WEST virginia legislature

2021 regular session

Introduced

Senate Bill 123

By Senator Baldwin

[Introduced February 10, 2021; referred
to the Committee on Energy, Industry, and Mining; and then to the Committee on the Judiciary]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. PROCEDURE.

§54-2-9. Report of commissioners.

The commissioners, after viewing the property, if a view is demanded, and hearing any proper evidence which is offered shall ascertain what will be a just compensation to the person entitled thereto for so much thereof as is proposed to be taken, or for the interest therein, if less than a fee is proposed to be taken, and for damage to the residue of the tract beyond all benefits to be derived, in respect to ~~such~~ the residue, from the work to be constructed, or the purpose to which the land to be taken is to be appropriated. ~~including~~ When less than the fee is taken, the actual damage, if any, done, or that may be done, to the fee by ~~such~~ the construction shall be included. ~~and~~

When the interest in property is for a pipeline, unless the pipeline directly connects to a residential or commercial end user, just compensation shall be determined by the value of the pipeline across the property to the owner of the pipeline or the owner of the beneficial interest in the pipeline or by the value of the owner of the property interest taken, whichever is higher. Instead of a one-time payment, payments over time contingent upon the value of the pipeline over time may be awarded. The commissioners shall make report to the following effect: We, the commissioners, appointed by the circuit court of ............ county, (or by the judge thereof in vacation, as the case may be) by an order made on the ........ day of ........ on the application of ............... respectfully report, that having first been duly sworn, we have viewed the real estate owned by ..............., mentioned in the ~~said~~ application, and are of opinion that ........ dollars will be a just compensation for so much of the said real estate as is proposed to be taken by the ~~said~~ applicant, that is to say: (here describe the part to be taken, and the interest therein, if less than a fee, so as to identify the same with reasonable certainty, which description may be supplemented by reference to a plat annexed to the report, or in any manner that would be sufficient in a conveyance) as well as for damages to the residue of the ~~said~~ real estate beyond all benefits which will be derived in respect to ~~such~~ the residue from the work to be constructed (or from the purposes to which the part to be taken by ~~said~~ the applicant is to be appropriated).

Given under our hands this ........ day of .............

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