

Stricken language would be deleted from and underlined language would be added to present law.  
Act 1130 of the Regular Session

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S2/25/13 S3/12/13

# A Bill

SENATE BILL 187

By: Senator D. Johnson  
By: Representatives Williams, Vines

## For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 18 OF  
THE ARKANSAS CODE CONCERNING PROPERTY RIGHTS AND  
INTERESTS; AND FOR OTHER PURPOSES.

### Subtitle

AN ACT TO MAKE TECHNICAL CORRECTIONS TO  
TITLE 18 OF THE ARKANSAS CODE CONCERNING  
PROPERTY RIGHTS AND INTERESTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 18-15-501 is amended to read as follows to remove terminology that relied on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter:

18-15-501. Right-of-way construed.

The right-of-way provided for under this section and §§ 18-15-502-- 18-15-509 shall be construed to include all lands necessary for dams and the backwater resulting there from, levees, approaches, abutments, canals, reservoirs, powerhouses, and other purposes incident to the business of generating, transmitting, distributing, or supplying electricity to or for the public for compensation or for public use by *an electric utility*.

SECTION 2. Arkansas Code § 18-15-502 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed



before the enactment of that chapter:

18-15-502. Exception.

No action to condemn the right-of-way over, upon, or along any street or alley in any city or incorporated town shall be instituted or maintained by *an electric utility* as against any city or incorporated town.

SECTION 3. Arkansas Code § 18-15-503 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter and make technical corrections:

18-15-503. Powers.

(a)(1)(A) ~~Any~~ An *electric utility organized or domesticated* under the laws of this state for the purpose of generating, transmitting, distributing, or supplying electricity to or for the public for compensation or for public use may construct, operate, and maintain such lines of wire, cables, poles, or other structures necessary for the transmission or distribution of electricity and broadband services:

- (i) Along and over the public highways and the streets of the cities and towns of the state;
- (ii) Across or under the waters of the state;
- (iii) Over any lands or public works belonging to the state;
- (iv) On and over the lands of private individuals or other persons;
- (v) Upon, along, and parallel to any railroad or turnpike of the state; and
- (vi) On and over the bridges, trestles, and structures of railroads.

(B) In constructing such dams as the *electric utility* may be authorized to construct for the purpose of generating electricity by water power, the *electric utility* may flow the lands above the dams with backwater resulting from construction.

(2)(A) However, the ordinary use of the public highways, streets, works, railroads, bridges, trestles, or structures and turnpikes shall not be obstructed, nor the navigation of the waters impeded, and just damages shall be paid to the owners of such lands, railroads, and turnpikes.

(B) The permission of the proper municipal authorities shall be obtained for the use of the streets.

(b)(1) In the event that *an electric utility*, upon application to the individual, railroad, turnpike company, or other persons, should fail to secure by consent, contract, or agreement, a right-of-way for the purposes enumerated in subsection (a) of this section, then the *electric utility* shall have the right to proceed to procure the condemnation of the property, lands, rights, privileges, and easements in the manner prescribed in this subchapter.

(2) *However, ~~no~~ an electric utility shall not* be required to secure by consent, contract, or agreement or to procure by condemnation the right to provide broadband services over its own lines of wire, cables, poles, or other structures that are in service at the time that the *electric utility* provides broadband services over the lines of wire, cables, poles, or other structures.

(c) Whenever *an electric utility* desires to construct its line on or along the lands of individuals or other persons or on the right-of-way and the structures of any railroad or upon and along any turnpike, the *electric utility*, by its agent, shall have the right to enter peacefully upon the lands, structures, or right-of-way and survey, locate, and lay out its line thereon, being liable, however, for any damage that may result by reason of the acts.

SECTION 4. Arkansas Code § 18-15-504 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter and to make technical corrections:

18-15-504. Petition for assessment of damages.

(a) If ~~any~~ *an electric utility*, having surveyed and located its line under the power conferred by this section, §§ 18-15-501--18-15-503, and §§ 18-15-505--18-15-509, fails to obtain, by agreement with the owner of the property through which the line may be located, the right-of-way over the property, it may apply by petition to the circuit court of the county in which the property is situated to have the damages for the right-of-way assessed, giving the owner of the property at least ten (10) days' notice in writing by certified mail, return receipt requested, of the time and place

where the petition will be heard.

(b) In case property sought to be condemned is owned by any individual or corporation and is located in more than one (1) county, the petition may be filed in the circuit court of any county in which the whole or a part of the property may be located, and proceedings had therein will apply to all property designated in the petition.

(c) If the owners of the property are nonresidents of the state, infants, or persons of unsound mind, the notice shall be given as follows:

(1)(A) By publication in any newspaper in the county which is authorized by law to publish legal notices.

(B) The notices shall be published for the same length of time as may be required in other civil causes;

(2) If there is no such newspaper published in the county, then the publication shall be made in some newspaper designated by the circuit clerk and one (1) written or printed notice thereof posted on the door of the courthouse of the county; and

(3) In writing by certified mail, return receipt requested, to the address of the owners of the property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements of taxes, as provided in § 26-35-705.

(d) As nearly as may be, the petition shall describe the lands over which the right-of-way is located and for which damages are asked to be assessed, whether improved or unimproved, and be sworn to.

(e)(1) ~~No~~ An *electric utility shall not* be required to petition a court in order to provide broadband services over its own lines of wire, cables, poles, or other structures that are in service at the time that the *electric utility* provides broadband services over the lines of wire, cables, poles, or other structures.

(2) An owner of property upon which *an electric utility's lines* of wire, cables, poles, or other structures are located may petition the circuit court of the county in which the property is situated for any compensation to which it might be entitled under this subchapter.

