

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 491

BY SENATORS CLEMENTS AND LINDSAY

[Introduced March 1, 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
 3 adjusting the interest rate to be paid in condemnation cases; changing the rate of interest
 4 from a fixed percentage to a floating rate tied to a federal discount rate; and updating
 5 language to meet modern legislative drafting 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 §54-2-21
 9 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~~ is 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~~ is other than a corporate body politic, before
 14 entering upon or taking possession of such property, it shall enter into bond before the court, or
 15 judge thereof in vacation, in a penalty prescribed by the judge, with securities approved by him or
 16 her, conditioned for the payment to the owner of any additional sums which may be awarded
 17 against it in subsequent proceedings as additional compensation and damages for the property
 18 so taken.

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

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

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

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

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

30 If the amount which has been paid into court pursuant to this section exceeds the amount
31 allowed by the report of the condemnation commissioners, or the verdict of a jury, if there ~~be~~ is
32 one, the excess shall be repaid to the applicant out of such fund in court, or, if the amount
33 remaining in the fund be insufficient, then the persons to whom the fund, or any part thereof, has

34 been paid, shall reimburse the applicant, on a pro rata basis, but without interest.

35 If the amount allowed by the report of the condemnation commissioners, or the verdict of
36 the jury, if there ~~be~~ is one, does not exceed the sum paid into court and it shall appear that the
37 latter amount was tendered by the applicant to the defendant prior to the institution of the
38 proceeding, the defendant shall pay the costs of the proceeding in the trial court unless the refusal
39 to accept the tender was based on some ground other than that of insufficiency of compensation
40 and any damages.

§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 is the State of West Virginia or any political subdivision thereof, and ~~be~~ is 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 Before entry, taking possession, appropriation, or use, the applicant shall pay into court
10 ~~such sum as it shall estimate~~ the amount the applicant estimates to be the fair value of the
11 property, or estate, right, or interest therein, sought to be condemned, including, where applicable,
12 the damages, if any, to the residue beyond the benefits, if any, to such residue, by reason of the
13 taking. The court or judge may, at the request of any party to the proceeding, require the clerk of
14 the court to give an additional bond, adequate to protect ~~such~~ the deposit with the clerk; and if
15 such bond is required, the applicant shall pay the necessary premiums.

16 Upon ~~such~~ payment into court, the title to the property, or interest or right therein, sought
17 to be condemned, shall be vested in the applicant, and the court or judge shall, at the request of
18 the applicant, make an order permitting the applicant at once to enter upon, take possession,

19 appropriate and use the property, or interest or right therein, sought to be condemned for the
20 purposes stated in the petition, but the owners of ~~such~~ the property, or interest or right therein, at
21 the time of ~~such~~ payment, including lienors and conflicting claimants, shall have such title, interest,
22 or right in the money paid into court as they had in the property, or interest or right therein, sought
23 to be condemned, and all liens by deed of trust, judgment or otherwise, upon such property, or
24 interest or right therein, shall be transferred to ~~such~~ the fund in court, subject to the provisions of
25 this section. The title in the applicant shall be defeasible until the compensation and any damages
26 are determined in the condemnation proceedings and the applicant has paid any excess amount
27 into court.

28 Upon petition to the court or judge, any person entitled thereto may be paid his or her pro
29 rata share of the money paid into court, or a portion thereof, as ordered by the court or judge, but
30 the acceptance of such payment shall not limit the amount to be allowed by the report of the
31 condemnation commissioners, or the verdict of a jury, if there ~~be~~ is one. Proceedings for the
32 distribution of the money so 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 be~~ is permitted to introduce evidence of ~~such~~ the payment or of the amount so
35 paid into court, or of any amount which has been accepted by any party, nor shall reference be
36 made thereto during the course of the trial.

