

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H2/19/13

A Bill

HOUSE BILL 1282

5 By: Representatives J. Edwards, Steel, Wright
6 By: Senator J. Hutchinson
7

For An Act To Be Entitled

9 AN ACT TO MODIFY CERTAIN EMINENT DOMAIN LAWS THAT
10 ARISE OUT OF PROPERTY RIGHTS SECURED UNDER ARTICLE 2,
11 § 22 OF THE ARKANSAS CONSTITUTION; AND FOR OTHER
12 PURPOSES.
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Subtitle

15 TO MODIFY CERTAIN EMINENT DOMAIN LAWS
16 THAT ARISE OUT OF PROPERTY RIGHTS SECURED
17 UNDER ARTICLE 2, § 22 OF THE ARKANSAS
18 CONSTITUTION.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. DO NOT CODIFY. Legislative intent.

25 (a) It is the intent of the General Assembly to protect the property
26 rights of the people of the State of Arkansas in eminent domain proceedings
27 initiated by the Arkansas State Highway and Transportation Department
28 because, as stated in Article 2, § 22 of the Arkansas Constitution, the right
29 of property in Arkansas is before and higher than any constitutional sanction
30 and should not be taken without just compensation.

31 (b) The General Assembly believes when the Arkansas State Highway and
32 Transportation Department fails to offer the fair market value for condemned
33 property that costs, expenses, and reasonable attorney's fees should be
34 awarded to the land owner to justly compensate the people of the State of
35 Arkansas.

36 (c) The General Assembly believes it is in the best interests of the



1 people of the State of Arkansas to encourage settlement in eminent domain
2 proceedings initiated by the Arkansas State Highway and Transportation
3 Department.

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5 SECTION 2. Arkansas Code § 27-67-317 is amended to read as follows:

6 27-67-317. Payment of award.

7 (a) Upon the application of any party in interest and upon due notice
8 to all parties, the court may order that the money deposited in the court, or
9 any part thereof, be paid immediately to the person or persons entitled
10 thereto.

11 (b) If the compensation finally awarded ~~shall exceed~~ exceeds the
12 amount of money ~~so~~ deposited, the court shall enter judgment against the
13 State of Arkansas and in favor of the ~~parties~~ party entitled thereto for the
14 amount of the deficiency and under § 27-67-318 shall award the party entitled
15 to judgment their costs, expenses, and reasonable attorney's fees incurred in
16 preparing and conducting the final hearing and adjudication.

17 ~~(c) If the compensation finally awarded shall be less than the amount~~
18 ~~of money so deposited and paid to the persons entitled thereto, the court~~
19 ~~shall enter judgment in favor of the State of Arkansas and against the proper~~
20 ~~parties for the amount of the excess.~~

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22 SECTION 3. Arkansas Code § 27-67-318 is amended to read as follows:

23 27-67-318. Hearing on amount of deposit.

24 (a)(1) At least forty (40) days before the filing of an action for
25 condemnation of property or an interest in property, the Arkansas State
26 Highway and Transportation Department shall make an initial written offer to
27 the owner of or any other party with an interest in the subject property to
28 adequately compensate for the property and for any compensable damages to
29 remaining portions of the subject property.

30 (2) The initial written offer shall be accompanied by any
31 written appraisal upon which the Arkansas State Highway and Transportation
32 Department relied in establishing the amount of compensation offered.

33 (3) If the Arkansas State Highway and Transportation Department
34 determines that the amount of just compensation due is less than ten thousand
35 dollars (\$10,000), the Arkansas State Highway and Transportation Department,
36 in lieu of a written appraisal, may provide to the owner of or any other

1 party with an interest in the subject property a written explanation of the
2 bases and methods by which the Arkansas State Highway and Transportation
3 Department arrived at the specific valuation of the subject property.

4 (4) The initial written offer and the accompanying written
5 appraisal or explanation shall be delivered to the owner of or any other
6 party with an interest in the subject property.

7 (5)(A) The owner of or any party with an interest in the subject
8 property shall have not less than forty (40) days from the date he or she
9 receives the initial written offer required by subdivision (a)(1) of this
10 section, accompanied by the written appraisal or written explanation required
11 by subdivisions (a)(2)-(3) of this section, to accept the offer.

12 (B)(i) The owner of or any party with an interest in the
13 subject property shall send written notice of his or her acceptance of the
14 initial written offer to the Arkansas State Highway and Transportation
15 Department.

16 (ii) If a written notice of acceptance is not sent,
17 the offer is deemed rejected.

18 (6)(A) Before filing a petition pursuant to § 27-67-311 or a
19 declaration of taking pursuant to § 27-67-312, the Arkansas State Highway and
20 Transportation Department shall assert and provide proof that the initial
21 written offer actually was received by the owner of or any other party with
22 an interest in the subject property.

