

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 849**

By Senator Queen

[Introduced February 19, 2024; referred  
to the Committee on Agriculture and Natural  
Resources; and then to the Committee on Finance]

1 A BILL to amend and reenact §17-2A-17a of the Code of West Virginia, 1931, as amended,  
 2 relating to clarifying the definition of utility and establishing that private natural resource  
 3 property shall not be taken without just compensation.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-17a. Acquisition of property for utility accommodation purposes; "utility" defined.**

1 (a) The Legislature finds that it is in the public interest for utility facilities and natural  
 2 resources production and transportation facilities to be accommodated on the right-of-way of state  
 3 highways when such use and occupancy of the highway right-of-way does not adversely affect  
 4 highway or traffic safety or otherwise impair the highway or its aesthetic quality, and does not  
 5 conflict with the provisions of federal, state, or local laws, legislative rules, or agency policies.  
 6 Utilities and natural resources production and transportation facilities provide essential services to  
 7 the general public and, as a matter of sound economic public policy and law, utilities have used  
 8 state road rights-of-way for transmitting and distributing their services. The accommodation of  
 9 utility facilities on the rights-of-way of state highways serves an important public purpose by  
 10 increasing public access to utility services.

11 (b) "Utility" and "public utility" (having the same meaning for purposes of this chapter)  
 12 ~~means~~ mean, for purposes of this chapter, any privately, publicly, or cooperatively owned line,  
 13 facility, or system for producing, transmitting, or distributing communications, data, information,  
 14 video services, power, electricity, light, heat, gas, oil, crude products, water, steam, waste,  
 15 stormwater not connected with highway drainage, or any other similar commodity, including any  
 16 fire or police signal system or street lighting system, which directly ~~or indirectly~~ serves numerous  
 17 members of the public generally and is actively regulated and controlled as to rates and terms of  
 18 service as a public utility by the West Virginia Public Service Commission or the Federal Energy  
 19 Regulatory Commission serves the public. The term "utility" also includes those similar facilities  
 20 which are owned or leased by a government agency for its own use, or otherwise dedicated solely

21 to governmental use, or those facilities which are owned or leased by a local exchange carrier, as  
22 defined by 150 CSR 6. If oil, crude products, natural gas, natural gas liquids, propane, hydrogen,  
23 nitrogen, carbon dioxide, water used in connection with the production and/or gathering of oil or  
24 gas, or other natural resource line of any entity except a utility is moved, relocated, adjusted or  
25 taken or used for any public use then just compensation shall be provided. For relocated lines, the  
26 cost of relocation shall be reimbursed within 90 days of the date the cost of relocation is  
27 determined and communicated to the office of the Commissioner.

28 (c) In addition to all other powers given and assigned to the commissioner in this chapter,  
29 the commissioner may acquire, either temporarily or permanently, in the name of the division, and  
30 adjacent to public roadways or highways, all real or personal property, public or private, or any  
31 interests or rights therein, including any easement, riparian right, or right of access, determined by  
32 the commissioner to be necessary for present or presently foreseeable future utility  
33 accommodation purposes.

34 (d) Notwithstanding any provision of this article to the contrary, the commissioner may  
35 lease real property held by the division or any interest or right in the property, including airspace  
36 rights, if any, for the purpose of accommodating any utility providing telecommunications or  
37 broadband services that has requested a lease if the commissioner finds, in his or her sole  
38 discretion, that entering into the lease agreement with such utility is in the public interest. The  
39 execution and governance of such accommodation leases are subject to the following:

40 (1) The term of any accommodation lease authorized by this section may not exceed 30  
41 years;

42 (2) Neither competitive bids nor public solicitations are required prior to entering into a  
43 utility accommodation lease;

44 (3) Any utility accommodation lease shall require the utility to pay fair market value for the  
45 real property interest as determined by the commissioner: *Provided*, That because the social,  
46 environmental, and economic benefits from such use of state highway rights-of-way is of

47 overwhelming value to the citizens of this state and is in the overall public interest, the division  
48 shall establish the fair market value for purposes of this article at \$0 in monetary compensation:  
49 *Provided, however,* That a utility accommodation lease may include provisions that convey the  
50 state in-kind compensation if the lease includes multiple districts of the Division of Highways;  
51 (4) For any utility which is not subject to the jurisdiction of the Public Service Commission,  
52 an accommodation lease may not contain any exclusivity provisions;  
53 (5) The provisions of this subsection do not require any utility to lease any real property, or  
54 any interest or right in the property, from the commissioner; and  
55 (6) The ownership, control, or any rights related to any in-kind compensation received by  
56 the division may, upon written approval of the Governor, be transferred or assigned to any other  
57 state agency.

NOTE: The purpose of this bill is to provide just compensation to owners of coal slurry, oil, gas, crude products, hydrogen, nitrogen, carbon dioxide or other natural resource lines if their property is taken for public use and to pay compensation for use of highways as determined by the commissioner.

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