

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 400

FISCAL  
NOTE

BY SENATORS CLEMENTS, SWOPE, ROBERTS, PLYMALE,

AND MARONEY

[Introduced February 23, 2021; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §54-2-12, §54-2-13, §54-2-14, §54-2-14a, §54-2-15, §54-2-16, §54-  
 2 2-18, and §54-2-21, of the Code of West Virginia, 1931, as amended, all relating to bringing  
 3 the statutory interest rate to be paid in condemnation cases into conformity with current  
 4 statutory rates; and making revisions to meet legislative 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 shall be assessed in accordance with §54-2-21 of this Code.

### **§54-2-13. Entry on land on payment of compensation.**

1 (a) After ~~such a~~ report has ~~once~~ been made, whether it be set aside, recommitted, or new  
 2 commissioners appointed, or not, or whether a trial by jury be demanded and had or not, the  
 3 applicant upon paying into court the sum ascertained by ~~such~~ the report, with ~~ten percent~~ interest  
 4 thereon from the date of the filing of the petition until payment, may, notwithstanding the pendency  
 5 of further proceedings, enter upon, take and use for the purposes specified in the application, that  
 6 part of the land and property in respect to which ~~such~~ payment is made, and where ~~such~~ payment  
 7 has been made and possession taken, or where payment has been made without taking ~~such~~  
 8 possession in a pending case, it shall have the same effect as if ~~such~~ payment were made or  
 9 possession taken, or both, in a case hereafter commenced; and no order shall be made or any  
 10 injunction awarded by any court or judge to stay it in so doing, unless it be manifest that the

11 applicant is insolvent or that it or its officers, agents or servants, are transcending their authority,  
12 or that such interposition is necessary to prevent injury which cannot be adequately compensated  
13 in damages: *Provided*, That if the applicant be other than a corporate body politic, before entering  
14 upon or taking possession of such property, it shall enter into bond before the court, or judge  
15 thereof in vacation, in a penalty prescribed by the judge, with securities approved by him or her,  
16 conditioned for the payment to the owner of any additional sums which may be awarded against  
17 it in subsequent proceedings as additional compensation and damages for the property so taken.

18 (b) And where, under authority of §54-10-1 of this code, wood, earth, gravel, shale, stone,  
19 water or other material are sought to be taken, impounded or consumed, the applicant, after ~~such~~  
20 a report has been made, whether it be set aside, recommitted or new commissioners appointed,  
21 or not, or whether a trial by jury be demanded and had, or not, may, upon payment into court as  
22 aforesaid of the sum ascertained by the report of ~~such~~ the commissioners, notwithstanding the  
23 pendency of further proceedings, take, impound or consume such wood, earth, gravel, shale,  
24 stone, water or other material; and all the foregoing provisions of this section as to injunction and  
25 bond shall be applicable to ~~such~~ the case.

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

1 (a) If the applicant ~~be~~ is the State of West Virginia, or any political subdivision thereof, on  
2 filing its petition as authorized in this article, and if the court or judge is satisfied that the purpose  
3 for 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~~ considered  
9 sufficient security and to have been pledged for ~~such~~ the payment, and no bond or further security  
10 shall be required of the applicant.

11           **(b)** If the applicant ~~shall enter~~ enters upon or take possession of property under the  
12 authority of this section, and ~~shall do~~ does any work thereon and ~~injure such~~ injures the land or  
13 property, it ~~shall~~ may not be entitled, without the consent of the defendant, to abandon the  
14 proceedings for the condemnation thereof, but ~~such the~~ the proceedings shall proceed to final award  
15 or judgment, and the applicant shall pay to the owner of the land the amount of compensation  
16 and damages as finally determined in such proceedings, with interest ~~at ten percent~~ from the date  
17 of the filing of the petition.

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

22           **(d)** When, after payment into court as provided under the authority of this section, the  
23 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there  
24 be one, exceeds the amount which has been paid into court, the excess amount, together with  
25 interest thereon ~~at ten percent~~ from the date of the filing of the petition to the date of payment of  
26 the excess amount into court, may, at any time within three months after the report or verdict of a  
27 jury, as the case may be, has been confirmed and ordered to be recorded, be paid into court by  
28 the applicant for the persons entitled thereto.

