

1 State of Arkansas *As Engrossed: S2/25/13 S3/12/13*

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A Bill

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SENATE BILL 187

4

5 By: Senator D. Johnson

6 By: Representatives Williams, Vines

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For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 18 OF
10 THE ARKANSAS CODE CONCERNING PROPERTY RIGHTS AND
11 INTERESTS; AND FOR OTHER PURPOSES.

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Subtitle

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AN ACT TO MAKE TECHNICAL CORRECTIONS TO
16 TITLE 18 OF THE ARKANSAS CODE CONCERNING
17 PROPERTY RIGHTS AND INTERESTS.

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19

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

21

22 SECTION 1. Arkansas Code § 18-15-501 is amended to read as follows to
23 remove terminology that relied on the repealed Electric Consumer Choice Act
24 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
25 before the enactment of that chapter:

26 18-15-501. Right-of-way construed.

27 The right-of-way provided for under this section and §§ 18-15-502-- 18-
28 15-509 shall be construed to include all lands necessary for dams and the
29 backwater resulting there from, levees, approaches, abutments, canals,
30 reservoirs, powerhouses, and other purposes incident to the business of
31 generating, transmitting, distributing, or supplying electricity to or for
32 the public for compensation or for public use by *an electric utility*.

33

34 SECTION 2. Arkansas Code § 18-15-502 is amended to read as follows to
35 remove terminology that relies on the repealed Electric Consumer Choice Act
36 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed



1 before the enactment of that chapter:

2 18-15-502. Exception.

3 No action to condemn the right-of-way over, upon, or along any street
4 or alley in any city or incorporated town shall be instituted or maintained
5 by *an electric utility* as against any city or incorporated town.

6

7 SECTION 3. Arkansas Code § 18-15-503 is amended to read as follows to
8 remove terminology that relies on the repealed Electric Consumer Choice Act
9 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
10 before the enactment of that chapter and make technical corrections:

11 18-15-503. Powers.

12 (a)(1)(A) ~~Any~~ An *electric utility organized or domesticated* under the
13 laws of this state for the purpose of generating, transmitting, distributing,
14 or supplying electricity to or for the public for compensation or for public
15 use may construct, operate, and maintain such lines of wire, cables, poles,
16 or other structures necessary for the transmission or distribution of
17 electricity and broadband services:

18 (i) Along and over the public highways and the
19 streets of the cities and towns of the state;

20 (ii) Across or under the waters of the state;

21 (iii) Over any lands or public works belonging to
22 the state;

23 (iv) On and over the lands of private individuals or
24 other persons;

25 (v) Upon, along, and parallel to any railroad or
26 turnpike of the state; and

27 (vi) On and over the bridges, trestles, and
28 structures of railroads.

29 (B) In constructing such dams as the *electric utility* may
30 be authorized to construct for the purpose of generating electricity by water
31 power, the *electric utility* may flow the lands above the dams with backwater
32 resulting from construction.

33 (2)(A) However, the ordinary use of the public highways,
34 streets, works, railroads, bridges, trestles, or structures and turnpikes
35 shall not be obstructed, nor the navigation of the waters impeded, and just
36 damages shall be paid to the owners of such lands, railroads, and turnpikes.

1 (B) The permission of the proper municipal authorities
2 shall be obtained for the use of the streets.

3 (b)(1) In the event that *an electric utility*, upon application to the
4 individual, railroad, turnpike company, or other persons, should fail to
5 secure by consent, contract, or agreement, a right-of-way for the purposes
6 enumerated in subsection (a) of this section, then the *electric utility* shall
7 have the right to proceed to procure the condemnation of the property, lands,
8 rights, privileges, and easements in the manner prescribed in this
9 subchapter.

10 (2) *However, ~~no~~ an electric utility shall not* be required to
11 secure by consent, contract, or agreement or to procure by condemnation the
12 right to provide broadband services over its own lines of wire, cables,
13 poles, or other structures that are in service at the time that the *electric*
14 *utility* provides broadband services over the lines of wire, cables, poles, or
15 other structures.

16 (c) Whenever *an electric utility* desires to construct its line on or
17 along the lands of individuals or other persons or on the right-of-way and
18 the structures of any railroad or upon and along any turnpike, the *electric*
19 *utility*, by its agent, shall have the right to enter peacefully upon the
20 lands, structures, or right-of-way and survey, locate, and lay out its line
21 thereon, being liable, however, for any damage that may result by reason of
22 the acts.

23
24 SECTION 4. Arkansas Code § 18-15-504 is amended to read as follows to
25 remove terminology that relies on the repealed Electric Consumer Choice Act
26 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
27 before the enactment of that chapter and to make technical corrections:

28 18-15-504. Petition for assessment of damages.

