

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

COM. SUB. FOR
SENATE BILL NO. 17

(By Mr.....)

PASSED March 9,.....1963

In Effect 90 days from.....Passage

Filed in Office of the Secretary of State
of West Virginia 3-16-63

JOE F. BURDETT
SECRETARY OF STATE

3-16-63

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 17

[Passed March 9, 1963; in effect ninety days from passage.]

AN ACT to amend chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections five, seven, eight, nine, ten, twelve and eighteen, article two thereof, and by adding to article one thereof a new section to be designated section three-a, and to article two thereof seven new sections to be designated sections four-a, seven-a, seven-b, nine-a, eleven-a, fourteen-a and sixteen-a, all relating to the exercise of the right of eminent domain.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

by amending and reenacting sections five, seven, eight, nine, ten, twelve and eighteen, article two thereof, and by adding to article one thereof, a new section to be designated section three-a, and to article two thereof seven new sections designated sections four-a, seven-a, seven-b, nine-a, eleven-a, fourteen-a and sixteen-a, all to read as follows.

Article 1. Right of Eminent Domain.

Section 3-a. Entry by Political Body to Obtain Data.—

2 If the applicant be the state of West Virginia, or any
3 agency or political subdivision thereof, and if the appli-
4 cant shall have given the person residing thereon, if any,
5 at least three days' notice of its intent, the applicant, by
6 its authorized contractors, officers, agents, and employees,
7 may enter and bring necessary or desirable machinery,
8 equipment and tools upon any property, waters and
9 premises in this state, to make thereon such surveys,
10 inspections, examinations, investigations, tests, soundings
11 and drillings as the applicant shall deem necessary or
12 desirable for the purpose for which the property, or an
13 interest or right therein, is proposed to be taken, which
14 shall include, but shall not be limited to, laying out the

15 lands, ways and easements, and acquiring data and in-
16 formation deemed necessary or desirable by the appli-
17 cant in contemplation of acquiring the property, waters
18 or premises, or an interest or right therein, by the power
19 of eminent domain. Such entry or acts authorized by
20 this section shall not be deemed either a trespass or an
21 entry under any condemnation proceeding which may
22 then be pending. Such entry or acts shall not continue
23 longer than one year, except by the consent in writing
24 of the owner, or by authority of the circuit court of the
25 county wherein the property lies. It shall be the duty
26 of the applicant to compensate the owner reasonably for
27 the use of this property and to pay him the amount of
28 any actual or demonstrable damages proximately result-
29 ing from any such entry or acts. In the event the appli-
30 cant and the owner cannot agree as to the amount of such
31 damage, if any, the applicant shall institute a condemna-
32 tion proceeding for the purpose of determining the
33 amount thereof, if any. If the applicant shall fail to in-
34 stitute such a proceeding within sixty days after receipt
35 of demand therefor from the owner, by certified or reg-

36 istered mail, the owner may have a writ of mandamus
37 in the circuit court of the county wherein such entry or
38 act authorized by this section was made or performed,
39 to compel the applicant to institute and prosecute to com-
40 pletion a condemnation proceeding for such purpose.

Article 2. Procedure.

Section 4-a. Lis Pendens Notice; Effect.—At the time
2 of the filing of an eminent domain petition, the applicant
3 may file a notice of the pendency of such proceeding as
4 provided in section two, article eleven, chapter fifty-five
5 of this code, containing the information therein required
6 so far as the provisions therein are applicable. From the
7 time of such filing every purchaser or encumbrancer whose
8 conveyance or encumbrance is not then recorded or dock-
9 eted shall be deemed a subsequent purchaser or encum-
10 brancer and shall be bound by the proceeding to the same
11 extent and in the same manner as if he were a party
12 therein.

Sec. 5. Commissioners; Qualifications.—When it shall
2 appear to the court, or the judge thereof in vacation, that
3 proper notice has been given and that the case is one in

4 which the applicant has lawful right to take property
5 for the purposes stated in the petition, upon making just
6 compensation, five disinterested freeholders shall be ap-
7 pointed commissioners to ascertain what will be a just
8 compensation and any damages to the persons entitled
9 thereto, for the property, or interest or right therein, pro-
10 posed to be taken.

