

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

A Bill

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

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

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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
34 any town, city, or village in this state, or the inhabitants thereof with

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

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

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

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32 SECTION 2. *Arkansas Code § 18-15-604 is amended to read as follows:*
33 *"18-15-604. Petition.*

34 (a) *The municipal corporation or other corporation so intending and*
35 *desiring to condemn, take, and use the real estate may present to the circuit*

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

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

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

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

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

31 "18-15-605. Damages - Deposits.

32 (a) The further proceedings in the matter of assessment of damages and
33 the making of deposits to secure the owner shall be the same as is now
34 prescribed by law in reference to condemnation proceedings by railroad,
35 telegraph, and telephone corporations, except that the measure of damages

1 shall be the fair market value of the condemned property at the time of the
2 filing of the petition by the corporation or water association as may be
3 determined by a jury based on the opinion of a licensed appraiser.

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

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

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

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

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

1 and effect from and after its passage and approval.

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/s/Rep. Wagner

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