

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3011

BY DELEGATES WARD, CAPUTO, MCGEEHAN AND FOLK

[Introduced March 14, 2017; Referred
to the Committee on Energy then the Judiciary]

1 A BILL to amend and reenact §54-2-9 of the Code of West Virginia, 1931, as amended, relating
 2 to changing the determination of just compensation to be paid to the landowner when
 3 eminent domain is used for a pipeline.

Be it enacted by the Legislature of West Virginia:

1 That §54-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 to read as follows:

ARTICLE 2. PROCEDURE.

§54-2-9. Report of commissioners.

1 The commissioners, after viewing the property, if a view is demanded, and hearing any
 2 proper evidence which is offered shall ascertain what will be a just compensation to the person
 3 entitled thereto for so much thereof as is proposed to be taken, or for the interest therein, if less
 4 than a fee is proposed to be taken, and for damage to the residue of the tract beyond all benefits
 5 to be derived, in respect to such residue, from the work to be constructed, or the purpose to which
 6 the land to be taken is to be appropriated. ~~including~~, When less than the fee is taken, the actual
 7 damage, if any, done, or that may be done, to the fee by such construction shall be included. ~~and~~
 8 When the interest in property is for a pipeline, unless the pipeline directly connects to a
 9 residential or commercial end user, just compensation shall be determined by the value of the
 10 pipeline across the property to the owner of the pipeline or the owner of the beneficial interest in
 11 the pipeline or by the value of the owner of the property interest taken, whichever is higher. Instead
 12 of a one time payment, payments over time contingent upon the value of the pipeline over time
 13 may be awarded. The commissioners shall make report to the following effect: We, the
 14 commissioners, appointed by the circuit court of county, (or by the judge thereof in
 15 vacation, as the case may be) by an order made on the day of on the application of
 16 respectfully report, that having first been duly sworn, we have viewed the real estate
 17 owned by, mentioned in the said application, and are of opinion that dollars will
 18 be a just compensation for so much of the said real estate as is proposed to be taken by the said

19 applicant, that is to say: (here describe the part to be taken, and the interest therein, if less than
20 a fee, so as to identify the same with reasonable certainty, which description may be
21 supplemented by reference to a plat annexed to the report, or in any manner that would be
22 sufficient in a conveyance) as well as for damages to the residue of the said real estate beyond
23 all benefits which will be derived in respect to such residue from the work to be constructed (or
24 from the purposes to which the part to be taken by said applicant is to be appropriated).

25 Given under our hands this day of

26 But if the property is proposed to be taken by a company incorporated for construction of
27 a railroad, no damages shall be ascertained for the construction of any farm crossing, fences, or
28 cattle guards, or for keeping the same in repair. The report shall be signed by at least three of the
29 commissioners, and forthwith returned to the clerk's office of the court, to be filed with the papers
30 of the case.

NOTE: The purpose of this bill is to change the determination of "just compensation" to be paid to the landowner when eminent domain is used for a pipeline and the pipeline does not connect directly to a residential or commercial end user. Currently the common law provides that the just compensation paid to the landowner is the value to the land owners of the interest taken before the pipeline was proposed. Under the bill the just compensation will be the higher of either the value to the landowner of the landowner's interest taken or the value of the pipeline to the person or entity seeking to use eminent domain for the pipeline. And regular payments contingent upon the value of the pipeline over time may be awarded.

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