11 The following persons shall be deemed interested and
12 shall not be appointed as commissioners: any person who
13 is personally interested in the property, or interest or
14 right therein, proposed to be taken or in the compensation
15 and any damages to be awarded therefor, or who is re-
16 lated by blood or marriage to any person having such
17 personal interest, or who stands in the relation of guar-
18 dian and ward, master and servant, principal and agent,
19 or partner, real estate broker, or surety to any per-
20 son having such personal interest, or who has enmity
21 against or bias in favor of any person who has such
22 personal interest, or who is the owner of, or interested in,
23 any real estate over or through which the work of internal
24 improvement will pass. No person shall be deemed in-

25 terested or incompetent to act as commissioner by reason
26 of his being an inhabitant of the county, district, or mu-
27 nicipal corporation, on behalf of which application is
28 made, or holding property therein.

Sec. 7. Oath of Commissioners.—Before entering upon
2 the discharge of his duties, each commissioner shall take
3 an oath, before some person authorized by law to ad-
4 minister it, that he will honestly, faithfully, and impar-
5 tially ascertain to the best of his skill and judgment what
6 will be a just compensation to the persons entitled thereto
7 for the property, or interest or right therein, proposed
8 to be taken, including, where applicable, any damages to
9 the extent provided by section nine of this article. The
10 oath shall be certified, by the person administering it, and
11 shall be filed, with the papers of the proceeding, in the
12 office of the clerk of the court.

Sec. 7-a. Information for Commissioners.—Before en-
2 tering upon the discharge of his duties, each commissioner
3 shall be informed generally, in writing or otherwise, by
4 the court, or the judge thereof in vacation, as to the duties
5 and responsibilities of a condemnation commissioner and

6 as to the law applicable to the deliberations of condemna-
7 tion commissioners.

Sec. 7-b. Supervision of Hearings.—The court may, and
2 upon motion of any party shall, preside over and super-
3 vise all hearings held by the condemnation commission
4 or appoint for such purpose one of its own commissioners,
5 or a special commissioner, to be known as a court com-
6 missioner, who shall preside over and supervise all hear-
7 ings held by the condemnation commission. The person
8 presiding, or the clerk of the court, may sign and issue
9 subpoenas for witnesses, including subpoenas duces tecum,
10 and may swear any witness that the evidence which he
11 will give relating to the matter to be reported by the con-
12 demnation commission shall be the truth, the whole truth,
13 and nothing but the truth. The person presiding shall
14 rule on all questions of evidence, instruct the condemna-
15 tion commissioners as to the law, and otherwise exercise
16 all the functions of a judge in the trial of a civil action
17 to the extent necessary for the determination of any issues
18 before the condemnation commission. In the event a court
19 commissioner is appointed to preside over and supervise

20 all of the hearings to be held by a condemnation commis-
21 sion such court commissioner shall be allowed for his
22 services a reasonable sum to be fixed by the court, such
23 sum to be taxed in the bill of costs against the moving
24 party.

Sec. 8. Powers of Commissioners; Hearings.—Any three
2 of the commissioners may act in the absence of the others,
3 and any one of them may sign and issue subpoenas for
4 witnesses in like manner as a justice, and with like effect;
5 and may swear any witness who appears before them,
6 that the evidence which he will give relating to the mat-
7 ters to be reported upon by the said commissioners shall
8 be the truth, the whole truth, and nothing but the truth.
9 They may adjourn their sessions from time to time as
10 shall be necessary; and any person interested may attend
11 in person or by attorney, produce and examine witnesses,
12 read depositions duly taken, and other proper evidence,
13 and be heard, if he requests it, in support of his rights,
14 according to the usages and rules of law.

15 A view of the property to be taken shall not be required
16 unless a demand therefor is made by a party in interest.

17 In the event a court commissioner is appointed to preside
 18 over and supervise all of the hearings to be held by a con-
 19 demnation commission pursuant to the provisions of sec-
 20 tion seven-b of this article such court commissioner shall
 21 go with the commissioners and shall control the pro-
 22 ceedings.

Sec. 9. Report of Commissioners.—The commissioners,
 2 after viewing the property, if a view is demanded, and
 3 hearing any proper evidence which is offered shall ascer-
 4 tain what will be a just compensation to the person entitled
 5 thereto for so much thereof as is proposed to be taken,
 6 or for the interest therein, if less than a fee, and for
 7 damage to the residue of the tract beyond all benefits to
 8 be derived, in respect to such residue, from the work to
 9 be constructed, or the purpose to which the land to be
 10 taken is to be appropriated, including, when less than the
 11 fee is taken, the actual damage, if any, done, or that may
 12 be done, to the fee by such construction, and make report
 13 to the following effect: We, the commissioners, appointed
 14 by the circuit court of _____ county, (or by the judge
 15 thereof in vacation, as the case may be) by an order made

