

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 466

FISCAL
NOTE

BY SENATORS TRUMP AND BOSO

[Introduced February 2, 2018; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §54-2-12, §54-2-14, §54-2-14a, §54-2-16, §54-2-18, and §54-2-21
 2 of the Code of West Virginia, 1931, as amended, all relating to bringing the statutory
 3 interest rate to be paid in condemnation cases into conformity with current statutory rates
 4 for other civil cases; and revising antiquated language to meet current legislative
 5 standards.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. PROCEDURE.

§54-2-12. Vesting of title in applicant.

1 Except as otherwise provided in this article, at any time within three months after the
 2 report, or the verdict of a jury, if ~~there be one~~, has been confirmed and ~~ordered to be~~ recorded,
 3 the sum ~~so ascertained with ten percent~~ awarded and interest thereon from the date of the filing
 4 of the petition until payment, may be paid by the applicant into court. Upon ~~such~~ payment, title to
 5 the property, or interest or right therein, ~~so paid for~~ shall be absolutely vested in the applicant in
 6 fee simple or to the extent described in the petition: *Provided*, That in the case of a public road
 7 title to the right-of-way only shall absolutely vest in the applicant. Interest in all condemnation
 8 cases brought under this article will be assessed in accordance with the provisions of §56-6-31
 9 of this code.

§54-2-14. Entry by state or its political subdivisions.

1 ~~If the applicant be the State of West Virginia, or any political subdivision thereof, on filing~~
 2 ~~its petition as authorized in this article, and if the court or judge is satisfied that the purpose for~~
 3 ~~which the land or property is sought to be condemned is a public use for which private property~~
 4 ~~may be appropriated on compensating the owner, the court or judge shall, at the request of the~~
 5 ~~applicant, make an order permitting the applicant at once to enter upon, take possession,~~
 6 ~~appropriate and use the land sought to be condemned for the purposes stated in the petition. The~~
 7 ~~revenues applicable to the payment of any damages or compensation to which the owner is~~
 8 ~~entitled, and which shall be awarded or assessed in his or her favor, shall be deemed sufficient~~

9 ~~security and to have been pledged for such payment, and no bond or further security shall be~~
10 ~~required of the applicant~~

11 (a) If the court is satisfied that the purpose for which the state or its political subdivisions
12 seek to condemn property or an interest in property, is a public use for which private property may
13 be appropriated after compensating the owner, the court shall, when requested by the applicant,
14 enter an order permitting the applicant to immediately enter upon, take possession, appropriate
15 and use the land for the purposes stated in the petition. The money paid into the court by the
16 applicant as its estimated fair market value for the property is sufficient security and will be
17 pledged for payment to the landowner. No bond or further security is required of the applicant.

18 (b) If the applicant ~~shall enter~~ enters upon or ~~take~~ takes possession of property under the
19 authority of this section, and ~~shall do~~ does any work thereon and ~~injure such~~ which injures the
20 land or property, it ~~shall~~ may not be entitled, without the consent of the defendant, to abandon the
21 proceedings for the condemnation. ~~thereof, but such~~ The proceedings shall proceed to final award
22 or judgment, and the applicant shall pay to the owner of the land the amount of compensation
23 and damages as finally determined in such proceedings, with interest ~~at ten percent~~ from the date
24 of the filing of the petition.

25 (c) Before entry, taking possession, appropriation, or use, the applicant shall pay into court
26 ~~such sum as it shall estimate to be~~ its estimate of the fair value of the property, or estate, right, or
27 interest therein, sought to be condemned, including, where applicable, the damages, if any, to the
28 residue beyond the benefits, if any, to such residue, ~~by reason of~~ caused by the taking.

29 (d) ~~When, after payment into court as provided under the authority of this section~~ If the
30 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there
31 ~~be~~ is one, exceeds the amount which has been paid into court, the excess amount, together with
32 interest thereon ~~at ten percent~~ at the rate specified in §56-6-31 of this code from the date of the
33 filing of the petition to the date of payment of the excess amount into court, ~~may, at any time~~ may
34 ~~be paid~~ within three months after the report or verdict of a jury, as the case may be, has been

35 confirmed and ordered to be recorded, ~~be paid into court by the applicant for the persons entitled~~
 36 ~~thereto.~~

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

42 (f) If the amount allowed by the report of the condemnation commissioners, or the verdict
 43 of the jury, if there be one, does not exceed the sum paid into court and ~~it shall appear~~ that the
 44 latter amount was tendered by the applicant to the defendant prior to the institution of the
 45 proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal
 46 to accept the tender was based on some ground other than that of insufficiency of compensation
 47 and any damages.

