

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

State of Arkansas *As Engrossed: S3/6/19 S3/20/19 S4/1/19*
92nd General Assembly **A Bill**
Regular Session, 2019

SENATE BILL 319

By: Senator B. Ballinger
By: Representative Gonzales

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING EMINENT DOMAIN; TO
ADD NEW DEFINITIONS UNDER EMINENT DOMAIN; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING EMINENT
DOMAIN; 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 taking clause of the fifth amendment to the United States Constitution that 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" in the State of Arkansas;

(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 interests of the people of the State of Arkansas for property owners to be protected from being subject 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 by this act 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 days (180) 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, which 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) "Local government" means the elected governing body of a city, county, or township;

(4)(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) "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.

SECTION 3. Arkansas Code Title 18, Chapter 15, Subchapter 2, is amended to add additional sections to read as follows:

18-15-203. 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 local government 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 local government 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 local government access to the building.

(2) The local government may use items of evidence to the following items of 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.

18-15-204. Cause of action.

(a) The owner of private property may 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; or

(3) As abandoned property.

(b) An entity authorized to use the power of eminent domain under this

chapter 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.

SECTION 4. 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.

/s/B. Ballinger