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89th General Assembly  
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# A Bill

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HOUSE BILL

By: Representative <NA>

## For An Act To Be Entitled

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

## Subtitle

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

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

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remove terminology that relied on the repealed Electric Consumer Choice Act  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

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

The right-of-way provided for under this section and §§ 18-15-502-- 18-  
15-509 shall be construed to include all lands necessary for dams and the  
backwater resulting therefrom, levees, approaches, abutments, canals,  
reservoirs, powerhouses, and other purposes incident to the business of  
generating, transmitting, distributing, or supplying electricity to or for  
the public for compensation or for public use by ~~an electric utility, as~~  
~~defined in § 18-15-512~~ a corporation.

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remove terminology that relies on the repealed Electric Consumer Choice Act  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

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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~~ a corporation as against any city or incorporated  
6 town.

7  
8 SECTION 3. Arkansas Code § 18-15-503 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9 remove terminology that relies on the repealed Electric Consumer Choice Act  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 18-15-503. Powers.

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

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

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

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

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

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

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

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

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

1 damages shall be paid to the owners of such lands, railroads, and turnpikes.

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

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

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

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

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

29 18-15-504. Petition for assessment of damages.

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

1 writing by certified mail, return receipt requested, of the time and place  
2 where the petition will be heard.

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

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

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

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

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

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

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

25 (e)(1) No ~~electric-utility~~ corporation shall be required to petition a  
26 court in order to provide broadband services over its own lines of wire,  
27 cables, poles, or other structures that are in service at the time that the  
28 ~~electric-utility~~ corporation provides broadband services over the lines of  
29 wire, cables, poles, or other structures.

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

35  
36 SECTION 5. Arkansas Code § 18-15-506 is amended to read as follows to

1 remove terminology that relies on the repealed Electric Consumer Choice Act  
2 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed  
3 before the enactment of that chapter:

4 18-15-506. Trial by jury.

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

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

14 18-15-507. Damages.

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

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

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

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

1 right-of-way over the lands forever.

2 (c) In all cases in which the ~~electric utility~~ corporation shall not  
3 pay or deposit the amount of damages assessed pursuant to this section, §§  
4 18-15-501--18-15-506, § 18-15-508, and § 18-15-509 within thirty (30) days  
5 after the assessment, the electric utility shall forfeit all rights in the  
6 premises.

7  
8 SECTION 7. Arkansas Code § 18-15-508 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 18-15-508. Deposit in case of controversy.

13 (a) When the determination of questions in controversy in the  
14 proceedings is likely to retard the progress of work on or the business of  
15 the ~~electric utility~~ corporation, the court or judge in vacation shall  
16 designate an amount of money to be deposited by the ~~electric utility~~  
17 corporation, subject to the order of the court, and for the purpose of making  
18 compensation when the amount thereof has been assessed, as provided in § 18-  
19 15-507, and the judge shall designate the place of deposit.

20 (b) Whenever the deposit has been made in compliance with the order of  
21 the court or judge, it shall be lawful for the ~~electric utility~~ corporation  
22 to enter upon the land and proceed with its work, through and over the lands  
23 in controversy, prior to the assessment and payment of damages for the use  
24 and right to be determined as provided in this section, §§ 18-15-501 - 18-15-  
25 507, and § 18-15-509.

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

31 18-15-509. Destruction or injury to company property.

32 ~~Any A~~ person who ~~shall destroy or injure~~ destroys or injures the wire,  
33 cable, pole, dam, reservoir, canal, power house, machinery, or appliances  
34 therein of the ~~electric utility~~ corporation ~~shall be~~ is guilty of a  
35 misdemeanor and upon conviction shall be fined in any sum not less than fifty  
36 dollars (\$50.00) nor more than one thousand dollars (\$1,000) and imprisoned

1 in the county jail for a period of not less than ten (10) days nor more than  
2 six (6) months.

3  
4 SECTION 9. Arkansas Code § 18-15-511 is repealed because it relied on  
5 the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and  
6 thus is no longer applicable.

7 ~~18-15-511. Declaration of public interest.~~

8 ~~The business of generating electricity, transmitting electricity,~~  
9 ~~distributing electricity, or supplying electricity to or for the public for~~  
10 ~~compensation or for public use is declared to be in the public interest.~~

11  
12 SECTION 10. Arkansas Code § 18-15-512 is repealed because it relied on  
13 the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and  
14 thus is no longer applicable.

15 ~~18-15-512. Definition of electric utility.~~

16 ~~As used in this subchapter, the term electric utility means an electric~~  
17 ~~utility as defined by § 23-19-102(9) [repealed] or an independent~~  
18 ~~transmission system operator, independent transmission company, independent~~  
19 ~~regional transmission group, or other independent transmission entity~~  
20 ~~operating transmission facilities in this state under § 23-19-103(g)~~  
21 ~~[repealed].~~

22  
23 SECTION 11. Arkansas Code § 18-28-403(a)(1)(B) is amended to correct a  
24 reference and make technical corrections to read as follows:

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

31  
32 SECTION 12. DO NOT CODIFY. Acts 2001, No. 1291, amended several  
33 sections in § 18-15-501 et seq. in reliance on the former Electric Consumer  
34 Choice Act of 1999, § 23-19-101 et seq., which was enacted by Acts 1999, No.  
35 1556, § 1, and was later repealed by Acts 2003, No. 204, § 18. Despite the  
36 repeal of the former Electric Consumer Choice Act of 1999, § 23-19-101 et

1 seq., the amendments made to § 18-15-501 et seq. by Acts 2001, No. 1291 in  
2 reliance on the now repealed chapter were never addressed. Sections 1-10 of  
3 this act amend the affected sections in § 18-15-501 et seq. to remove  
4 terminology that relied on the repealed Electric Consumer Choice Act of 1999,  
5 § 23-19-101 et seq., and to restate the terminology as it existed before the  
6 enactment of that chapter.

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