

# **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]

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:*

**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~~ the residue, from the work to be constructed, or the purpose to  
 6 which the land to be taken is to be appropriated. ~~including~~ When less than the fee is taken, the  
 7 actual damage, if any, done, or that may be done, to the fee by ~~such~~ the construction shall be  
 8 included. ~~and~~

9 When the interest in property is for a pipeline, unless the pipeline directly connects to a  
 10 residential or commercial end user, just compensation shall be determined by the value of the  
 11 pipeline across the property to the owner of the pipeline or the owner of the beneficial interest in  
 12 the pipeline or by the value of the owner of the property interest taken, whichever is higher. Instead  
 13 of a one-time payment, payments over time contingent upon the value of the pipeline over time  
 14 may be awarded. The commissioners shall make report to the following effect: We, the  
 15 commissioners, appointed by the circuit court of ..... county, (or by the judge thereof in  
 16 vacation, as the case may be) by an order made on the ..... day of ..... on the application of  
 17 ..... respectfully report, that having first been duly sworn, we have viewed the real estate  
 18 owned by ....., mentioned in the ~~said~~ application, and are of opinion that ..... dollars will  
 19 be a just compensation for so much of the said real estate as is proposed to be taken by the ~~said~~  
 20 applicant, that is to say: (here describe the part to be taken, and the interest therein, if less than

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

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

27           But if the property is proposed to be taken by a company incorporated for construction of  
 28 a railroad, no damages ~~shall~~ may be ascertained for the construction of any farm crossing, fences,  
 29 or cattle guards, or for keeping the same in repair. The report shall be signed by at least three of  
 30 the commissioners, and forthwith returned to the clerk's office of the court, to be filed with the  
 31 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.