

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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; providing the
3 compensation for taking coal, oil and natural gas; clarifying that near-surface minerals are
4 part of the surface estate unless specifically granted to the mineral estate; providing for
5 the inadmissibility of certain evidence; providing for an owner's interest in the money paid
6 into court; removing refund and reimbursement provisions; and conforming certain
7 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) Coal, oil and natural gas, which are taken concomitant with the public use, shall be
27 compensated for, taking into consideration the mining, production, excavation and marketing
28 costs. Other minerals encountered, such as limestone, gravel, rock, clay, sand, chalk and all
29 other similar near-surface minerals, shall be compensated for as a part of the surface estate,
30 unless the highest and best use of the property, as a whole, is commercial mineral extraction.
31 Evidence of the use of any near-surface minerals by the state or any of its political subdivisions
32 is inadmissible in a condemnation proceeding.

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

37 (e) Upon such payment into court, the title to the property, or interest or right therein,
38 sought to be condemned, shall be vested in the applicant. and The court or judge shall, at the
39 request of the applicant state or any of its political subdivisions, make an order permitting the
40 applicant state or any of its political subdivisions at once to enter upon, take possession,

41 appropriate and use the property, or interest or right ~~therein~~ in the property, sought to be
42 condemned for the purposes stated in the petition, ~~but the owners of such property, or interest or~~
43 ~~right therein, at the time of such payment, including lienors and conflicting claimants, shall have~~
44 ~~such title, interest, or right in the money paid into court as they had in the property, or interest or~~
45 ~~right therein, sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon~~
46 ~~such property, or interest or right therein, shall be transferred to such fund in court, subject to the~~
47 ~~provisions of this section~~ and to deposit the state or any of its political subdivision's estimate of
48 just compensation with the clerk of the court.

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

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

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

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

74 ~~(j) When, after payment into court as provided under the authority of this section, the~~
75 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there
76 ~~be one~~ If the amount awarded by the commissioners or jury exceeds the amount which has been
77 paid into court, the ~~excess~~ additional amount, together with interest ~~thereon~~ on the additional
78 amount at ten percent from the date of the filing of the petition to the date of ~~payment of~~ the award
79 of the excess additional amount ~~into court~~, may, at any time within three months after the ~~report~~
80 ~~or verdict of a jury, as the case may be,~~ award has been confirmed and ordered to be recorded,
81 be paid into court by the ~~applicant~~ state or any of its political subdivisions for the persons entitled
82 ~~thereto~~ to the additional amount. In no other instance shall is interest be allowed on payments
83 made pursuant to the provisions of this section.

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

89 ~~(k) If the applicant~~ state or any of its political subdivisions has the right to abandon the
90 proceeding and does so, the amount which has been paid into court pursuant to this section shall
91 be repaid to the ~~applicant~~ state or any of its political subdivisions from ~~such~~ the fund in court and

92 by any persons to whom the fund, or any part thereof, has been paid, on a pro rata basis, but
93 without interest.

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

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