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

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

10 (b) Before entry, taking possession, appropriation, or use, the applicant shall pay into court
 11 ~~such sum as it shall estimate to be the~~ its estimated fair value of the property, or estate, right, or
 12 interest therein, sought to be condemned, including, ~~where applicable, the~~ damages, if any, to the

13 residue beyond the benefits, if any, ~~to such residue, by reason of~~ due to the taking.

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

17 (d) Upon such payment into court, the title to the property, or interest or right therein,
18 sought to be condemned, shall be vested in the applicant. ~~and the court or judge~~ The court shall,
19 at the request of the applicant, make an order permitting the applicant at once to enter upon, take
20 possession, appropriate and use the property, or interest or right therein, sought to be condemned
21 for the purposes stated in the petition.

22 (e) ~~but the~~ The owners of ~~such the~~ the property being condemned, or interest or right therein,
23 at the time of ~~such the~~ the payment, including lienors and conflicting claimants, shall have ~~such any~~
24 title, interest, or right in the money paid into court as they had in the property, or interest or right
25 therein ~~sought to be condemned~~, and all liens by deed of trust, judgment or otherwise, upon such
26 property, or interest or right therein, shall be transferred to ~~such the~~ the fund in court, subject to the
27 provisions of this section.

28 (f) The title in the applicant shall be defeasible until the compensation and any damages
29 are determined in the condemnation proceedings and the applicant has paid any excess amount
30 into court.

31 (g) Upon petition to the court ~~or judge~~, any person entitled thereto may be paid his or her
32 pro rata share of the money paid into court, or a portion thereof, as ordered by the court. ~~or judge,~~
33 ~~but the acceptance of such~~

34 (h) Acceptance of the payment shall does not limit the amount to be allowed by the report
35 of the condemnation commissioners, or the verdict of a jury. ~~if there be one~~

36 (i) Proceedings for the distribution of the money so paid into court shall be conducted as
37 provided in §54-2-18 of this code to the extent that the provisions therein are applicable. No party
38 to the condemnation proceeding shall be permitted to introduce evidence of such payment or of

39 the amount so paid into court, or of any amount which has been accepted by any party, nor shall
40 reference be made thereto during the course of the trial.

41 (j) If the applicant ~~shall enter~~ enters upon or take possession of the property, under the
42 authority of this section, and ~~shall injure~~ injures the property, the applicant ~~shall not be entitled,~~
43 may not, without the consent of the defendant, ~~to~~ abandon the proceeding for the condemnation.
44 ~~thereof, but such~~ The proceeding shall be paid in the manner provided by this section.

45 (k) ~~When, after payment into court as provided under the authority of this section,~~ the
46 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, ~~if there~~
47 ~~be one,~~ exceeds the amount which has been paid into court, the excess amount, together with
48 interest thereon at ~~ten percent~~ at the rate specified in §56-6-31 of this code from the date of the
49 filing of the petition to the date of payment of the excess amount into court, may, at any time within
50 three months after the report or verdict of a jury, as the case may be, has been confirmed and
51 ordered to be recorded, be paid into court by the applicant for the persons entitled thereto. In no
52 other instance shall interest be allowed on payments made pursuant to the provisions of this
53 section.

54 (l) If the amount which has been paid into court ~~pursuant to this section~~ exceeds the
55 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, ~~if there~~
56 ~~be one,~~ the excess shall be repaid to the applicant out of ~~such fund in~~ the money deposited with
57 the court. ~~or, if~~ If the amount remaining in the fund be insufficient, then the persons to whom the
58 fund, or any part thereof, has been paid, shall reimburse the applicant, on a pro rata basis, but
59 without interest.

