

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

NO: 35

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 35

(By Mr. Stephens)



PASSED April 11 1981

In Effect ninety days from Passage

OFFICE
SECY. OF STATE

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ENROLLED
Senate Bill No. 35

(By MR. STEPTOE)

[Passed April 11, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-one, all relating to condemnation proceedings generally; increasing from six percent to ten percent the interest rate heretofore applicable on sums initially payable into court prior to a condemnation award, on awards exceeding an original payment into court, and on awards in which the condemnor fails to give proper notice; providing for payment of ten percent interest on the determined amount of compensation and damages payable when a business corporation applicant takes legal entry upon or possession of property during a condemnation proceeding; providing for interest to be paid from the date of the filing of the petition; requiring the state and political subdivisions to pay into court the fair value of the property to be taken before entry; and applying the increased rate only to condemnation proceedings instituted after the effective date of this act.

Be it enacted by the Legislature of West Virginia:

That sections twelve, thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-one, all to read as follows:

ARTICLE 2. PROCEDURE.**§54-2-12. Vesting of title in applicant.**

1 Except as otherwise provided in this article, at any time
2 within three months after the report, or the verdict of a jury, if
3 there be one, has been confirmed and ordered to be recorded,
4 the sum so ascertained with ten percent interest thereon from
5 the date of the filing of the petition until payment, may be
6 paid by the applicant into court; upon such payment, title to
7 the property, or interest or right therein, so paid for shall be
8 absolutely vested in the applicant in fee simple or to the
9 extent described in the petition: *Provided*, That in the case of
10 a public road title to the right-of-way only shall absolutely
11 vest in the applicant.

§54-2-13. Entry on land on payment of compensation.

1 After such report has once been made, whether it be set
2 aside, recommitted, or new commissioners appointed, or not,
3 or whether a trial by jury be demanded and had or not, the
4 applicant upon paying into court the sum ascertained by such
5 report, with ten percent interest thereon from the date of the
6 filing of the petition until payment, may, notwithstanding the
7 pendency of further proceedings, enter upon, take and use for
8 the purposes specified in the application, that part of the land
9 and property in respect to which such payment is made, and
10 where such payment has been made and possession taken, or
11 where payment has been made without taking such
12 possession in a pending case, it shall have the same effect as if
13 such payment were made or possession taken, or both, in a
14 case hereafter commenced; and no order shall be made or any
15 injunction awarded by any court or judge to stay it in so
16 doing, unless it be manifest that the applicant is insolvent or
17 that it or its officers, agents or servants, are transcending their
18 authority, or that such interposition is necessary to prevent
19 injury which cannot be adequately compensated in damages:
20 *Provided*, That if the applicant be other than a corporate body
21 politic, before entering upon or taking possession of such
22 property, it shall enter into bond before the court, or judge
23 thereof in vacation, in a penalty prescribed by the judge, with
24 securities approved by him, conditioned for the payment to
25 the owner of any additional sums which may be awarded
26 against it in subsequent proceedings as additional
27 compensation and damages for the property so taken.

28 And where, under authority of section ten, article one of
29 this chapter, wood, earth, gravel, shale, stone, water or other
30 material are sought to be taken, impounded or consumed, the
31 applicant, after such report has been made, whether it be set
32 aside, recommitted or new commissioners appointed, or not,
33 or whether a trial by jury be demanded and had, or not, may,
34 upon payment into court as aforesaid of the sum ascertained
35 by the report of such commissioners, notwithstanding the
36 pendency of further proceedings, take, impound or consume
37 such wood, earth, gravel, shale, stone, water or other material;
38 and all the foregoing provisions of this section as to
39 injunction and bond shall be applicable to such case.

§54-2-14. Entry by state or its political subdivisions.

1 If the applicant be the state of West Virginia, or any political
2 subdivision thereof, on filing its petition as authorized in this
3 article, and if the court or judge is satisfied that the purpose
4 for which the land or property is sought to be condemned is a
5 public use for which private property may be appropriated on
6 compensating the owner, the court or judge shall, at the
7 request of the applicant, make an order permitting the
8 applicant at once to enter upon, take possession, appropriate
9 and use the land sought to be condemned for the purposes
10 stated in the petition. The revenues applicable to the payment
11 of any damages or compensation to which the owner is
12 entitled, and which shall be awarded or assessed in his favor,
13 shall be deemed sufficient security and to have been pledged
14 for such payment, and no bond or further security shall be
15 required of the applicant.

