

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1870

By: Representative Sabin

For An Act To Be Entitled

AN ACT TO PROTECT THE PROPERTY RIGHTS OF CITIZENS; TO PREVENT THE ABUSE OF THE POWER OF EMINENT DOMAIN BY PRIVATE PIPELINE COMPANIES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO PROTECT THE PROPERTY RIGHTS OF CITIZENS; TO PREVENT THE ABUSE OF THE POWER OF EMINENT DOMAIN BY PRIVATE PIPELINE COMPANIES; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Property Rights Protection Act".

SECTION 2. DO NOT CODIFY. Purpose.

The purpose of this act is to:

- (1) Empower landowners who are facing the seizure of their property by a pipeline company using the power of eminent domain;
- (2) Bring accountability to the process by which a pipeline company uses the power of eminent domain;
- (3) Prevent a pipeline company's abuse of the power of eminent domain; and
- (4) Ensure that the taking of private property by a pipeline



company occurs only to further the public good.

SECTION 3. Arkansas Code § 23-15-101 is amended to read as follows:

23-15-101. ~~Common Pipeline companies deemed common~~ carriers – Eminent domain – Reasonable access.

(a) ~~All pipeline companies~~ A pipeline company operating in this state ~~are:~~

(1)(A) given Has the right of eminent domain.

(B) However, the right of eminent domain under subdivision (a)(1)(A) of this section is subject to the provisions and restrictions imposed by this subchapter;

(2)(A) and are declared to be common carriers, except Is a common carrier.

(B) Except for However subdivision (a)(2)(A) of this section does not apply to pipelines a pipeline operated for conveying natural gas for public utility service; and

(3) Is subject to regulation by the Arkansas Public Service Commission and the Arkansas Department of Environmental Quality.

(b)(1) ~~The~~ Except as provided in this subchapter, the procedure to be followed in the exercise of the right of of eminent domain shall be the same as prescribed in § 18-15-1201 et seq. relating to railroad companies, telegraph companies, and telephone companies.

(2) Section 18-15-1206 does not apply to a pipeline company's exercise of the right of eminent domain under this subchapter.

(c)(1) A pipeline company shall have a right of reasonable access to property proposed as the site of a pipeline to survey the property to:

(A) Determine its suitability for placing the pipeline;
and

(B) Conduct additional surveying that may be necessary after complying with §§ 23-15-102, 23-15-106, and 23-15-107.

(2) The survey shall be conducted in a manner that minimizes damage to the property.

SECTION 4. Arkansas Code Title 23, Chapter 15, Subchapter 1, is amended to add an additional section to read as follows:

23-15-102. Conditions for exercising right of eminent domain.

(a) A pipeline company shall not exercise a right of eminent domain unless the pipeline company has, in the following order:

(1) Filed with the county clerk of each county in which land included within the proposed site of the pipeline is located a plat of the entire proposed site within the county that includes the:

- (A) Land's location;
- (B) Width of the strip of land to be condemned; and
- (C) Depth of the pipeline;

(2) Delivered to each landowner whose property may be condemned a written notice that contains:

(A) An attached copy of this section and §§ 23-15-106 – 23-15-108; and

(B) The following language in boldface type:

"(A) THE ATTACHED ARKANSAS CODE SECTIONS 23-15-102 AND 23-15-106 THROUGH 23-15-108 PROVIDE:

(1) SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY A PIPELINE COMPANY BEFORE THE PIPELINE COMPANY MAY EXERCISE THE RIGHT TO CONDEMN YOUR PROPERTY; AND

(2) SPECIFIC RIGHTS FOR YOUR PROTECTION.

(B) YOU SHOULD MAKE YOURSELF FAMILIAR WITH THE REQUIREMENTS AND YOUR RIGHTS BEFORE NEGOTIATING WITH A PIPELINE COMPANY OR THE PIPELINE COMPANY'S AGENT CONCERNING THE SALE OF YOUR PROPERTY TO THE PIPELINE COMPANY."; and

(3) Complied with §§ 23-15-106 and 23-15-107.

SECTION 5. Arkansas Code Title 23, Chapter 15, Subchapter 1, is amended to add additional sections to read as follows:

23-15-106. Certificate of public convenience and necessity required.

(a)(1) Before exercising the right of eminent domain under this subchapter, a pipeline company shall obtain a certificate of public convenience and necessity from the Arkansas Public Service Commission.

(2) Upon compliance with this section, the certificate shall not be unreasonably withheld.

(b) The commission shall establish by rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the requirements deemed necessary or desirable for determining whether the certificate should be granted, including without limitation:

- (1) That the application for the certificate include:
- (A) A description of the proposed project, including its general route;
 - (B) A detailed explanation of the public convenience and necessity that support the proposed pipeline route;
 - (C) The width of the proposed pipeline corridor;
 - (D) A showing that use of the power of eminent domain may be necessary to construct the pipeline; and
 - (E) A showing that the public necessity for and benefit of the pipeline justify the use of the power of eminent domain;
- (2) That a hearing be held before the commission on the application and any objections to the application within forty-five (45) days of filing the application; and
- (3)(A) That reasonable notice of the application, the proposed route, and the date, time, and place of the hearing be:
- (i) Sent by first class mail to all landowners within the proposed route; and
 - (ii) Published in a newspaper of general circulation in each county where land within the proposed site is located on the Sunday and Wednesday no more than eighteen (18) days nor less than ten (10) days before the hearing.
- (B) The notice shall include a procedure for filing a written objection to the application or proposed route with the commission.
- (c)(1) The commission shall render its decision on the application for the certificate within forty-five (45) days of the hearing.
- (2) The decision and any appeals from the decision shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-15-107 – Permit from Director of Arkansas Department of Environmental Quality required.

