

ENROLLED

H. B. 1026

(By MR. FARLEY and MR. ALBRIGHT)

[Passed January 29, 1982; in effect ninety days from passage.]

AN ACT to amend article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to restricting the exercise of the right of eminent domain by the West Virginia housing development fund; setting forth required allegations and proof in condemnation proceedings; prohibiting the taking of land used for agricultural production; and providing that should the acreage limitation be unconstitutional or invalid, the powers of eminent domain shall not be exercised.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-5a. Restrictions as to the exercise of the right of eminent domain by the West Virginia housing development fund.

1 (1) The West Virginia housing development fund, in exer-
2 cising the power of eminent domain as provided for in section
3 six, article eighteen, chapter thirty-one of this code, shall
4 allege and prove, and the trier of fact shall find, in addition
5 to other requirements of the law, the following:

6 (a) That resort is had to condemnation proceedings only
7 after all other reasonable alternatives for acquisition of the
8 site in question have been explored and found impractical;

9 (b) That the housing sought to be developed on the site in
10 question is necessitated by circumstances existing in the local
11 community or area where the site is located as follows:

12 (i) An extreme shortage of land suitable for housing exists
13 in the local community or area and that no practical alterna-
14 tive site is available for purchase by negotiation;

15 (ii) A serious shortage of housing exists in the local com-
16 munity or area, as evidenced by an insufficient number of
17 housing units, by low vacancy rates, or by a high proportion
18 of substandard or overcrowded housing;

19 (iii) An open, active and free market for adequate housing
20 does not exist in the local community or area;

21 (iv) The real property which is the subject of the proposed
22 condemnation proceeding is not a part of, or contiguous to, the
23 owner's principal residence or the curtilage thereof; and

24 (v) The owner of the real property which is the subject of
25 the condemnation proceeding is seized of title to the surface of
26 five thousand acres of land or more within this state, without
27 reduction for any lease, license or easement to which the estate
28 may be subject: *Provided*, That any portion of the five
29 thousand acres or more of land which is being used or
30 operated in the production of agricultural products by the
31 owner or his lessee (under a ^bbona fide written lease executed
32 and delivered prior to the institution of a proceeding in
33 condemnation subject to the restriction provided in this
34 section) shall not be taken by condemnation under the pro-
35 visions of this section. In the case of a corporate owner, the
36 court shall aggregate the holdings of the corporation, the
37 holdings of other corporate bodies which have legally en-
38 forceable control of a majority of the shares of the corporate
39 owner, and the holdings of other corporate bodies which have
40 a majority of their shares subject to the legally enforceable
41 control of the corporate owner. Such aggregate holdings shall

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42 be used to determine whether the corporate owner owns five
43 thousand acres of land or more within this state.

44 (2) If, for any reason, the provisions of subsection two-b
45 of this section are held unconstitutional or invalid, then upon
46 the finding of such unconstitutionality or invalidity, the West
47 Virginia housing development fund shall not exercise the
48 powers of eminent domain provided for in section six, article
49 eighteen, chapter thirty-one of this code.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates
[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 9
day of Feb., 1982.

[Signature]
Governor

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