16 If the applicant shall enter upon or take possession of
17 property under the authority of this section, and shall do any
18 work thereon and injure such land or property, it shall not be
19 entitled, without the consent of the defendant, to abandon the
20 proceedings for the condemnation thereof, but such
21 proceedings shall proceed to final award or judgment, and the
22 applicant shall pay to the owner of the land the amount of
23 compensation and damages as finally determined in such
24 proceedings, with interest at ten percent from the date of the
25 filing of the petition.

26 Before entry, taking possession, appropriation, or use, the
27 applicant shall pay into court such sum as it shall estimate to
28 be the fair value of the property, or estate, right, or interest
29 therein, sought to be condemned, including, where

30 applicable, the damages, if any, to the residue beyond the
31 benefits, if any, to such residue, by reason of the taking.

32 When, after payment into court as provided under the
33 authority of this section, the amount allowed by the report of
34 the condemnation commissioners, or the verdict of a jury, if
35 there be one, exceeds the amount which has been paid into
36 court, the excess amount, together with interest thereon at
37 ten percent from the date of the filing of the petition to the
38 date of payment of the excess amount into court, may, at any
39 time within three months after the report or verdict of a jury,
40 as the case may be, has been confirmed and ordered to be
41 recorded, be paid into court by the applicant for the persons
42 entitled thereto.

43 If the amount which has been paid into court pursuant to
44 this section exceeds the amount allowed by the report of the
45 condemnation commissioners, or the verdict of a jury, if there
46 be one, the excess shall be repaid to the applicant out of such
47 fund in court, or, if the amount remaining in the fund be
48 insufficient, then the persons to whom the fund, or any part
49 thereof, has been paid, shall reimburse the applicant, on a pro
50 rata basis, but without interest.

51 If the amount allowed by the report of the condemnation
52 commissioners, or the verdict of the jury, if there be one, does
53 not exceed the sum paid into court and it shall appear that the
54 latter amount was tendered by the applicant to the defendant
55 prior to the institution of the proceeding, the defendant shall
56 pay the costs of the proceeding in the trial court unless the
57 refusal to accept the tender was based on some ground other
58 than that of insufficiency of compensation and any damages.

**§54-2-14a. Alternative method for condemnation by state or its
political subdivision.**

1 Prior to any report by condemnation commissioners, or
2 verdict of a jury, if the applicant be the state of West Virginia
3 or any political subdivision thereof, and be otherwise
4 authorized by law to make payment as required in this
5 section, on filing its petition as authorized in this article, and
6 if the court or judge is satisfied that the purpose for which the
7 property or interest or right therein, is sought to be
8 condemned is a public use for which private property may be
9 appropriated on compensating the owner, the applicant may
10 thereupon acquire title to, and enter upon, take possession of,

11 appropriate and use the property, or interest or right therein,
12 sought to be condemned for the purposes stated in the
13 petition by following the method provided in this section.

14 Before entry, taking possession, appropriation, or use, the
15 applicant shall pay into court such sum as it shall estimate to
16 be the fair value of the property, or estate, right, or interest
17 therein, sought to be condemned, including, where
18 applicable, the damages, if any, to the residue beyond the
19 benefits, if any, to such residue, by reason of the taking. The
20 court or judge may, at the request of any party to the
21 proceeding, require the clerk of the court to give an additional
22 bond, adequate to protect such deposit with the clerk; and if
23 such bond is required, the applicant shall pay the necessary
24 premiums.

