

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5027

By Delegates Funkhouser, Hanshaw (Mr. Speaker),
Hornby, D. Cannon, Street, Phillips, Ridenour, Butler,
Kimble, Hott, and Miller

[Introduced February 02, 2026; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §54-1-2 of the Code of West Virginia, 1931, as amended, relating
2 generally to the use of property taken by eminent domain.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. Right of Eminent Domain.

§54-1-2. Public uses for which private property may be taken or damaged.

1 (a) The public uses for which private property may be taken or damaged are as follows:

2 (1) For the construction, maintenance and operation of railroad and traction lines (including
3 extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings,
4 wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for
5 the public use;

6 (2) For the construction and maintenance of telegraph, telephone, electric light, heat and
7 power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and
8 service lines), when for public use;

9 (3) For constructing, maintaining and operating pipelines, plants, systems and storage
10 facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas,
11 and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise,
12 (including the construction and operation of telephone and telegraph lines for the service of such
13 systems and plants), and for underground storage areas and facilities, and the operation and
14 maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil
15 and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be
16 condemned and within the limits of the reservoir proposed to be utilized for such purposes, has
17 ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial
18 quantities, when for public use, the extent of the area to be acquired for such purpose to be
19 determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall
20 be construed to interfere with the power of the state and its political subdivisions to enact and
21 enforce ordinances and regulations deemed necessary to protect the lives and property of citizens

from the effects of explosions of oil or gas;

(4) For constructing, maintaining and operating, water plants and systems, including lines for transporting water by any corporate body politic, or private corporation, for supplying water to the inhabitants of any city, town, village or community, for public use, including lands for pump stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting water, and the right to take and damage lands which may be flooded by the impounded waters, and to appropriate any spring, stream and the surrounding property necessary to protect, preserve and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by means of any storage dam;

(5) For the purpose of constructing, maintaining and operating sewer systems, lines and sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the public welfare and the preservation of the public health, the construction of a sewer line to serve a single building or institution shall be deemed a public use, and, for such purpose, the right of eminent domain, if within a municipal corporation, may be exercised in the name of a municipal corporation, and if not within a municipal corporation, in the name of the county commission of the county in which the property is located;

(6) For the reasonable use by an incorporated company engaged in a public enterprise of which the state or any county or municipality is the sole or a part owner;

(7) For courthouses and municipal buildings, parks, public playgrounds, the location of public monuments, and all other public buildings;

(8) For cemeteries, and the extension and enlargement of existing cemeteries: *Provided*, That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling house, unless to extend the boundaries of an existing cemetery, and then only in such manner that the limits of the existing cemetery shall not be extended nearer than four hundred feet of any dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any dwelling house which is within four hundred feet thereof;

(9) For public schools, public libraries and public hospitals;

(10) For the construction and operation of booms (including approaches, landings and ways necessary for such objects), when for a public use;

(11) By the State of West Virginia for any and every other public use, object and purpose not herein specifically mentioned, but in no event may "public use", for the purposes of this subdivision, be construed to mean the exercise of eminent domain primarily for private economic development.

For purposes of this subdivision, no private property may be taken by the State of West Virginia or its political subdivisions without the owner's consent when the primary purpose of the taking is economic development that will ultimately result in ownership or control of the property transferring to another private entity, other than one having the power of eminent domain, whether by purchase agreement, long-term lease agreement or any other mechanism whereby ownership or control is effectively transferred: *Provided*, That a municipal urban renewal authority may exercise a right of eminent domain as to property only within an area designated a slum area or blighted area under the provisions of article eighteen, chapter sixteen of this code.

By the United States of America for each and every legitimate public use, need and purpose of the government of the United States, within the purview, and subject to the provisions of chapter one of this code.

(12) For constructing, maintaining and operating pipelines, plants, systems and storage facilities, for the transportation by common carrier as a public utility of coal and its derivatives and all mixtures and combinations thereof with any substance by means of pipes, pressure stations or otherwise (including the construction and operation of telephone and telegraph lines for the service of such systems and plants), for public use: *Provided*, That the common carrier engages in some intrastate activity in this state, if there is any reasonable demand therefor: *Provided*, *however*, That in addition to all other requisites by federal or state Constitutions, statute or common law required for the taking of private property for public use, a further prerequisite and

74 condition precedent to the exercise of such taking of or damage to private property for public use
75 as in this subsection hereinabove provided, is that the Public Service Commission of this state, in
76 an appropriate hearing and proceeding on due notice to all interested persons, firms or
77 corporations, in accordance with the procedure now or hereafter established by statute and the
78 regulations thereunder, shall have found that such pipeline transportation of coal and its
79 derivatives and all mixtures and combinations thereof is required for the public convenience and
80 necessity, and that the Public Service Commission of this state shall not extend a certificate of
81 convenience and necessity or make such finding of public convenience and necessity unless, in
82 addition to the other facts required to support such findings, it shall have been established by the
83 applicant therefor that the patents and other similar rights under which the applicant proposes to
84 construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and
85 shall remain equally available, insofar as said subsequent applicant may determine such
86 availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of
87 convenience and necessity and finding of fact for any other pipeline in West Virginia; for the
88 purpose of making the findings hereinbefore set forth the Public Service Commission shall have
89 and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be
90 subject to judicial review as in other Public Service Commission proceedings.

91 It is the intention of the Legislature in amending this section by the addition of subdivision
92 (12) to extend the right of eminent domain to coal pipelines for public use; to provide for regulation
93 of such coal pipelines by the Public Service Commission of this state or the Interstate Commerce
94 Commission of the United States of America, or both; to assure that such rights shall be extended
95 only to public utilities or common carriers as distinguished from private carriers or contract carriers;
96 to make patents covering the same equally available to others on fair and reasonable terms; and
97 to prevent monopolistic use of coal pipelines by any users thereof which would result in any
98 appreciable economic detriment to others similarly situated by reasons of any such monopoly.

99 (b) Notwithstanding any other provision of law to the contrary, if private property taken for

100 public use under this article is not used for the purpose for which it was taken within two years after
101 the taking, or becomes abandoned for two years after the taking, the original property owner shall
102 have the right to purchase it for the same amount as was received when the property was taken.

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NOTE: The purpose of this bill relates generally to the use of property taken by eminent domain.

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