

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Representative Wagner**

# A Bill

**ACT 1207 OF 1995**  
**HOUSE BILL 1838**

## For An Act To Be Entitled

8 "AN ACT TO AMEND THE PROVISIONS OF ARKANSAS CODE 18-15-  
9 601, § 18-15-604, AND § 18-15-605 IN ORDER TO AUTHORIZE  
10 ASSOCIATIONS AND CORPORATIONS WHICH SUPPLY WATER TO  
11 CITIES, TOWNS, VILLAGES AND RURAL AREAS TO EXERCISE THE  
12 POWER OF EMINENT DOMAIN IN ORDER TO CONSTRUCT WATER  
13 FACILITIES, WATER TRANSMISSION AND DISTRIBUTION LINES AND  
14 EXPAND WATER SERVICE AREAS, TO LIMIT THE AUTHORITY OF  
15 ASSOCIATIONS AND CORPORATIONS WHICH SUPPLY WATER TO  
16 CITIES, TOWNS, VILLAGES AND RURAL AREAS TO EXERCISE THE  
17 POWER OF EMINENT DOMAIN, AND TO CLARIFY THE MEASURE OF  
18 DAMAGES IN EMINENT DOMAIN ACTIONS; AND FOR OTHER  
19 PURPOSES."

## Subtitle

20 "TO AUTHORIZE ASSOCIATIONS AND  
21 CORPORATIONS TO EXERCISE THE POWER OF  
22 EMINENT DOMAIN TO CONSTRUCT WATER  
23 FACILITIES, WATER TRANSMISSION AND  
24 DISTRIBUTION LINES AND EXPAND WATER  
25 SERVICE AREAS."

26  
27  
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29

30 SECTION 1. Arkansas Code 18-15-601 is amended to read as follows:

31 "18-15-601. Power of eminent domain.

32 (a) All municipal corporations in this state, and all corporations,  
33 including not-for-profit corporations and water associations, which supply any  
34 town, city, or village in this state, or the inhabitants thereof with water,  
35 or which supply water to rural customers or consumers, are authorized to

1 exercise the power of eminent domain to condemn, take, and use private  
2 property for the use of the corporations when necessary to carry out the  
3 purposes and objects of the corporations including, without limitation, the  
4 condemnation of easements in which water transmission or water distribution  
5 lines shall be constructed and located and the condemnation of real property  
6 for the construction and location of water storage tanks, water treatment  
7 facilities, master metering facilities, pump stations and other necessary  
8 appurtenances needed for water production, transmission and distribution  
9 regardless of whether or not said private property is located within or  
10 outside of the boundaries of the city, town or village which the municipal or  
11 other corporation, including not-for-profit corporations and water  
12 associations, serves.

13 (b) Whenever the municipal or other corporation, including not-for-profit  
14 corporations and water associations, in the construction of its waterworks, or  
15 in enlarging or extending the waterworks, or water distribution or water  
16 transmission lines shall deem it desirable to condemn, take, use, or occupy  
17 private property in the construction of its water treatment or storage  
18 facilities, water transmission or distribution lines, or other appurtenances  
19 thereto, the corporation may condemn, take, and use the private property,  
20 first making just compensation therefor, and proceed as provided in this  
21 subchapter. (c) *The corporations and water associations shall exercise the*  
22 *powers of eminent domain only as a last resort and they shall make use of*  
23 *existing easements and rights-of-way to the extent practicable.*

24 (c) *No municipal or other corporation, including not-for-profit*  
25 *corporations and water associations, exercising eminent domain powers under*  
26 *this act shall provide water service to any existing customer of any*  
27 *incorporated city or town absent the express written approval of such*  
28 *incorporated city or town."*

29

30 SECTION 2. *Arkansas Code § 18-15-604 is amended to read as follows:*

31 *"18-15-604. Petition.*

32 (a) *The municipal corporation or other corporation so intending and*  
33 *desiring to condemn, take, and use the real estate may present to the circuit*  
34 *court in and for the county in which the lands so proposed to be taken,*  
35 *condemned, and used are situated, a petition signed by the president and*

