WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

ENROLLED

House Bill No. 4048

(By Delegates Craig, Amores, Mahan, Morgan, Pethtel, Stemple, Caputo, Armstead, Schadler, Hamilton and Azinger)

Passed March 11, 2006

In Effect Ninety Days from Passage
AN ACT to amend and reenact §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-18-6a; and to amend and reenact §54-1-2 of said code; and to further amend said code by adding thereto a new section designated §54-1-2a, all relating to limiting the use of eminent domain; creating definitions for certain terms; prohibiting use of eminent domain for economic development and providing for limited exceptions; establishing a procedure for municipal urban renewal authorities to use eminent domain for properties only in blighted areas; requiring notice of public hearing and rights of property owners related to proposed condemnation of property; requiring municipal urban renewal authority to consider other alternatives to condemnation; requiring municipal urban renewal authority to show property is blighted or necessary for the redevelopment plan; requiring municipal urban renewal authority meet additional requirements before proceeding with condemnation of nonblighted property; creating right for property owner to appeal
the condemnation; requiring municipal authority to prove all statutory criteria have been met; protecting property owners right to relocation assistance; prohibiting use of eminent domain for economic development that would result in private economic gain; and requiring a good faith offer prior to condemnation.

Be it enacted by the Legislature of West Virginia:

That §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-18-6a, and that §54-1-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §54-1-2a, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 18. SLUM CLEARANCE.


The following terms, wherever used or referred to in this article, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Area of operation" means in the case of a municipality, the area within such municipality and the area within five miles of the territorial boundaries thereof, except that the area of operation of a municipality under this article shall not include any area which lies within the territorial boundaries of another municipality unless a resolution shall have been adopted by the governing body of such other municipality declaring a need therefor; and in the case of a county, the area within the county, except that the area of operation in such case shall not include any area which lies within the territorial boundaries of a municipality unless a resolution shall have been adopted by the governing body of such municipality declaring a need therefor;
and in the case of a regional authority, shall mean the area within the communities for which such regional authority is created: Provided, That a regional authority shall not undertake a redevelopment project within the territorial boundaries of any municipality unless a resolution shall have been adopted by the governing body of such municipality declaring that there is a need for the regional authority to undertake such development project within such municipality. No authority shall operate in any area of operation in which another authority already established is undertaking or carrying out a redevelopment project without the consent, by resolution, of such other authority.

(b) "Authority", "slum clearance and redevelopment authority" or "urban renewal authority" means a public body, corporate and politic, created by or pursuant to section four of this article or any other public body exercising the powers, rights and duties of such an authority as hereinafter provided.

(c) "Blighted area" means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(d) "Blighted property" means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, age or
obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, deterioration of site or other improvements, or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety or welfare.

(e) "Bonds" means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(f) "Community" means any municipality or county in the state.

(g) "Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

(h) "Federal government" is the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(i) "Governing body" means the council or other legislative body charged with governing the municipality or the county court or other legislative body charged with governing the county.

(j) "Mayor" means the officer having the duties customarily imposed upon the executive head of a municipality.

(k) "Municipality" means any incorporated city, town or village in the state.

(l) "Obligee" means any bondholder, agents or trustees for any bondholders, or lessor demising to the authority property used in connection with a redevelopment project, or any assignee or assignees of such lessor's interest or any part
thereof, and the federal government when it is a party to any contract with the authority.

(m) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other similar representative thereof.

(n) "Public body" means the state or any municipality, county, township, board, commission, authority, district, or any other subdivision or public body of the state.

(o) "Real property" includes all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(p) "Redeveloper" means any person, partnership, or public or private corporation or agency which shall enter or propose to enter into a redevelopment contract.

(q) "Redevelopment contract" means a contract entered into between an authority and a redeveloper for the redevelopment of an area in conformity with a redevelopment plan.

(r) "Redevelopment plan" means a plan for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area.