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

34           **(f)** If the amount allowed by the report of the condemnation commissioners, or the verdict  
35 of the jury, if there ~~be is~~ is one, does not exceed the sum paid into court and it shall appear that the  
36 latter amount was tendered by the applicant to the defendant prior to the institution of the

37 proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal  
38 to accept the tender was based on some ground other than that of insufficiency of compensation  
39 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 is~~ the State of West Virginia or any political subdivision thereof, and be otherwise authorized  
3 by law to make payment as required in this section, on filing its petition as authorized in this article,  
4 and if the court or judge is satisfied that the purpose for which the property or interest or right  
5 therein, is sought to be condemned is a public use for which private property may be appropriated  
6 on 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           (b) Before entry, taking possession, appropriation, or use, the applicant shall pay into court  
10 ~~such sum as it shall estimate~~ the amount it estimates to be the fair value of the property, or estate,  
11 right, or interest therein, sought to be condemned, including, where applicable, the damages, if  
12 any, to the residue beyond the benefits, if any, to ~~such~~ the residue, by reason of the taking. The  
13 court or judge may, at the request of any party to the proceeding, require the clerk of the court to  
14 give an additional bond, adequate to protect ~~such~~ the deposit with the clerk; and if ~~such~~ a bond is  
15 required, the applicant shall pay the necessary premiums.

16           (c) Upon ~~such~~ payment into court, the title to the property, or interest or right therein,  
17 sought to be condemned, shall be vested in the applicant, and the court or judge shall, at the  
18 request of the applicant, make an order permitting the applicant at once to enter upon, take  
19 possession, appropriate and use the property, or interest or right therein, sought to be condemned  
20 for the purposes stated in the petition, but the owners of ~~such~~ the property, or interest or right  
21 therein, at the time of ~~such~~ payment, including lienors and conflicting claimants, shall have ~~such~~  
22 the title, interest, or right in the money paid into court as they had in the property, or interest or

23 right therein, sought to be condemned, and all liens by deed of trust, judgment or otherwise, upon  
24 such property, or interest or right therein, shall be transferred to ~~such~~ the fund in court, subject to  
25 the provisions of this section. The title in the applicant shall be defeasible until the compensation  
26 and any damages are determined in the condemnation proceedings and the applicant has paid  
27 any excess amount into court.

28 (d) Upon petition to the court or judge, any person entitled thereto may be paid his or her  
29 pro rata share of the money paid into court, or a portion thereof, as ordered by the court or judge,  
30 but the acceptance of ~~such~~ the payment ~~shall~~ may not limit the amount to be allowed by the report  
31 of the condemnation commissioners, or the verdict of a jury, if there ~~be~~ is one. Proceedings for  
32 the distribution of the money ~~se~~ paid into court shall be conducted as provided in §54-2-18 of this  
33 code to the extent that the provisions ~~therein~~ are applicable. No party to the condemnation  
34 proceeding ~~shall~~ may be permitted to introduce evidence of ~~such~~ the payment or of the amount  
35 ~~se~~ paid into court, or of any amount which has been accepted by any party, nor shall reference  
36 be made thereto during the course of the trial.

37 (e) If the applicant ~~shall enter~~ enters upon or ~~take~~ takes possession of the property, under  
38 the authority of this section, and ~~shall injure~~ injures the property, the applicant ~~shall not be~~ is not  
39 entitled, without the consent of the defendant, to abandon the proceeding for the condemnation  
40 ~~thereof~~, but ~~such~~ the proceeding shall proceed to final award or judgment, and the amount of  
41 compensation and any damages as finally determined in ~~such~~ the proceeding shall be paid in the  
42 manner provided by this section.

