

1 State of Arkansas *As Engrossed: S3/4/21 H4/14/21*

2 93rd General Assembly

A Bill

3 Regular Session, 2021

SENATE BILL 334

4

5 By: Senators B. Ballinger, M. Johnson

6 By: Representatives Gonzales, A. Collins

7

8

For An Act To Be Entitled

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

12

13

14

Subtitle

15

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

19

20

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

21

22

SECTION 1. DO NOT CODIFY. Legislative intent.

23

(a) The General Assembly finds that:

24

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

27

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

29

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

32

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

36

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



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

4
5 SECTION 2. Arkansas Code Title 18, Chapter 15, Subchapter 1, is
6 amended to add an additional section to read as follows:

7 18-15-104. Definitions.

8 As used in this chapter:

9 (1) "Abandoned property" means property that:

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

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

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

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

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

23 (B) Building is a fire hazard; or

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

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

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

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

34 (iii) Remediating and reselling blighted property;
35 or

36 (iv) Possessing and reselling abandoned property.

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

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

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

10
11 SECTION 3. Arkansas Code § 18-15-1202(b), concerning railroad
12 condemnation proceedings, is amended to read as follows:

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

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

19
20 SECTION 4. Arkansas Code Title 18, Chapter 15, is amended to add an
21 additional subchapter to read as follows:

22 Subchapter 18 – State Agencies Generally

23
24 18-15-1801. Administrative warrant.

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

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

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

36 (A) A recent fire or police inspection;

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

4
5 18-15-1802. Cause of action.

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

10 (1) For a public use;

11 (2) As blighted property;

12 (3) As abandoned property; or

13 (4) As necessary to achieve a public use.

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

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

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

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

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

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

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

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

36

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/B. Ballinger