

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-037

State of Arkansas  
87th General Assembly  
Regular Session, 2009

# A Bill

HOUSE BILL 1592

By: Representative Reynolds

Filed with: House Interim Committee on Agriculture, Forestry and Economic Development  
pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS GATHERING LINE LAND  
ACQUISITION ACT; AND FOR OTHER PURPOSES.

### Subtitle

TO CREATE THE ARKANSAS GATHERING LINE  
LAND ACQUISITION ACT.

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

SECTION 1. Arkansas Code Title 15 is amended to add a new chapter to  
read as follows:

#### CHAPTER 76

#### ARKANSAS GATHERING LINE LAND ACQUISITION ACT

#### SUBCHAPTER 1

#### ARKANSAS GATHERING LINE LAND ACQUISITION ACT

#### 15-76-101. Short Title.

This chapter shall be known and may be cited as the "Arkansas Gathering  
Line Land Acquisition Act".

#### 15-76-102. Definitions.

As used in this chapter:

(1) "Gathering line" means a pipeline used in connection with



1 the transportation of petroleum, natural gas, carbon dioxide gas, and any  
2 product derived from a pipeline:

3 (2) "Mineral developer" means a mineral owner, operator, lessee,  
4 or natural gas or petroleum pipeline company that is engaged in the  
5 production or conveyance by pipeline of natural gas or petroleum; and

6 (3) "Property owner" means a person who holds an ownership  
7 interest in the property to be acquired to construct a natural gas or  
8 petroleum gathering line or an associated disposal line, other than the  
9 property on which the well to be connected to a natural gas or petroleum  
10 gathering line or an associated disposal line is located.

11  
12 15-76-103. Easement – Offer and counterproposal.

13 (a)(1) If an easement is sought to be acquired by a mineral developer  
14 for the purpose of constructing a natural gas or petroleum gathering line or  
15 an associated disposal line and the mineral developer and the property owner  
16 cannot agree to the terms, including without limitation locations,  
17 conditions, or compensation for the acquisition, the mineral developer may  
18 make a written offer to the property owner to include proposed terms,  
19 locations, conditions, and compensation for the easement.

20 (2) The offer shall be made by mailing a copy of the offer by  
21 certified mail, return receipt requested.

22 (3) The offer submitted by the mineral developer shall also  
23 include notice of the property owner's duty to submit a counterproposal as  
24 provided in subsection (b) of this section.

25 (b)(1) Within twenty (20) days after receipt of the mineral  
26 developer's offer, the property owner shall submit either a notice of  
27 acceptance or a counterproposal to each term in the offer of the mineral  
28 developer, including locations, conditions, and compensation.

29 (2) The acceptance or counterproposal shall be made in the same  
30 manner as provided in subdivision (a)(3) of this section for the delivery of  
31 the mineral developer's offer.

32 (c) Except as provided in subsection (d) of this section, if the  
33 parties are unable to negotiate a settlement, ten (10) days after the date of  
34 receipt of the counterproposal by the property owner the mineral developer  
35 may petition the circuit court in the county in which the property is located  
36 or any part lies to appoint a hearing officer to review the matters relating

1 to the proposed property acquisition and to have the hearing officer submit a  
2 report to the court.

3 (d) If the property owner does not submit an acceptance or a  
4 counterproposal to the mineral developer within the time period specified in  
5 subsection (b) of this section and the mineral developer has complied with  
6 all other provisions of this chapter, the mineral developer may file a copy  
7 of the offer submitted to the property owner with the court and that offer  
8 shall be binding on all parties.

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10 15-76-104. Petition – Appointment of hearing officer.

11 (a) The petition filed by the mineral developer pursuant to § 15-76-  
12 103(c) shall include:

13 (1) A designation as petitioner of the person on whose behalf  
14 the easement is sought to be acquired;

15 (2) A statement by the petitioner of his or her authority to  
16 petition the circuit court;

17 (3) An allegation that the petitioner has been unable to  
18 negotiate a settlement in good faith with the property owner;

19 (4) A map, plat, or plan included with or attached to the  
20 petition showing the proposed route of the easement;

21 (5) A request for the appointment of a hearing officer;

22 (6) A copy of the offer submitted to the property owner by the  
23 petitioner;

24 (7) A copy of the counterproposal, if any, submitted to the  
25 petitioner by the property owner; and

26 (8) The name of the property owner and his or her address.

27 (b) Upon the filing of the petition, if the route of easement is not  
28 an issue, the court shall grant upon the request of the petitioner an order  
29 of immediate possession of the easement sought to be acquired by the mineral  
30 developer.

31 (c) Within fifteen (15) days of receipt of the petition, the court  
32 shall issue and give notice of the action which shall contain a demand that  
33 the property owner and the mineral developer submit to the court within ten  
34 (10) days the names of any persons whom the parties jointly agree the court  
35 may appoint as a hearing officer.