29 (a) If ~~any~~ *an electric utility*, having surveyed and located its line
30 under the power conferred by this section, §§ 18-15-501--18-15-503, and §§
31 18-15-505--18-15-509, fails to obtain, by agreement with the owner of the
32 property through which the line may be located, the right-of-way over the
33 property, it may apply by petition to the circuit court of the county in
34 which the property is situated to have the damages for the right-of-way
35 assessed, giving the owner of the property at least ten (10) days' notice in
36 writing by certified mail, return receipt requested, of the time and place

1 where the petition will be heard.

2 (b) In case property sought to be condemned is owned by any individual
3 or corporation and is located in more than one (1) county, the petition may
4 be filed in the circuit court of any county in which the whole or a part of
5 the property may be located, and proceedings had therein will apply to all
6 property designated in the petition.

7 (c) If the owners of the property are nonresidents of the state,
8 infants, or persons of unsound mind, the notice shall be given as follows:

9 (1)(A) By publication in any newspaper in the county which is
10 authorized by law to publish legal notices.

11 (B) The notices shall be published for the same length of
12 time as may be required in other civil causes;

13 (2) If there is no such newspaper published in the county, then
14 the publication shall be made in some newspaper designated by the circuit
15 clerk and one (1) written or printed notice thereof posted on the door of the
16 courthouse of the county; and

17 (3) In writing by certified mail, return receipt requested, to
18 the address of the owners of the property as it appears on the records in the
19 office of the county sheriff or county tax assessor for the mailing of
20 statements of taxes, as provided in § 26-35-705.

21 (d) As nearly as may be, the petition shall describe the lands over
22 which the right-of-way is located and for which damages are asked to be
23 assessed, whether improved or unimproved, and be sworn to.

24 (e)(1) ~~No~~ An *electric utility* shall not be required to petition a
25 court in order to provide broadband services over its own lines of wire,
26 cables, poles, or other structures that are in service at the time that the
27 *electric utility* provides broadband services over the lines of wire, cables,
28 poles, or other structures.

29 (2) An owner of property upon which *an electric utility's lines*
30 of wire, cables, poles, or other structures are located may petition the
31 circuit court of the county in which the property is situated for any
32 compensation to which it might be entitled under this subchapter.

33
34 SECTION 5. Arkansas Code § 18-15-506 is amended to read as follows to
35 remove terminology that relies on the repealed Electric Consumer Choice Act
36 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed

1 before the enactment of that chapter:

2 18-15-506. Trial by jury.

3 It shall be the duty of the court to impanel a jury of twelve (12)
4 persons, as in other civil cases, to ascertain the amount of compensation
5 which the *electric utility* shall pay, and the matter shall proceed and be
6 determined as other civil causes.

7

8 SECTION 6. Arkansas Code § 18-15-507 is amended to read as follows to
9 remove terminology that relies on the repealed Electric Consumer Choice Act
10 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
11 before the enactment of that chapter and make technical corrections:

12 18-15-507. Damages.

13 (a)(1) The amount of damages to be paid the owner of the lands for the
14 right-of-way for the use of the *electric utility* shall be determined and
15 assessed irrespective of any other benefit that the owner may receive from
16 any improvement proposed by the *electric utility*.

17 (2)(A) If an owner of property petitions a court under § 18-15-
18 504(e), the amount of damages, if any, payable to the owner for the use of
19 preexisting lines of wire, cables, poles, or other structures by *an electric*
20 *utility* to provide broadband services shall be limited to an amount
21 sufficient to compensate the property owner for the increased interference,
22 if any, with the owner's use of the property caused by any new or additional
23 physical attachments to the preexisting facility for the purpose of providing
24 broadband services.

25 (B) Evidence of revenues or profits derived by *an electric*
26 *utility* from providing broadband services is not admissible for any purpose
27 in a proceeding under § 18-15-504(e).

28 (b) In all cases in which damages for the right-of-way for the use of
29 the *electric utility* shall have been assessed in the manner provided, it
30 shall be the duty of the *electric utility* to deposit with the court or pay to
31 the owners the amount so assessed and pay such costs as may in the discretion
32 of the court be adjudged against it within thirty (30) days after the
33 assessment. Whereupon, it shall and may be lawful for the *electric utility* to
34 enter upon, use, and have the right-of-way over the lands forever.

35 (c) In all cases in which the *electric utility* shall not pay or
36 deposit the amount of damages assessed pursuant to this section, §§ 18-15-

1 501--18-15-506, § 18-15-508, and § 18-15-509 within thirty (30) days after
2 the assessment, the electric utility shall forfeit all rights in the
3 premises.

4
5 SECTION 7. Arkansas Code § 18-15-508 is amended to read as follows to
6 remove terminology that relies on the repealed Electric Consumer Choice Act
7 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
8 before the enactment of that chapter and make technical corrections:

9 18-15-508. Deposit in case of controversy.