16 on the _____ day of _____ on the application of _____,
17 respectfully report, that having first been duly sworn,
18 we have viewed the real estate owned by _____, men-
19 tioned in the said application, and are of opinion that
20 _____ dollars will be a just compensation for so much
21 of the said real estate as is proposed to be taken by the
22 said applicant, that is to say: (here describe the part to
23 be taken, and the interest therein, if less than a fee, so
24 as to identify the same with reasonable certainty, which
25 description may be supplemented by reference to a plat
26 annexed to the report, or in any manner that would be
27 sufficient in a conveyance) as well as for damages to the
28 residue of the said real estate beyond all benefits which
29 will be derived in respect to such residue from the work
30 to be constructed (or from the purposes to which the part
31 to be taken by said applicant is to be appropriated).

32 Given under our hands this _____ day of _____.

33 But if the property is proposed to be taken by a com-
34 pany incorporated for construction of a railroad, no
35 damages shall be ascertained for the construction of any
36 farm crossing, fences, or cattle guards, or for keeping the

37 same in repair. The report shall be signed by at least
38 three of the commissioners, and forthwith returned to
39 the clerk's office of the court, to be filed with the papers
40 of the case.

Sec. 9-a. Separate Findings of Compensation and Dam-

2 **ages.**—If the report of the commissioners includes any
3 sum for damages, in addition to the sum for just compen-
4 sation for the property, or interest or right therein, pro-
5 posed to be taken, the commissioners shall, if the owner
6 or owners of the property request the same, state in their
7 report what sum has been fixed as damages.

Sec. 10. Proceedings on Report; Trial by Jury.—Within

2 ten days after the report required by the provisions of
3 section nine of this article is returned and filed, either
4 party may file exceptions thereto, and demand that the
5 question of the compensation, and any damages to be
6 paid, be ascertained by a jury, in which case a jury of
7 twelve freeholders shall be selected and impaneled for
8 the purpose, as juries are selected in civil actions. But
9 no person shall sit on such jury who would not be eligible
10 to serve as a condemnation commissioner in the pro-

11 ceeding. The cause shall be tried as other causes in such
12 court, except that any person who served as a condemna-
13 tion commissioner, in the proceeding shall not be ex-
14 amined as a witness in regard to just compensation or
15 any damages. The jury, ascertaining the damages or com-
16 pensation to which the owner of the property, or interest
17 or right therein, proposed to be taken is entitled, shall
18 be governed by sections nine and nine-a of this article
19 except that a view of the property proposed to be taken
20 shall not be required: *Provided*, That in the event a de-
21 mand therefor is made by a party in interest, the jury
22 shall be taken to view the property, and in such case,
23 the judge presiding at the trial shall go with the jury
24 and shall control the proceedings.

25 If no exceptions be filed to such report, and neither
26 party demand a trial by jury as aforesaid, the court, or
27 the judge thereof in vacation, unless good cause be
28 shown against it, or it be defective or erroneous on its
29 face, shall confirm such report, and order it to be re-
30 corded in the proper order book of the court.

Sec. 11-a. Waiver of Findings by Commissioner.—If at

2 any time prior to the appointment of condemnation com-
3 missioners, or in the event condemnation commissioners
4 have been appointed, if at any time prior to the making
5 of a report by the condemnation commissioners pursuant
6 to the provisions of section nine of this article, all of the
7 parties who have appeared in the proceeding agree to
8 waive the findings of the condemnation commissioners
9 and file a stipulation to this effect with the clerk of the
10 court, the question of the compensation and any damages
11 to be paid shall be ascertained by a jury in the manner
12 provided by section ten of this article and a hearing before
13 the condemnation commissioners shall not be necessary.
14 Any such stipulation shall be filed with the papers of this
15 proceeding.

Sec. 12. Vesting of Title in Applicant.—Except as other-
2 wise provided in this article, at any time within three
3 months after the report, or the verdict of a jury, if there
4 be one, has been confirmed and ordered to be recorded,
5 the sum so ascertained with legal interest thereon from
6 the date of the report or verdict until payment, may be
7 paid by the applicant into court; upon such payment, title

8 to the property, or interest or right therein, so paid for
9 shall be absolutely vested in the applicant in fee simple
10 or to the extent described in the petition: *Provided*, That
11 in the case of a public road title to the right of way only
12 shall absolutely vest in the applicant.