43 (f) When, after payment into court as provided under the authority of this section, the  
44 amount allowed by the report of the condemnation commissioners, or the verdict of a jury, if there  
45 be one, exceeds the amount which has been paid into court, the excess amount, together with  
46 interest thereon ~~at ten percent~~ from the date of the filing of the petition to the date of payment of  
47 the excess amount into court, may, at any time within three months after the report or verdict of a  
48 jury, as the case may be, has been confirmed and ordered to be recorded, be paid into court by

49 the applicant for the persons entitled thereto. In no other instance shall interest be allowed on  
 50 payments made pursuant to the provisions of this section. If the amount which has been paid into  
 51 court pursuant to this section exceeds the amount allowed by the report of the condemnation  
 52 commissioners, or the verdict of a jury, if there ~~be~~ is one, the excess shall be repaid to the  
 53 applicant out of ~~such~~ the fund in court, or, if the amount remaining in the fund ~~be~~ is insufficient,  
 54 then the persons to whom the fund, or any part thereof, has been paid, shall reimburse the  
 55 applicant, on a pro rata basis, but without interest. If the applicant has the right to abandon the  
 56 proceeding and does so, the amount which has been paid into court pursuant to this section shall  
 57 be repaid to the applicant from ~~such~~ the fund in court and by any persons to whom the fund, or  
 58 any part thereof, has been paid, on a pro rata basis, but without interest.

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

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

**§54-2-15. Alternative procedure for condemnation by business corporation; bond.**

1 (a) Any business corporation, entitled to exercise the powers of eminent domain under  
 2 this chapter, may file with its petition a bond for a sufficient amount with good sureties, payable  
 3 to the owner of the property proposed to be taken to secure to ~~such~~ the owner payment for ~~such~~

4 the property and all damages to which he or she shall be entitled for the taking thereof, and if the  
5 owner being sui juris shall appear and make no objection to such bond, the applicant shall be  
6 entitled to take possession of the property sought to be condemned, for the purposes stated in  
7 the petition. ~~But if~~ If objection ~~be~~ is made to the form, amount of, or sureties on, ~~such~~ the bond,  
8 or if the owner cannot be found, or is not sui juris, the court or judge shall fix a day for the hearing  
9 of any objections to ~~such~~ the bond and of the request of the applicant to approve the same; and  
10 at any time after five days' written notice ~~shall have~~ has been given to the owner or to his or her  
11 guardian or committee, if he or she be not sui juris, and if the owner cannot be found, or his or  
12 her guardian or committee, the owner not being sui juris, then, after five days' written notice posted  
13 upon the land, which notice shall state the time and place for ~~such~~ the hearing, the court or the  
14 judge shall proceed to hear and determine the matters arising upon such objection and request,  
15 and may require evidence as to the sufficiency of the surety or sureties and as to the sufficiency  
16 of the amount of the bond, and may, in its or his or her discretion, require new and additional  
17 sureties and a bond for a larger amount and in a more satisfactory form, and when satisfied as to  
18 the form, amount and sufficiency of ~~such~~ the bond and sureties, and that the purpose for which  
19 the property is to be appropriated is a public use for which private property may be taken upon  
20 compensating the owner, the court or judge shall approve the bond and make an order permitting  
21 the applicant to enter upon, take possession, appropriate and use the land or property sought to  
22 be condemned for the purposes stated in the petition. At any time during the subsequent  
23 proceedings on such petition, if it ~~shall appear~~ appears necessary so to do in order to protect the  
24 owner and assure unto him or her the payment of the compensation and damages to which he or  
25 she may be entitled, the court or judge may require the applicant to give a new and additional  
26 bond with sureties satisfactory to the court or judge.

27 (b) Any indemnity company authorized to transact business in the State of West Virginia  
28 shall be deemed a good and sufficient surety on any bond required under this section.

29 (c) If the applicant ~~shall enter upon or take~~ enters upon or takes possession of the property



30 under the provisions of this section, and ~~shall do~~ does any work thereon, or cause any injury or  
 31 damage to ~~such~~ the property, it shall not thereafter be entitled, without the consent of the  
 32 defendant, to abandon the proceeding for the condemnation thereof, but the same shall proceed  
 33 with reasonable dispatch to a finality and the applicant shall pay to the owner of the land the  
 34 amount of the compensation and damages as finally determined in such proceedings, with  
 35 interest ~~at ten percent~~ from the date of the filing of the petition as provided in §54-2-21 of this  
 36 code.

