

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 539

BY SENATOR CARMICHAEL

[Introduced February 6, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §54-2-14a of the Code of West Virginia, 1931, as amended, relating
 2 to condemnation proceedings; clarifying that near-surface minerals are part of the surface
 3 estate unless specifically granted to the mineral estate; and conforming certain language
 4 to accepted drafting standards.

Be it enacted by the Legislature of West Virginia:

1 That §54-2-14a of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 2. PROCEDURE.

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

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

9 (a) When the following conditions are met, the State of West Virginia or any of its political
 10 subdivisions may pursue condemnation actions under this section and acquire title, enter upon,
 11 take possession of, appropriate and use the property or interest or right therein for the purposes
 12 stated in the petition:

13 (1) The entity is authorized to institute condemnation proceeding under this article;

14 (2) The entity is authorized to deposit the amount of just compensation for the property
 15 being condemned; and

16 (3) The court is satisfied that the purpose for which the property or interest or right therein
 17 is sought to be condemned is a public use for which the private property may be appropriated

18 upon compensating the owner.

19 (b) Before entry, taking possession, appropriation, or use, the applicant shall pay into court
20 ~~such sum as it shall estimate to be the fair value of the property~~ the fair market value determined
21 by the applicant to be just compensation for the property, or estate, right, or interest therein,
22 sought to be condemned, including, where applicable, the damages, if any, to the residue beyond
23 the benefits, if any, to ~~such~~ the residue, by reason of the taking.

24 (c) Coal, oil, and natural gas, which are taken concomitant with the public use, shall be
25 compensated for, taking into consideration the mining, production, excavation and marketing
26 costs. Other minerals encountered, such as, limestone, gravel, rock, clay, sand, chalk, and all
27 other similar near-surface minerals, shall be compensated for as a part of the surface estate,
28 unless the highest and best use of the property as a whole is commercial mineral extraction.
29 Evidence of the use of any near-surface minerals by the applicant is inadmissible.

30 (d) The court or judge may, at the request of any party to the proceeding, require the clerk
31 of the court to give an additional bond, adequate to protect ~~such~~ the deposit with the clerk; and if
32 ~~such~~ a bond is required, the applicant shall pay the necessary premiums.

33 (e) ~~Upon such payment into court, the title to the property, or interest or right therein,~~
34 ~~sought to be condemned, shall be vested in the applicant. and~~ The court or judge shall, at the
35 request of the applicant, make an order permitting the applicant at once to enter upon, take
36 possession, appropriate and use the property, or interest or right therein, sought to be condemned
37 for the purposes stated in the petition, ~~but the owners of such property, or interest or right therein,~~
38 ~~at the time of such payment, including lienors and conflicting claimants, shall have such title,~~
39 ~~interest, or right in the money paid into court as they had in the property, or interest or right therein,~~
40 ~~sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon such~~
41 ~~property, or interest or right therein, shall be transferred to such fund in court, subject to the~~
42 ~~provisions of this section~~ and to deposit the applicant's estimate of just compensation with the
43 clerk of the court.

44 (f) The title in the applicant shall be defeasible until the compensation and any damages
45 are determined in the condemnation proceedings and the applicant has paid any ~~excess~~
46 additional amount awarded into court.

47 (g) The owners of the property, or interest or right therein, at the time of the payment,
48 including lienors and conflicting claimants, have the same title, interest, or right in the money paid
49 into court as they had in the property, or interest or right therein, being condemned.

50 (h) Upon petition to the court or judge, any person entitled thereto may be paid his or her
51 pro rata share of the money paid into court, or a portion thereof, as ordered by the court or judge,
52 but the acceptance of ~~such~~ the payment ~~shall~~ does not limit the amount to be allowed by the
53 report of the condemnation commissioners, or the verdict of a jury, if there ~~be~~ is one. Proceedings
54 for the distribution of the money so paid into court shall be conducted as provided in section
55 eighteen of this article to the extent that the provisions therein are applicable. No party to the
56 condemnation proceeding ~~shall be~~ is permitted to introduce evidence of ~~such~~ the payment or of
57 the amount so paid into court, or of any amount which has been accepted by any party, nor ~~shall~~
58 may reference be made thereto during the course of ~~the~~ a commissioners hearing or trial.

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

65 (j) ~~When, after payment into court as provided under the authority of this section, the~~
66 ~~amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there~~
67 ~~be one~~ If the amount awarded by the commissioners or jury exceeds the amount which has been
68 paid into court, the excess amount, together with interest thereon at ten percent from the date of
69 the filing of the petition to the date of payment of the award of the excess amount ~~into court~~, may,

70 at any time within three months after the ~~report or verdict of a jury, as the case may be,~~ award
71 has been confirmed and ordered to be recorded, be paid into court by the applicant for the persons
72 entitled thereto. In no other instance ~~shall~~ is interest ~~be~~ allowed on payments made pursuant to
73 the provisions of this section.

74 ~~If the amount which has been paid into court pursuant to this section exceeds the amount~~
75 ~~allowed by the report of the condemnation commissioners, or the verdict of a jury, if there be one,~~
76 ~~the excess shall be repaid to the applicant out of such fund in court, or, if the amount remaining~~
77 ~~in the fund be insufficient, then the persons to whom the fund, or any part thereof, has been paid,~~
78 ~~shall reimburse the applicant, on a pro rata basis, but without interest.~~

79 (k) If the applicant has the right to abandon the proceeding and does so, the amount which
80 has been paid into court pursuant to this section shall be repaid to the applicant from such fund
81 in court and by any persons to whom the fund, or any part thereof, has been paid, on a pro rata
82 basis, but without interest.

83 (l) If the amount allowed by the report of the condemnation commissioners, or the verdict
84 of the jury, if there ~~be~~ is one, does not exceed the sum paid into court and it ~~shall appear~~ appears
85 that the latter amount was tendered by the applicant to the defendant prior to the institution of the
86 proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal
87 to accept the tender was based on some ground other than that of insufficiency of compensation
88 and any damages.

89 (m) When the report of the condemnation commissioners, or the verdict of a jury, if there
90 ~~be~~ is one, has been confirmed and ordered to be recorded, and the excess amount, if any, has
91 been paid into court as provided herein, the title to the property, or interest or right therein, so
92 paid for ~~shall be~~ is absolutely and indefeasibly vested in the applicant in fee simple or to the extent
93 described in the petition: *Provided*, That in the case of a public road, title to the right-of-way only
94 ~~shall absolutely vest~~ vests in the applicant.

NOTE: The purpose of this bill is to clarify that compensation and damages to be paid as a result of any condemnation proceeding by the state or its political subdivisions do not include payment for limestone, gravel, clay, sand, rock, and related minerals unless it is established that the highest and best use of the condemned property is mineral extraction. The paragraph before subsection (k) is being stricken because it is in conflict with W.Va. Code §54-3-4. Antiquated language has been removed or conformed to current usage and drafting standards.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.