60 (m) If the applicant has the right to abandon the proceeding and does so, the amount
61 which has been paid into court pursuant to this section shall be repaid to the applicant from ~~such~~
62 ~~fund in~~ the money deposited with the court pursuant to this section shall be repaid to the applicant
63 from such fund in court and by any persons to whom the fund, or any part thereof, has been paid,
64 on a pro rata basis, but without interest.

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

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

§54-2-16. Increase or decrease in award after payment into court; costs.

1 ~~(a) When, after such payment into~~ After payment has been made to the court as is
 2 ~~mentioned~~ provided in §54-2-13 of this code a subsequent report is made which is confirmed and
 3 ordered to be recorded, or the verdict of a jury is found, if the ~~sum ascertained by such subsequent~~
 4 ~~report or verdict exceed~~ amount awarded exceeds what was ~~so~~ paid, and the applicant ~~fail~~ fails
 5 to pay the ~~same~~ difference, judgment shall be given against it for the amount of such excess, with
 6 ~~ten percent~~ interest thereon at the rate specified in §56-6-31 of this code from the date of filing of
 7 the petition until payment. ~~but if~~ If what was ~~so~~ paid exceeds the ~~sum ascertained by such~~ amount
 8 awarded in the subsequent report or verdict, the excess shall be repaid to the applicant out of the
 9 fund in court, or by the persons ~~to whom the same shall have been paid~~ who were paid. If the
 10 defendant moved that the previous report be set aside, recommitted, other commissioners be
 11 appointed or for a jury trial, and the ~~sum ascertained by such~~ amount awarded in the subsequent
 12 report or verdict does not exceed the ~~sum ascertained by the former report~~ amount previously
 13 awarded, the party on whose motion the former report was set aside, recommitted, or other

14 ~~commissioners appointed, or trial by jury demanded, if he be a defendant therein~~ the defendant
 15 shall pay the costs occasioned by such motion, unless ~~such~~ the former report was set aside,
 16 recommitted or other commissioners appointed on some other ground than that of insufficiency
 17 of compensation.

18 (b) If the applicant has stated in his ~~his~~ its application the sum of money which ~~he~~ it is ready to
 19 pay to the owners for any parcel of land proposed to be taken, and ~~it appear by a~~ the confirmed
 20 and recorded commissioner's report ~~confirmed and ordered to be recorded,~~ or by a verdict of a
 21 jury, ~~that he is entitled to take such parcel for the purpose mentioned in his application without~~
 22 ~~paying~~ does not award any greater compensation ~~therefor,~~ ~~he~~ it shall be adjudged ~~his~~ its costs in
 23 respect to such parcel, out of the compensation to be paid ~~therefor~~ to the owners.

24 (c) In cases not otherwise provided for, the applicant shall pay the costs of the
 25 proceedings.

**§54-2-18. Payment to clerk; disposition of money paid into court; determination of
 conflicting claims; notice to condemnee.**

1 (a) Payment of an award or judgment, or any money, under any of the provisions of this
 2 chapter may be made to the clerk of the court in which such proceeding is had, constitutes ~~and~~
 3 ~~such payment shall be deemed to be a~~ payment into court.

4 (b) Within 10 days after the payment of an award, judgment or money into court pursuant
 5 to the provisions of this chapter, the condemnor shall serve notice of a hearing for the distribution
 6 or disposition of the award or judgment upon the parties of record except nonresidents and
 7 unknown parties whose interests the applicant seeks to condemn, or upon their counsel of record.

8 (c) Service of notice by registered or certified mail to the parties' last- known addresses
 9 ~~shall be deemed~~ is sufficient. Notwithstanding any other provision of this chapter to the contrary,
 10 failure to serve such notice shall result in the accrual of interest ~~at ten percent~~ upon the award, at
 11 the rate specified in §56-6-31 of this code, judgment or money paid into court from the filing of the
 12 petition until such notice is served or until disbursement be made to the persons entitled thereto.

13 The clerk to whom payment is so made, together with the surety on his or her official bond, shall
14 be liable therefor, as for other moneys collected by him or her by virtue of his or her office.

15 (d) Upon money being paid into court, pursuant to the provisions of this chapter, and the
16 court ~~or judge~~ being satisfied that the persons entitled thereto are before the court ~~or judge~~, it ~~or~~
17 ~~he~~ shall make such distribution or disposition of such money as is proper, having due regard to
18 the interest of all persons therein, and in what proportions such money is properly payable.

