

# **WEST VIRGINIA LEGISLATURE**

**2016 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 596**

BY SENATORS CARMICHAEL AND WALTERS

[Originating in the Committee on the Judiciary;

reported on February 25, 2016.]

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 landowner protection by setting forth written notice from  
3 natural gas companies prior to entry for studies and surveys; permitting natural gas  
4 companies to enter upon real property only in certain instances for limited purposes;  
5 setting forth those instances and purposes; making legislative findings; establishing a  
6 procedure to enter upon the property; requiring the company to pay for damages;  
7 excluding certain activities; exempting the company and its agents from trespass penalties  
8 if certain conditions are met; and 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.  
3 C. §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 for  
10 the purposes of selecting the most advantageous location or route, pursuant to the Natural Gas  
11 Act of 1938, 15 U. S. C. §717-717w, may enter upon any real property without permission of the  
12 owner or owners in order to make examinations, inspections, studies, tests, hand auger borings,

13 hand excavations, appraisals and surveys, collectively called the “studies”. A natural gas  
14 company shall have made application and been assigned a docket number under the Natural Gas  
15 Act at the time of notification or entry so long as it is organized for such purposes and intends to  
16 use the studies to: (1) Satisfy any regulatory requirements; (2) prepare any necessary applications  
17 for approval by any regulatory body or agency; (3) respond to any data requests or other inquiries  
18 from any regulatory or agency authority or public official; (4) aid in the selection of a location for  
19 proposed pipelines or other facilities, or the relocation or expansion of existing facilities; or (5) aid  
20 in the engineering and design of any proposed or existing facilities.

21 (c) Request for permission to perform studies. — A natural gas company shall attempt to  
22 obtain permission to perform the studies by sending a Request for Permission to the owner by  
23 certified mail identifying the approximate date or dates for such studies. The Request for  
24 Permission shall be sent between fifteen and sixty calendar days prior to the first proposed date  
25 of entry upon the property.

26 (1) The Request for Permission shall be made to an owner or owners of record in the  
27 clerk of the county commission where the property is located as of the date of mailing and the  
28 person or persons to whom the sheriff is required to mail the annual tax ticket pursuant to section  
29 eight, article one, chapter eleven-a of this code.

30 (2) If the identity of the occupants of the property that is subject of the Request for  
31 Permission is known to be different from any of the individuals mentioned in subdivision (1) of this  
32 subsection and can be ascertained by reasonable due diligence, the Request shall be sent to the  
33 occupant or occupants of the residences on the property or any commercial structures.

34 Permission from any owner of record shall be sufficient to allow the studies to proceed.  
35 Permission may be written or verbal. In the event permission is revoked, the studies may be  
36 performed pursuant to section (d) of this section.

37 (d) Notice of intent to enter to perform studies. — Concurrent with, or subsequent to, the  
38 Request for Permission, the natural gas company shall send a Notice of Intent to Enter the real

39 property to perform the studies to the owner or owners of record as of the date the Request for  
40 Permission is made. The Notice of Intent to Enter shall be served the same as the Request for  
41 Permission. The Request for Permission and the Notice of Intent to Enter may be sent in the same  
42 mailing.

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

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

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

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

59 (i) The notice required by this article neither prevents nor requires the landowner or  
60 landowners to be present during the survey activities. The date set forth in the notice may be  
61 changed with consent of both parties.