Sec. 14-a. Condemnation by State or Its Political Sub-
2 **division; Alternative Method.**—Prior to any report by
3 a condemnation commissioner, or verdict of a jury, if the
4 applicant be the state of West Virginia or any political
5 subdivision thereof, and be otherwise authorized by law
6 to make payment as required in this section, on filing its
7 petition as authorized in this article, and if the court or
8 judge is satisfied that the purpose for which the property
9 or interest or right therein, is sought to be condemned is
10 a public use for which private property may be appro-
11 priated on compensating the owner, the applicant may
12 thereupon acquire title to, and enter upon, take posses-
13 sion of, appropriate and use the property, or interest or
14 right therein, sought to be condemned for the purposes
15 stated in the petition by following the method provided
16 in this section.

17 Before entry, taking possession, appropriation, or use,
18 the applicant shall pay into court such sum as it shall
19 estimate to be the fair value of the property, or estate,
20 right, or interest therein, sought to be condemned, in-
21 cluding, where applicable, the damages, if any, to the
22 residue beyond the benefits, if any, to such residue, by
23 reason of the taking. The court or judge may, at the re-
24 quest of any party to the proceeding, require the clerk
25 of the court to give an additional bond, adequate to pro-
26 tect such deposit with the clerk; and if such bond is re-
27 quired, the applicant shall pay the necessary premiums.

28 Upon such payment into court, the title to the property,
29 or interest or right therein, sought to be condemned, shall
30 be vested in the applicant, and the court or judge shall,
31 at the request of the applicant, make an order permitting
32 the applicant at once to enter upon, take possession, ap-
33 propriate and use the property, or interest or right there-
34 in, sought to be condemned for the purposes stated in the
35 petition, but the owners of such property, or interest or
36 right therein, at the time of such payment, including
37 lienors and conflicting claimants, shall have such title,

38 interest, or right in the money paid into court as they
39 had in the property, or interest or right therein, sought
40 to be condemned, and all liens by deed of trust, judgment
41 or otherwise, upon such property, or interest or right
42 therein, shall be transferred to such fund in court, subject
43 to the provisions of this section. The title in the applicant
44 shall be defeasible until the compensation and any dam-
45 ages are determined in the condemnation proceedings and
46 the applicant has paid any excess amount into court.

47 Upon petition to the court or judge, any person entitled
48 thereto may be paid his pro rata share of the money paid
49 into court, or a portion thereof, as ordered by the court or
50 judge, but the acceptance of such payment shall not limit
51 the amount to be allowed by the report of the condemna-
52 tion commissioners, or the verdict of a jury, if there be
53 one. Proceedings for the distribution of the money so
54 paid into court shall be conducted as provided in section
55 eighteen of this article to the extent that the provisions
56 therein are applicable. No party to the condemnation pro-
57 ceeding shall be permitted to introduce evidence of such
58 payment or of the amount so paid into court, or of any

59 amount which has been accepted by any party, nor shall
60 reference be made thereto during the course of the trial.

61 If the applicant shall enter upon or take possession of
62 the property, under the authority of this section, and shall
63 injure the property, the applicant shall not be entitled,
64 without the consent of the defendant, to abandon the
65 proceeding for the condemnation thereof, but such pro-
66 ceeding shall proceed to final award or judgment, and
67 the amount of compensation and any damages as finally
68 determined in such proceeding shall be paid in the man-
69 ner provided by this section.

70 When, after payment into court as provided under the
71 authority of this section, the amount allowed by the re-
72 port of the condemnation commissioners, or the verdict
73 of a jury, if there be one, exceeds the amount which has
74 been paid into court, the excess amount, together with
75 interest thereon at six per cent from the date of such
76 original deposit to the date of payment of the excess
77 amount into court, may, at any time within three months
78 after the report or verdict of a jury, as the case may be,
79 has been confirmed and ordered to be recorded, be paid

80 into court by the applicant for the persons entitled there-
81 to. In no other instance shall interest be allowed on pay-
82 ments made pursuant to the provisions of this section.
83 If the amount which has been paid into court pursuant
84 to this section exceeds the amount allowed by the report
85 of the condemnation commissioners, or the verdict of a
86 jury, if there be one, the excess shall be repaid to the
87 applicant out of such fund in court, or, if the amount re-
88 maining in the fund be insufficient, then the persons to
89 whom the fund, or any part thereof, has been paid, shall
90 reimburse the applicant on a pro rata basis, but without
91 interest. If the applicant has the right to abandon the
92 proceeding and does so, the amount which has been paid
93 into court pursuant to this section shall be repaid to the
94 applicant from such fund in court and by any persons
95 to whom the fund, or any part thereof, has been paid,
96 on a pro rata basis, but without interest.