(s) "Redevelopment project" means any work or undertaking:

(1) To acquire pursuant to the limitations contained in subdivision (11), section two, article one, chapter fifty-four slum areas or blighted areas or portions thereof, including
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lands, structures, or improvements the acquisition of which is
necessary or incidental to the proper clearance, development or
redevelopment of such slum or blighted areas or to the preven-
tion of the spread or recurrence of slum conditions or conditions
of blight;

(2) To clear any such areas by demolition or removal of
existing buildings, structures, streets, utilities or other improve-
ments thereon and to install, construct, or reconstruct streets,
utilities, and site improvements essential to the preparation of
sites for uses in accordance with a redevelopment plan;

(3) To sell, lease or otherwise make available land in such
areas for residential, recreational, commercial, industrial or
other use or for public use or to retain such land for public use,
in accordance with a redevelopment plan; and

(4) Preparation of a redevelopment plan, the planning,
survey and other work incident to a redevelopment project and
the preparation of all plans and arrangements for carrying out
a redevelopment project.

(t) "Slum area" means an area in which there is a predomi-
nance of buildings or improvements or which is predominantly
residential in character, and which, by reason of dilapidation,
deterioration, age or obsolescence, inadequate provision for
ventilation, light, air, sanitation, or open spaces, high density of
population and overcrowding, or the existence of conditions
which endanger life or property by fire and other causes, or any
combination of such factors, is conducive to ill health, transmis-
sion of disease, infant mortality, juvenile delinquency and
crime, and is detrimental to the public health, safety, morals or
welfare.

(u) "Unblighted property" means a property that is not a
blighted property.
§16-18-6. Preparation and approval of redevelopment plans.

(a) An authority shall not acquire real property for a redevelopment project unless the governing body of the community in which the redevelopment project area is located has approved the redevelopment plans, as prescribed in subsection (i) below.

(b) An authority shall not prepare a redevelopment plan for a redevelopment project area unless the governing body of the community in which such area is located has, by resolution, declared such area to be a slum or blighted area in need of redevelopment.

(c) An authority shall not recommend a redevelopment plan to the governing body of the community in which the redevelopment project area is located until a general plan for the development of the community has been prepared.

(d) The authority may itself prepare or cause to be prepared a redevelopment plan or any person or agency, public or private, may submit such a plan to an authority. A redevelopment plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities and other public improvements and the proposed land uses and building requirements in the redevelopment project area, and shall include without being limited to:

(1) The boundaries of the redevelopment project area, with a map showing the existing uses and conditions of the real property therein;

(2) A land use plan showing proposed uses of the area;
(3) Information showing the standards of population densities, land coverage and building intensities in the area after redevelopment;

(4) A statement of the proposed changes, if any, in zoning ordinances or maps, street layouts, street levels or grades, building codes and ordinances;

(5) A site plan of the area; and

(6) A statement as to the kind and number of additional public facilities or utilities which will be required to support the new land uses in the area after redevelopment.

(e) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall submit such plan to the planning commission of the community in which the redevelopment project area is located for review and recommendations as to its conformity with the general plan for the development of the community as a whole. The planning commission shall submit its written recommendations with respect to the proposed redevelopment plan to the authority within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission or, if no recommendations are received within said thirty days, then without such recommendations, an authority may recommend the redevelopment plan to the governing body of the community for approval.

(f) Prior to recommending a redevelopment plan to the governing body for approval, an authority shall consider whether the proposed land uses and building requirements in the redevelopment project area are designed with the general purpose of accomplishing, in conformance with the general plan, a coordinated, adjusted and harmonious development of the community and its environs which will, in accordance with present and future needs, promote health, safety, morals, order,
convenience, prosperity and the general welfare, as well as
efficiency and economy in the process of development;
including, among other things, adequate provision for traffic,
vehicular parking, the promotion of safety from fire, panic and
other dangers, adequate provision for light and air, the promo-
tion of the healthful and convenient distribution of population,
the provision of adequate transportation, water, sewerage and
other public utilities, schools, parks, recreational and commu-
nity facilities and other public requirements, the promotion of
sound design and arrangement, the wise and efficient expendi-
ture of public funds, the prevention of the recurrence of
insanitary or unsafe dwelling accommodations, slums, or
conditions of blight, and the provision of adequate, safe and
sanitary dwelling accommodations.

(g) The recommendation of a redevelopment plan by an
authority to the governing body shall be accompanied by the
recommendations, if any, of the planning commission concern-
ing the redevelopment plan; a statement of the proposed method
and estimated cost of the acquisition and preparation for
redevelopment of the redevelopment project area and the
estimated proceeds or revenues from its disposal to redevelop-
ers; a statement of the proposed method of financing the
redevelopment project; and a statement of a feasible method
proposed for the relocation of families to be displaced from the
redevelopment project area.