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

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

14 (b) If the applicant has stated in his or her application the sum of money which he or she  
 15 is ready to pay to the owners for any parcel of land proposed to be taken, and it ~~appear~~ appears  
 16 by a report confirmed and ordered to be recorded, or by a verdict of a jury, that he or she is entitled  
 17 to take ~~such~~ the parcel for the purpose ~~mentioned~~ stated in his or her application without paying  
 18 any greater compensation therefor, he or she shall be adjudged his or her costs in respect to ~~such~~

19 the parcel, out of the compensation to be paid therefor to the owners.

20 (c) In cases not otherwise provided for, the applicant shall pay the costs of the  
21 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, and ~~such~~ the  
3 payment shall be ~~deemed to be~~ a payment into court. Within ~~ten~~ 10 days after the payment of an  
4 award, judgment, or money into court pursuant to the provisions of this chapter, the condemnor  
5 shall serve notice upon the parties of record except nonresidents and unknown parties whose  
6 interests the applicant seeks to condemn, or upon their counsel of record. Service of notice by  
7 registered or certified mail to the parties' last-known addresses shall be ~~deemed~~ sufficient.  
8 Notwithstanding any other provision of this chapter to the contrary, failure to serve such notice  
9 shall result in the accrual of interest ~~at ten percent~~ upon the award, judgment or money paid into  
10 court from the filing of the petition until ~~such~~ the notice is served or until disbursement ~~be is~~ made  
11 to the persons entitled thereto. The clerk to whom payment is ~~se~~ made, together with the surety  
12 on his or her official bond, shall be liable therefor, as for other moneys collected by him or her by  
13 virtue of his or her office.

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

19 (c) If it ~~shall appear~~ appears that the petition states the persons or classes of persons,  
20 who, in the opinion of the applicant, are vested with the superior right or claim of title in the  
21 property, or interest or right therein, condemned or sought to be condemned or in the amount

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

33 (d) If it ~~shall appear~~ appears to the court or judge, from the record or otherwise, that there  
34 exists a controversy among claimants to the money paid into court, or to the ownership of the  
35 property, or interest or right therein, condemned or sought to be condemned, the court or judge  
36 shall enter an order setting a time for hearing the case and determining the rights and claims of  
37 all persons entitled to the money paid into court or to any interest or share therein. To aid in  
38 properly disposing of the money, the court or judge may appoint a commissioner to take evidence  
39 of the conflicting claims. The court or judge may direct publication to be made requiring all who  
40 are interested to appear at the time set for hearing the case to present their respective claims.  
41 ~~Such~~ The costs shall be allowed to the prevailing persons as the court or judge shall direct. Upon  
42 a determination by the court or judge of the rights and claims of the persons entitled to the money  
43 paid into court, with or without a report of ~~such~~ a commissioner, judgment shall be entered  
44 directing the disbursement or distribution, after withholding for taxes as provided in the next  
45 preceding paragraph, to the persons entitled thereto, provided that the rights or claims of persons  
46 under legal disability shall be protected as provided in the next preceding paragraph.

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

1           The percent interest rate provided for in ~~sections twelve, thirteen, fourteen, fourteen-a,~~  
2 ~~fifteen, sixteen and eighteen of this article~~ §54-2-12, §54-2-13, §54-2-14, §54-2-14a, §54-2-15,  
3 §54-2-16, and §54-2-18 of this code reenact shall be applicable only to condemnation  
4 proceedings hereafter instituted on and after the amendment and reenactment of those section  
5 in the 2021 Legislative session. The interest rate in all condemnation action brought under this  
6 article shall be assessed in accordance with the provisions of §56-6-31 of this code for judgments  
7 in civil actions. The rate of interest previously applicable to proceedings under the above sections  
8 shall continue to be applicable to condemnation proceedings heretofore instituted.

NOTE: The purpose of this bill is to conform the judgment interest paid in condemnation cases to the interest paid on all other civil judgments and decrees. The Supreme Court of Appeals of West Virginia sets the rate of interest in all civil actions, except condemnations, in January of each year. The interest rate is 2% above prime on January second each year not to exceed 9%. The 2020 interest rate is 4.75%.

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