

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: H3/14/17  
**A Bill**

HOUSE BILL 2086

By: Representatives Sabin, Pilkington

### 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 – Purpose – Construction.

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

(b) 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.

(c) This act shall be liberally construed to effectuate its purposes.



SECTION 2. Arkansas Code § 23-15-101 is amended to read as follows:

23-15-101. Common carriers – Eminent domain – Definitions.

(a) ~~All pipeline companies~~ A pipeline company operating in this state ~~are given~~ is given the right of eminent domain ~~and are declared to be common carriers, except pipelines operated for conveying natural gas for public utility service~~ if:

(1) The pipeline company is a natural gas public utility as defined in § 23-1-101(9)(A)(i) or a municipal natural gas utility providing service under § 14-54-701 et seq.; or

(2) The pipeline company:

(A) Is exercising the right of eminent domain in connection with the operation of a common carrier facility;

(B) Obtains an order verifying it will operate a common carrier facility from the Arkansas Public Service Commission under § 23-15-106; and

(C) Is granted a permit by the Arkansas Department of Environmental Quality under § 23-15-107.

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

(c) As used in this subchapter:

(1) "Common carrier facility" means pipeline equipment or facilities by or through which services are provided without discrimination to or for the public in this state for hire; and

(2) "Pipeline company" means a person or a corporation and its lessees, trustees, and receivers, that owns or operates pipeline equipment or facilities used for gathering, transmitting, or transporting natural gas, crude oil, other petroleum products, or ammonia and other substances and materials composing commercial fertilizer or used in manufacturing commercial fertilizer.

SECTION 3. Arkansas Code Title 23, Chapter 15, Subchapter 1, is amended to add an additional section to read as follows:

23-15-102. Notice – Filing requirements.

(a) At least thirty (30) days before requesting an order from the Arkansas Public Service Commission under § 23-15-106 and a permit from the Arkansas Department of Environmental Quality under § 23-15-107, a pipeline company as specified in § 23-15-101(a)(2) shall provide notice of its intent to exercise a right of eminent domain, as follows:

(1) Designate on a plat or map prepared by the pipeline company and file with the county clerk of each county in which the proposed site of the pipeline is to be located the:

(A) Width of the strip of land needed to be condemned for the purposes of the pipeline;

(B) Location of the land; and

(C) Depths to which the pipeline is to be laid;

(2) Deliver by certified mail, return receipt requested, to each owner of real property whose property may be within the site of the proposed pipeline a written notice of intent to exercise a right of eminent domain that contains:

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

(B) A copy of the plat or map prepared by the pipeline company under subdivision (a)(1) of this section; and

(C) The following language in boldface type:

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

(a) SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY A PIPELINE COMPANY BEFORE THE PIPELINE COMPANY MAY EXERCISE THE RIGHT TO ACQUIRE AN EASEMENT ACROSS YOUR PROPERTY OR CONDEMN YOUR PROPERTY USING EMINENT DOMAIN; AND

(b) SPECIFIC RIGHTS FOR YOUR PROTECTION.

(2) 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 ACQUISITION OF AN EASEMENT ACROSS YOUR PROPERTY BY A PIPELINE COMPANY OR THE CONDEMNATION OF YOUR PROPERTY BY A PIPELINE COMPANY USING EMINENT DOMAIN."

(b) The written notice of intent to exercise a right of eminent domain to the owner of real property required by this section shall be directed to the address of the owner of the real 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.

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

23-15-106. Verification of common carrier facility operation required.

(a) Before exercising the right of eminent domain under this subchapter, a pipeline company as specified in § 23-15-101(a)(2) shall obtain an order from the Arkansas Public Service Commission verifying that the pipeline company will operate a common carrier facility.

(b)(1) The application for the order verifying that the pipeline company as specified in § 23-15-101(a)(2) will operate a common carrier facility shall include:

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

(B) A detailed explanation of how the proposed project meets the definition of a common carrier facility under § 23-15-101(c)(1); and

(C) Proof that notice of intent to exercise a right of eminent domain has been given under § 23-15-102.

(2) The commission shall hold a hearing, unless waived by the parties, on the application within ninety (90) days of filing the application.

(c)(1) An applicant for an order under subsection (a) of this section shall give notice of the application, the proposed route of the pipeline, and the date, time, and place of the hearing, by:

(A) Sending notice by certified mail, return receipt requested, to all owners of real property as described in § 23-15-102(b), on the proposed route of the pipeline no more than five (5) days after the date of the order setting the hearing on the application; and

(B) Within thirty (30) days of the filing of the application, publishing notice of the application under subdivision (b)(1) of this section one (1) time a week for two (2) consecutive weeks in a newspaper of general circulation in each county where land within the proposed site of the pipeline is located.

(2) The notice shall specify the date of the filing of the application and include a statement that interested individuals may file a request for intervention with the commission.

(c) The commission shall render its decision on the application for the order within forty-five (45) days from the conclusion of the hearing.

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

(a) Before exercising the right of eminent domain under this subchapter, a pipeline company as specified in § 23-15-101(a)(2) 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 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 proposed 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 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 certified mail, return receipt requested, to all landowners within the proposed route; and

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

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

(c) The director shall render a decision on the application for the

permit within sixty (60) days of the hearing.

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

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

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

(3) The location, construction, and maintenance of the proposed pipeline do not constitute an undue 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 without limitation 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 as specified in § 23-15-101(a)(2) is liable to the owner of an interest in property 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.

(c) Any disputes regarding compensation for damage to property surveyed, used for maintenance, or not acquired shall be resolved in the circuit court with jurisdiction to hear such matters.

23-15-109. Applicability.

If no increase in the width of an existing easement or right-of-way is required, the restrictions and conditions on the right of eminent domain imposed by this subchapter do not apply for the:

(1) Replacement or expansion of an existing pipeline with similar equipment or facilities in substantially the same location; or

(2) The rebuilding, upgrading, modernizing, or reconstructing of equipment or facilities that increase the capacity of the pipeline.

SECTION 5. 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 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, laying out, or constructing pipelines, 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 pipeline or logging railway is located the width of the strip of land needed to be condemned for its purposes, the land's location, and the depth to which the pipes are to be laid if the project is a pipeline.

SECTION 6. Arkansas Code § 18-15-1303 is amended to read as follows:

18-15-1303. Procedure for condemnation.

(a) In the event any company fails, If upon application to individuals, railroads, or turnpike companies, a lumber company fails to secure the right-of-way by consent, contract, or agreement, then the corporation lumber company 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 upon application to individuals, railroads, or turnpike companies a pipeline company fails to secure the right-of-way by consent, contract, or agreement, then the pipeline company may condemn the property, lands, rights, privileges, and easements in the manner provided by § 23-15-101 et seq.

SECTION 7. 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 verified to be a common carrier facility; and that this act is immediately necessary to ensure that appropriate safeguards are in place so 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.

*/s/Sabin*