

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-79

Time 4:15 p.m.

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1979



**ENROLLED**

SENATE BILL NO. 526

(By Mr. Susman)

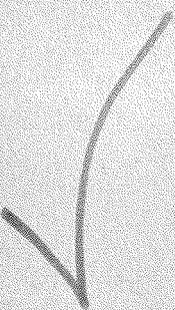


PASSED March 10, 1979

In Effect ninety days from Passage



No. 526



# ENROLLED

## Senate Bill No. 526

(By MR. SUSMAN)

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[Passed March 10, 1979; in effect ninety days from passage.]

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AN ACT to amend and reenact section two, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public uses for which private property can be taken; underground storage areas and facilities.

*Be it enacted by the Legislature of West Virginia:*

That section two, 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:

### **ARTICLE 1. RIGHT OF EMINENT DOMAIN.**

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

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

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

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

13 (c) For constructing, maintaining and operating pipe-  
14 lines, plants, systems and storage facilities for manufac-  
15 turing gas and for transporting petroleum oil, natural gas,  
16 manufactured gas, and all mixtures and combinations  
17 thereof, by means of pipes, pressure stations or otherwise,  
18 (including the construction and operation of telephone

19 and telegraph lines for the service of such systems and  
20 plants), and for underground storage areas and facilities,  
21 and the operation and maintenance thereof, for the in-  
22 jection, storage and removal of natural gas in subter-  
23 ranean oil and/or gas bearing stratum, which, as shown  
24 by previous exploration of the stratum sought to be con-  
25 demned and within the limits of the reservoir proposed to  
26 be utilized for such purposes, has ceased to produce or  
27 has been proved to be nonproductive of oil and/or gas in  
28 substantial quantities, when for public use, the extent of  
29 the area to be acquired for such purpose to be determined  
30 by the court on the basis of reasonable need therefor.  
31 Nothing in this subsection shall be construed to interfere  
32 with the power of the state and its political subdivisions to  
33 enact and enforce ordinances and regulations deemed  
34 necessary to protect the lives and property of citizens  
35 from the effects of explosions of oil or gas;

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

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

60 (f) For the reasonable use by an incorporated com-  
61 pany engaged in a public enterprise of which the state or  
62 any county or municipality is the sole or a part owner;

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

66 (h) For cemeteries, and the extension and enlargement  
67 of existing cemeteries: *Provided*, That no lands shall be  
68 taken for cemetery purposes which lie within four hun-  
69 dred feet of a dwelling house, unless to extend the boun-  
70 daries of an existing cemetery, and then only in such  
71 manner that the limits of the existing cemetery shall not  
72 be extended nearer than four hundred feet of any dwell-  
73 ing house distant four hundred feet or more from such  
74 cemetery, or nearer than it was to any dwelling house  
75 which is within four hundred feet thereof;

76 (i) For public schools, public libraries, and public  
77 hospitals;

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

81 (k) By the state of West Virginia for any and every  
82 other public use, object and purpose not herein specifi-  
83 cally mentioned. By the United States of America for  
84 each and every legitimate public use, need and purpose  
85 of the government of the United States, within the pur-  
86 view, and subject to the provisions of chapter one of this  
87 code;

88 (l) For constructing, maintaining and operating pipe-  
89 lines, plants, systems and storage facilities, for the trans-  
90 portation by common carrier as a public utility of coal  
91 and its derivatives and all mixtures and combinations  
92 thereof with any substance by means of pipes, pressure  
93 stations or otherwise (including the construction and  
94 operation of telephone and telegraph lines for the service  
95 of such systems and plants), for public use: *Provided*,  
96 That the common carrier engages in some intrastate  
97 activity in this state, if there is any reasonable demand  
98 therefor: *Provided, however*, That in addition to all  
99 other requisites by federal or state constitutions, statute

100 or common law required for the taking of private proper-  
101 ty for public use, a further prerequisite and condition  
102 precedent to the exercise of such taking of or damage to  
103 private property for public use as in this subsection  
104 hereinabove provided, is that the public service commis-  
105 sion of this state, in an appropriate hearing and proceed-  
106 ing on due notice to all interested persons, firms or cor-  
107 porations, in accordance with the procedure now or here-  
108 after established by statute and the regulations there-  
109 under, shall have found that such pipeline transportation  
110 of coal and its derivatives and all mixtures and combina-  
111 tions thereof is required for the public convenience and  
112 necessity, and that the public service commission of this  
113 state shall not extend a certificate of convenience and  
114 necessity or make such finding of public convenience and  
115 necessity unless, in addition to the other facts required  
116 to support such findings, it shall have been established  
117 by the applicant therefor that the patents and other  
118 similar rights under which the applicant proposes to  
119 construct, maintain or operate such pipeline, plants, sys-  
120 tems and storage facilities shall be and shall remain  
121 equally available, insofar as said subsequent applicant  
122 may determine such availability, upon fair and reason-  
123 able terms, to other bona fide applicants seeking a cer-  
124 tificate of convenience and necessity and finding of fact  
125 for any other pipeline in West Virginia; for the purpose of  
126 making the findings hereinbefore set forth the public  
127 service commission shall have and exercise jurisdiction,  
128 and that the aforesaid findings in this proviso above set  
129 forth shall be subject to judicial review as in other public  
130 service commission proceedings.

131 It is the intention of the Legislature in amending this  
132 section by the addition of subdivision (1) as set forth  
133 above to extend the right of eminent domain to coal pipe-  
134 lines for public use; to provide for regulation of such coal  
135 pipelines by the public service commission of this state  
136 or the interstate commerce commission of the United  
137 States of America, or both; to assure that such rights shall  
138 be extended only to public utilities or common carriers  
139 as distinguished from private carriers or contract car-  
140 riers; to make patents covering the same equally available

141 to others on fair and reasonable terms; and to prevent  
142 monopolistic use of coal pipelines by any users thereof  
143 which would result in any appreciable economic detri-  
144 ment to others similarly situated by reasons of any such  
145 monopoly.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Christensen*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*J. DeLeon*  
Clerk of the Senate

*Ch. Blankenship*  
Clerk of the House of Delegates

*W. S. Brantley, Jr.*  
President of the Senate

*Hyde H. See, Jr.*  
Speaker House of Delegates

The within *is approved* this the *25*

day of *March*, 1979.

*John D. Raley*  
Governor



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