(a) Before exercising the right of eminent domain under this subchapter, a pipeline company shall obtain a permit to construct the pipeline from the Director of the Arkansas Department of Environmental Quality.

(b) The director shall establish by rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the requirements deemed

necessary or desirable for determining whether the permit should be granted, including without limitation:

(1) That the application for the permit include:

(A) A description of the proposed project, including its general route;

(B) The width of the proposed pipeline corridor;

(C) An environmental assessment of the proposed project;

and

(D) A detailed explanation of the environmental impact of the proposed project and a certification that the location, construction, and maintenance of the proposed pipeline:

(i) Is safe for the environment; and

(ii) Does not constitute an undue hazard to the environment and natural resources of the state;

(2) That a hearing be held before the director on the application and any objections to the application within sixty (60) days of filing the application; and

(3)(A) That reasonable notice of the application, the proposed route, and the date, time, and place of the hearing be:

(i) Sent by first class mail to all landowners within the proposed route; and

(ii) Published in a newspaper of general circulation in each county where land within the proposed site is located on the Sunday and Wednesday no more than eighteen (18) days nor less than ten (10) days before the hearing.

(B) The notice shall include a procedure for filing a written objection to the application or proposed route with the director.

(c)(1) The director shall render a decision on the application for the permit within sixty (60) days of the hearing.

(2) The decision and any appeals from the decision shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) The director shall not grant the permit unless the director finds that:

(1) The application complies with subsection (a) of this section;

(2) Appropriate notice was given to affected parties; and

(3) The location, construction, and maintenance of the proposed pipeline are safe for the environment and do not constitute a hazard to the environment or natural resources of the state with due consideration of the following factors:

(A) Whether the proposed route of the pipeline is an environmentally reasonable route;

(B) Whether other corridors of public utilities already in existence may reasonably be used for the pipeline;

(C) Compliance with local zoning ordinances, unless compliance would impose an unreasonable burden on the project as weighed against the purpose of the local zoning ordinances; and

(D) Whether ample opportunity has been afforded for public comment, specifically including but not limited to comment by the governing body and citizenry of any municipality or county within which the proposed project or any part thereof is to be located, as well as by landowners affected by the proposed pipeline.

(e) The director may grant the permit subject to reasonable conditions that will allow the director to monitor the effect of the pipeline upon the property subjected to eminent domain and upon the surrounding environment and natural resources.

23-15-108. Compensation for damage to property surveyed, used for maintenance, or not acquired.

(a) A pipeline company is liable to the owner of a property interest that is damaged from an entry upon land to:

(1) Survey a pipeline route or proposed route; or

(2) Obtain access to, maintain, or relocate a pipeline or proposed pipeline route.

(b) If the chosen and approved pipeline route damages any other property of an owner that was not acquired by eminent domain by the pipeline company for the pipeline project, the owner shall be compensated under the laws of eminent domain for the fair market value of the damage to the other property upon the trial of the case of the property taken by eminent domain.

23-15-109. Applicability.

The restrictions and conditions on the right of eminent domain imposed

by this subchapter do not apply to a relocation of a pipeline necessitated by the:

- (1) Exercise of a legal right by a third party; or
- (2) Maintenance of an existing pipeline or existing pipeline right-of-way.

SECTION 6. Arkansas Code § 18-15-1302 is amended to read as follows:
18-15-1302. Right to enter, survey, etc. – Plat or map.

(a)~~(1) Whenever~~ If a corporation desires to ~~construct a pipeline or~~ build a logging railway upon or under the lands of individuals, or right-of-way of any railroad, or any turnpike~~;~~:

(1) the The corporation, by and its agents, shall have the right to may enter peacefully upon the lands or rights-of-way and survey, locate, and lay out its pipeline, thereon, or tram road or logging road, tram roads or logging roads; and

(2) However, the The corporation shall be is liable for any damages that may result by reason of such acts from the corporation's surveying, locating, or laying out tram roads or logging roads.

(b) The corporation shall designate on a plat or map to be made and filed with the county clerk of the county in which the logging railway is located the width of the strip of land needed to be condemned for its purposes, and the land's location, ~~and the depth to which the pipes are to be laid.~~

SECTION 7. Arkansas Code § 18-15-1303 is amended to read as follows:
18-15-1303. Procedure for condemnation.

(a) In the event any If a lumber company fails, upon application to individuals, railroads, or turnpike companies, to secure the right-of-way by consent, contract, or agreement, then the corporation shall have the right to ~~proceed to procure the condemnation of~~ condemn the property, lands, rights, privileges, and easements in the manner provided by law for taking private property for right-of-way for railroads ~~as provided by §§ 18-15-1201—18-15-1207~~ under § 18-15-1201 et seq., including the procedure for providing notice by publication and by certified mail ~~in~~ under § 18-15-1202.

(b) If a pipeline company fails, upon application to individuals, railroads, or turnpike companies, to secure the right-of-way by consent,

contract, or agreement, then the pipeline company shall have the right to condemn the property, lands, rights, privileges, and easements in the manner provided by § 23-15-101 et seq.

SECTION 8. Construction.

This act shall be liberally construed to effectuate its purposes.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that landowners should be protected from unwarranted intrusions and appropriately compensated when pipeline companies exercise the power of eminent domain; that the seizure of private property for pipeline purposes should be permitted only after a proposed project is reviewed and determined to be safe for the environment and to further the public good; and that this act is immediately necessary to ensure that appropriate safeguards are in place to ensure that landowners are protected from unwarranted intrusions that impede the use and enjoyment of their property and are appropriately compensated when the power of eminent domain is exercised by a pipeline company, to prevent abuse of the eminent domain power, and to prevent harm to the environment or natural resources of the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.