

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2960

BY DELEGATES ANDERSON, HIGGINBOTHAM, AZINGER,

HOLLEN AND NELSON

[Introduced February 11, 2019; Referred
to the Committee on Energy]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §37-12-3, relating to entry onto private property for certain purposes by a
 3 federally regulated natural gas company without written permission of the property owner
 4 under certain defined conditions; requiring a written request for permission to enter
 5 property prior to entry; requiring notice of intent to enter property prior to entry; declaring
 6 the legal status of such entry; requiring natural gas company pay the landowner \$500 per
 7 five day initial entry and \$100 per day thereafter; distinguishing lawful entry under other
 8 authority; and limiting property owner’s liability with respect to the company’s entry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. SURVEYORS.

§37-12-3. Entry by natural gas companies to obtain data.

1 (a) Any firm, corporation, company, or partnership, organized for the bona fide purpose of
 2 operating, transporting, or selling natural gas in interstate commerce as a natural gas company
 3 as defined in 15 U.S.C. § 717a, as amended, and regulated by the Federal Energy Regulatory
 4 Commission, regardless of the location of the consumer, may by its duly authorized officers,
 5 agents, contractors or employees, enter onto any property without the written permission of the
 6 property owner to make such inspections, examinations, tests, hand auger borings, appraisals
 7 and surveys for its proposed line or location of its works: (i) To satisfy any regulatory requirements;
 8 or (ii) for the selection of the most advantageous location or route, the improvement or
 9 straightening of its line or works, changes of location or construction, or providing additional
 10 facilities, under the following conditions:

11 (1) The natural gas company has requested the owner’s permission to enter the property
 12 as provided by subsection (b) of this section;

13 (2) The owner’s written permission is not received prior to the date entry is proposed; and

14 (3) The natural gas company has given the owner notice of intent to enter as provided by
 15 subsection (c) of this section; and

16 (4) The natural gas company has sent or delivered to the record surface owners \$500 in
17 total for an initial five day entry and \$100 per day thereafter as provided for in subsection (d) of
18 this section.

19 A natural gas company may use motor vehicles, self-propelled machinery, and power
20 equipment on property only after receiving the permission of the landowner or his or her agent.

21 (b) A request to enter shall:

22 (1) Be sent to any record owner by certified mail, return receipt requested;

23 (2) Identify up to five days upon which such entry is proposed to be made; and

24 (3) Be sent not less than 15 days prior to the first date of entry.

25 (c) Notice of intent to enter shall:

26 (1) Be sent to any record owner by certified mail, return receipt requested;

27 (2) Set forth the specific dates, not to exceed five days, per intended entry; and

28 (3) Be sent not less than 15 days prior to the first date of intended entry onto the property.

29 (d) Any entry authorized by and in compliance with this section is neither a trespass nor a
30 taking. Such entries shall be considered a minimal intrusion and shall not exceed five days per
31 initial notice. The natural gas company shall send or deliver to the surface owners \$500 in total
32 for an initial five-day entry and shall make reimbursement for any actual damages resulting from
33 all entry or entries. After the expiration of the initial 5 day entry period, the natural gas company
34 may send or deliver an additional \$100 per day to the surface owners to reenter the property,
35 provided the natural gas company again complies with the notice provisions found in subsections
36 (b) and (c) of this section prior to reentry.

37 (e) Nothing in this section shall impair or limit any right of a natural gas company obtained
38 by:

39 (1) The power of eminent domain;

40 (2) Any easement granted by the landowner or his or her predecessor in title; or

41 (3) Any right-of-way agreement, lease or other agreement by and between a natural gas
42 company and a landowner or their predecessors in title or interest.

43 (f) The natural gas company and its contractors and agents shall defend, indemnify and
44 hold harmless the property owner for all claims arising out of an entry onto property under this
45 section by the natural gas company or its contractors and agents, and the property owner shall
46 have no liability for any claims, including without limitation bodily injury, property damage, or
47 environmental claims, arising out of an entry onto property under this section by a natural gas
48 company or its contractors and agents, except a property owner is liable for his or her intentional
49 acts.

NOTE: The purpose of this bill is to permit natural gas companies federally regulated by the Federal Energy Regulatory Commission and doing business in interstate commerce to obtain data to comply with regulatory requirements or to survey land for interstate pipeline or pipeline facility development. This bill also requires natural gas companies to enter private property without prior consent from the owner for the limited purposes of request permission from the owner to inspect property and to provide the owner notice of intent to enter property prior to entry. The bill requires the natural gas company to send or deliver the surface owner moneys to compensate for the entry. The bill further preempts entries authorized under this section from being deemed either a trespass or a taking and limits a property owner's liability with respect to the company's entry.

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