1 secretary of the corporation or water association, or by the mayor, recorder,  
2 or other executive officer of the city, town, or village. This petition shall  
3 set forth a description of the enterprise to be prosecuted by them and  
4 describe with reasonable certainty and by reference to the map or plat, or  
5 otherwise, the lands, property, and estate which it will be necessary to  
6 appropriate, take, use, overflow, drain, or otherwise affect, setting forth  
7 the name of each and every owner, encumbrancer, or other person interested in  
8 the lands, property, or estate or any part thereof, so far as it can be  
9 ascertained by the public records and by view of the premises or other inquiry  
10 touching the occupation thereof.

11 (b) In case the property sought to be condemned is owned by any  
12 individual or corporation and is located in more than one (1) county, the  
13 petition may be filed in any circuit court having jurisdiction in any county  
14 in which the whole or a part of the property may be located, and proceedings  
15 had in the circuit court will apply to all the property designated in the  
16 petition.

17 (c) The notice of the filing of the petition and the presentation  
18 thereof shall be given to the owners and parties interested as is now  
19 prescribed by law for the condemnation of property by railroad, telegraph, and  
20 telephone corporations.

21 (d) The written notice to the landowner shall include a statement that  
22 the owner may request, within twenty (20) days of receipt of the notice, that  
23 the corporations or associations shall mark and identify the proposed area of  
24 the easement on the landowners property which is the subject of the eminent  
25 domain action, and which shall be done at the expense of the corporation or  
26 association."

27

28 SECTION 3. Arkansas Code § 18-15-605 is amended to read as follows:

29 "18-15-605. Damages - Deposits.

30 (a) The further proceedings in the matter of assessment of damages and  
31 the making of deposits to secure the owner shall be the same as is now  
32 prescribed by law in reference to condemnation proceedings by railroad,  
33 telegraph, and telephone corporations, except that the measure of damages  
34 shall be the fair market value of the condemned property at the time of the  
35 filing of the petition by the corporation or water association as may be

1 determined by a jury based on the opinion of a licensed appraiser.

2       (b) In the case of application for orders of immediate possession by  
3 the corporation or water association, if the amount awarded by the jury  
4 exceeds the amount deposited by the corporation or water association in an  
5 amount which is more than twenty percent (20%) of the sum deposited, the  
6 landowner shall be entitled to recover the reasonable attorneys fees and  
7 costs."

8

9       SECTION 4. All provisions of this act of a general and permanent nature  
10 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
11 Revision Commission shall incorporate the same in the Code.

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13       SECTION 5. If any provision of this act or the application thereof to  
14 any person or circumstance is held invalid, such invalidity shall not affect  
15 other provisions or applications of the act which can be given effect without  
16 the invalid provision or application, and to this end the provisions of this  
17 act are declared to be severable.

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19       SECTION 6. All laws and parts of laws in conflict with this act are  
20 hereby repealed.

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22       SECTION 7. EMERGENCY. It is hereby found and determined by the General  
23 Assembly that the supplying of water to the citizens of the state shall be  
24 expedited by this act; that there are numerous cities, villages and rural  
25 areas desiring to immediately expand their water works facilities to meet the  
26 demands of their customers and potential customers; that numerous citizens of  
27 the state of Arkansas currently have no stable source of water and can obtain  
28 such only through the immediate passage and effectiveness of this act; that  
29 the supplying of water and expansion of water facilities shall be expedited by  
30 this act; and that this act is necessary for the public health, safety and  
31 welfare of the citizens of the state. Therefore, an emergency is hereby  
32 declared to exist, and this act being immediately necessary for the  
33 preservation of the public peace, health, and safety shall be in full force  
34 and effect from and after its passage and approval.

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*/s/Rep. Wagner*

***As Engrossed: 3/23/95***

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APPROVED: 4-11-95

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