

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.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007

# A Bill

SENATE BILL 69

4  
5 By: Senators Whitaker, Faris, Trusty, Horn, T. Smith  
6 By: Representatives R. Green, Pyle, Walters, D. Creekmore, Burris, Edwards, Key, Sample, Hardwick,  
7 Woods, Cornwell, D. Hutchinson

## For An Act To Be Entitled

8  
9  
10 AN ACT TO LIMIT THE SCOPE OF EMINENT DOMAIN POWER  
11 TO PROTECT PROPERTY OWNERS' RIGHTS; AND FOR OTHER  
12 PURPOSES.  
13

### Subtitle

14  
15 TO LIMIT THE SCOPE OF EMINENT DOMAIN  
16 POWER TO PROTECT PROPERTY OWNERS'  
17 RIGHTS.  
18

19  
20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22  
23 SECTION 1. Arkansas Code Title 18, Chapter 15, Subchapter 1 is amended  
24 to add additional sections to read as follows:

25 18-15-103. Limitations on power of eminent domain.

26 (a) An entity given the power of eminent domain by law shall not take  
27 property for public use:

28 (1) For the sole purpose of enhancing tax revenue; or

29 (2)(A) For the purpose of transferring property to another  
30 entity to achieve a purpose distinct from the initial purpose stated for  
31 commencement of an eminent domain proceeding.

32 (B) Limited purposes incidental to the initial purpose are  
33 permissible.

34 (b) If condemned property is not used for the initial purpose for  
35 which it was taken within ten (10) years of the conclusion of the eminent  
36 domain proceeding, the former property owner shall have the right to acquire



1 the property at its present fair market value.

2 (c)(1) After a condemning entity makes a deposit to the court on the  
3 affected property, a hearing is held, and the condemning entity takes  
4 possession of the property, the affected property owner or owners shall have  
5 immediate access to the deposit.

6 (2) The condemning entity shall be given credit for the  
7 deposited amount upon a determination of just compensation.

8 (3) The condemning entity shall declare its' opinion of the  
9 value of the condemned property at the commencement of the eminent domain  
10 proceeding.

11 (d)(1) A condemning entity shall not initiate an eminent domain  
12 proceeding to take a neighborhood or a group of properties in a single  
13 proceeding.

14 (2) Each parcel of property shall be condemned in a distinct  
15 eminent domain proceeding.

16 (e) This section shall not apply to the use of eminent domain in  
17 connection with a redevelopment district as authorized by § 14-168-301 et  
18 seq.

19  
20 18-15-104. Approval by local governing authority.

21 In any eminent domain proceeding initiated by a board, commission, or  
22 entity of a municipality or county, the board, commission, or entity shall  
23 receive approval from the governing authority of the municipality or county  
24 prior to commencement of the eminent domain proceeding.

25  
26 18-15-105. Compensation to property owner.

27 (a) In any eminent domain proceeding:

28 (1) Just compensation shall be determined by a jury unless a  
29 jury determination is waived by the affected property owner or owners;

30 (2) Just compensation shall include, but not be limited to, the  
31 cost to the affected property owner or owners of acquiring comparable  
32 property.

33 (3) Just compensation may include costs and losses incurred by  
34 the affected property owner or owners as a result of the eminent domain  
35 proceeding, including:

36 (A) Loss of income;

- 1                   (B) Loss of business goodwill;
- 2                   (C) Relocation costs;
- 3                   (D) The full amount to satisfy any mortgage indebtedness
- 4 on the condemned property; or
- 5                   (E) The fee for an appraiser to testify as an expert
- 6 witness;

7                   (4) Present or future enhanced value of any remaining property  
 8 adjoining the condemned property owned by an affected property owner or  
 9 owners shall not satisfy the requirement of just compensation; and

10                   (5) If the initial amount deposited with the court at the  
 11 commencement of the eminent domain proceeding by the condemning entity is  
 12 less than the amount the fact finder ascertains, then the affected property  
 13 owner or owners shall be awarded attorney's fees not to exceed twenty-five  
 14 percent (25%) of the difference between the awarded amount of just  
 15 compensation and the initial amount deposited with the court at the  
 16 commencement of the eminent domain proceeding.

17                   (b) After a determination of just compensation by the fact finder,  
 18 full payment shall be made to the affected property owner or owners within  
 19 thirty (30) days of judgment or upon the expiration of the time frame allowed  
 20 by law for an appeal, whichever occurs last.

21                   (c) This section shall not apply to electric or natural gas utilities.

22

23                   SECTION 2. Arkansas Code § 14-168-301(3), concerning the definition of  
 24 "blighted area", is amended to read as follows:

25                   (3)(A) "Blighted area" means an area in which the structures,  
 26 buildings, or improvements, by reason of dilapidation, deterioration, age or  
 27 obsolescence, inadequate provision for access, ventilation, light, air,  
 28 sanitation, or open spaces, high density of population, and overcrowding or  
 29 the existence of conditions which endanger life or property, are detrimental  
 30 to the public health, safety, morals, or welfare.

31                   (B) "Blighted area" includes any area which, by reason of  
 32 the presence of a substantial number of substandard, slum, deteriorated or  
 33 deteriorating structures, predominance of defective or inadequate street  
 34 layout, faulty lot layout in relation to size, adequacy, accessibility, or  
 35 usefulness, unsanitary or unsafe conditions, deterioration of site or other  
 36 improvements, diversity of ownership, tax on special assessment delinquency

1 exceeding the fair value of the land, defective or unusual conditions of  
2 title, or the existence of conditions which endanger life or property by fire  
3 and other causes, or any combination of such factors, substantially impairs  
4 or arrests the sound growth of a city, retards the provision of housing  
5 accommodations, or constitutes an economic or social liability and is a  
6 menace to the public health, safety, morals, or welfare in its present  
7 condition and use, or any area which is predominantly open and which because  
8 of lack of accessibility, obsolete platting, diversity of ownership,  
9 deterioration of structures or of site improvements, or otherwise,  
10 substantially impairs or arrests the sound growth of the community+.

11 (C) "Blighted area" does not include property that is  
12 primarily used for agricultural purposes;

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36