

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4586

(BY DELEGATE COWLES)

[Introduced February 17, 2016;

referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §54-2-4 of the Code of West Virginia, 1931, as amended, relating
2 to representation in condemnation proceedings where a property owner or other party is
3 under a legal disability; providing that the court shall protect the rights of any person who
4 is under a legal disability because he or she is a protect person, incarcerated, or whose
5 ownership interest, lien, or other claim to property requires them to be a party in a
6 condemnation action; providing that a protected person who is a party in a condemnation
7 action may be represented by a conservator or guardian or by a limited guardian appointed
8 by the court; providing that an incarcerated person who is a party in a condemnation action
9 and has an attorney or committee shall be represented by the attorney or committee;
10 providing that an incarcerated person who is a party in a condemnation action who does
11 not have an attorney or committee shall be represented by a court appointed attorney;
12 providing that the court shall appoint a guardian ad litem to defend the interests of an
13 unknown owner or owners of property subject to condemnation; clarifying that the statutory
14 procedures for condemnation actions control; and authorizing payment for court appointed
15 attorneys to be paid in an amount to be fixed by the court or judge, to be taxed as costs
16 and paid by the applicant.

Be it enacted by the Legislature of West Virginia:

1 That §54-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

ARTICLE 2. PROCEDURE.

§54-2-4. Persons under disability.

1 ~~If the owner, or person holding any lien or claim, be under any disability and there be a~~
2 ~~guardian or committee for him, such guardian or committee shall be notified; but if there be no~~
3 ~~guardian or committee or if any such owner or person be unknown or if there be any persons~~
4 ~~made parties by the general description of parties unknown, as provided in section two of this~~
5 ~~article, the court, or judge thereof in vacation, shall appoint a guardian ad litem to defend such~~

6 ~~interests and may direct the payment of such guardian ad litem, in an amount to be fixed by the~~
7 ~~court or judge, to be taxed as costs and paid by the applicant.~~

8 (a) The court shall protect the rights of any person who is under a legal disability because
9 he or she is a protected person, as defined in section two (a), article one, chapter forty-four-a of
10 this code, or incarcerated, and whose ownership interest, lien or other claim to property requires
11 them to be a party in a condemnation action brought pursuant to the provisions of this chapter.

12 (b) A protected person who is a party in a condemnation action may be represented by a
13 conservator or guardian or by a limited guardian appointed by the court to represent the protected
14 person in the condemnation action.

15 (c) An incarcerated person who is a party in a condemnation action and who has an
16 attorney or committee shall be represented by the attorney or committee. An incarcerated person
17 who is a party in a condemnation action who does not have an attorney or committee shall be
18 represented by an attorney appointed by the court.

19 (d) The court shall appoint a guardian ad litem to defend the interests of an unknown
20 owner or owners of property subject to condemnation.

21 (e) Notwithstanding any other provisions of this code to the contrary, the provisions of this
22 chapter regarding the procedure in condemnation actions shall be followed.

23 (f) The court may direct payment of a limited guardian, attorney or guardian ad litem
24 appointed in an amount to be fixed by the court or judge, to be taxed as costs and paid by the
25 applicant.

NOTE: The purpose of this bill is ensure that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways. The bill requires the appointment of a limited guardian if a protected person is not otherwise represented and an attorney to represent an incarcerated person who is not otherwise represented in a condemnation action. It also clarifies that the process set out in the eminent domain statute must be followed rather than other requirements related to disposition of a protected person's or inmate's real property.

This section has been completely rewritten; therefore it has been entirely underscored.

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