(h) The governing body of the community shall hold a
public hearing on any redevelopment plan or substantial
modification thereof recommended by the authority, after
public notice thereof by publication as a Class II legal adver-
tisement in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area for such
publication shall be the community. Public notice shall also
include notice by certified letter, return receipt requested to
each property owner of record of all affected properties of the proposed project. The notice shall include:

(1) Notice of the public hearing time, date and location;

(2) The right to have an inspection by the municipal authority to determine if the property is blighted or unblighted;

(3) The inspection procedures; and

(4) The rights the property owner has pursuant to section six-a of this article relating to unblighted properties in blighted or slum areas.

The last publication shall be at least ten days prior to the date set for the hearing. The notice shall describe the time, date, place and purpose of the hearing and shall also generally identify the area to be redeveloped under the plan. All interested parties shall be afforded at such public hearing a reasonable opportunity to express their views respecting the proposed redevelopment plan. The municipal authority shall consider reasonable alternatives for the redevelopment project that will minimize the use of eminent domain against any properties that are not blighted.

(i) Following such hearing, the governing body may approve a redevelopment plan if it finds that said plan is feasible and in conformity with the general plan for the development of the community as a whole: Provided, That if the redevelopment project area is a blighted area, the governing body must also find that a shortage of housing of sound standards and designs, adequate for family life, exists in the community; the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas under redevelopment; the conditions of blight in the redevelopment project area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and
spread of disease and crime and constitute a menace to the public health, safety, morals or welfare; and that the development of the blighted area for predominantly residential uses is an integral part of and essential to the program of the community for the elimination of slum areas. A redevelopment plan which has not been approved by the governing body when recommended by the authority may again be recommended to it with any modifications deemed advisable.

(j) A redevelopment plan may be modified at any time by the authority: Provided, That if modified after the lease or sale of real property in the redevelopment project area, the modification must be consented to by the redeveloper or redevelopers of such real property or his successor, or their successors in interest affected by the proposed modification. Where the proposed modification will substantially change the redevelopment plan as previously approved by the governing body the modification must similarly be approved by the governing body.

§16-18-6a. Municipal non-blighted property in slum or blight areas.

(a) The municipal authority shall have the burden to show that a property is blighted. If the property owner does not allow the authority to conduct an inspection of the property to determine whether it is appropriate to deem the property blighted or unblighted, then it is a rebuttable presumption that the property is blighted.

(b) When any area has been declared to be slum and blighted, pursuant to the provisions of this article, if a private property within that area is found to not be a blighted property, then to condemn the property pursuant to article two, chapter fifty four of the code, the municipal authority must demonstrate, in addition to all other lawful condemnation require-
ments, that the project or program requiring the clearance of the
slum and blighted area:

(1) Cannot proceed without the condemnation of the private
property at issue;

(2) That the private property shown not to be blighted
cannot be integrated into the proposed project or program once
the slum and blighted area surrounding such property is taken
and cleared;

(3) That the condemnation of the unblighted property is
necessary for the clearance of an area deemed to be slum or
blighted;

(4) That other alternatives to the condemnation of the
unblighted property are not reasonably practical;

(5) That every reasonable effort has been taken to ensure
that the unblighted property and its owners have been given a
reasonable opportunity to be included in the redevelopment
project or plan without the use of eminent domain;

(6) That no alternative site within the slum and blighted
area is available for purchase by negotiation that might substi-
tute as a site for the unblighted property;

(7) That the redevelopment project or plan could not be
restructured to avoid the taking of the unblighted property;

(8) That the redevelopment project or plan could not be
carried out without the use of eminent domain; and

(9) That there is specific use for the unblighted property to
be taken and a plan to redevelop and convert the unblighted
property from its current use to the stated specific use basically
exists.
(c) In any case when the municipal authority has decided to pursue condemnation, the property owner shall have the right to seek review in the circuit court within the county wherein the property lies. Prior to authorizing condemnation as provided pursuant to article two, chapter fifty-four of the code, the court must find that the property is blighted, or if unblighted, that the authority has met the requirements of subsection (b) of this section.