10 (a) When the determination of questions in controversy in the
11 proceedings is likely to retard the progress of work on or the business of
12 the *electric utility*, the court or judge in vacation shall designate an
13 amount of money to be deposited by the *electric utility*, *subject* to the order
14 of the court, and for the purpose of making compensation when the amount
15 thereof has been assessed, as provided in § 18-15-507, and the judge shall
16 designate the place of deposit.

17 (b) Whenever the deposit has been made in compliance with the order of
18 the court or judge, it shall be lawful for the *electric utility* to enter upon
19 the land and proceed with its work, through and over the lands in
20 controversy, prior to the assessment and payment of damages for the use and
21 right to be determined as provided in this section, §§ 18-15-501 - 18-15-507,
22 and § 18-15-509.

23
24 SECTION 8. Arkansas Code § 18-15-509 is amended to read as follows to
25 remove terminology that relies on the repealed Electric Consumer Choice Act
26 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
27 before the enactment of that chapter and make technical corrections:

28 18-15-509. Destruction or injury to company property.

29 ~~Any~~ A person who ~~shall destroy or injure~~ destroys or injures the wire,
30 cable, pole, dam, reservoir, canal, power house, machinery, or appliances
31 therein of the *electric utility* ~~shall be~~ is guilty of a misdemeanor and upon
32 conviction shall be fined in any sum not less than fifty dollars (\$50.00) nor
33 more than one thousand dollars (\$1,000) and imprisoned in the county jail for
34 a period of not less than ten (10) days nor more than six (6) months.

35
36 SECTION 9. Arkansas Code § 18-15-512 is amended to read as follows:

1 18-15-512. Definition of "electric utility".

2 (a)(1) As used in this subchapter, ~~the term~~ "electric utility" means
3 ~~an electric utility as defined by § 23-19-102(9) [repealed] or an independent~~
4 ~~transmission system operator, independent transmission company, independent~~
5 ~~regional transmission group, or other independent transmission entity~~
6 ~~operating transmission facilities in this state under § 23-19-103(g)~~
7 ~~[repealed]~~ a public utility, as defined in § 23-1-101(9), that owns or
8 operates for compensation in this state equipment or facilities for
9 producing, generating, transmitting, distributing, selling, or furnishing
10 electricity or another agent for the production of light or electric power to
11 or for the public in this state.

12 (2) "Electric utility" does not include:

13 (A) An exempt wholesale generator as defined in § 23-1-
14 101(5);

15 (B) Any person not otherwise an electric utility or a
16 business unit of an electric utility that:

17 (i) Is a power broker who acts as an agent, or
18 intermediary on behalf of another person, for the purpose of facilitating the
19 sale or purchase of electricity;

20 (ii) Is a power marketer who acquires, purchases, or
21 generates electric energy on its own behalf with the intent of reselling the
22 electric energy to another person at wholesale;

23 (iii) Is a qualifying facility that is a cogeneration
24 or small power production facility entitled to the rights and privileges of a
25 qualifying facility under the Public Utilities Regulatory Reform Act of 1978,
26 16 U.S.C. § 2601 et seq.; or

27 (iv) Is a municipal corporation owning a municipal
28 electric utility; or

29 (C) An independent transmission system operator,
30 independent transmission company, independent regional transmission group, or
31 other independent transmission entity operating transmission facilities in
32 this state as an independent transmission company, an independent regional
33 transmission group, or other independent transmission entity that is not a
34 public utility, as defined in § 23-1-101(9).

35 (b) As used in this section, "person" means an individual or entity,
36 including without limitation a partnership, corporation, cooperative

1 association, trust, business trust, limited liability company, or
2 governmental entity.

3
4 *SECTION 10.* Arkansas Code § 18-28-403(a)(1)(B) is amended to correct a
5 reference and make technical corrections to read as follows:

6 (B) Abandoned mineral proceeds ~~shall be~~ are subject to the
7 unclaimed property provisions of ~~the Uniform Disposition of Unclaimed~~
8 ~~Property Act~~, § 18-28-201 et seq., except that funds received by the Auditor
9 of State pursuant to this section shall be deposited by the Auditor of State
10 ~~in~~ into a special trust fund to be known as the Abandoned Mineral Proceeds
11 Trust Fund.

12
13 *SECTION 11.* DO NOT CODIFY. The enactment and adoption of this act
14 shall not repeal, expressly or impliedly, the acts passed at the regular
15 session of the Eighty-Ninth General Assembly. All such acts shall have the
16 full force and effect and, so far as those acts intentionally vary from or
17 conflict with any provision contained in this act, those acts shall have the
18 effect of subsequent acts and as amending or repealing the appropriate parts
19 of the Arkansas Code of 1987.

20
21 /s/D. Johnson

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24 **APPROVED: 04/11/2013**