25 Upon such payment into court, the title to the property, or
26 interest or right therein, sought to be condemned, shall be
27 vested in the applicant, and the court or judge shall, at the
28 request of the applicant, make an order permitting the
29 applicant at once to enter upon, take possession, appropriate
30 and use the property, or interest or right therein, sought to be
31 condemned for the purposes stated in the petition, but the
32 owners of such property, or interest or right therein, at the
33 time of such payment, including lienors and conflicting
34 claimants, shall have such title, interest, or right in the money
35 paid into court as they had in the property, or interest or right
36 therein, sought to be condemned, and all liens by deed of
37 trust, judgment or otherwise, upon such property, or interest
38 or right therein, shall be transferred to such fund in court,
39 subject to the provisions of this section. The title in the
40 applicant shall be defeasible until the compensation and any
41 damages are determined in the condemnation proceedings
42 and the applicant has paid any excess amount into court.

43 Upon petition to the court or judge, any person entitled
44 thereto may be paid his pro rata share of the money paid into
45 court, or a portion thereof, as ordered by the court or judge,
46 but the acceptance of such payment shall not limit the
47 amount to be allowed by the report of the condemnation
48 commissioners, or the verdict of a jury, if there be one.
49 Proceedings for the distribution of the money so paid into
50 court shall be conducted as provided in section eighteen of
51 this article to the extent that the provisions therein are
52 applicable. No party to the condemnation proceeding shall be

53 permitted to introduce evidence of such payment or of the
54 amount so paid into court, or of any amount which has been
55 accepted by any party, nor shall reference be made thereto
56 during the course of the trial.

57 If the applicant shall enter upon or take possession of the
58 property, under the authority of this section, and shall injure
59 the property, the applicant shall not be entitled, without the
60 consent of the defendant, to abandon the proceeding for the
61 condemnation thereof, but such proceeding shall proceed to
62 final award or judgment, and the amount of compensation
63 and any damages as finally determined in such proceeding
64 shall be paid in the manner provided by this section.

65 When, after payment into court as provided under the
66 authority of this section, the amount allowed by the report of
67 the condemnation commissioners, or the verdict of a jury, if
68 there be one, exceeds the amount which has been paid into
69 court, the excess amount, together with interest thereon at
70 ten percent from the date of the filing of the petition to the
71 date of payment of the excess amount into court, may, at any
72 time within three months after the report or verdict of a jury,
73 as the case may be, has been confirmed and ordered to be
74 recorded, be paid into court by the applicant for the persons
75 entitled thereto. In no other instance shall interest be allowed
76 on payments made pursuant to the provisions of this section.
77 If the amount which has been paid into court pursuant to this
78 section exceeds the amount allowed by the report of the
79 condemnation commissioners, or the verdict of a jury, if there
80 be one, the excess shall be repaid to the applicant out of such
81 fund in court, or, if the amount remaining in the fund be
82 insufficient, then the persons to whom the fund, or any part
83 thereof, has been paid, shall reimburse the applicant, on a pro
84 rata basis, but without interest. If the applicant has the right
85 to abandon the proceeding and does so, the amount which
86 has been paid into court pursuant to this section shall be
87 repaid to the applicant from such fund in court and by any
88 persons to whom the fund, or any part thereof, has been paid,
89 on a pro rata basis, but without interest.

90 If the amount allowed by the report of the condemnation
91 commissioners, or the verdict of the jury, if there be one, does
92 not exceed the sum paid into court and it shall appear that the
93 latter amount was tendered by the applicant to the defendant
94 prior to the institution of the proceeding, the defendant shall

95 pay the costs of the proceeding in the trial court unless the
96 refusal to accept the tender was based on some ground other
97 than that of insufficiency of compensation and any damages.
98 When the report of the condemnation commissioners, or
99 the verdict of a jury, if there be one, has been confirmed and
100 ordered to be recorded, and the excess amount, if any, has
101 been paid into court as provided herein, the title to the
102 property, or interest or right therein, so paid for shall be
103 absolutely and indefeasibly vested in the applicant in fee
104 simple or to the extent described in the petition: *Provided,*
105 That in the case of a public road title to the right-of-way only
106 shall absolutely vest in the applicant.

§54-2-15. Alternative procedure for condemnation by business corporation; bond.

