

Stricken language would be deleted from and underlined language would be added to present law.
Act 945 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/4/21 H4/14/21
A Bill

SENATE BILL 334

By: Senators B. Ballinger, M. Johnson
By: Representatives Gonzales, A. Collins

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE USE OF EMINENT
DOMAIN BY A STATE AGENCY; TO ADD NEW DEFINITIONS
UNDER EMINENT DOMAIN; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE USE OF
EMINENT DOMAIN BY A STATE AGENCY; AND TO
ADD NEW DEFINITIONS UNDER EMINENT DOMAIN.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

(a) The General Assembly finds that:

(1) Public use is a legal requirement under the takings clause of the Fifth Amendment to the United States Constitution, which stipulates owners of real property seized for public use be paid just compensation;

(2) Over two hundred (200) years of case law exists in the State of Arkansas establishing the legal definition of "public use";

(3) It is necessary to codify current case law defining "public use" in the State of Arkansas so that the system of eminent domain is preserved; and

(4) It is in the best interest of the people of the State of Arkansas for property owners to be protected from being subjected to a taking by the federal, state, or local government unless that property is taken by the government for public use and just compensation is received.

(b) It is the intent of the General Assembly to amend § 18-15-101 et



seq. so that the language of § 18-15-101 et seq. reflects current case law, decisions, and precedent and to preserve the status quo of the eminent domain process in the state.

SECTION 2. Arkansas Code Title 18, Chapter 15, Subchapter 1, is amended to add an additional section to read as follows:

18-15-104. Definitions.

As used in this chapter:

(1) "Abandoned property" means property that:

(A) Has not been occupied or used for a commercial or residential purpose for at least one (1) year by a person with a legal or equitable right to occupy or use the property;

(B) Has been cited for a violation of a housing, building, or fire code that has not been remedied within one hundred eighty (180) days from the date the citation was issued; and

(C) Has accrued at least two (2) years of delinquent property taxes;

(2) "Blighted property" means a building, in its current condition, that has been designated and cited as unfit for human use or habitation by the agency responsible for enforcement of housing, building, or fire codes because the:

(A) Building is dilapidated, unsanitary, or unsafe;

(B) Building is a fire hazard; or

(C) Electricity, heating, or plumbing has been destroyed or removed;

(3)(A) "Public use" means the taking of private property by an entity authorized under this chapter using the power of eminent domain for the purpose of:

(i) Possessing, developing, occupying, and owning property for the enjoyment of the general public or public agency;

(ii) Possessing, occupying, and owning property for the necessary operations of a utility or common carrier that the general public has a right to use;

(iii) Remediating and reselling blighted property;

or

(iv) Possessing and reselling abandoned property.

(B)(i) "Public use" does not include the taking of private property for the economic benefit of the general public, including without limitation for the purpose of an increase in the tax base, tax revenues, or employment.

(ii) However, a taking of private property for a public use as defined in subdivision (3)(A) of this section is not prohibited because the public use also provides ancillary economic benefits; and

(4) "State agency" means an office, board, commission, department, council, bureau, or other agency of state government.

SECTION 3. Arkansas Code § 18-15-1202(b), concerning railroad condemnation proceedings, is amended to read as follows:

(b)(1) In case the property sought to be condemned for public use is owned by ~~any~~ an individual or corporation and is located in more than one (1) county, the petition may be filed in ~~any~~ a circuit court having jurisdiction in any county in which the whole or a part of the property ~~may be~~ is located.

(2) Proceedings had in the circuit court ~~will~~ shall apply to all property designated in the petition.

SECTION 4. Arkansas Code Title 18, Chapter 15, is amended to add an additional subchapter to read as follows:

Subchapter 18 – State Agencies Generally

18-15-1801. Administrative warrant.

(a) For the purposes of establishing the basis for the use of eminent domain for the remediation of a blighted property or for the possession of an abandoned property, a state agency may request an administrative warrant from a judge or magistrate to gain access to inspect a building on the property.

(b)(1) The judge or magistrate may allow the state agency to present evidence that shows that there is probable cause that a violation occurred, notice of the violation has been served on the owner of the property, the owner has failed to cure the violation, and the owner has denied the state agency access to the building.

(2) The state agency may use evidence to support a conclusion of probable cause, including without limitation evidence of:

(A) A recent fire or police inspection;

(B) Deterioration of the building's exterior; or
(C) Other violations of the municipal code in the
building.

18-15-1802. Cause of action.

(a) Unless otherwise agreed by the parties or determined by a court of law, the owner of private property may raise a defense or bring a cause of action in circuit court to determine whether his or her private property is lawfully being taken:

- (1) For a public use;
- (2) As blighted property;
- (3) As abandoned property; or
- (4) As necessary to achieve a public use.

(b) A state agency has the burden of proof to show by a preponderance of the evidence that the private property is lawfully being taken for the purposes authorized under subsection (a) of this section.

(c)(1) In a challenge to whether the taking is necessary to achieve a public use, the state agency bears the burden of proving by the preponderance of the evidence that the:

(A) Land, real estate, premises, or other property the state agency seeks to acquire is required for a public use;

(B) State agency has plans that reflect a reasonable schedule to complete the public use after the state agency takes ownership of the property;

(C) State agency has access to funding to complete the public use; and

(D) Public use cannot be accomplished by using or acquiring other property with the consent of the owner of the property without an unreasonable increase in cost or delay.

(2) The Arkansas Department of Transportation is exempt from the burden of proving whether the taking is necessary to achieve a public use as required under subdivision (c)(1) of this section.

(d) A cause of action under this section shall not be exercised more than one hundred eighty (180) days after the date the owner of the property received reasonable notice of a condemnation under this chapter.

/s/B. Ballinger

APPROVED: 4/27/21