
46 road may be altered by any such company for the purpose
47 aforesaid, whenever it shall have made an equally con-
48 venient road in lieu thereof.



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

James Davis, Jr.
Chairman Senate Committee

Mr. J. H. Withrow
Chairman House Committee

Originated in the Senate

NINETY DAYS

Takes effect

FROM

..... passage.

Harlow Myers
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Harold Wilson
President of the Senate

James W. Singleton
Speaker House of Delegates

The within *approved* this the *10th*
day of *February*, 1962.

W. M. Baum
Governor