1 Any business corporation, entitled to exercise the powers
2 of eminent domain under this chapter, may file with its
3 petition a bond for a sufficient amount with good sureties,
4 payable to the owner of the property proposed to be taken to
5 secure to such owner payment for such property and all
6 damages to which he shall be entitled for the taking thereof,
7 and if the owner being sui juris shall appear and make no
8 objection to such bond, the applicant shall be entitled to take
9 possession of the property sought to be condemned, for the
10 purposes stated in the petition. But if objection be made to
11 the form, amount of, or sureties on, such bond, or if the owner
12 cannot be found, or is not sui juris, the court or judge shall fix
13 a day for the hearing of any objections to such bond and of the
14 request of the applicant to approve the same; and at any time
15 after five days' written notice shall have been given to the
16 owner or to his guardian or committee, if he be not sui juris,
17 and if the owner cannot be found, or his guardian or
18 committee, the owner not being sui juris, then, after five days'
19 written notice posted upon the land, which notice shall state
20 the time and place for such hearing, the court or the judge
21 shall proceed to hear and determine the matters arising upon
22 such objection and request, and may require evidence as to
23 the sufficiency of the surety or sureties and as to the
24 sufficiency of the amount of the bond, and may, in its or his
25 discretion, require new and additional sureties and a bond for
26 a larger amount and in a more satisfactory form, and when
27 satisfied as to the form, amount and sufficiency of such bond
28 and sureties, and that the purpose for which the property is to

29 be appropriated is a public use for which private property
30 may be taken upon compensating the owner, the court or
31 judge shall approve the bond and make an order permitting
32 the applicant to enter upon, take possession, appropriate and
33 use the land or property sought to be condemned for the
34 purposes stated in the petition. At any time during the
35 subsequent proceedings on such petition, if it shall appear
36 necessary so to do in order to protect the owner and assure
37 unto him the payment of the compensation and damages to
38 which he may be entitled, the court or judge may require the
39 applicant to give a new and additional bond with sureties
40 satisfactory to the court or judge.

41 Any indemnity company authorized to transact business in
42 the state of West Virginia shall be deemed a good and
43 sufficient surety on any bond required under this section.

44 If the applicant shall enter upon or take possession of the
45 property under the provisions of this section, and shall do any
46 work thereon, or cause any injury or damage to such
47 property, it shall not thereafter be entitled, without the
48 consent of the defendant, to abandon the proceeding for the
49 condemnation thereof, but the same shall proceed with
50 reasonable dispatch to a finality and the applicant shall pay to
51 the owner of the land the amount of the compensation and
52 damages as finally determined in such proceedings, with
53 interest at ten percent from the date of the filing of the
54 petition.

**§54-2-16. Increase or decrease in award after payment into
court; costs.**

1 ' When, after such payment into court as is mentioned in
2 section thirteen of this article a subsequent report is made
3 which is confirmed and ordered to be recorded, or the verdict
4 of a jury is found, if the sum ascertained by such subsequent
5 report or verdict exceed what was so paid, and the applicant
6 fail to pay the same, judgment shall be given against it for the
7 amount of such excess, with ten percent interest thereon
8 from the date of filing of the petition until payment; but if
9 what was so paid exceeds the sum ascertained by such
10 subsequent report or verdict, the excess shall be repaid to the
11 applicant out of the fund in court, or by the persons to whom
12 the same shall have been paid. If the sum ascertained by such
13 subsequent report or verdict does not exceed the sum
14 ascertained by the former report, the party on whose motion

15 the former report was set aside, recommitted, or other
16 commissioners appointed, or trial by jury demanded, if he be
17 a defendant therein, shall pay the costs occasioned by such
18 motion, unless such former report was set aside, recommitted
19 or other commissioners appointed on some other ground
20 than that of insufficiency of compensation.

21 If the applicant has stated in his application the sum of
22 money which he is ready to pay to the owners for any parcel
23 of land proposed to be taken, and it appear by a report
24 confirmed and ordered to be recorded, or by a verdict of a
25 jury, that he is entitled to take such parcel for the purpose
26 mentioned in his application without paying any greater
27 compensation therefor, he shall be adjudged his costs in
28 respect to such parcel, out of the compensation to be paid
29 therefor to the owners.