36 (d)(1) Within fifteen (15) days after providing notice of the action

1 to the parties, the court shall appoint a hearing officer from the list of  
2 names provided under subsection (c) of this section.

3 (2) If the parties are unable to agree on the selection of a  
4 hearing officer, the court shall appoint a hearing officer who is  
5 knowledgeable in property valuation techniques and administrative hearing  
6 procedures.

7 (e) Subject to any limitations in the order of appointment, the  
8 hearing officer has and shall exercise the power to regulate all proceedings  
9 in hearings before him or her, including requiring:

10 (1) The production of books, papers, vouchers, documents, and  
11 writings applicable to the issue;

12 (2) The swearing in of witnesses; and

13 (3) Receiving testimony and exhibits offered in evidence.

14 (f)(1) Upon receipt of the order of appointment, the hearing officer  
15 shall set a time and place for a hearing of parties or their attorneys to be  
16 held within twenty (20) days after the date of the order of appointment.

17 (2) The hearing officer shall notify the parties or their  
18 attorneys of the date of the hearing.

19 (3) If a party fails to appear at the time and place appointed,  
20 the hearing officer may proceed ex parte or adjourn the proceedings for a  
21 future date, giving notice to the absent party of the adjournment.

22 (g)(1) The parties may procure the attendance of witnesses before the  
23 hearing officer by the issuance and service of subpoenas as provided in the  
24 Rules of Civil Procedure.

25 (2) If without adequate reason a witness fails to appear or give  
26 evidence, he or she may be cited by the judge for contempt or be subject to  
27 other court sanctions.

28 (h) The compensation to be allowed to a hearing officer shall be fixed  
29 by the court and shall be apportioned equally among the parties.

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31 15-76-105. Scope of review by the hearing officer.

32 (a) The report of the hearing officer shall include findings  
33 concerning the following:

34 (1) When the route of easement is in issue, a full consideration  
35 of all other access available to the mineral developer, including the cost of  
36 construction for alternative routes, safety, obstructions, and other economic

1 and noneconomic factors;

2 (2)(A) The cost of acquisition or contract to acquire comparable  
3 easements if the transaction or contracting was freely made in good faith  
4 within a reasonable time before or after the date the petition was filed; or

5 (B) Other credible evidence of the market value of the  
6 easement to be acquired; and

7 (3) The amount of damages sustained by the property owner for  
8 the:

9 (A) Loss of agricultural production and income;

10 (B) Lost value of improvements;

11 (C) Cost for surface reclamation including revegetation,  
12 soil treatment, reshaping of topography, drainage systemizing, waste  
13 disposal, removal of any equipment, structures and obstacles, and the return  
14 of the property to its approximate original contour;

15 (D) Inconvenience to the property owner in use of his or  
16 her property; and

17 (E) Burden on the property owner of continued inspection  
18 and repair of the gathering line by the mineral developer.

19 (b) The total amount of compensation or damages awarded under  
20 subdivisions (a)(2) and (3) of this section shall not be greater than one-  
21 half (1/2) of the sum of the reasonable cost of surface reclamation plus  
22 twice the market value of the easement to be acquired as determined in  
23 subdivision (a)(2) of this section.

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25 15-76-106. Report and appeal.

26 (a) Within forty-five (45) days after the appointment of the hearing  
27 officer the:

28 (1) Hearing officer shall:

29 (A) Prepare a report and shall make findings of fact and  
30 conclusions of law; and

31 (B) File the report with the circuit clerk and, unless  
32 waived by the parties, he or she shall file with it a transcript or other  
33 authorized recording of the proceedings and of the evidence and the original  
34 exhibits:

35 (2) Clerk shall mail notice of the filing to all parties; and

36 (3) Circuit court shall accept the hearing officer's findings of

1 fact unless clearly erroneous.

2 (b)(1) Within ten (10) days after being served with notice of the  
3 filing of the report, either party may appeal the decision of the hearing  
4 officer to the court.

5 (2) The circuit court may adopt or modify the report.

6 (c) If the appealing party does not prevail in his or her appeal, the  
7 court shall award the other party reasonable attorney's fees and court costs  
8 incurred on appeal.

9 (d) If an appeal is not filed within ten (10) days of the parties  
10 having been served notice of the filing of the report or at the conclusion of  
11 any appeal, the court shall enter a final judgment granting or modifying the  
12 easement sought to be acquired, including the terms and compensation of the  
13 easement.

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15 15-76-107. Abandonment of easement.

16 If an easement is acquired pursuant to this chapter and the use for  
17 which the easement is acquired is subsequently abandoned, the easement is  
18 extinguished and the property interest reverts to the landowner or his or her  
19 successor in interest of the fee, free from any rights of the mineral  
20 developer.

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36 Filed Date: 04/02/2009 By: MAG\VJF