23 (B) Receipt of the initial offer may be demonstrated by
24 affidavit or by the signature of the owner of and any other party with an
25 interest in the subject property and attached as an exhibit to the petition.

26 (C) If receipt of the initial offer is not submitted by
27 the Arkansas State Highway and Transportation Department before or at the
28 time of filing the petition or declaration, the Arkansas State Highway and
29 Transportation Department shall refrain from the filing of the petition or
30 declaration until the proof of receipt is available to be submitted.

31 (b)(1) The initial written offer described in subsection (a) may be
32 followed by other subsequent written offers of adequate compensation.

33 (2) Any subsequent written offer for adequate compensation may
34 be presented to the owner of or any other party with an interest in the
35 subject property before or after a petition or declaration is filed by the
36 Arkansas State Highway and Transportation Department.

1 (c)(1) If no subsequent written offers of adequate compensation are
2 made before filing a petition or declaration, the amount deposited in the
3 circuit court's registry at the time of filing the petition or declaration
4 shall correspond with the amount offered in the initial written offer.

5 (2) If a subsequent written offer for adequate compensation is
6 made before filing a petition or declaration, the amount deposited in the
7 circuit court's registry at the time of filing the petition or declaration
8 shall correspond with the amount offered in the last written offer.

9 (3) If written offers of adequate compensation are made after
10 filing the petition or declaration and after the initial deposit, the
11 Arkansas State Highway and Transportation Department shall deposit into the
12 circuit court's registry the additional amounts of its last written offer
13 within ten (10) days of making the last written offer.

14 (d)(1) The amount of adequate compensation offered in the initial
15 written offer or any subsequent written offer shall not be reduced by
16 amendment or otherwise before or during a final hearing or adjudication
17 except on order of the court entered not less than sixty (60) days prior to
18 the final hearing or adjudication.

19 (2) An order for reduction of adequate compensation offered,
20 pleaded by the Arkansas State Highway and Transportation Department in the
21 complaint, or deposited with the circuit court for the use and benefit of the
22 owner of or any other person with an interest in the subject property pending
23 outcome of the final hearing or adjudication may be entered only upon motion
24 of the Arkansas State Highway and Transportation Department and a finding
25 that the appraisal or written explanation upon which the initial written
26 offer is based was the result of a mistake of material fact that was not
27 known and could not reasonably have been known at the time of the original
28 appraisal or was based on a mistake of law.

29 ~~(a)(e)~~ If, after due notice, any party in interest should feel the
30 owner of or any party with an interest in the subject property is aggrieved
31 at the amount of the initial written offer or estimated compensation as
32 deposited by the Arkansas State Highway and Transportation Department in the
33 registry of the circuit court, the party shall be entitled to a hearing, at
34 which time evidence may be heard and received concerning the adequacy of the
35 deposit.

36 ~~(b)(f)(1)~~ Thereafter, the circuit court in its discretion shall, ~~in~~

1 ~~its discretion~~, determine whether the present deposit is adequate, and if
2 not, shall determine the additional amount ~~which~~ that the department shall
3 deposit.

4 (2) Such ~~The~~ additional amount ordered deposited shall remain in
5 the registry of the court without withdrawal until final adjudication of just
6 compensation, but the additional deposit shall not prevent the accrual of
7 interest on the difference in the amount of the original deposit and the
8 compensation awarded as provided in §§ 27-67-315 and 27-67-316.

9 ~~(e)~~(g) This hearing and adjudication shall in no way interfere with
10 the possession of the premises by the department.

11 (h) If a final hearing or adjudication is held to fix the amount of
12 adequate compensation to be awarded to the owner of or any party with an
13 interest in the subject property, the court shall award the party its costs,
14 expenses, and reasonable attorney's fees, including without limitation the
15 costs of appraisals and fees for experts, incurred in preparing and
16 conducting the defense to the action:

17 (1) If the amount of just compensation assessed by the verdict
18 in the final hearing or adjudication is ten percent (10%) more than the
19 amount deposited into the circuit court's registry by the State of Arkansas;
20 or

21 (2) If an action is abandoned by the Arkansas State Highway and
22 Transportation Department and judgment is entered in favor of the owner of or
23 any party with an interest in the subject property.

24 (i) Costs, expenses, and reasonable attorney's fees awarded under
25 subsection (h) of this section are part of the just compensation awarded.

26 (j) At the final hearing or adjudication, the amount of just
27 compensation assessed shall not be less than the amount of just compensation
28 initially offered in writing, the amount of just compensation offered in the
29 latest subsequent written offer, or the amount deposited by the Arkansas
30 State Highway and Transportation Department into the circuit court's
31 registry, whichever may be largest.

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33 */s/J. Edwards*
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