19 ~~If it shall appear that the petition states the persons or classes of persons, who, in the~~
20 ~~opinion of the applicant, are vested with the superior right or claim of title in the property, or interest~~
21 ~~or right therein, condemned or sought to be condemned or in the amount allowed or to be allowed~~
22 ~~by the report of the condemnation commissioners, or the verdict of a jury, if there be one, and it~~
23 ~~does not appear from the record or otherwise that there is any denial or dispute, by any person~~
24 ~~or party in interest, of such statement in the petition, the court or judge may direct that the money~~
25 ~~paid into court, after withholding therefrom any sum necessary for payment of any taxes which~~
26 ~~are a lien upon the property, interest, or right, be disbursed and distributed in accordance with the~~
27 ~~statement in the petition, among the persons entitled thereto, except that with respect to any~~
28 ~~persons appearing to be infants, incompetents, incarcerated convicts, or under any other legal~~
29 ~~disability, the court or judge shall inquire into their rights or claims, independent of any statement~~
30 ~~in the petition, and any order for disbursement or distribution shall conserve and protect the rights~~
31 ~~or claims of such persons in and to the money paid into court~~

32 (e) The court may direct that the money paid into court, less payment for any property taxes
33 that are due, be disbursed or distributed in accordance with the parties named as defendants in
34 the petition if:

35 (1) It appears to the court that the applicant has named persons or classes of persons who
36 the applicant believes are vested with the superior right or claim of title in the property to be
37 condemned; and

38 (2) It does not appear from the record, or otherwise, that there is any denial or dispute, by

39 any party in interest as to ownership or pro rate share of the proceeds.

40 (f) If it appears to the court that any defendant is under a legal disability because he or she
 41 is a protected person, an infant, or incarcerated, the court shall inquire into their rights or claims,
 42 independent of any statement in the petition. Any order for disbursement or distribution shall
 43 conserve and protect the rights or claims of such persons to the money paid into court.

44 (g) If it ~~shall appear to the court or judge~~ appears to the court, from the record or otherwise,
 45 that there exists a controversy among claimants to the money paid into court, or to the ownership
 46 of the property, or interest or right therein, condemned or sought to be condemned, the court ~~or~~
 47 ~~judge~~ shall enter an order setting a time for hearing ~~the case and determining~~ to determine the
 48 rights and claims of all persons entitled to the money paid into court or to any interest or share
 49 therein.

50 (h) To aid in properly disposing of the money, the court ~~or judge~~ may appoint a
 51 commissioner to take evidence of the conflicting claims. The ~~court or judge~~ may direct publication
 52 to be made requiring all who are interested to appear at the time set for hearing the case to
 53 present their respective claims. ~~Such costs~~ The costs of publication shall be allowed to the
 54 prevailing persons as the court ~~or judge shall direct~~ directs.

55 (i) Upon a determination by the court ~~or judge~~ of the rights and claims of the persons
 56 entitled to the money paid into court, with or without a report of ~~such a~~ a commissioner, judgment
 57 shall be entered directing the disbursement or distribution, after withholding for property taxes
 58 ~~that may be due. as provided in the next preceding paragraph, to the persons entitled thereto,~~
 59 ~~provided that the rights or claims of persons under legal disability shall be protected as provided~~
 60 ~~in the next preceding paragraph~~

§54-2-21. Effective date of new percent interest rates.

1 The percent interest rate provided for in §54-2-12, §54-2-13, §54-2-14, §54-2-14a, §54-2-
 2 15, §54-2-16 and §54-2-18 of this code, ~~shall be~~ are applicable only to condemnation proceedings
 3 ~~hereafter~~ instituted on and after the amendment and reenactment of those sections during the

- 4 2018 Legislative session. The rate of interest previously applicable to proceedings under ~~the~~
5 ~~above~~ those sections shall continue to be applicable to condemnation proceedings heretofore
6 instituted.

NOTE: The purpose of this bill is to bring the statutory interest rate to be paid in condemnation cases into conformity with current statutory rates for other civil cases. The bill revises antiquated language to meet current legislative 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.