WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

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ENROLLED

HOUSE BILL No. 1026

(By Mr. Fabley & Mr. Albright)

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Passed JANUARY 29, 1982

In Effect NINETY DAYS FROM Passage
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 exercising the power of eminent domain as provided for in section six, article eighteen, chapter thirty-one of this code, shall allege and prove, and the trier of fact shall find, in addition to other requirements of the law, the following:
(a) That resort is had to condemnation proceedings only after all other reasonable alternatives for acquisition of the site in question have been explored and found impractical;

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

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

(ii) A serious shortage of housing exists in the local community or area, as evidenced by an insufficient number of housing units, by low vacancy rates, or by a high proportion of substandard or overcrowded housing;

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

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

(v) The owner of the real property which is the subject of the condemnation proceeding is seized of title to the surface of five thousand acres of land or more within this state, without reduction for any lease, license or easement to which the estate may be subject: Provided, That any portion of the five thousand acres or more of land which is being used or operated in the production of agricultural products by the owner or his lessee (under a bona fide written lease executed and delivered prior to the institution of a proceeding in condemnation subject to the restriction provided in this section) shall not be taken by condemnation under the provisions of this section. In the case of a corporate owner, the court shall aggregate the holdings of the corporation, the holdings of other corporate bodies which have legally enforceable control of a majority of the shares of the corporate owner, and the holdings of other corporate bodies which have a majority of their shares subject to the legally enforceable control of the corporate owner. Such aggregate holdings shall
be used to determine whether the corporate owner owns five
thousand acres of land or more within this state.

(2) If, for any reason, the provisions of subsection two-b
of this section are held unconstitutional or invalid, then upon
the finding of such unconstitutionality or invalidity, the West
Virginia housing development fund shall not exercise the
powers of eminent domain provided for in section six, article
eighteen, chapter thirty-one of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ____________ this the ____ day of ____________, 1982.

Governor