SECTION 5. Arkansas Code § 18-15-506 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed

before the enactment of that chapter:

18-15-506. Trial by jury.

It shall be the duty of the court to impanel a jury of twelve (12) persons, as in other civil cases, to ascertain the amount of compensation which the *electric utility* shall pay, and the matter shall proceed and be determined as other civil causes.

SECTION 6. Arkansas Code § 18-15-507 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter and make technical corrections:

18-15-507. Damages.

(a)(1) The amount of damages to be paid the owner of the lands for the right-of-way for the use of the *electric utility* shall be determined and assessed irrespective of any other benefit that the owner may receive from any improvement proposed by the *electric utility*.

(2)(A) If an owner of property petitions a court under § 18-15-504(e), the amount of damages, if any, payable to the owner for the use of preexisting lines of wire, cables, poles, or other structures by *an electric utility* to provide broadband services shall be limited to an amount sufficient to compensate the property owner for the increased interference, if any, with the owner's use of the property caused by any new or additional physical attachments to the preexisting facility for the purpose of providing broadband services.

(B) Evidence of revenues or profits derived by *an electric utility* from providing broadband services is not admissible for any purpose in a proceeding under § 18-15-504(e).

(b) In all cases in which damages for the right-of-way for the use of the *electric utility* shall have been assessed in the manner provided, it shall be the duty of the *electric utility* to deposit with the court or pay to the owners the amount so assessed and pay such costs as may in the discretion of the court be adjudged against it within thirty (30) days after the assessment. Whereupon, it shall and may be lawful for the *electric utility* to enter upon, use, and have the right-of-way over the lands forever.

(c) In all cases in which the *electric utility* shall not pay or deposit the amount of damages assessed pursuant to this section, §§ 18-15-

501--18-15-506, § 18-15-508, and § 18-15-509 within thirty (30) days after the assessment, the electric utility shall forfeit all rights in the premises.

SECTION 7. Arkansas Code § 18-15-508 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter and make technical corrections:

18-15-508. Deposit in case of controversy.

(a) When the determination of questions in controversy in the proceedings is likely to retard the progress of work on or the business of the *electric utility*, the court or judge in vacation shall designate an amount of money to be deposited by the *electric utility*, *subject* to the order of the court, and for the purpose of making compensation when the amount thereof has been assessed, as provided in § 18-15-507, and the judge shall designate the place of deposit.

(b) Whenever the deposit has been made in compliance with the order of the court or judge, it shall be lawful for the *electric utility* to enter upon the land and proceed with its work, through and over the lands in controversy, prior to the assessment and payment of damages for the use and right to be determined as provided in this section, §§ 18-15-501 - 18-15-507, and § 18-15-509.

SECTION 8. Arkansas Code § 18-15-509 is amended to read as follows to remove terminology that relies on the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and to restate the terminology as it existed before the enactment of that chapter and make technical corrections:

18-15-509. Destruction or injury to company property.

~~Any~~ A person who ~~shall destroy or injure~~ destroys or injures the wire, cable, pole, dam, reservoir, canal, power house, machinery, or appliances therein of the *electric utility* ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000) and imprisoned in the county jail for a period of not less than ten (10) days nor more than six (6) months.

SECTION 9. Arkansas Code § 18-15-512 is amended to read as follows:

18-15-512. Definition of "electric utility".

(a)(1) As used in this subchapter, ~~the term~~ "electric utility" means ~~an electric utility as defined by § 23-19-102(9) [repealed] or an independent transmission system operator, independent transmission company, independent regional transmission group, or other independent transmission entity operating transmission facilities in this state under § 23-19-103(g) [repealed]~~ a public utility, as defined in § 23-1-101(9), that owns or operates for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity or another agent for the production of light or electric power to or for the public in this state.

(2) "Electric utility" does not include:

(A) An exempt wholesale generator as defined in § 23-1-101(5);

(B) Any person not otherwise an electric utility or a business unit of an electric utility that:

(i) Is a power broker who acts as an agent, or intermediary on behalf of another person, for the purpose of facilitating the sale or purchase of electricity;

(ii) Is a power marketer who acquires, purchases, or generates electric energy on its own behalf with the intent of reselling the electric energy to another person at wholesale;

(iii) Is a qualifying facility that is a cogeneration or small power production facility entitled to the rights and privileges of a qualifying facility under the Public Utilities Regulatory Reform Act of 1978, 16 U.S.C. § 2601 et seq.; or

(iv) Is a municipal corporation owning a municipal electric utility; or

(C) An independent transmission system operator, independent transmission company, independent regional transmission group, or other independent transmission entity operating transmission facilities in this state as an independent transmission company, an independent regional transmission group, or other independent transmission entity that is not a public utility, as defined in § 23-1-101(9).

(b) As used in this section, "person" means an individual or entity, including without limitation a partnership, corporation, cooperative

association, trust, business trust, limited liability company, or governmental entity.

*SECTION 10.* Arkansas Code § 18-28-403(a)(1)(B) is amended to correct a reference and make technical corrections to read as follows:

(B) Abandoned mineral proceeds ~~shall be~~ are subject to the unclaimed property provisions of ~~the Uniform Disposition of Unclaimed Property Act,~~ § 18-28-201 et seq., except that funds received by the Auditor of State pursuant to this section shall be deposited by the Auditor of State ~~in~~ into a special trust fund to be known as the Abandoned Mineral Proceeds Trust Fund.

*SECTION 11.* DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have the full force and effect and, so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987.

*/s/D. Johnson*

**APPROVED: 04/11/2013**