97 If the amount allowed by the report of the condemna-
98 tion commissioners, or the verdict of the jury, if there be
99 one, does not exceed the sum paid into court and it shall
100 appear that the latter amount was tendered by the appli-

101 cant to the defendant prior to the institution of the pro-
102 ceeding, the defendant shall pay the costs of the proceed-
103 ing in the trial court unless the refusal to accept the
104 tender was based on some ground other than that of
105 insufficiency of compensation and any damages.

106 When the report of the condemnation commissioners,
107 or the verdict of a jury, if there be one, has been con-
108 firmed and ordered to be recorded, and the excess amount,
109 if any, has been paid into court as provided herein, the
110 title to the property, or interest or right therein, so paid
111 for shall be absolutely and indefeasibly vested in the
112 applicant in fee simple or to the extent described in the
113 petition: *Provided*, That in the case of a public road title
114 to the right of way only shall absolutely vest in the
115 applicant.

Sec. 16-a. Costs.—Except as otherwise specially pro-
2 vided, all costs of a condemnation proceeding in the trial
3 court shall be paid by the applicant. In every condemna-
4 tion proceeding in an appellate court, costs shall be re-
5 covered in such court by the party substantially prevailing.

Sec. 18. Payment to Clerk; Disposition of Money Paid

2 **into Court.**—Payment of an award or judgment, or any
3 money, under any of the provisions of this chapter may
4 be made to the clerk of the court in which such proceed-
5 ing is had, and such payment shall be deemed to be a
6 payment into court. The clerk to whom payment is so
7 made, together with the surety on his official bond, shall
8 be liable therefor, as for other moneys collected by him
9 by virtue of his office.

10 Upon money being paid into court, pursuant to the pro-
11 visions of this chapter, and the court or judge being sat-
12 isfied that the persons entitled thereto are before the court
13 or judge, it or he shall make such distribution or disposi-
14 tion of such money as is proper, having due regard to the
15 interest of all persons therein, and in what proportions
16 such money is properly payable.

17 If it shall appear that the petition states the persons or
18 classes of persons, who, in the opinion of the applicant,
19 are vested with the superior right or claim of title in the
20 property, or interest or right therein, condemned or sought
21 to be condemned or in the amount allowed or to be al-
22 lowed by the report of the condemnation commissioners,

23 or the verdict of a jury, if there be one, and it does not
24 appear from the record or otherwise that there is any de-
25 nial or dispute, by any person or party in interest, of such
26 statement in the petition, the court or judge may direct
27 that the money paid into court, after withholding there-
28 from any sum necessary for payment of any taxes which
29 are a lien upon the property, interest, or right, be dis-
30 bursed and distributed in accordance with the statement
31 in the petition, among the persons entitled thereto, except
32 that with respect to any persons appearing to be infants,
33 incompetents, incarcerated convicts, or under any other
34 legal disability, the court or judge shall inquire into their
35 rights or claims, independent of any statement in the pe-
36 tition, and any order for disbursement or distribution shall
37 conserve and protect the rights or claims of such persons
38 in and to the money paid into court.

39 If it shall appear to the court or judge, from the record
40 or otherwise, that there exists a controversy among claim-
41 ants to the money paid into court, or to the ownership of
42 the property, or interest or right therein, condemned or
43 sought to be condemned, the court or judge shall enter

44 an order setting a time for hearing the case and deter-
45 mining the rights and claims of all persons entitled to the
46 money paid into court or to any interest or share therein.
47 To aid in properly disposing of the money, the court or
48 judge may appoint a commissioner to take evidence of
49 the conflicting claims. The court or judge may direct
50 publication to be made requiring all who are interested
51 to appear at the time set for hearing the case to present
52 their respective claims. Such costs shall be allowed to
53 the prevailing persons as the court or judge shall direct.
54 Upon a determination by the court or judge of the
55 rights and claims of the persons entitled to the money
56 paid into court, with or without a report of such commis-
57 sioner, judgment shall be entered directing the disburse-
58 ment or distribution, after withholding for taxes as pro-
59 vided in the next preceding paragraph, to the persons
60 entitled thereto, provided that the rights or claims of
61 persons under legal disability shall be protected as pro-
62 vided in the next preceding paragraph.

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

C. Ray Parker
Chairman Senate Committee

Ethel L. Chandall
Chairman House Committee

Originated in the Senate.

Takes effect *90 days from* passage.

Howard Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Harvard W. Cannon
President of the Senate

Julius W. Singleton
Speaker House of Delegates

The within *approved* this the *16th*
day of *March*, 1963.

W. R. R. Benson
Governor