

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
4

As Engrossed: S2/5/07 S2/13/07

A Bill

SENATE BILL 69

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
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For An Act To Be Entitled

11 AN ACT TO LIMIT THE SCOPE OF EMINENT DOMAIN POWER
12 TO PROTECT PROPERTY OWNERS' RIGHTS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15 TO LIMIT THE SCOPE OF EMINENT DOMAIN
16 POWER TO PROTECT PROPERTY OWNERS'
17 RIGHTS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 (4) Neither payment of the deposited amount by the condemning
12 entity nor access to the deposit by the affected property owner or owners
13 shall constitute a waiver of any claims or defenses.

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

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

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.

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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, natural gas, or

22 telephone utilities.

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24 SECTION 2. Arkansas Code § 14-168-301(3), concerning the definition of

25 "blighted area", is amended to read as follows:

26 (3)(A) "Blighted area" means an area in which the structures,

27 buildings, or improvements, by reason of dilapidation, deterioration, age or

28 obsolescence, inadequate provision for access, ventilation, light, air,

29 sanitation, or open spaces, high density of population, and overcrowding or

30 the existence of conditions which endanger life or property, are detrimental

31 to the public health, safety, morals, or welfare.

32 (B) "Blighted area" includes any area which, by reason of

33 the presence of a substantial number of substandard, slum, deteriorated or

34 deteriorating structures, predominance of defective or inadequate street

35 layout, faulty lot layout in relation to size, adequacy, accessibility, or

36 usefulness, unsanitary or unsafe conditions, deterioration of site or other

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

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

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/s/ Whitaker