WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED

SENATE BILL NO. 526

(By Mr. Sussman)

PASSED March 19, 1979

In Effect ninety days from Passage
ENROLLED

Senate Bill No. 526
(By Mr. Susman)

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

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.

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 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;

(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 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;

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

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

(k) By the state of West Virginia for any and every other public use, object and purpose not herein specifically mentioned. 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;

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

James L. Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. D. Connors  
Clerk of the Senate

Clarence B. Lewis  
Clerk of the House of Delegates

W. J. Battle  
President of the Senate

Speaker House of Delegates

The within __________ approved________ this the 25________

day of March, 1979.

John D. Bolling  
Governor