

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 596

BY SENATOR CARMICHAEL AND WALTERS

[Introduced February 12, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §37-16-1, relating to permitting natural gas companies to enter upon real
 3 property in certain instances for limited purposes; setting forth those instances and
 4 purposes; making legislative findings; establishing a procedure to enter upon the property;
 5 requiring the company to pay for damages; excluding certain activities; exempting the
 6 company and its agents from trespass penalties if certain conditions are met; and
 7 providing that certain other rights are not impaired.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §37-16-1, to read as follows:

ARTICLE 16. NATURAL GAS COMPANIES; SURVEYS AND OTHER STUDIES.

**§37-16-1. Natural gas companies; findings; right of entry upon property; notice; studies;
 limitations.**

1 (a) Legislative findings.-- The Legislature finds that it is in the public interest to grant
 2 natural gas companies regulated or to be regulated under the Natural Gas Act of 1938, 15 U.S.C.
 3 §717-717w, a right of entry to real property for survey and study purposes in order to compile
 4 information to satisfy regulatory requirements or select the most advantageous location or route
 5 for facilities to be regulated under that act.

6 (b) Right of Entry for survey activities. -- Provided that the requirements set forth in
 7 subsections (c) and (d) of this section have been met, any firm, corporation, company, or
 8 partnership organized for the bona fide purpose of operating as a natural gas company, as defined
 9 in 15 U.S.C. §717a, and its agents, employees, contractors, subcontractors, or consultants may
 10 enter upon any real property without permission of the owner(s) in order to make examinations,
 11 inspections, studies, tests, hand auger borings, hand excavations, appraisals, and surveys,
 12 collectively called the "Studies." A natural gas company does not need to be in current possession

13 of a certificate of public convenience and necessity under the Natural Gas Act at the time of
14 notification or entry so long as it is organized for such purposes and intends to use the studies to:
15 (1) Satisfy any regulatory requirements; (2) prepare any necessary applications for approval by
16 any regulatory body or agency; (3) respond to any data requests or other inquiries from any
17 regulatory or agency authority or public official; (4) aid in the selection of a location for proposed
18 pipelines or other facilities, or the relocation or expansion of existing facilities; or (5) aid in the
19 engineering and design of any proposed or existing facilities.

20 (c) Request for permission to perform studies. -- A natural gas company shall attempt to
21 obtain permission to perform the studies by sending a Request for Permission to the owner, by
22 certified mail, identifying the approximate date or dates for such studies. The Request for
23 Permission shall be sent at least fifteen calendar days prior to the first proposed date of entry
24 upon the property. The Request for Permission may be made to an owner of record in the clerk
25 of the county commission where the property is located as of the date of mailing. If more than
26 three tenants in common or other coowners of interests described in this subsection hold interests
27 in the property that is the subject of the Request for Permission, the natural gas company may
28 send the request to the person to whom the sheriff is required to mail the annual tax ticket
29 pursuant to section eight, article one, chapter eleven-a of this code. Permission from any owner
30 of record shall be sufficient to allow the studies to proceed. Permission may be written or verbal.
31 In the event permission is revoked, the studies may be performed pursuant to section (d) of this
32 section.

33 (d) Notice of intent to enter to perform studies.-- Concurrent with or subsequent to the
34 Request for Permission, the natural gas company shall send a Notice of Intent to Enter the real
35 property to perform the studies to an owner(s) of record as of the date the Request for Permission
36 is made. If more than three tenants in common or other coowners of interests described in this
37 subsection hold interests in the property that is the subject of the Notice of Intent to Enter, the
38 natural gas company may send the request to the person to whom the sheriff is required to mail

39 the annual tax ticket pursuant to section eight, article one, chapter eleven-a of this code. The
40 Notice of Intent to Enter shall be sent by certified mail and set forth the approximate date that
41 entry to perform the studies is anticipated, which shall not be sooner than fifteen calendar days
42 after mailing. The Request for Permission and the Notice of Intent to Enter may be sent in the
43 same mailing.

44 (e) The entry upon real property by the natural gas company or its agents, employees,
45 contractors, subcontractors and consultants to perform studies is not a trespass and those
46 persons and entities are not subject to the penalties set forth in article three-b, chapter sixty-one
47 of this code if the entry is pursuant to a grant of permission obtained under subsection (c) of this
48 section or a Notice of Intent to Enter has been made under section (d) of this section.

49 (f) Nothing in this section allows the natural gas company, in performing the studies, to
50 park or use motor vehicles on any real property, or to use chainsaws or other power equipment,
51 without the consent of the owner. The natural gas company shall reimburse the owner for any
52 actual damages resulting from the studies.

53 (g) Requests for Permission and Notices of Intent to Enter, may be sent and any studies
54 may be performed by the natural gas company or its agents, employees, contractors,
55 subcontractors and consultants.

56 (h) Nothing in this section impairs or limits any right of a natural gas company obtained
57 by: (1) The power of eminent domain; (2) any easement granted by the landowner or his or her
58 predecessor in title; or (3) any right-of-way agreement, lease or other agreement by and between
59 a natural gas company and a landowner or their predecessors in title or interest.

NOTE: The purpose of this bill is to permit natural gas companies to enter upon real property in certain instances for limited purposes. The bill sets forth those instances and purposes. The bill makes legislative findings. The bill establishes a procedure to enter upon the property. The bill requires the company to pay for damages. The bill excludes certain activities. The bill exempts the company and its agents from trespass penalties if certain conditions are met. The bill provides that certain other rights are not impaired.

Strike-throughs indicate language that would be stricken from a heading or the present law,

and underscoring indicates new language that would be added.