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SENATE BILL NO. 324

Offered January 10, 2018

Prefiled January 8, 2018

A BILL to amend and reenact § 56-49.01 of the Code of Virginia, relating to natural gas companies; right of entry upon property; remedies; injunctive relief; public use certification required as condition to lawful entry; issuance of public use certification by State Corporation Commission.

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-49.01 of the Code of Virginia is amended and reenacted as follows:

§ 56-49.01. Natural gas companies; right of entry upon property.

A. Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a, as amended, may make such examinations, tests, hand auger borings, appraisals, and surveys for its proposed line or location of its works as are necessary (i) to satisfy any regulatory requirements and or (ii) for the selection of the most advantageous location or a route, the improvement or straightening of its line or works, changes of location or construction, or providing additional facilities, and for such purposes, by its duly authorized officers, agents, or employees or facility location, may enter upon any property without the written permission of its owner if (a) the natural gas company has requested the owner's permission to inspect the property as provided in subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, and (c) the natural gas company has given the owner notice of intent to enter as provided in subsection C, and (d) the natural gas company has been issued a public use certificate by the State Corporation Commission as provided in subsection F. A natural gas company may use motor vehicles, self-propelled machinery, and power equipment on property only after receiving the permission of the landowner or his agent.

B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth the date such inspection is proposed to be made, and (iii) set forth a description of each type of survey and each entity or agent proposed to make such survey, and (iv) be made not less than 15 days prior to the date of the proposed inspection. This request shall be sent at least 21 days prior to any notice of intent to enter sent pursuant to subsection C.

C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of the intended entry, and (iii) set forth the time and location where the first entry will occur, (iv) set forth the duration of the surveys, and (v) be made not less than 15 days prior to the date of mailing of the notice of intent to enter entry. For any survey lasting longer than 24 hours, the natural gas company shall set forth the reasons why the survey cannot be conducted within 24 hours, such as the large size of the area to be surveyed, difficult terrain, or other extenuating circumstances.

D. Any entry authorized by this section shall not be deemed a trespass. The natural gas company shall make reimbursement pay treble damages for any actual damages resulting from such entry. Nothing in this section shall impair or limit any right of a natural gas company obtained by (i) the power of eminent domain, (ii) any easement granted by the landowner or his predecessor in title, or (iii) any right-of-way agreement, lease, or other agreement by and between a natural gas company and a landowner or their predecessors in title or interest. The landowner or any person designated in writing by the landowner as his agent may accompany any surveyors and may record or photograph survey activities by any available means.

E. Any landowner may request a temporary restraining order against entry by a natural gas company upon the filing of the landowner's complaint and affidavit in the circuit court for the jurisdiction in which the property is located, and in accordance with law governing such orders. Such affidavit may set forth a past or imminent violation of this section by a natural gas company purporting to enter under authority of this section. Violations include failure to enter as agreed with the landowner pursuant to subsection B, failure to provide sufficient notice as required by subsection C, or violating the limitations set forth in subsection A. Such restraining order may be maintained until an evidentiary hearing may be held. If at trial the landowner demonstrates by a preponderance of the evidence that the company entered or attempted to enter the landowner's real property in violation of this section, or violated this section by breaching any agreement reached pursuant to this section, the landowner shall be entitled to a trespass penalty of \$500 per day per individual entering or attempting to enter the property or per individual granted permission to enter pursuant to agreement. Upon such showing, the

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59 landowner shall also be entitled to costs and attorney fees.

60 F. No entry pursuant to this section shall be lawful unless the natural gas company has obtained a  
61 public use certification from the Commission. The Commission is authorized to issue a public use  
62 certification upon satisfaction of the following requirements:

63 1. The natural gas company has submitted an application or pre-application to the appropriate  
64 federal or state regulatory authority;

65 2. The natural gas company has notified potentially affected landowners of the potential surveys and  
66 public use certification application by certified mail;

67 3. The natural gas company has set forth a prima facie case that the proposed pipeline or facility  
68 would be for public use. There shall be no public use if the proposed facility is significantly designed  
69 for foreign commerce or if the proposed facility will not provide natural gas to public utilities or  
70 citizens of the Commonwealth;

71 4. The natural gas company provides proof of liability insurance for each person expected to enter  
72 any property pursuant to this section; and

73 5. The Commission has reasonably considered and responded to the written comments or objections  
74 of any potentially affected landowner.

75 G. Procedures before the Commission regarding the issuance of a public use certification pursuant  
76 to subsection F shall conform to the Commission's Rules of Practice and Procedure set forth at  
77 5VAC5-20-10 et seq.

78 H. Any potentially affected landowner may obtain judicial review of the Commission's issuance of a  
79 public use certificate by appealing the decision of the Commission to the Supreme Court in accordance  
80 with § 12.1-39.

81 I. For purposes of this section and the public use certification, "public use" means that the general  
82 public of Virginia shall have a right to a certain and definite use of a private property on terms and for  
83 charges fixed by law, and the owner of the property shall be compelled by law to permit the general  
84 public to enjoy it or its services. For pipelines subject to this section, this means that the pipeline shall  
85 be obligated to serve the general public of Virginia and shall be regulated in such obligation. This  
86 definition is not met if the pipeline does not distribute gas to regulated public utilities or to natural gas  
87 distribution systems within the Commonwealth.

88 J. If any person enters private property pursuant to this section and is not licensed or otherwise duly  
89 authorized under Virginia law or federal law, as applicable, to conduct the intended surveys, such entry  
90 shall be an independent violation of this section and subject to the penalties and procedures set forth in  
91 subsection E.

92 K. Any landowner shall be entitled to a true and complete copy of all data, reports, maps, tables,  
93 laboratory analyses, and other documentation reflecting or resulting from information collected on the  
94 landowner's real property. A copy shall be provided to the landowner within 60 days of any entry  
95 during which the information is collected, unless the parties agree otherwise.

96 L. Any person entering property pursuant to this section shall be obligated to provide  
97 government-issued or employer-issued identification and proof of insurance to the landowner upon the  
98 landowner's written or oral request.