WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1962

ENROLLED
Committee Substitute for
SENATE BILL NO. 28-31-32

(By Mr. ..............................................................)

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
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 Be Taken or Damaged.—The public uses for which private property may be taken or damaged are as follows:

(a) 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;

(b) 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;

(c) For constructing, maintaining and operating pipe lines, 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, by gas public utilities selling natural gas at retail in West Virginia 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;

(d) 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;

(e) 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 the municipal corporation, and if not within a municipal corporation, in the name of the county court of the county in which the property is located;

(f) 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;

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

(h) 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
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 (l) 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
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 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 sub-section 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 finding, 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 section two by the insertion of subsection (1) as set forth above 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 reason of any such monopoly.

Sec. 5. Restrictions as to Dwelling Houses.—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.

Sec. 9. Crossings, Connections or Alteration of Works; Civil Action.—If any railroad, canal company, company
organized for the purpose of transporting carbon oil or natural or manufactured gas, or both, by means of pipes or otherwise, 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, the state road commission, or any county court, deem it necessary in the construction of its work, or any branch or siding thereof, to cross any other railroad, canal, pipe line, any state or other public road at grade or otherwise, telephone or telegraph line or electric transmission line, it may do so, provided its works be so constructed as not to impede the passage or transportation of persons, property, or commodities along, over or through the same. If any such company desire that the course of any other railroad, canal, pipe line, state, or other public road, telephone or telegraph line, electric transmission line, or any stream which is not a public highway, should 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 company desiring such alteration and the other railroad, or canal company, or pipe line company, or state road commission in the case of a state road, the owner of the land to be affected by the alteration of the course of such stream, telephone and telegraph company or the company operating such electric transmission line. In case the parties interested fail to agree upon such crossing or alteration as is desired, the company desiring it may bring a civil action, and in such action the court may, in a proper case, order that such, or any proper crossing, or alteration, may be made upon payment of damages to be ascertained as provided in article two of this chapter and the company desiring such crossing or alteration may thereupon proceed under said article two to obtain the right to make such crossing or alteration. If such crossing or alteration as is allowed by this section shall cause damage to any party or persons, or to the owner of any lands, then the railroad, canal, pipe line company, telephone or telegraph company, or company operating such electric transmission line, or state road commission or county
court, shall pay such damages; but any county-district road may be altered by any such company for the purpose aforesaid, whenever it shall have made an equally con-
venient road in lieu thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Ninety Days

Takes effect From passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor