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HOUSE BILL NO. 2112

Offered January 9, 2019

Prefiled January 8, 2019

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.

Patrons—Hurst; Senator: Deeds

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 for public use, 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. 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 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 injunction 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 injunctions. 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 violation of the limitations set forth in subsection A. Such an injunction 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 landowner shall also be entitled to costs and attorney fees.

F. For purposes of this section, "public use" means that the general public of Virginia shall have a

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59 right to a certain and definite use of a private property on terms and for charges fixed by law, and the
60 owner of the property shall be compelled by law to permit the general public to enjoy it or its services.
61 For pipelines subject to this section, a pipeline is for a public use if it is obligated to serve the general
62 public of Virginia and shall be regulated in such obligation. This definition is not met if the pipeline
63 does not distribute gas to regulated public utilities or to natural gas distribution systems within the
64 Commonwealth.

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

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

73 I. Any person entering property pursuant to this section shall be obligated to provide
74 government-issued or employer-issued identification and proof of insurance to the landowner upon the
75 landowner's written or oral request.