

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4168

BY DELEGATES ANDERSON, KELLY, ZATEZALO, LANE AND

HIGGINBOTHAM

[Introduced January 17, 2018; Referred
to the Committee on Energy then the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §54-1-3b, 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 requiring a written request for permission to inspect property prior to entry; requiring notice
 5 of intent to enter property prior to entry; declaring the legal status of such entry;
 6 distinguishing lawful entry under other authority; and limiting property owner’s liability with
 7 respect to the company’s entry.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-3b. 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, may by its duly authorized officers, agents, or employees, enter onto any property
 5 without the written permission of the property owner to make such examinations, tests, hand
 6 auger borings, appraisals and surveys for its proposed line or location of its works as are
 7 necessary: (i) To satisfy any regulatory requirements; and (ii) for the selection of the most
 8 advantageous location or route, the improvement or straightening of its line or works, changes of
 9 location or construction, or providing additional facilities, under the following conditions:

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

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

13 (3) The natural gas company has given the owner notice of intent to enter as provided in
 14 subsection (c) of this section.

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

- 17 (b) A request for permission to inspect shall:
18 (1) Be sent to the owner by certified mail, return receipt requested;
19 (2) Set forth the date such inspection is proposed to be made; and
20 (3) Be sent not less than fifteen days prior to the date of the proposed inspection.
21 (c) Notice of intent shall:
22 (1) Be sent to the owner by certified mail, return receipt requested;
23 (2) Set forth the date of the intended entry; and
24 (3) Be sent not less than fifteen days prior to the date of intended entry onto the property.
25 (d) Any entry authorized by and in compliance with this section is neither a trespass nor a
26 taking. Such entries shall be considered a minimal intrusion. The natural gas company shall make
27 reimbursement for any actual damages resulting from such entry.
28 (e) Nothing in this section shall impair or limit any right of a natural gas company obtained
29 by:
30 (1) The power of eminent domain;
31 (2) Any easement granted by the landowner or his or her predecessor in title; or
32 (3) Any right-of-way agreement, lease or other agreement by and between a natural gas
33 company and a landowner or their predecessors in title or interest.
34 (f) The natural gas company and its contractors and agents shall defend, indemnify and
35 hold harmless the property owner for all claims arising out of an entry onto property under this
36 section by the natural gas company or its contractors and agents, and the property owner shall
37 have no liability for any claims, including without limitation bodily injury, property damage, or
38 environmental claims, arising out of an entry onto property under this section by a natural gas
39 company or its contractors and agents, except a property owner is liable for his or her intentional
40 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 enter private property without prior consent from the owner for the limited purposes of obtaining 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 request permission from the owner to inspect property and to provide the owner notice of intent to enter property prior to 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.