37 If the applicant ~~shall enter~~ enters upon or ~~take~~ takes possession of the property, under the
38 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 When, after payment into court as provided under the authority of this section, the amount
44 allowed by the report of the condemnation commissioners, or the verdict of a jury, if there ~~be~~ is

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

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

1 Any business corporation, entitled to exercise the powers of eminent domain under this
2 chapter, may file with its petition a bond for a sufficient amount with good sureties, payable to the
3 owner of the property proposed to be taken to secure to ~~such~~ the owner payment for ~~such~~ the
4 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 been given to the owner or to his or her
11 guardian or committee, if he or she ~~be~~ is 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~~ the objection and
15 request, and may require evidence as to the sufficiency of the surety or sureties and as to the
16 sufficiency of the amount of the bond, and may, in its or his or her discretion, require new and
17 additional sureties and a bond for a larger amount and in a more satisfactory form, and when
18 satisfied as to the form, amount and sufficiency of ~~such~~ the bond and sureties, and that the
19 purpose for which the property is to be appropriated is a public use for which private property may
20 be taken upon compensating the owner, the court or judge shall approve the bond and make an
21 order permitting the applicant to enter upon, take possession, appropriate and use the land or
22 property sought to be condemned for the purposes stated in the petition. At any time during the
23 subsequent proceedings on ~~such~~ the petition, if it ~~shall appear~~ appears necessary so to do in
24 order to protect the owner and assure unto him or her the payment of the compensation and
25 damages to which he or she may be entitled, the court or judge may require the applicant to give

26 a new and additional bond with sureties satisfactory to the court or judge.

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

29 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~~ 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 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 the~~ the subsequent report or verdict exceed what was so
4 paid, and the applicant ~~fail~~ fails to pay the same, judgment shall be given against it for the amount
5 of ~~such the~~ the excess, with ~~ten percent~~ interest thereon from the date of filing of the petition until
6 payment, but if what was so paid exceeds the sum ascertained by ~~such the~~ the subsequent report or
7 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~~ 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 ~~be~~ or she is a defendant therein, shall pay the costs ~~occasioned by such~~ of the
12 motion, unless ~~such the~~ the former report was set aside, recommitted or other commissioners
13 appointed on some other ground than that of insufficiency of compensation.

14 If the applicant has stated in his or her application the sum of money which he or she is

15 ready to pay to the owners for any parcel of land proposed to be taken, and it ~~appear~~ appears by
 16 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 parcel for the purpose ~~mentioned~~ stated in his or her application without paying any
 18 greater compensation therefor, he or she shall be adjudged his or her costs in respect to such
 19 parcel, out of the compensation to be paid therefor to the owners.

20 In cases not otherwise provided for, the applicant shall pay the costs of the proceedings.

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

1 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 payment
 3 shall be ~~deemed to be~~ a payment into court. Within 10 days after the payment of an award,
 4 judgment or money into court pursuant to the provisions of this chapter, the condemnor shall
 5 serve notice upon the parties of record except nonresidents and unknown parties whose interests
 6 the applicant seeks to condemn, or upon their counsel of record. Service of notice by registered
 7 or certified mail to the parties' last-known addresses shall be ~~deemed~~ sufficient. Notwithstanding
 8 any other provision of this chapter to the contrary, failure to serve such notice shall result in the
 9 accrual of interest ~~at ten percent~~ upon the award, judgment or money paid into court from the
 10 filing of the petition until ~~such~~ the notice is served or until disbursement ~~be~~ is made to the persons
 11 entitled thereto. The clerk to whom payment is so made, together with the surety on his or her
 12 official bond, shall be liable therefor, as for other moneys collected by him or her by virtue of his
 13 or her office.

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

18 If it shall ~~shall appear~~ appears that the petition states the persons or classes of persons,

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

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

45 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~~ referenced in §54-2-12, §54-2-13, §54-2-14, §54-2-
2 14a, §54-2-15, §54-2-16, and §54-2-18 of this code shall be ~~applicable only to condemnation~~
3 ~~proceedings hereafter instituted~~ assessed in accordance with the provisions of §56-6-31 of this
4 code for judgments in civil actions and shall be applicable to condemnation proceedings instituted
5 on or after July 1, 2021. The 10 percent rate of interest previously applicable to proceedings under
6 the ~~above~~ above-referenced sections shall continue to be applicable to condemnation
7 proceedings ~~heretofore~~ instituted prior to July 1, 2021.

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 two percent above prime on January second each year not to exceed nine percent. The 2020 interest rate is 4.75 percent.

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