

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 539

BY SENATOR CARMICHAEL

[Originating in the Committee on the Judiciary;

reported on February 27, 2016]

1 A BILL to amend and reenact §54-2-14a of the Code of West Virginia, 1931, as amended, relating
2 to condemnation proceedings; setting forth conditions which must be met and procedures
3 which must be followed; providing that fair market value of minerals shall follow common
4 law with certain exceptions; declaring the procedure for calculation of the fair market value
5 of near-surface minerals; allowing for near-surface minerals to be compensated for by
6 considering production and marketing costs if owner meets certain burden; providing that
7 certain near-surface minerals lie with the surface owner unless specifically granted
8 otherwise; providing for the inadmissibility of certain evidence; requiring certain funds to
9 be paid into the court; providing for an owner's interest in the money paid into court;
10 removing refund and reimbursement provisions; updating antiquated language; and
11 conforming certain language 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 in the property for the
12 purposes stated in the petition:

13 (1) The state or any of its political subdivisions may institute a condemnation proceeding
14 under this article;

15 (2) The state or any of its political subdivisions may deposit the amount of just
16 compensation for the property being condemned; and

17 (3) The court is satisfied that the purpose for which the property or interest or right in the
18 property is sought to be condemned is a public use for which the private property may be
19 appropriated upon compensating the owner.

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

26 (c) With respect to minerals, the calculation of fair market value shall follow the common
27 law of this state: *Provided*, That to the extent limestone, gravel, rock, clay, sand, chalk and all
28 other similar minerals generally found near the surface and for which the property owner may be
29 entitled to compensation, the property owner has the burden of proving that the mineral is found
30 in such quantity and quality as to be commercially marketable and shall then be compensated for
31 by considering the production and marketing costs, as well as the market and demand for the
32 minerals: *Provided, however*, That the use of limestone, gravel, rock, clay, sand, chalk, or other
33 similar minerals by the state or its political subdivisions for the project for which the land is taken
34 is inadmissible and shall be excluded from this calculation of fair market value: *Provided further*,
35 That in the absence of an express contractual term or an express conveyance in a deed stating

36 otherwise, limestone, gravel, rock, clay, sand, chalk, and all other similar minerals shall lie with
37 the surface owner.

38 (d) The court or judge may, at the request of any party to the proceeding, require the clerk
39 of the court to give an additional bond, adequate to protect ~~such~~ the deposit with the clerk; and if
40 ~~such a~~ bond is required, the applicant state or any of its political subdivisions shall pay the
41 necessary premiums.

42 ~~(e) Upon such payment into court, the title to the property, or interest or right therein,~~
43 ~~sought to be condemned, shall be vested in the applicant. and~~ The court or judge shall, at the
44 request of the applicant state or any of its political subdivisions, make an order permitting the
45 applicant state or any of its political subdivisions at once to enter upon, take possession,
46 appropriate and use the property, or interest or right ~~therein~~ in the property, sought to be
47 condemned for the purposes stated in the petition, ~~but the owners of such property, or interest or~~
48 ~~right therein, at the time of such payment, including lienors and conflicting claimants, shall have~~
49 ~~such title, interest, or right in the money paid into court as they had in the property, or interest or~~
50 ~~right therein, sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon~~
51 ~~such property, or interest or right therein, shall be transferred to such fund in court, subject to the~~
52 ~~provisions of this section~~ and to deposit the state or any of its political subdivision's estimate of
53 just compensation with the clerk of the court.

54 (f) The title in the applicant state or any of its political subdivisions shall be defeasible until
55 the compensation and any damages are determined in the condemnation proceedings, and the
56 applicant state or any of its political subdivisions has paid any ~~excess~~ additional amount awarded
57 into court.

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

62 (h) Upon petition to the court or judge, any person entitled thereto may be paid his or her
63 pro rata share of the money paid into court, or a portion ~~thereof~~ of the money, as ordered by the
64 court or judge, but the acceptance of ~~such~~ the payment ~~shall~~ does not limit the amount to be
65 allowed by the report of the condemnation commissioners, or the verdict of a jury, if there ~~be~~ is
66 one. Proceedings for the distribution of the money ~~se~~ paid into court shall be conducted as
67 provided in section eighteen of this article to the extent that the provisions ~~therein~~ in that section
68 are applicable. ~~No~~ A party to the condemnation proceeding ~~shall be~~ is not permitted to introduce
69 evidence of ~~such~~ the payment or of the amount ~~se~~ paid into court, or of any amount which has
70 been accepted by any party, nor ~~shall~~ may reference be made ~~thereto~~ to any payment during the
71 course of ~~the~~ a commissioners' hearing or trial.

72 (i) ~~If the applicant shall enter~~ state or any of its political subdivisions enters upon or ~~take~~
73 takes possession of the property, under the authority of this section, and ~~shall injure~~ damages the
74 property, the ~~applicant shall not be entitled~~ state or any of its political subdivisions may not, without
75 the consent of the defendant, to abandon the condemnation proceeding. ~~for the condemnation~~
76 ~~thereof, but such proceeding shall proceed~~ The condemnation proceeding shall continue to final
77 award or judgment, and the amount of compensation and any damages as finally determined in
78 ~~such proceeding~~ shall be paid in the manner provided by this section.

79 (j) ~~When, after payment into court as provided under the authority of this section, the~~
80 ~~amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there~~
81 ~~be one~~ If the amount awarded by the commissioners or jury exceeds the amount which has been
82 paid into court, the excess additional amount, together with interest ~~thereon~~ on the additional
83 amount at ten percent from the date of the filing of the petition to the date of ~~payment of the award~~
84 of the excess additional amount ~~into court~~, may, at any time within three months after the ~~report~~
85 ~~or verdict of a jury, as the case may be,~~ award has been confirmed and ordered to be recorded,
86 be paid into court by the ~~applicant~~ state or any of its political subdivisions for the persons entitled

87 ~~thereto~~ to the additional amount. In no other instance shall is interest be allowed on payments
88 made pursuant to the provisions of this section.

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

94 (k) If the applicant state or any of its political subdivisions has the right to abandon the
95 proceeding and does so, the amount which has been paid into court pursuant to this section shall
96 be repaid to the applicant state or any of its political subdivisions from such the fund in court and
97 by any persons to whom the fund, or any part thereof, has been paid, on a pro rata basis, but
98 without interest.

99 (l) If the amount allowed by the report of the condemnation commissioners, or the verdict
100 of the jury, if there be is one, does not exceed the sum paid into court and it ~~shall appear~~ appears
101 that the latter amount was tendered by the applicant state or any of its political subdivisions to the
102 defendant prior to the institution of the proceeding, the defendant shall pay the costs of the
103 proceeding in the trial court unless the refusal to accept the tender was based on some ground
104 other than that of insufficiency of compensation and any damages.

105 (m) When the report of the condemnation commissioners, or the verdict of a jury, if there
106 be is one, has been confirmed and ordered to be recorded, and the excess amount, if any, has
107 been paid into court as provided ~~herein~~ in this section, the title to the property or interest or right
108 ~~therein, so~~ in the property paid for shall be is absolutely and indefeasibly vested in the applicant
109 state or any of its political subdivisions in fee simple or to the extent described in the petition:
110 *Provided*, That in the case of a public road, title to the right-of-way only shall ~~absolutely vest~~ vests
111 in the applicant state or any of its political subdivisions.