(d) All of the rights and remedies contained in article three, chapter fifty-four of this code concerning relocation assistance are available to the private property owner whose unblighted property is being condemned, and if the property to be condemned contains a business owned by the property owner, the property owner is entitled to the amount, if any, which when added to the acquisition cost of the property acquired by the condemning authority, equals the reasonable cost of obtaining a comparable building or property having substantially the same characteristics of the property sought to be taken.


(a) An authority shall have the right to acquire by the exercise of the power of eminent domain, pursuant to the limitations contained in subdivision (11), section two, article one, chapter fifty-four, any real property which it may deem necessary for a redevelopment project or for its purposes under this article after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for condemnation proceedings, in chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain.
Property already devoted to a public use may be acquired in like manner: Provided, That no real property belonging to the municipality, the county or the state may be acquired without its consent.

(b) When an authority has found and determined by resolution that certain real property described therein is necessary for a redevelopment project or for its purposes under this article, the resolution shall be conclusive evidence that the acquisition of such real property is necessary for the purposes described therein.

CHAPTER 54. EMINENT DOMAIN

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

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

(a) The public uses for which private property may be taken or damaged are as follows:

(1) 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;

(2) 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;

(3) 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 reason-
able need therefor. Nothing in this subsection shall be construed
to interfere with the power of the state and its political subdivi-
sions 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;

(4) 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 commu-

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nity, for public use, including lands for pump stations, reser-
voirs, 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 im-
pounded by means of any storage dam;

(5) 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
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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 a municipal corporation, and if not within a municipal corporation, in the name of the county commission of the county in which the property is located;

(6) 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;

(7) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;

(8) 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;

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

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

(11) By the State of West Virginia for any and every other public use, object and purpose not herein specifically mentioned, but in no event may "public use", for the purposes of this subdivision, be construed to mean the exercise of eminent domain primarily for private economic development.
For purposes of this subdivision, no private property may be taken by the State of West Virginia or its political subdivisions without the owner's consent when the primary purpose of the taking is economic development that will ultimately result in ownership or control of the property transferring to another private entity, other than one having the power of eminent domain, whether by purchase agreement, long-term lease agreement or any other mechanism whereby ownership or control is effectively transferred: Provided, That a municipal urban renewal authority may exercise a right of eminent domain as to property only within an area designated a slum area or blighted area under the provisions of article eighteen, chapter sixteen of this code.

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.

(12) 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 or common law required for the taking of private property for public use, a further prerequisite and condition precedent to the exercise of such taking of or damage to private property for public use as in this subsection hereinabove provided, is that the Public Service Commission of this state, in an appropriate hearing and proceeding on due notice to all interested persons, firms or
corporations, in accordance with the procedure now or hereafter established by statute and the regulations thereunder, shall have found that such pipeline transportation of coal and its derivatives and all mixtures and combinations thereof is required for the public convenience and necessity, and that the Public Service Commission of this state shall not extend a certificate of convenience and necessity or make such finding of public convenience and necessity unless, in addition to the other facts required to support such findings, it shall have been established by the applicant therefor that the patents and other similar rights under which the applicant proposes to construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and shall remain equally available, insofar as said subsequent applicant may determine such availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of convenience and necessity and finding of fact for any other pipeline in West Virginia; for the purpose of making the findings hereinbefore set forth the Public Service Commission shall have and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be subject to judicial review as in other Public Service Commission proceedings.

It is the intention of the Legislature in amending this section by the addition of subdivision (12) to extend the right of eminent domain to coal pipelines for public use; to provide for regulation of such coal pipelines by the Public Service Commission of this state or the Interstate Commerce Commission of the United States of America, or both; to assure that such rights shall be extended only to public utilities or common carriers as distinguished from private carriers or contract carriers; 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.
§54-1-2a. Notice; good faith purchase.

Prior to initiation of any condemnation proceeding pursuant to slum and blight, the applicant must make a reasonable attempt to notify all parties subject to a petition for condemnation provided in section two of this article, and attempt to enter into negotiations for purchase of the property with the owners. The applicant shall make an offer in good faith for the purchase of the property subject to the condemnation prior to initiation of the condemnation proceeding.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill approved this the 5th day of April, 2006.