30 In cases not otherwise provided for, the applicant shall pay
31 the costs of the proceedings.

**§54-2-18. Payment to clerk; disposition of money paid into
court; determination of conflicting claims; notice to
condemnee.**

1 Payment of an award or judgment, or any money, under
2 any of the provisions of this chapter may be made to the clerk
3 of the court in which such proceeding is had, and such pay-
4 ment shall be deemed to be a payment into court. Within ten
5 days after the payment of an award, judgment or money into
6 court pursuant to the provisions of this chapter, the condem-
7 nor shall serve notice upon the parties of record except non-
8 residents and unknown parties whose interests the applicant
9 seeks to condemn, or upon their counsel of record. Service of
10 notice by registered or certified mail to the parties' last-
11 known addresses shall be deemed sufficient. Notwithstand-
12 ing any other provision of this chapter to the contrary, failure
13 to serve such notice shall result in the accrual of interest at
14 ten percent upon the award, judgment or money paid into
15 court from the filing of the petition until such notice is served
16 or until disbursement be made to the persons entitled thereto.
17 The clerk to whom payment is so made, together with the
18 surety on his official bond, shall be liable therefor, as for other
19 moneys collected by him by virtue of his office.

20 Upon money being paid into court, pursuant to the provi-
21 sions of this chapter, and the court or judge being satisfied
22 that the persons entitled thereto are before the court or judge,

23 it or he shall make such distribution or disposition of such
24 money as is proper, having due regard to the interest of all
25 persons therein, and in what proportions such money is
26 properly payable.

27 If it shall appear that the petition states the persons or
28 classes of persons, who, in the opinion of the applicant, are
29 vested with the superior right or claim of title in the property,
30 or interest or right therein, condemned or sought to be con-
31 demned or in the amount allowed or to be allowed by the
32 report of the condemnation commissioners, or the verdict of a
33 jury, if there be one, and it does not appear from the record or
34 otherwise that there is any denial or dispute, by any person or
35 party in interest, of such statement in the petition, the court
36 or judge may direct that the money paid into court, after
37 withholding therefrom any sum necessary for payment of any
38 taxes which are a lien upon the property, interest, or right, be
39 disbursed and distributed in accordance with the statement
40 in the petition, among the persons entitled thereto, except
41 that with respect to any persons appearing to be infants,
42 incompetents, incarcerated convicts, or under any other legal
43 disability, the court or judge shall inquire into their rights or
44 claims, independent of any statement in the petition, and any
45 order for disbursement or distribution shall conserve and
46 protect the rights or claims of such persons in and to the
47 money paid into court.

48 If it shall appear to the court or judge, from the record or
49 otherwise, that there exists a controversy among claimants to
50 the money paid into court, or to the ownership of the prop-
51 erty, or interest or right therein, condemned or sought to be
52 condemned, the court or judge shall enter an order setting a
53 time for hearing the case and determining the rights and
54 claims of all persons entitled to the money paid into court or
55 to any interest or share therein. To aid in properly disposing
56 of the money, the court or judge may appoint a commissioner
57 to take evidence of the conflicting claims. The court or judge
58 may direct publication to be made requiring all who are in-
59 terested to appear at the time set for hearing the case to
60 present their respective claims. Such costs shall be allowed to
61 the prevailing persons as the court or judge shall direct. Upon
62 a determination by the court or judge of the rights and claims
63 of the persons entitled to the money paid into court, with or
64 without a report of such commissioner, judgment shall be

65 entered directing the disbursement or distribution, after
66 withholding for taxes as provided in the next preceding
67 paragraph, to the persons entitled thereto, provided that the
68 rights or claims of persons under legal disability shall be
69 protected as provided in the next preceding paragraph.

§54-2-21. Effective date of new percent interest rates.

1 The percent interest rate provided for in sections twelve,
2 thirteen, fourteen, fourteen-a, fifteen, sixteen and eighteen of
3 this article, shall be applicable only to condemnation pro-
4 ceedings hereafter instituted. The rate of interest previously
5 applicable to proceedings under the above sections shall con-
6 tinue to be applicable to condemnation proceedings hereto-
7 fore instituted.

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

R. P. Baylor
Chairman Senate Committee

Jonny E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Jedd C. White
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Waverly M. DeLoach
President of the Senate

Walter M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *29*

day of *April*, 1981.

John S. Dwyer
Governor



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