

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1341

By: Representatives Shaver, Day,  
and McGinnis

"AN ACT TO AMEND SECTION 16 OF ACT 164 OF 1973, AS AMENDED [ARK. STAT. ANN. § 73-276.15]; TO PROTECT PRIVATE PROPERTY RIGHTS BY LIMITING THE POWER OF EMINENT DOMAIN FOR PURPOSES CONSTRUCTION OF A MAJOR UTILITY FACILITY TO REGULATED PUBLIC UTILITIES; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 16 of Act 164 of 1973, as amended, the same being Ark. Stat. Ann. § 73-276.15, is hereby amended to read as follows:

"Section 16. (a) Whenever a certificate has been issued to a public utility or rural electric cooperative whose rates are subject to regulation by the Arkansas Public Service Commission for the construction of any major utility facility under the provisions of this Act and such public utility is unable to reach agreement with the owner of land (hereafter in this Section the word "land" shall include any estate or interest therein) to construct, operate, maintain and obtain reasonable access to the major utility facility in accordance with the certificate, it may acquire the same by the exercise of the power of eminent domain in a State court of competent jurisdiction in the judicial district in which such land is located. In the event the property sought to be condemned is owned by one (1) person and is situated in more than one (1) county, the petition may be filed in the court of any county where a part of the property may be located. The petition shall contain or have annexed thereto: (1) a statement of the authority under which and the use for which such land is taken; (2) a description of the land taken sufficient for the identification thereof; (3) a statement of the estate or interest in the land taken for such use; (4) a statement that a certificate has been issued to petitioner; (5) a statement of the sum of money estimated by such public utility or rural electric cooperative to be just compensation for the land

taken.

(b) After the filing of such petition and upon the deposit in court of a sum determined by the Court to be sufficient to secure compensation to the owner or owners of the property or interest therein sought to be condemned, the Court shall immediately enter an order finding title to such land in fee simple absolute, or such less estate or interest therein as is prayed in such petition, to be vested in such public utility or rural electric cooperative, and such land, or interest therein, shall be deemed to be condemned and taken for the use of the public utility or rural electric cooperative, and the right to just compensation for the same fee or for such lesser interest as may be taken shall vest in the person or persons entitled thereto; provided, however, that any taking of lands in fee simple absolute under the authority granted herein shall be limited to taking for electric generating plant sites and substation sites, and compressor station sites, and meter station sites only, and nothing herein shall be construed as authorizing a public utility or rural electric cooperative to take fee simple title to lands for gas or electric transmission line or distribution line rights-of-way purposes.

(c) Upon the application of any party in interest, and upon due notice to all parties, the Court may order that the money deposited in the registry of the Court, or any part thereof, be paid forthwith to the person or persons entitled thereto. If the compensation finally awarded shall exceed the amount of money so deposited, the Court shall enter judgment against the public utility or rural electric cooperative and in favor of the parties entitled thereto for the amount of the deficiency. If the compensation finally awarded shall be less than the amount of money so deposited and paid to the persons entitled thereto, the Court shall enter judgment in favor of the public utility or rural electric cooperative and against the proper parties for the amount of the excess.

(d) In the event that any party in interest is aggrieved by the amount of the estimated compensation as deposited by the public utility or rural electric cooperative in the registry of the Court, such party shall, upon written request, be entitled to a hearing, at which time evidence may be heard and received concerning the adequacy of the deposit. Thereafter, the Court shall, in its discretion, determine whether the present deposit is adequate, and if not, shall determine such additional amount which the public utility or rural electric cooperative shall deposit; provided that such additional amount

ordered deposited shall remain in the registry of the Court without withdrawal until final adjudication of just compensation, but such additional deposits shall not prevent the accrual of interest on the difference in the amount of the original deposit and the compensation awarded. This hearing and adjudication shall in no way interfere with the possession of the premises by the public utility or rural electric cooperative.

(e) Such compensation shall be determined by a jury pursuant to Section 35-310 Arkansas Statutes 1947 Annotated.

(f) Upon the filing of a petition, the Court shall have power to fix the time within which and the terms upon which the party or parties in possession shall be required to surrender possession to such applicant. The Court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable.

(g) No appeal in such proceeding or any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such land in such public utility or rural electric cooperative.

(h) The right to exercise the power of eminent domain and to take possession and title in advance of final judgment in such proceeding and all powers delegated in this Section shall be in addition to any right, power or authority conferred by any other laws of the State or of franchises, contracts, or agreements and shall not be construed as abrogating, limiting or modifying any such right, power, authority, franchise, contract or agreement."

